

Exhibit 35
(Engels Report)

Robinson v City of Madison, et al.

15CV502

Transcript of the Testimony of:

James D. Engels

April 19, 2016



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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

The Estate of TONY ROBINSON, JR.,
ex. rel. Personal Representative
ANDREA IRWIN,

Plaintiff,

vs.

Case No. 3:15-CV-502

THE CITY OF MADISON, WISCONSIN
and MADISON POLICE OFFICER MATTHEW
KENNY,

Defendants.

Deposition of JAMES D. ENGELS

Tuesday, April 19, 2016

9:08 a.m.

at

WISCONSIN DEPARTMENT OF JUSTICE
17 West Main Street
Madison, Wisconsin

Reported by Shelly A. Loniello, RPR

1 Deposition of JAMES D. ENGELS, a witness
2 in the above-entitled action, taken at the instance
3 of the Plaintiff, pursuant to the Federal Rules of
4 Civil Procedure, pursuant to Notice, before Shelly
5 Loniello, Registered Professional Reporter and
6 Notary Public, State of Wisconsin, at the WISCONSIN
7 DEPARTMENT OF JUSTICE, 17 West Main Street,
8 Madison, Wisconsin, on the 19th day of April, 2016,
9 commencing at 9:08 a.m. and concluding at 3:17 p.m.

10 A P P E A R A N C E S:

11 LOEVY & LOEVY ATTORNEYS AT LAW, by
12 Mr. Anand Swaminathan
13 311 North Aberdeen Street, Third Floor
Chicago, Illinois 60607
Appeared on behalf of Plaintiff.

14 BOARDMAN & CLARK, LLP, by
15 Ms. Kathryn A. Harrell
16 One South Pinckney Street, Fourth Floor
Madison, Wisconsin 53701
Appeared on behalf of the City of
Madison.

17 CRIVELLO CARLSON, S.C., by
18 Mr. Christopher J. Johnson
19 710 North Plankinton Avenue, Suite 500
Milwaukee, Wisconsin 53203
20 Appeared on behalf of Officer Matthew
Kenny.

21 WISCONSIN DEPARTMENT OF JUSTICE, by
22 Ms. Anne M. Bensky
23 17 West Main Street
Madison, Wisconsin 53707
Appeared on behalf of the witness.

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I N D E X

Examination by:	Page
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E X H I B I T S

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(Original exhibits attached to original transcript. Copies of exhibits attached to copies of transcript.)

1 TRANSCRIPT OF PROCEEDINGS
 2 JAMES D. ENGELS, called as a witness
 3 herein, having been first duly sworn on oath, was
 4 examined and testified as follows:
 5 EXAMINATION
 6 BY MR. SWAMINATHAN:
 7 Q Please state and spell your name for the record.
 8 A James Engels, E-N-G-E-L-S.
 9 MR. SWAMINATHAN: And did you have an
 10 objection you wanted to put on the record for this
 11 deposition?
 12 MS. BENSKY: Yeah. We object to any
 13 questions relating to Special Agent in Charge
 14 Engels' opinions, expert or otherwise, related to
 15 whether Officer Kenny or the City of Madison acted
 16 properly in using the force that it did.
 17 We have an objection that we've read
 18 on the record before, I'm not going to read it
 19 again, but that same objection applies here.
 20 MR. SWAMINATHAN: All right.
 21 BY MR. SWAMINATHAN:
 22 Q Would it be acceptable to -- to refer to you as
 23 Agent Engels, is that a -- or Special Agent Engels,
 24 what's a respect -- a respectable way to -- to
 25 refer to --

1 A Whatever you're comfortable with. It doesn't
 2 matter.
 3 Q Is -- is Agent Engels okay?
 4 A Jim -- Jim is fine.
 5 Q Let's -- let's do Agent Engels, if that's
 6 acceptable?
 7 A Sounds great.
 8 Q All right. Agent Engels, have you ever given a
 9 deposition before?
 10 A No.
 11 Q Okay. This is the first time you've ever given
 12 a -- a deposition?
 13 A Yes.
 14 Q Okay. Have you ever provided sworn testimony
 15 before?
 16 A Yes.
 17 Q Okay. What are the other forms in which you've
 18 provided sworn testimony?
 19 A Criminal proceedings.
 20 Q Okay. Is that a trial?
 21 A Trial, motion hearings.
 22 Q What other circumstances have you provided sworn
 23 testimony for?
 24 A I suppose for affidavits related to anything that
 25 came out of a court proceeding.

1 Q Those would be written forms of sworn testimony?
 2 A Yes.
 3 Q Okay. In those other instances in which you've
 4 provided sworn -- or strike that. In the instances
 5 when you've provided sworn testimony, was it always
 6 in the context of your duties as a law enforcement
 7 agent?
 8 A Yes.
 9 Q Have you ever given sworn testimony before outside
 10 of your role as a law enforcement agent?
 11 A No.
 12 Q In other words, you've never, in your sort of
 13 personal life, had any reason where you've had to
 14 give sworn testimony before?
 15 A Yeah, correct.
 16 Q Okay. Approximately how many times do you think
 17 you've given sworn testimony in your law
 18 enforcement career?
 19 A Hundreds.
 20 Q Okay. And always in the context of criminal
 21 proceedings?
 22 A Yes.
 23 Q Okay. And you -- you were under -- go ahead.
 24 A Potential civil hearings as well, related to maybe
 25 asset forfeitures.

1 Q Okay. You understood you were under oath when you
 2 were giving sworn testimony in those criminal
 3 proceedings in other matters?
 4 A Yeah.
 5 Q And you understand that it's the same oath that
 6 you're taking here and same -- same penalties of
 7 perjury and so on?
 8 A Yes.
 9 Q Okay. Just to give you a little -- the background
 10 on a deposition, this is basically a
 11 question-and-answer session. I'm going to ask
 12 questions, you'll answer them, the court reporter's
 13 going to write down everything that we both say, so
 14 to make that go smoothly, please make sure I've
 15 finished my question before you answer and I'll do
 16 the same, I'll try to make sure you've finished
 17 your answer before I ask my next question. Fair?
 18 A Fair.
 19 Q All right. There'll be many instances when you'll
 20 know exactly where I'm going and you'll be ready to
 21 answer it before I've finished, just try to wait
 22 and let me finish my question, fair?
 23 A Yeah.
 24 Q Okay. No nonverbal responses, no nodding of the
 25 head, no shaking your head, the court reporter

1 can't get that down, fair?
 2 A Yep.
 3 Q Okay. If I ask you a question and you don't
 4 understand it, please ask me to rephrase the
 5 question and I will rephrase it, okay?
 6 A Sure.
 7 Q All right. If you answer the question, I'm going
 8 to assume you understood the question; is that
 9 fair?
 10 A Yes.
 11 Q Okay. You can take breaks whenever you need to.
 12 My only rule is, no breaks while there's a pending
 13 question, fair?
 14 A Fair.
 15 Q Okay. Is there anything that would prevent you
 16 from providing accurate and truthful testimony
 17 today?
 18 A No.
 19 Q Do you have any medical conditions that would
 20 prevent you from providing accurate and truthful
 21 testimony today?
 22 A No.
 23 Q Do you have any -- are you taking any medications
 24 that would prevent you from providing accurate and
 25 truthful testimony today?

1 A No.
 2 Q Do you have any memory issues that would prevent
 3 you from providing accurate and truthful testimony
 4 today?
 5 A No.
 6 Q Are you represented at this deposition by anyone?
 7 A Well, I would say Anne is probably my
 8 representation from the Department of Justice.
 9 Q All right. So you understand that you're
 10 represented by Ms. Bensky from the Department of
 11 Justice for this deposition?
 12 A Yes.
 13 Q Did you meet with Ms. Bensky in preparation for
 14 today's deposition?
 15 A Yes.
 16 Q How many times did you meet with Ms. Bensky?
 17 A Once.
 18 Q Did you meet with anyone else from the Department
 19 of Justice who was serving as an attorney to
 20 represent you other than Ms. Bensky?
 21 A No.
 22 Q So Ms. Bensky is the only attorney you met with in
 23 preparation for today's deposition?
 24 A Yes.
 25 Q And Ms. Bensky's the only person from the

1 Department of Justice you met with in preparation
 2 for today's deposition?
 3 A Yes.
 4 Q Okay. When did you meet with Ms. Bensky?
 5 A Last week Wednesday -- Thursday. Last week.
 6 Q How long that was meeting?
 7 A Excuse me?
 8 Q How long was that meeting?
 9 A About ninety minutes.
 10 Q I don't want you to tell me about the contents of
 11 any communications you had during that meeting, but
 12 please tell me if you reviewed any documents at
 13 that meeting.
 14 A In that meeting?
 15 Q Yes.
 16 A Yes.
 17 Q Okay. How many documents did you review in that
 18 meeting?
 19 A The binder with the DCI reports, I reviewed I think
 20 one report, but I looked at the binder in general
 21 -- in general.
 22 Q When you say you looked at the binder in general,
 23 what do you mean?
 24 A Just kind of paged through it to see what it all
 25 contained.

1 Q Okay. And you said you reviewed one report, what
 2 report was that?
 3 A The case initiation report, the first report.
 4 Q You said initiation?
 5 A Yes.
 6 Q Okay. Did you specifically review any other
 7 reports other than the case initiation report?
 8 A Not that day.
 9 Q Okay. Did you review any other documents in that
 10 meeting with Ms. Bensky?
 11 A No.
 12 Q Did you review any DCI policies in that meeting?
 13 A No.
 14 Q Okay. Other than that meeting, did you have any
 15 other meetings in which you -- well, strike that.
 16 Did you have any other meetings to prepare for
 17 today's deposition?
 18 A No.
 19 Q Did you do anything else to prepare for today's
 20 deposition?
 21 A Yes.
 22 Q Okay. And let me pause for one second. When I ask
 23 if you had any other meetings, I'm talking about
 24 meetings with -- with actually other DCI folks, for
 25 example; did you have any meetings with any DCI

1 folks to prepare for today's deposition?
 2 A No.
 3 Q Okay. What else did you do to prepare for today's
 4 deposition, other than meet with Ms. Bensky?
 5 A I reviewed the reports that I authored and some
 6 policies.
 7 Q When did you do that?
 8 A Last night.
 9 Q Did you do anything else to prepare for this
 10 deposition, other than meet with Ms. Bensky and
 11 review those reports last night?
 12 A No.
 13 Q Okay. When you say you reviewed reports that you
 14 authored, can you explain what you mean by that.
 15 A Sure. I authored three reports related to this
 16 case regarding my contacts with the family.
 17 Q And did you -- and then you said you also reviewed
 18 DCI policies?
 19 A Yes.
 20 Q What policies did you review?
 21 A The report writing policy, the critical incident
 22 checklist, a crime scene policy. I think that's
 23 it.
 24 Q Did you review any policy related to
 25 interrogatories or interviews?

1 Q So the only reports -- DCI reports related to the
 2 Tony Robinson investigation that you reviewed for
 3 purposes of today's deposition are the three
 4 reports you authored and the case summary report;
 5 is that correct?
 6 A Yes.
 7 Q Okay. What was your involvement in the preparation
 8 of the case summary report?
 9 A I would have reviewed it for -- as part of our
 10 process --
 11 Q Explain --
 12 A -- in -- in -- in finalizing the document.
 13 Q So -- I think the best way to do it is, explain to
 14 me what that process is for preparing and
 15 finalizing the case summary report.
 16 A Sure. So Special Agent Fernandez would put the
 17 information together in a document. When it got to
 18 the point where she felt it was ready for review,
 19 because I'm her supervisor, I review the document,
 20 suggest any edits, content matter, grammatical
 21 errors, look for any omissions, mainly talk about
 22 the content, because it's just a summary, and she
 23 would make any edits, would come back to me for any
 24 reviews, and then I would forward it to my
 25 supervisor for another review.

1 A No.
 2 Q Did you -- when you say you reviewed the report
 3 writing policy, did that policy contain appendixes
 4 or exhibits to it?
 5 A Yes.
 6 Q Okay. Did you review those appendixes or exhibits
 7 as well?
 8 A One, yes.
 9 Q Okay. What was the one you reviewed?
 10 A The officer-involved death investigation report
 11 writing template.
 12 Q Okay. Any other policy related document that you
 13 reviewed in preparation for today's deposition?
 14 A The summary report.
 15 Q When you say the summary report, you mean the
 16 summary report in the Tony Robinson matter or a --
 17 a -- a general policy related to summary reports?
 18 A The summary report in the Tony Robinson matter --
 19 Q All right.
 20 A -- I think as authored by Special Agent Fernandez.
 21 It's a part of the DCI reports.
 22 Q Did you review any other reports other than the
 23 case summary report and the three reports that you
 24 authored?
 25 A No.

1 Q Who gave -- who did you forward it to for review?
 2 A Director Jody Wormet, W-O-R-M-E-T.
 3 Q And did Jody Wormet then approve the summary report
 4 eventually in this case?
 5 A I think he forwards it on to our deputy
 6 administrator, and then I'm not sure what the
 7 process is from there.
 8 Q Who's the deputy administrator you're referring to?
 9 A He was Pat Mitchell, M-I-T-C-H-E-L-L.
 10 Q And do you know if Pat Mitchell reviewed the case
 11 summary report in this case?
 12 A I believe so.
 13 Q Okay. And then do you know if anyone else reviewed
 14 the case summary report, from an approval
 15 perspective, other than yourself, Mr. Wormet and
 16 Mr. Mitchell?
 17 A I don't know.
 18 Q Okay. What was the role of Agent Crowe, with
 19 regard to the case summary report?
 20 A He may have reviewed it. I don't know.
 21 Q Okay. Were you -- what did you view your role as
 22 with regard to the preparation of the case summary
 23 report?
 24 A My role?
 25 Q Yes.

1 A Just as I described, a review to facilitate a final
 2 document to -- to pass along to our supervisors.
 3 Q Did you ultimately approve that report?
 4 A Yes. The actual DCI report, yes.
 5 Q Okay. What do you -- what is the sort of
 6 clarification you're giving there?
 7 A Yeah. Thank you. Likely -- what we typically do
 8 is put it into a Word document so it's reviewed in
 9 Word format, so we may be able to track changes.
 10 Once we get the content down, the narrative
 11 content, then we place it into the case management
 12 system, and at that point, then it's
 13 electronically, within our case management system,
 14 forwarded to me, at which time I would approve the
 15 report, which you would see on the paper document.
 16 Q And so that's that -- when you say you put it in
 17 the electronic system, you're referring to the
 18 ACISS or ACISS system?
 19 A Yes.
 20 Q Okay. So you do an initial review of a Word
 21 document that's not through the ACISS system; is
 22 that right?
 23 A Correct.
 24 Q And then after you've sort of -- would it be after
 25 you've done some basic level of approval, that you

1 changes in a Word document.
 2 Q Okay. So Agent Fernandez would have emailed you
 3 the document, and then you would have emailed it
 4 back to her in this case?
 5 A Maybe. I don't specifically recall.
 6 Q Okay. And it's typical for you, when you're
 7 reviewing reports, to make changes in -- in --
 8 using track changes in Microsoft Word; is that
 9 right?
 10 A Yes.
 11 Q Okay. And do you recall either way whether you did
 12 that in this case, in the case of the Tony Robinson
 13 matter?
 14 A Yeah, I don't specifically recall.
 15 Q Do you recall whether you made substantive changes
 16 to the Word document initial -- initially submitted
 17 to you by Agent Fernandez in this case?
 18 A I don't recall.
 19 Q How common is it for you to make substantive
 20 changes to a case summary report that's submitted
 21 to you in an officer-involved shooting?
 22 A Substantive as in -- I mean, I'm not sure what your
 23 definition --
 24 Q Yeah.
 25 A -- and my definition is. On a regular basis, we'll

1 then -- it's then put into the ACISS system?
 2 A Yes.
 3 Q Okay. And so at the point it goes into the ACISS
 4 system, you've already approved it; is that right?
 5 A Yeah, I've reviewed the content and I'm satisfied
 6 with the content.
 7 Q Will you make any subsequent changes to a report
 8 after its gone into the ACISS system?
 9 A In this case, no; but in the other reports, if
 10 there was an obvious mistake, I may make an
 11 adjustment that doesn't change the content, but in
 12 this case, no.
 13 Q For the most part, the substance of the report --
 14 strike that. For the most part, the changes that
 15 you intend to make to the report from a substantive
 16 or content perspective are made before it goes into
 17 the ACISS system, correct?
 18 A Yes.
 19 Q Okay. In this case, did you have any substantive
 20 or content-based edits to the report that Agent
 21 Fernandez prepared?
 22 A I specifically don't recall, but I'm sure I did.
 23 Q Okay. And how would you communicate those changes
 24 to Agent Fernandez?
 25 A Likely in-person conversations or through track

1 discuss the content, because it's difficult to take
 2 a lot of information and just get it down to just a
 3 summary, where it's of value to the reader.
 4 Q Okay. And -- and -- so you -- and then when we say
 5 substantive or -- or content-based here, so let's
 6 try -- let's define it now so that --
 7 A Uh-huh.
 8 Q -- I'm on the same page as you. What are you
 9 thinking when you -- when you -- when you use that
 10 term, content, or you're changing content or giving
 11 suggestions about content?
 12 A How much information we're putting in, some that's
 13 maybe not necessary, maybe other information that I
 14 feel is necessary, maybe summarizing certain
 15 details instead of placing all the details into
 16 that one summary report.
 17 Q Okay. And so those kinds of changes that you've
 18 just described --
 19 A Uh-huh.
 20 Q -- how often are you making those kinds of changes
 21 to a case summary report in an officer-involved
 22 shooting?
 23 A Every time that we would review a document.
 24 Q Okay. So it's -- it -- you don't know of any
 25 instances when you received a case summary report

1 in an officer-involved shooting where you didn't
 2 have some content-based changes?
 3 A It's never perfect.
 4 Q Okay. Would it be -- would it be correct to say
 5 that a number of the changes that you make are to
 6 remove detail or remove content so that it's
 7 shorter or more -- in more summary form?
 8 A Yeah, I don't -- it's hard to -- I don't know.
 9 Q So let me -- let me ask you this, one of these
 10 changes -- one of the content type of changes that
 11 you make to case summary reports often is changes
 12 to essentially remove information that you think
 13 may not need to be there; is that right?
 14 A Yes, that's one of the things.
 15 Q Okay. So -- and for that one, what are -- what are
 16 you -- what is -- what do you have an eye to in
 17 terms of what can come out; are you -- are you
 18 finding information that's irrelevant that can come
 19 out; are you finding information that's too
 20 detailed; what's your -- what are the kinds of
 21 things that -- that you're taking out of case
 22 summary reports?
 23 A I would say both of those examples that you shared,
 24 stuff that's irrelevant or maybe information that's
 25 just too detailed. The other thing I ensure is

1 that we're not releasing anything that we've
 2 received, for example, from the state crime lab,
 3 which we're not permitted to.
 4 Q Okay. What -- can you give me a sense of what type
 5 of information that is that you wouldn't be able to
 6 include in a report?
 7 A I think any of their documents. We could
 8 paraphrase or maybe use certain quotes, but we
 9 couldn't actually release their original document.
 10 Q So their documents could be exhibits to the case
 11 summary report, for example?
 12 A They could not.
 13 Q But the -- the conclusions or the analysis that
 14 they provided, you can include some of that
 15 information in your report; is that correct?
 16 A Yes.
 17 Q Okay. And what is the -- that kind of information
 18 that you're getting from the state crime lab that
 19 has some restrictions on -- on what you can
 20 disclose?
 21 A Their processing of the crime scene, maybe their
 22 analysis of anything we submit for testing, for
 23 forensic testing.
 24 Q Would it include -- so like would -- would it
 25 include information on like ballistic information?

1 A It could.
 2 Q Forensic information?
 3 A It could.
 4 Q I guess what I'm trying to understand is, if there
 5 was ballistic testing done, for example, in this
 6 case, would that have been done by the Wisconsin
 7 Crime Lab and have restrictions on what could be
 8 included in the case summary report?
 9 MS. BENSKY: Object to form.
 10 THE WITNESS: Let me clarify. I think
 11 I'm confusing what we can release. We cannot
 12 physically release the documents, but the
 13 information contained within the documents we can
 14 provide in our summary report.
 15 MR. SWAMINATHAN: Okay. All right.
 16 BY MR. SWAMINATHAN:
 17 Q So for purposes of the summary report, there's
 18 nothing from the -- from the crime lab records that
 19 you can't include in the report in terms of
 20 information, as long as you're not attaching the
 21 document; is that right?
 22 A Correct.
 23 Q Okay.
 24 A And I apologize for the confusion.
 25 Q Not at all. All right. You've -- you've given me

1 sort of one form of content-based sort of changes
 2 that you might make, and that is to remove
 3 information that's too detailed or irrelevant, why
 4 do you -- why is it important to remove some of
 5 that type of information when you're reviewing a
 6 case summary report?
 7 A Whether it's to remove information or add
 8 information, it's important that we come up with a
 9 document that summarizes our findings, like you
 10 would try and summarize anything with a lot of
 11 details.
 12 Q But why would -- why is it a problem to have too
 13 much detail in one of those case summary reports?
 14 A Because it's supposed to summarize the facts. If
 15 we want to know all the details, if somebody wants
 16 to know every detail, then we would direct them to
 17 the actual report.
 18 Q Would it be correct to say that one of the goals in
 19 summarizing is to focus on including just important
 20 or relevant information in the case summary report?
 21 A That would be fair.
 22 Q Okay. Another type of change that you talked about
 23 was sometimes to have people add information to the
 24 case summary report, correct?
 25 A Yes.

1 Q Okay. How do you know what the information is that
 2 they have not included in a case summary report
 3 that -- that could be added; does that make sense,
 4 what I'm asking?
 5 A Yeah. And how I may know that is based upon my
 6 personal knowledge of something that maybe occurred
 7 during the investigation or something that I've
 8 read during the investigation.
 9 Q Okay. So maybe, I guess, in another process
 10 question, when you're performing a review of a case
 11 summary report, and -- and let's use the Tony
 12 Robinson case, when you -- when you were reviewing
 13 Agent Fernandez's case summary report in the
 14 Robinson matter, had you reviewed all the other
 15 reports that had already been done in the case?
 16 A Almost all of them, yes.
 17 Q And is that as a matter of practice, that it's your
 18 job to make sure you've reviewed all of the
 19 other -- all of the reports up to that point or is
 20 that just a, you know, in this instance you
 21 happened to do it? Help me understand that.
 22 A As my -- one of my roles as a -- as a supervisor is
 23 I supervise these investigations, and as a result,
 24 those reports come to me for approval.
 25 Q Okay. Were there reports -- I'll note that a

1 number of the reports in this case have Agent Crowe
 2 listed as the approver, does that sound accurate to
 3 you?
 4 A I don't know, but yes, that -- it -- it could be,
 5 yes.
 6 Q So explain why that would be the case. I think --
 7 just so I -- and help me -- and --
 8 A He's my counterpart.
 9 Q Okay.
 10 A So he's a special agent in charge. He supervises
 11 internet crimes against children in the western
 12 region of Wisconsin, the western half of Wisconsin.
 13 He works here in the Madison office with me. But
 14 we exchange responsibilities on a regular basis, he
 15 supports the work that I do, I support the work
 16 that he does. So specifically related to Tony
 17 Robinson, the investigation, if he approved a bunch
 18 of reports, they may have, one, come from agents
 19 that he supervises that assisted with the
 20 investigation that could have sent them to him;
 21 secondly, he may have supported me while I was busy
 22 doing other things in the investigation, so he just
 23 took that responsibility to help me out to approve
 24 some reports.
 25 Q And so the reports that he approved, would you

1 have, in every instance, also have reviewed that
 2 report, or since he approved it, you may not have
 3 reviewed that report?
 4 A It would be report specific. I don't know.
 5 Q So some reports that he approved, you might not
 6 review, since it's already obtained approval,
 7 correct?
 8 A Correct.
 9 Q Okay. And all of the reports that you're listed as
 10 the approver, obviously you have -- you've reviewed
 11 those reports?
 12 A Yes.
 13 Q Okay. Who was the lead -- who was the supervisor
 14 in charge of the Robinson investigation?
 15 A Me.
 16 Q Okay. And so did Agent Crowe have a specific title
 17 or role on this -- on this investigation?
 18 A Yeah, he supported me in those times that I wasn't
 19 available or I just needed some additional
 20 supervision support.
 21 Q Okay. Is Agent Crowe a supervisor of yours, at the
 22 same level as you, below you? Help me understand.
 23 A Same level. He's a special agent in charge.
 24 Q Okay. So his involvement in the investigation was,
 25 in effect, informal; is that correct? In other

1 words, he was sort of helping you, but was not the
 2 special agent in charge?
 3 A Yes.
 4 Q Okay. And he didn't have any assigned specific
 5 duty or responsibility with regard to the Robinson
 6 investigation?
 7 A Yeah, correct.
 8 Q Okay.
 9 A For -- for the most part.
 10 Q And pursuant to the statute, there is a requirement
 11 that there be a certain number of investigators,
 12 independent investigators, on the case, correct?
 13 MS. BENSKY: Object to form.
 14 THE WITNESS: So would you like me to
 15 answer?
 16 MR. SWAMINATHAN: Yeah, you -- you can --
 17 you can answer it if you can.
 18 MS. BENSKY: If you -- if you -- if you
 19 understand what he's asking.
 20 THE WITNESS: Yeah, and -- if you can ask
 21 it again.
 22 MR. SWAMINATHAN: Yeah. Why don't -- why
 23 don't we -- why don't I come back to that a little
 24 bit later.
 25 MS. BENSKY: What statute are you talking

1 about?

2 MR. SWAMINATHAN: Yeah, we'll -- we'll

3 come back to it later. All right.

4 BY MR. SWAMINATHAN:

5 Q So for -- going back to the case summary report, we

6 had -- I had asked you a question about what are

7 the circumstances in which you'll add information,

8 it sounds like one of the circumstances in which

9 you'll add information or -- or the sources of --

10 of the information -- strike that. You know that

11 you can add certain information because you've

12 reviewed a lot of the other reports in the case, or

13 you reviewed the vast majority of the reports in

14 the case, is that correct, at the time you're

15 reviewing the case summary report?

16 A I've reviewed -- reviewed reports, yes.

17 Q Okay. Would you say you reviewed the vast majority

18 of the reports in the case?

19 A I think so, without looking at each of the reports

20 to kind of refresh my memory, but -- I've reviewed

21 a lot of the reports.

22 Q Okay. Have you reviewed the physical and physical

23 evidence and forensic evidence and video evidence

24 and all those things as well?

25 A Well, that's a lot of different things.

1 Q Yes.

2 A So when you talk about evidence, there's a lot of

3 evidence that was collected, so no, I did not

4 review, personally review specific evidence items.

5 I reviewed some of the reports related to those.

6 Another thing you mentioned were the videos, I've

7 reviewed I would say a majority of the videos and

8 audio. And I'm not sure what else you listed in

9 your question there.

10 Q Okay. When you -- well, strike that. Let's -- let

11 me ask you about the documents that you -- you

12 authored and -- and approved.

13 (A discussion was held off the record.)

14 (Exhibit 132 marked for identification.)

15 BY MR. SWAMINATHAN:

16 Q I'm handing you a document marked Exhibit 132.

17 It's Bates stamped DCI 1 and 2. Is this one of the

18 documents you reviewed in preparation for today's

19 deposition?

20 A Yes.

21 Q Okay. And can you tell me what this document is.

22 A This is what we call an initiating case report.

23 It's just our formal way of opening a case and

24 where we say why we're opening a case. And when I

25 say a case, it doesn't always mean an

1 investigation; in this case, it is an

2 investigation, but it's our formal way of

3 documenting information within DCI, Division of

4 Criminal Investigation.

5 Q Okay. And it -- the reporting LEO listed here is

6 Jesse Crowe, and you're listed as the backup, can

7 you tell me why that is?

8 A Because he authored the document.

9 Q Any other reason?

10 A No.

11 Q Okay. When you reviewed this document in

12 preparation for the deposition, was there anything

13 else you remembered about the initiation of this

14 case or DCI's involvement in the case that's not

15 documented in this report?

16 A Well, again, this report is simply to open the

17 investigation, so I'm sure there's details that are

18 not in this report that I remember.

19 Q Related to the initiation of the report or -- well,

20 strike that. The subject matter of this report in

21 particular is DCI being called in to help on this

22 investigation by Madison Police Department,

23 Assistant Chief Randy Gaber, correct?

24 A Correct.

25 Q Okay. Is there anything else about the

1 communication with Madison Police Department

2 Assistant Randy Gaber that you recall or remember

3 that's not communicated in this report or

4 documented in this report?

5 A No.

6 Q Do you remember what specifically Assistant Chief

7 Gaber said to you on that phone call -- well,

8 strike that. Who did -- did you speak with

9 Assistant Chief Gaber?

10 A I believe I did.

11 Q Okay.

12 A And I don't specifically recall, but in reviewing

13 this report, I would say that I spoke with Randy

14 Gaber, because I would have shared that information

15 with Agent Crowe when he completed this report. So

16 yes, I -- I would have spoke with him.

17 Q Tell me everything you remember being communicated

18 on that call between you and Assistant Chief Gaber.

19 A I -- I don't remember much.

20 Q Okay. So basically your memory of that

21 communication is basically whatever you can read

22 from this document; is that correct?

23 A To summarize, I had -- I received very few details

24 when the deputy chief called.

25 Q Okay.

1 A I remember that.

2 Q In terms of this overall Tony Robinson

3 investigation, you know, how good a memory do you

4 have of this case and this investigation?

5 A Certain parts real good and other parts not so

6 much.

7 Q What are the parts you remember really well?

8 A Just probably an overview of -- that -- that's a

9 pretty -- pretty general question, I mean. I know

10 who the lead agents were, you know, obviously I

11 remember my contacts based upon my reports, I

12 remember the phone call and having to call other

13 agents, coordinating the response, working with

14 Special Agent Crowe, who helped coordinate some

15 people; beyond that, initially, that's -- until

16 arriving at the scene, that's kind of where -- you

17 know, this was multiple weeks, so there's a lot.

18 Q Do you recall many details, you know, sort of

19 specific to the facts and evidence and the --

20 related to the case?

21 A Sure, some.

22 Q Okay. What are the kinds of things you remember,

23 sort of with -- without having to refer to

24 documents, about the -- the facts and evidence of

25 the case?

1 hospital, trying to determine where -- just trying

2 to get facts of what had happened, and then

3 arriving on the scene.

4 I remember meeting with Madison

5 Police Department Lieutenant Joey Skenandore. I

6 remember that the scene was being processed --

7 documented initially by Madison police personnel.

8 I remember having a conversation with Joey

9 Skenandore about the fact that I was going to call

10 the crime lab, have the crime lab do the actual

11 processing and collecting of the scene. I remember

12 having Special Agent Holmes do that processing or

13 be the lead agent for DCI to work with the crime

14 lab.

15 I remember just coordinating, just a

16 lot of -- trying to identify where officers were,

17 who had either been part of the incident, either as

18 a primary or a secondary responding officer.

19 Q So you remember a lot of coordinating related

20 steps; does that sound accurate?

21 A Yeah.

22 Q Let me ask you this, did you observe the scene of

23 the shooting itself, at 1125 Williamson Street, I'm

24 talking about the porch and stairwell and all that

25 stuff?

1 A That's a pretty broad question.

2 Q Uh-huh.

3 A I received a call, I -- I don't remember if I got

4 called directly, but I likely was called from the

5 time center, who answers DCI's phones after hours.

6 I believe the message was to call Deputy Chief

7 Gaber about an officer-involved shooting. I

8 remember that I didn't have a lot of details. At

9 some point I got in communication with Agent Crowe,

10 he -- don't know if he was available to respond,

11 but I think he was -- I think we agreed that he

12 would assist me in making phone calls.

13 Like with all of these, it's really

14 a lot of coordination in the beginning, I remember

15 that, just trying to get as many agents as

16 possible, so lots of phone calls. I remember

17 driving down to Madison, trying to figure out --

18 where exactly we were going, where the command post

19 was, streets were blocked off so where to park, how

20 to get to the command post, arriving at the command

21 post.

22 I believe Special Agent Holmes had

23 arrived prior to me. I remember trying to

24 coordinate people to get to the scene of the

25 incident, trying to get some people to the

1 A From a distance.

2 Q Did you ever do a -- sort of your own, you know,

3 view, observation, analysis of that area?

4 A No.

5 Q Okay. Was there a DCI agent who was responsible

6 for performing that analysis?

7 A I believe initially it was Special Agent Holmes.

8 Q Okay. Do you have any specific recollection of

9 what that scene looked like, where the shooting

10 occurred?

11 A It was dark. Something sticks in my mind about the

12 driveway was very slippery, I don't know why, but

13 -- and then just general -- you know, generalities,

14 that the entrance was on the -- the left side of

15 the -- the building, as you look at it from the

16 street. But that's really about it.

17 Q Any specifics that you remember about where things

18 were in that -- in that scene, on the porch and in

19 the stairwell?

20 A No.

21 Q All right. You had -- well, strike that. Let's --

22 let's move --

23 (Exhibit 133 marked for identification.)

24 BY MR. SWAMINATHAN:

25 Q Handing you a document marked Exhibit 133, Bates

1 stamped DCI 661 through 664. Did you review this
 2 document in preparation for today's deposition?
 3 A Yes.
 4 Q Can you tell me what this document is.
 5 A This is my reporting of my initial contacts with
 6 Andrea Irwin, who is Tony Robinson's mother.
 7 Q Do you recall anything -- when you reviewed this
 8 document in preparation for the deposition, did you
 9 remember anything about your contacts with
 10 Ms. Irwin that was not documented in this report?
 11 A No.
 12 Q Okay. Tell me what the purpose was of contacting
 13 Ms. Irwin initially.
 14 A Basically to inform her that -- two things, one, we
 15 were conducting the investigation as DCI, to
 16 introduce ourselves, just to try and make contact
 17 with the primary representative, the primary
 18 person, guardian, parent, contact person of Tony
 19 Robinson, and just share kind of some information,
 20 my contact information or our lead agent's contact
 21 information, and then to provide a document, a
 22 five-page document that we utilize in our -- that
 23 we share with the families of people who are
 24 involved in officer-involved death investigations.
 25 Q Looking at -- well, we can look at the -- let's

1 look at page 2 of the -- of the report.
 2 A Sure.
 3 Q Well, strike that. Let me -- let me ask a more
 4 general question. In looking at this report, it
 5 appears you made a number of attempts to contact
 6 Ms. Irwin and -- and Mr. Flowers, correct?
 7 A Yes.
 8 Q And it sounds like on -- it looks like on March 7,
 9 there were a number of times that morning, from,
 10 let's see, 11:00 a.m. to a little after 12:00 that
 11 you made repeated attempts to contact them,
 12 correct?
 13 A Correct.
 14 Q Why was it so important to contact them right away
 15 or for you to call them back when you hadn't
 16 received an answer in -- in, you know, less than a
 17 half an hour or an hour?
 18 A Well, the incident took place at whatever time,
 19 6:00 something p.m. on March 6, I would want that
 20 -- I would -- I guess I would want that -- I would
 21 want that family to know the process of what's
 22 happening, so that's, for me -- as -- as a
 23 supervisor, that's the urgency for me. Initially,
 24 because the medical examiner had made notification
 25 about the death, that would be one thing typically

1 that I would be contacting them about. If I were
 2 aware that a death had occurred, one of my primary
 3 responsibilities would be to make notification.
 4 Q You made notification to Ms. Irwin at 2:34 a.m. on
 5 -- on March 7, correct?
 6 A Yes, but something -- I don't know that it's
 7 contained within the report, but something tells me
 8 that Barry Irmen, the medical examiner, and/or
 9 Jeannette Fridie, who also works with the medical
 10 examiner, had made notification at the hospital.
 11 Something tells -- I just remember that, I -- I
 12 think notification had been made to the family at
 13 the hospital, I'm almost sure of it.
 14 Q That would have been in advance of 2:34 a.m.?
 15 A Yeah.
 16 Q Okay. And then you made -- to the extent there was
 17 any doubt, you definitely spoke with Ms. Irwin at
 18 2:34 a.m. and -- and offered your condolences and
 19 so on?
 20 A Yes.
 21 Q Okay. And then the next day, you contacted -- you
 22 called Ms. Irwin at 11:01 a.m., and then you called
 23 her again at 11:15 a.m., because you hadn't heard
 24 from her?
 25 A Correct.

1 Q And you called her again at 11:41 a.m., correct?
 2 A Correct.
 3 Q Okay. Why would -- why was it so important to call
 4 her and speak with her at 11:00 a.m. on March 7?
 5 A Well, one, I wanted to share the packet of
 6 information, which explains the process and their
 7 rights; and secondly, to just explain our process
 8 and answer any questions they may have had; and
 9 lastly, to obtain any background information as to
 10 why this may have -- have occurred, what was in
 11 Tony Robinson's recent activities that may be
 12 relevant to our investigation.
 13 Q So when you spoke -- when you called Ms. Irwin at
 14 11:01 a.m. on March 7, at that time, one of the
 15 reasons you wanted to communicate with her was to
 16 provide a packet of information, correct?
 17 A One of the reasons. And also because when we spoke
 18 initially, when I initially spoke to her, she had
 19 mentioned that they were going to have a family
 20 representative and an attorney at the house around
 21 noon, and that, for me, as a supervisor of this
 22 case, would be a great opportunity to meet with
 23 everybody, provide my contact information. My goal
 24 is to have really good communication, so if I can
 25 provide my name, my face, my business card, my

1 point of contact with her, her personal
 2 representative, her attorney, that's going to make
 3 things for the investigation much better, so that's
 4 -- that's, I guess, the urgency in my contacts.
 5 Q When you contacted her on that day, you -- one of
 6 your intentions also, or one of the reasons, was
 7 because you also wanted to see if you could learn
 8 some information relevant to the investigation; is
 9 that correct?
 10 A Sure, yes.
 11 Q Okay. And so did you have some conversations with
 12 her about what happened that day and -- or other
 13 information relevant to your investigation?
 14 A Which contact?
 15 Q On March 7, in and around this -- these attempts at
 16 11:00 a.m.
 17 A And the question was -- could you ask the question
 18 one more time, please.
 19 Q Yeah. So you had mentioned when you made this
 20 call --
 21 A Uh-huh.
 22 Q -- one thing you wanted to do was to get her a
 23 packet of information and another thing you wanted
 24 to do was see if you could learn some information
 25 that would be relevant to what happened that day,

1 correct?
 2 A Yes.
 3 Q Okay. So -- so did you ask her what happened that
 4 day when you eventually spoke with her that
 5 morning?
 6 A Initially, when I spoke with her that morning, it
 7 was a relatively short conversation. For me, it's
 8 not appropriate, in my first contact with a mother
 9 of somebody who is deceased, to begin asking
 10 questions on the phone, so no. When I had further
 11 conversations, I eventually was put in touch with
 12 -- I think his first name's Jerome, Flowers -- yep,
 13 Jerome Flowers, and Jerome had shared that the
 14 family was grieving, and so no, I didn't ask
 15 Jerome, because I -- I want to speak to the -- I
 16 want to know who I'm speaking to. And then lastly,
 17 when we met with Jerome, that contact was very
 18 short, and, again, Ms. Irwin wasn't available, they
 19 weren't -- she either wasn't -- unavailable or just
 20 wasn't interested in speaking with us at that time,
 21 whatever the reason, and -- and I know they had
 22 further things they were doing later that day, so
 23 -- no, at that time, we didn't ask any questions.
 24 Really, at that point, I wanted to get my contact
 25 information to them, put a name -- a face with a

1 name, provide the packet and just kind of begin
 2 those open lines of communication.
 3 Q On -- and then at 1 -- 1:00 p.m. that day, you and
 4 Agent De La Rosa went to the Irwin house and you --
 5 and you actually saw Mr. Flowers and Ms. Irwin
 6 directly, correct?
 7 A I don't -- nope, I don't believe I saw Ms. Irwin
 8 that day.
 9 Q Okay.
 10 A I think it was just Mr. Flowers briefly outside.
 11 Q Okay. Did you have any substantive conversation
 12 with him about what happened that day?
 13 A No.
 14 Q Okay. Was there any point at which you had
 15 substantive conversations with Irwin family
 16 members, Ms. Irwin herself, Mr. Flowers or others,
 17 about what had happened that day?
 18 A Yeah, I think we talked about the process and kind
 19 of where we were at on March 8 that I think I
 20 documented in another report.
 21 Q Okay. Anything else you remember about these
 22 initial communications on the night of --
 23 essentially that early morning and -- and during
 24 the day on March 7 with Ms. Irwin or the Irwin
 25 family that's not documented here?

1 A No. And I just see that, when I reviewed it, on
 2 page 1, Bates stamp 63, the last paragraph, about
 3 halfway through, Jerome Flowers was telling the
 4 family -- it was too heaving, I think that was
 5 supposed to be heavy, but -- that's -- that's the
 6 only thing I noticed.
 7 Q Okay. In -- looking at the second paragraph of
 8 your --
 9 A Uh-huh.
 10 Q -- back to your report on page 1, Bates stamp 663,
 11 it says Agent Engels responded to the area of the
 12 incident at 1125 Williamson Street, Madison, and
 13 received several briefings from MPD officers and
 14 supervisors. Can you tell me what the briefings
 15 were that you had received that you're referring to
 16 in this report?
 17 A Just overview information of what occurred.
 18 Q What overview information did you receive about
 19 what occurred?
 20 A That there was a response to that residence. I
 21 don't know the specific information they shared
 22 with me at that time, but in general, that -- I
 23 don't remember the specific information, just
 24 generalities that -- an overview of what had
 25 occurred, primarily that when Officer Kenny arrived

1 at the scene, he entered the residence, there was a
 2 confrontation in the stairwell and he had fired his
 3 weapon. Initially, I think, arriving at the scene,
 4 the status of Mr. Robinson, as far as his -- his
 5 medical condition was unknown yet, and really what
 6 Madison PD was doing as far as attempting to
 7 identify witnesses and get background information
 8 in preparation for -- for our investigation.
 9 Q Okay. Is it typical for the agency, you know, that
 10 the officer involved in the shooting works for, to
 11 do the initial investigative steps for a DCI
 12 investigation?
 13 A Is it typical? I don't know. Because each
 14 incident is so different, the circumstances are so
 15 different. But is it typical for -- for us to want
 16 them to do some of these things? Yes.
 17 Q Okay. Why is that?
 18 A Well, they can't stop being the police, and I think
 19 that's one thing. They -- they, as the involved
 20 agency, I think have a duty to identify witnesses,
 21 preserve evidence and to gather some facts before
 22 they disappear.
 23 Q Did you ask them at all to -- to sort of find the
 24 people but not ask them questions until DCI folks
 25 could talk to them to ask questions first?

1 A I don't think specifically that night I gave any
 2 directive like that.
 3 Q Did you give any directive like that at any point?
 4 A No.
 5 Q Did -- did you have any practice or policy of
 6 trying to make sure that DCI could talk to folks
 7 first whenever possible?
 8 A Practice -- a common practice is to identify
 9 primary -- or any witnesses and obtain the basic
 10 information, contact information and -- and
 11 information about what they saw. I wouldn't --
 12 what they saw, what they knew, what they heard, and
 13 I don't know, every witness would be different,
 14 every circumstance would be different, so it's hard
 15 to -- to formalize what an officer or an involved
 16 agency should or shouldn't do with a -- with a
 17 certain witness.
 18 Q Did you have any policies or practices about what
 19 you wanted involved agencies to do or not do, in
 20 terms of speaking to these witnesses?
 21 A Well, practices, yes, because we had investigated
 22 other officer-involved shootings for Madison Police
 23 Department, so -- this would be a common practice,
 24 not only for Madison Police Department, but I think
 25 many police departments.

1 Q What would be a common practice, to have them
 2 interview folks first?
 3 A Just obtain information. When you say
 4 interview and I say interview --
 5 Q Yes.
 6 A -- I think we're thinking two different things.
 7 There's a field interview, there's a formal
 8 interview and then there's maybe an interrogation.
 9 So you may say interview, and I, as a law
 10 enforcement officer, may look at it as just
 11 gathering information.
 12 Q Okay.
 13 A They may knock on a door or they may talk to
 14 somebody who's on the sidewalk that purports to
 15 have known or seen something.
 16 Q A term that you all use I think in the case summary
 17 report is preliminary interviews; is that a term
 18 that's familiar to you?
 19 A Yeah, it's familiar. Yeah, I guess I've seen that.
 20 I don't know if I use that or not, but -- it's --
 21 if it's in a report, sure.
 22 Q All right. And so the idea would be that Madison
 23 -- so, for example, the report says at the request
 24 of DOJ/DCI investigative tasks, including locating
 25 witnesses and conducting preliminary interviews,

1 were conducted by the Madison Police Department,
 2 does that sound about right?
 3 A Sure.
 4 Q Okay. And so preliminary -- we -- can we call them
 5 preliminary interviews that the Madison Police
 6 Department would have been conducting in this case?
 7 A Yeah.
 8 Q Okay. Were there anything -- was there anything
 9 that you wanted -- strike that. Were there any
 10 restrictions on what you wanted Madison Police
 11 Department folks to be asking in those preliminary
 12 interviews?
 13 A Restrictions? No.
 14 Q Does DCI have any policies about what information
 15 the involved agency's officers should be asking in
 16 these preliminary interviews, when they're -- when
 17 they're asked to conduct them?
 18 A I think the only restriction would be any
 19 restrictions they imposed only related to involved
 20 officers.
 21 Q Explain what you mean by that.
 22 A The only restriction that comes to mind would be
 23 the public safety statements that many agencies
 24 implement to gather information, initial snapshot
 25 information, from any of the officers who are --

1 who are involved in the incident, so that's the
 2 only restriction I can think of; when I think of
 3 witnesses, I think of, whether it's officers, first
 4 responder, medical or fire, or people driving by,
 5 people on the street, people that called, those for
 6 me are all witnesses.

7 Q When -- so I think the answer is that's a -- that's
 8 a restriction that Madison Police Department may
 9 itself place on the involvement in the
 10 investigation?

11 A Correct.

12 Q Okay. But in terms of restrictions that DCI may
 13 place on involved agency officers communicating
 14 with witnesses, there are none; is that correct?

15 A I don't think so.

16 Q Do you have any -- do you -- as a matter of
 17 practice, when you're leading an investigation like
 18 this one, do you give any instruction to Madison
 19 police officers who are participating in the
 20 investigation and speaking with witnesses about
 21 what you don't want them to go into during the
 22 course of those initial interviews?

23 A Nothing specific, but I think it's a common
 24 practice that Madison police officers are obtaining
 25 initial information or preliminary information,

1 realizing they're not the lead on the investigation
 2 and that DCI is going to do a formal interview or
 3 review any interview reports or any documents that
 4 Madison would create and that -- I know there's an
 5 understanding that in-depth interviews are going to
 6 be handled, formal interviews are going to be
 7 handled by DCI, so I think there's that
 8 understanding in the practice of field contacts is
 9 really what their -- what the role is, but it's
 10 hard to standardize from one witness to the next,
 11 an officer versus a citizen. Certain citizens may
 12 want to share more information right away, so it
 13 really -- it's -- it really depends.

14 Q From your perspective, is the purposes of having --
 15 of having them be involved in the early stages to
 16 figure out who are the relevant witnesses that we
 17 should be talking to?

18 A One of their roles, yeah.

19 Q What else?

20 A Preserving the scene.

21 Q What else?

22 A Well, preserving evidence, any -- directing us --
 23 just providing us background information of what
 24 happened.

25 Q So when they are talking with witnesses in sort of

1 this preliminary role, to figure out hey, is this
 2 someone who has relevant information, you don't
 3 have a problem with them collecting some of that
 4 basic information to understand were you there,
 5 what where you doing there, did you see anything,
 6 correct?

7 MS. BENSKY: Object to form.

8 THE WITNESS: I would say I don't have
 9 any objection to any of those things, nor do I have
 10 objection to them getting details from people
 11 either, because those details are going to provide
 12 us with background of what is their knowledge
 13 related to the incident.

14 BY MR. SWAMINATHAN:

15 Q So you don't have any -- any concerns or
 16 restrictions on the amount of detail you want them
 17 to collect as part of these preliminary field
 18 reports in advance of DCI's more formal interview;
 19 is that correct?

20 A Well, that's pretty general, but in general, no.

21 Q Okay. Madison police officers were also involved
 22 in participating in the formal interviews that DCI
 23 did in a number of cases, correct, in -- in the
 24 Robinson shooting matter?

25 A Yes.

1 Q Okay. Explain why that is.

2 A Purely for resources. In this case, for that sole
 3 purpose of resources. I think I can explain it
 4 maybe best by -- I don't know how many agents
 5 responded that first evening of March 6, but if
 6 there were ten, we work in pairs of two, as a
 7 general practice. If there's ten agents that show
 8 up, that gives me five teams to assign tasks to.
 9 In this particular incident, there was a lot of
 10 tasks, so if I can supplement our agents with
 11 Madison Police Department agents, that now provides
 12 us with ten teams, and that's merely the -- that's
 13 the purpose in this. That's one purpose.

14 The other purpose would be they have
 15 resources that we need in databases on people,
 16 contacts through their -- through their work that
 17 will aid us in finding witnesses and locating
 18 people. Facilities, they have facilities that are
 19 useful to us, so --

20 Q In terms of participating in the interviews
 21 themselves, you're saying the main reason you did
 22 that was because they would be -- they provided
 23 additional -- essentially to have a second -- an
 24 additional resource there; is that right?

25 A Another body really.

1 Q Okay.

2 A Another set of eyes, ears, another brain as we're

3 leading these interviews and conducting our

4 investigation.

5 Q If you have a DCI agent conducting an interview of

6 a witness, why do you need -- if you don't have

7 another DCI agent who can participate, why do you

8 need a Madison police officer to participate in

9 that investigation -- or participate in that

10 interview, I'm sorry?

11 A Well, they're the law enforcement agency that's

12 most available to us in this circumstance.

13 Q Let me ask you a better question. Is it DCI's

14 policy to have more than one person participate in

15 the interviews of witnesses?

16 A I don't know that it's a policy, but it's a

17 standard practice.

18 Q Okay. So where you've got a DCI agent doing an

19 interview of a witness and another DCI agent is not

20 available, the practice is to have someone from the

21 involved agency participate in that interview,

22 rather than just have the agent do that interview

23 by themselves?

24 A I don't know that it's a standard practice.

25 Specifically here in Madison, that has been the

1 an interview knocking on a door and speaking with

2 somebody you may consider an interview, I consider

3 an interview what we're doing here today, a formal

4 sitdown, asking questions.

5 Q So help me understand the difference. In the case

6 of formal interviews --

7 A Uh-huh.

8 Q -- you -- your goal is to have two DCI agents do

9 them, correct?

10 A That would be preferred, but really it's not

11 realistic when we have an event of this magnitude.

12 Q And we agree in the Robinson case, there were a

13 number of instances when DCI agents were doing

14 formal interviews and there wasn't a second DCI

15 agent available to participate in those formal

16 interviews, correct?

17 A Yes.

18 Q Okay. And the kinds of formal interviews we're

19 talking about are interviews that were done, for

20 example, in the Madison Police Department itself,

21 correct?

22 A That's a good example.

23 Q Okay. There were some formal interviews that were

24 also done in people's homes, correct?

25 A Yes.

1 practice.

2 Q Why is that?

3 A Because they have the resources to -- to support

4 our investigation.

5 Q In those instances, would you prefer to have the

6 agent do that interview by themselves or have a -- a

7 Madison police officer participate in that

8 interview?

9 MS. BENSKY: Object to form.

10 THE WITNESS: The preference being what?

11 MR. SWAMINATHAN: So let -- let me ask

12 you a different way.

13 BY MR. SWAMINATHAN:

14 Q Ideally you have two DCI agents sitting in on each

15 of these interviews with witnesses in a -- in an

16 officer-involved shooting, correct?

17 A Ideally, yes.

18 Q Okay. And in this case, there were a number of

19 instances when you weren't able to do that because

20 you didn't have enough resources for two agents to

21 be at every one of these interviews; is that

22 correct?

23 A That -- yes.

24 Q Okay.

25 A And -- and interview, again, is a very broad term,

1 Q Okay. And in the instances when you couldn't have

2 two DCI agents participate in the formal interview

3 because you didn't have enough resources to have a

4 second DCI agent there, what's the next preference;

5 is it to have a Madison Police Department officer

6 participate in that formal interview or to just

7 have the agent do it themselves?

8 A My preference is to have two people there.

9 Q Okay. Even if the second person there is from the

10 involved agency?

11 A Yes.

12 Q Okay. Why is that?

13 A Because two are better than one. We have two

14 people that are listening, seeing, thinking; for

15 me, that's better.

16 Q Okay. Are there any restrictions on the

17 involvement -- when you have an -- when you have --

18 strike that. When you have someone from the

19 involved agency participating in formal interviews,

20 are there any restrictions placed on what they can

21 do or should do in those interviews?

22 A Formal restrictions in writing, policies, no;

23 restrictions in the form of directions that either

24 I as a supervisor may give them or as an agent may

25 give them, yes, there's an understanding, there's

1 -- they know that DCI's leading the investigation,
 2 they know that DCI will lead the interview, DCI's
 3 going to do the report. So I guess if you want to
 4 call them restrictions, those would be the type of
 5 restrictions.
 6 Q So what --
 7 A If we're going to record something, that DCI would
 8 record -- use the recording device or take the
 9 recording if we didn't have a recording device and
 10 for some reason we needed to use a Madison Police
 11 Department recording device. If there's evidence
 12 to collect, there's an understanding, there's an
 13 awareness, there's a practice that DCI's the lead.
 14 Q Okay. So in the Robinson shooting matter, there's
 15 one piece -- there's one direction that was given
 16 to the Madison Police Department that when they
 17 participate in these formal interviews with
 18 witnesses, that DCI would take the lead?
 19 A Yes.
 20 Q Okay. And was one piece of -- or one direction
 21 that was given to them that if the interviews were
 22 recorded, that DCI would keep those recordings and
 23 not the Madison Police Department?
 24 A Yes.
 25 Q Okay. Was there a restriction that said Madison --

1 recording process?
 2 A No, I don't -- I don't specifically recall a
 3 direction like that.
 4 Q Did you ever give such a direction?
 5 A Not that I recall.
 6 Q Do you know anyone who gave such a direction?
 7 A Not that I recall.
 8 Q Okay. Another restriction I think you said is that
 9 -- that you'd have on Madison police officers
 10 participating in formal interviews was that they --
 11 that DCI would conduct the interview, correct?
 12 A We want to lead the interview, so -- yes, that's
 13 understood that we want to lead the interview.
 14 Q What does that mean, I guess; what does it mean for
 15 you -- for DCI to lead the interview?
 16 A To lead the direction. If there's ever a question
 17 of what should or shouldn't be asked, to make it
 18 clear that DCI's conducting the interview of the
 19 investigation.
 20 Q Was there any instruction or direction given to
 21 them about if they could ask questions during the
 22 course of that interview?
 23 A Well, it depends which interviews you're talking
 24 about.
 25 Q Let's focus on the formal interviews of witnesses

1 the Madison Police Department could not also have a
 2 copy of that recording?
 3 A I -- I don't know. Yeah, that's probably --
 4 Q Is there --
 5 A -- something that doesn't happen real often. I
 6 don't see that as something that we've probably
 7 ever addressed. I think it's common practice.
 8 Q What's common practice?
 9 A That there would be one recording and DCI would
 10 take it.
 11 Q Do you know whether the Madison Police Department
 12 in this case had copies of any of the recordings
 13 when they participated in formal interviews?
 14 A I don't know.
 15 Q And you're not aware of any specific instruction
 16 that was given to them that they should not have a
 17 copy of any of those recordings when there were
 18 formal interviews that they participated in?
 19 A I think -- nothing related to copies, you're
 20 talking about copies of -- of recordings. I'm
 21 talking specifically about another recording or if
 22 they took the recording. I think there's an
 23 understanding that that recording would go to DCI.
 24 Q Was there a direction that they should not keep a
 25 copy of that recording if they were involved in the

1 with relevant information related to the shooting
 2 incident.
 3 MS. BENSKY: Object to form and
 4 foundation.
 5 THE WITNESS: Yeah, if you could give me
 6 what exact interview you're talking about.
 7 BY MR. SWAMINATHAN:
 8 Q Let's take, for example, Javier Lamone and Anthony
 9 Lamone, for example, all right; you recall who
 10 those two gentlemen are?
 11 A I believe they're the roommates.
 12 Q Okay. Would there be any restrictions on -- if --
 13 if -- strike that. If a Madison police officer was
 14 involved in the formal interview of either of
 15 those -- of either of those gentlemen, would there
 16 be any restrictions on what questions they could
 17 ask or not ask in that interview?
 18 A No, I don't think so. I think the DCI agent --
 19 it's -- the process is the DCI agent would lead the
 20 interview, but I think if there's an obvious
 21 question -- it really is going to boil down to the
 22 agent and the investigator and how they decide to
 23 -- to handle it.
 24 Q In other words, there's no restriction; I mean,
 25 there's no -- the interviews can be -- there's no

1 formal rules that say hey, you can participate in
 2 this interview, but I don't want you doing certain
 3 things, right; there's no -- there's no specific
 4 rules or direction that's given on that front,
 5 correct?
 6 A In an interview like Javier and --
 7 Q Anthony.
 8 A Thank you. -- Anthony, that, again, I think would
 9 be up to the agent that's conducting the interview.
 10 If you're talking about the interview of Officer
 11 Kenny, I think we -- we put more restrictions on
 12 that. I think our agents who conduct those
 13 interviews, if there's a Madison person with the
 14 agent during those interviews, I think there's more
 15 restrictions on those in the fact that there's an
 16 understanding that the DCI agent's going to ask the
 17 questions and if there's a subsequent follow-up
 18 question, that that would be shared with the DCI
 19 agent who would -- who would ask those questions.
 20 Q Okay. So we'll come back to the Officer Kenny
 21 scenario. The Officer Kenny scenario has some
 22 unique restrictions, correct?
 23 A Unique in that --
 24 Q Well, strike that. Let me ask it a better way.
 25 Officer -- there are some restrictions on how you

1 to Madison Police Department or its officers who
 2 participated in interviews with witnesses?
 3 A In summary would be something like DCI's the lead,
 4 we'll -- we are going to record the interviews, if
 5 there's evidence to collect, we will collect the
 6 evidence, and we will author reports and work with
 7 your DCI agent -- work with your DCI agent to
 8 figure out how that interview is going to work.
 9 And I say that because a witness may gravitate
 10 towards one person more than -- one investigator
 11 more than another, they just may have, for whatever
 12 reason, more likely to share information with one
 13 investigator versus another, so as long as a DCI
 14 agent is there and feels it's appropriate and we're
 15 leading it, that's probably what I -- I mean, that
 16 would be a generality of what I would share with
 17 them.
 18 Q Any other direction that was given to the Madison
 19 Police Department or its officers when they
 20 participated in interviews of witnesses in the
 21 Robinson shooting matter?
 22 A Not off the top of my head, no.
 23 Q Okay. All right. Now, let me ask you this --
 24 well, strike that. And is any of that inconsistent
 25 with DCI's policies, that is to say, does DCI have

1 guys would handle the interview of Officer Kenny
 2 that are different from restrictions that may or
 3 may not exist for folks like Anthony and Javier
 4 Lamone, correct?
 5 A I don't know about that. I think it's -- the
 6 restriction would be that anybody that's
 7 represented with an attorney present, we're likely
 8 going to have one person asking questions, and in
 9 -- I think with most interviews, any formal
 10 interview, DCI's going to lead, so -- and, again,
 11 it goes back to the agent who's conducting the
 12 interview, are there any formal restrictions that
 13 we put in place with Madison? Nothing in writing.
 14 Q Okay. But in terms of practices --
 15 A Uh-huh.
 16 Q -- did you give them any direction -- did you as
 17 the lead in charge of this investigation give any
 18 direction to Madison Police Department or its
 19 officers who participated in interviews of
 20 witnesses that here's how you should handle
 21 questioning in those interviews?
 22 A I don't think we dive into that much detail.
 23 Q All right.
 24 A I think it's just understood.
 25 Q What direction, if any, did you give to Madison --

1 some policy that says you were supposed to give
 2 certain direction that was not given in this case?
 3 A No policy that I'm aware of.
 4 Q Okay. And here we're talking specifically about a
 5 policy related to what the role is of the officer
 6 from the involved agency when they participate in
 7 these interviews of witnesses?
 8 A Correct.
 9 Q Okay. Were -- was the Madison Police Department or
 10 its officers given any direction about what they
 11 could do with information they learned when they
 12 participated in interviews of witnesses in the
 13 Robinson shooting matter?
 14 A Yes.
 15 Q What restriction were they given or what direction
 16 were they given?
 17 A That it was confidential information related to
 18 DCI's investigation and that it wasn't to be
 19 shared.
 20 Q When you say not to be shared, not to be shared
 21 with who?
 22 A People that were not assisting with the
 23 investigation.
 24 Q Would that include other people in the Madison
 25 Police Department?

1 A It could, yes.

2 Q When you say could, what do you mean?

3 A Well, other people in the Madison Police Department

4 are assisting in the investigation, or assisting

5 DCI agents.

6 Q Those folks you could share the information that

7 you learned in an -- a Madison police officer who

8 participated in an interview could share what they

9 learned in that interview with another Madison

10 police officer who was also participating in the

11 investigation, correct?

12 A That would be appropriate, sure.

13 Q But they could not share the information they

14 learned in an interview with other Madison police

15 officers who were not participating in the

16 investigation; is that correct?

17 A Yes.

18 Q Okay. And this is direction that was given to the

19 Madison Police Department and its officers by DCI,

20 correct?

21 A Yes.

22 Q And who gave that direction?

23 A I did.

24 Q Okay. And how did you give that direction?

25 A In the command post in my interactions with Madison

1 maintain the confidentiality of the investigation.

2 Q But why would it be -- why didn't you want Madison

3 police officers who participated in these

4 interviews to share any information with anyone

5 else in the Madison Police Department who was not

6 participating in the investigation?

7 A Because it's a confidential, sensitive

8 investigation, ongoing, we just -- information

9 should stay within those people that are conducting

10 the -- the investigation.

11 Q I understand that that's the goal, but my -- my

12 question is, why is that the goal?

13 A So as to not influence other witnesses that may not

14 have been located yet, that would be one reason.

15 Q What -- what other reasons?

16 A So there's not misinformation disseminated to

17 anybody outside the investigation. Just pretty

18 standard.

19 Q So one of the purposes you're saying is you don't

20 want information necessarily flowing to witnesses

21 who haven't been spoken to yet who could learn

22 information that they -- you know, they shouldn't

23 necessarily know, or that you want to be able to

24 interview them before they can learn information

25 that they learning in the investigation?

1 supervisors and officers.

2 Q In any form other than oral communications in the

3 command post?

4 A No.

5 Q Okay. Did anybody else give that direction to the

6 Madison Police Department?

7 A Yes, specifically -- circumstances -- do I know

8 specifically? In general -- in general, yes,

9 because agents would have provided that same kind

10 of direction. So DCI agents involved in it would

11 have provided that same type of direction or --

12 Q How do you know that -- oh, I'm sorry.

13 A -- or maybe -- or maybe like Special Agent Crowe or

14 any other supervisor that DCI that were maybe part

15 of the investigation.

16 Q How do you know they gave that same direction?

17 A Just standard, I mean, that's --

18 Q That's typical practice for DCI agents?

19 A Yes, sir.

20 Q Okay. And is that also policy of DCI?

21 A No policy that I'm aware of.

22 Q Okay. Why is that direction given; why did you

23 give that direction in this case and why did your

24 agents give that direction in this case?

25 A Well, in this case and in any other cases, it's to

1 A Yes.

2 Q Okay. Is that typical in criminal investigations,

3 not unique to an officer-involved shooting?

4 A Yes.

5 Q Okay. Explain what you mean by that.

6 A In any investigation, you just don't want to

7 influence any witnesses, any evidence by releasing

8 information that somebody else may have shared with

9 you.

10 Q And is that your practice as well in your own

11 investigations that you've been involved with over

12 your career?

13 A Yes.

14 Q In other words, you try to restrict the information

15 that may be available to key witnesses in the case

16 before you interview them?

17 A Yes.

18 Q Okay. And is that pretty standard practice?

19 A Yes.

20 Q Okay. Have you been involved in homicide

21 investigations?

22 A I have.

23 Q Okay. Is that something -- a practice of yours in

24 homicide investigations?

25 A Yeah.

1 Q Okay. Have you had homicide investigations where
 2 you've shared information that you were learning
 3 during the investigation with a key witness before
 4 interviewing them or speaking to them?
 5 A It really depends on the circumstances, sure.
 6 Q Can you -- so the answer is yes?
 7 A Let me -- the answer is maybe. It really depends
 8 on the circumstance.
 9 Q Can you --
 10 A It's a pretty broad question.
 11 Q -- can you remember any homicide investigation
 12 you've participated in in your career where you
 13 shared information that you learned during the
 14 investigation with a key witness before having
 15 asked them any questions?
 16 A Sure.
 17 Q Okay. Tell me -- tell me, how many times has that
 18 happened?
 19 A I don't have a specific number, but I can tell you
 20 in -- it may be an approach that's taken by an
 21 investigator, to say hey person we're interviewing,
 22 we know A, B, C and D, and tell us what you -- what
 23 you know about that.
 24 Q What's the purpose when you do that in those -- in
 25 that -- in that kind of an instance?

1 Madison officers involved in your interviews, okay?
 2 When you said -- I think you said the direction was
 3 that the only Madison police officers with whom
 4 information should be shared are -- are other
 5 police officers involved in the investigation,
 6 correct?
 7 A Yeah. And I don't even know that I -- I would say
 8 you can talk about it if somebody else has been
 9 part of the investigation, I think it's -- I'm more
 10 firm in what you learn in this investigation stays
 11 with you, it -- it doesn't leave this command post
 12 room, so that would probably have been the most
 13 direct.
 14 Q Okay. Would it have been acceptable, pursuant to
 15 your direction, if officers involved, Madison
 16 police officers involved in these interviews shared
 17 information they learned in those interviews with
 18 Officer Kenny?
 19 A Would it have been --
 20 Q Appropriate?
 21 A No.
 22 Q Okay. And it would have been inconsistent with
 23 your direction; is that correct?
 24 A Yes.
 25 Q Okay. Why was it important not to have information

1 A To let the witness know what we know and really
 2 what we're seeking from them as far as information
 3 goes.
 4 Q Okay. And -- and that would be -- I mean, one
 5 circumstance in which you might do that is when
 6 you're trying to get a confession from someone,
 7 correct?
 8 A No -- one circumstance might be, yes.
 9 Q Sure. Tell me about circumstances in your career
 10 when you've provided specific information, key --
 11 key evidence in the case to a witness, before
 12 asking them any questions.
 13 MS. BENSKY: If you can remember.
 14 THE WITNESS: Well, I did drug
 15 investigations for a long time, so it would be
 16 multiple times that I've had witnesses that I've
 17 said this is what we know, this is what you may
 18 know, share it with me.
 19 MR. SWAMINATHAN: Okay.
 20 BY MR. SWAMINATHAN:
 21 Q Any specifics that you recall?
 22 A Sure.
 23 Q Okay. Well, let's -- let's come back to this. Let
 24 me go back to your -- the direction that you all
 25 gave in the Robinson shooting matter when you had

1 shared with Officer Kenny?
 2 A Well, like any witness or any person involved in
 3 the investigation, we wouldn't want to influence
 4 Officer Kenny's statement to law enforcement.
 5 Q Why not?
 6 A Because we want just the facts, we want what he
 7 knows versus what he's heard.
 8 Q Okay. But why -- why is it inappropriate for him
 9 to have -- to learn about what someone -- what a
 10 Madison police officer learned from speaking with
 11 Javier Lamone or Anthony Lamone, for example?
 12 MS. BENSKY: Objection. Asked and
 13 answered.
 14 THE WITNESS: Yeah, I -- I -- it's as
 15 simple as, whether it's Officer Kenny or any
 16 witness, we don't want to influence what they're
 17 going to share with us. We would like to
 18 control -- if we're going to share information
 19 about the investigation, we as investigators would
 20 like to make the determination of what we share.
 21 MR. SWAMINATHAN: Okay.
 22 BY MR. SWAMINATHAN:
 23 Q Any other reasons?
 24 A No. I mean, not that I can think of right now.
 25 Q And it would have been inappropriate for Madison

1 police officers to share information with Officer
 2 Kenny that they had learned at these interviews; is
 3 that correct?
 4 A Yes.
 5 Q Okay. And would that be particular -- particularly
 6 true if they shared that information with him
 7 before his interview with DCI?
 8 A It would have been inappropriate to share
 9 information with him until the district attorney
 10 had made a decision and DCI closed its
 11 investigation.
 12 Q Okay. Are you aware of any circumstances in which
 13 that occurred in this case?
 14 A No.
 15 Q Okay. Did you have any personal conversations with
 16 Officer Kenny?
 17 A Not prior to the decision.
 18 Q When you say the decision, what are you referring
 19 to?
 20 A From -- the decision from the district attorney.
 21 Q Okay. After the decision from the -- so when was
 22 the first time you had a conversation with Officer
 23 Kenny?
 24 A First and only time I've had a conversation with
 25 Officer Kenny was after District Attorney Ozanne

1 had made a decision and we met with Officer Kenny
 2 to answer any questions he had about the
 3 investigation.
 4 Q Okay. Who participated in that meeting?
 5 A I know Special Agent De La Rosa did; and beyond
 6 that, I don't remember who else.
 7 Q With -- go ahead.
 8 A I just don't -- I know Special Agent De La Rosa was
 9 there, and I -- I believe there was another person
 10 for -- there was at least three DCI people, but I
 11 know Special Agent De La Rosa was one.
 12 Q You -- De La Rosa and one other DCI agent, correct?
 13 A Yes, for sure.
 14 Q And Officer Kenny, correct?
 15 A Yes.
 16 Q And anyone from the district attorney's office?
 17 A No.
 18 Q Any -- anyone else on behalf of Officer Kenny?
 19 A I don't remember.
 20 Q Anyone else from the Madison Police Department?
 21 A I don't remember that.
 22 Q What did you say -- what did you say in that
 23 meeting?
 24 A Just what would you like to know.
 25 Q And so then did Officer Kenny then ask you some

1 questions?
 2 A He did ask some questions, but I don't remember --
 3 there weren't a lot of questions.
 4 Q What do you remember being discussed in that
 5 meeting?
 6 A Specifically, not anything specific. What I
 7 remember is I was surprised that there weren't more
 8 questions, that -- it just -- there just -- there
 9 wasn't a lot of why this and why that and who --
 10 you know, I just -- I don't --
 11 Q That's the only thing you have a sort of specific
 12 memory of --
 13 A Yeah.
 14 Q -- related to that meeting; is that correct?
 15 A Yes.
 16 Q Was there any documentation of that meeting?
 17 A Not by me, and I don't know if there was by anybody
 18 else.
 19 Q Okay. How long did that meeting last?
 20 A I don't remember. It was maybe an hour, but that's
 21 an approximation. I don't -- it wasn't all day and
 22 it wasn't five minutes.
 23 Q You said Officer Kenny didn't have that many
 24 questions of you or fewer than you -- than you
 25 might have expected, what questions do you remember

1 him asking, if any?
 2 A I don't remember specifically what he asked.
 3 Q Do you remember generally what he asked?
 4 A No. I really don't remember much --
 5 Q Okay.
 6 A -- about that.
 7 Q Did you have any communications, whether in person
 8 or on the phone or in other forms, with Officer
 9 Kenny before or after that meeting you just told me
 10 about?
 11 A No.
 12 Q Okay.
 13 MR. SWAMINATHAN: Should we take a quick
 14 break? It's 10:30.
 15 MS. BENSKY: Yeah.
 16 MR. SWAMINATHAN: All right.
 17 (A recess was taken from 10:34 a.m. until 10:40 a.m.)
 18 BY MR. SWAMINATHAN:
 19 Q You had mentioned earlier that there was some
 20 restriction placed on what the Madison police
 21 officers' involvement could be during the interview
 22 of Officer Kenny, correct?
 23 A Yes.
 24 Q Okay. And the restriction -- or at least one
 25 restriction was that that officer was not to ask

1 questions directly of Kenny during the course of
 2 the interview, correct?
 3 A Yeah, I think there's the preference that some
 4 agents have when they conduct officer-involved
 5 interviews.
 6 Q Okay. Was that the preference of Officer
 7 De La Rosa?
 8 A I think so, yes.
 9 Q Okay. So how do you know that -- was that a
 10 direction you gave or a direction that De La Rosa
 11 gave or someone else?
 12 A I think -- it's a conversation we had at some
 13 point, but I know that because of my conversations
 14 with Special Agent De La Rosa about how he conducts
 15 investigations.
 16 Q Was that a practice that you had or that you had
 17 folks who worked for you follow when they conducted
 18 officer-involved interviews?
 19 A Yes. For some, yes.
 20 Q You said -- so what would be the ones in which you
 21 wouldn't?
 22 A I just qualify that because I only supervise --
 23 there's a -- there's a -- a bunch of agents within
 24 DCI that are assigned to major crimes, that would
 25 be the lead in these types of investigations, I

1 A No.
 2 Q Okay. The Madison police officer who participated
 3 in the interview of Officer Kenny was somebody by
 4 the name of Officer Riesterer, do you recall that?
 5 A Yes.
 6 Q Okay. Why did Officer Riesterer participate in
 7 that interview?
 8 A Well, one, she was the primary contact I think for
 9 Special Agent De La Rosa, and that's kind of
 10 standard. We, with the involved agency, like to
 11 have an investigative contact from the involved
 12 agency and an administrative contact, at least
 13 that's how we do it here in our Madison office,
 14 with investigations we -- we conduct. So because
 15 she's the investigative conduct, that would -- that
 16 was why she -- she would have been the specific
 17 person in the interview.
 18 Q The primary contact for the -- in the Madison
 19 Police Department for the Robinson shooting
 20 investigation was Riesterer?
 21 A Yes, for like Special Agent De La Rosa and Special
 22 Agent Fernandez, anything investigatively, if we
 23 needed something, she would have been the contact.
 24 Q And who was the administrative contact?
 25 A Lieutenant Joey Skenandore, primarily. It just

1 supervise now four people, at that time three
 2 people, that would lead an interview like that, and
 3 I know, based upon just my professional
 4 conversations with them, that that's their
 5 preference.
 6 Q Okay. And who are the folks who worked for you at
 7 that time?
 8 A Special Agent Fernandez, Special Agent De La Rosa
 9 and Special Agent Holmes.
 10 Q Okay. And one of the restrictions -- and so your
 11 practice and their practice, consistent with your
 12 practice, was that the Madison police officer who
 13 participated in the Kenny interview would not ask
 14 questions directly of Officer Kenny; is that right?
 15 A That's -- that's my understanding of their
 16 practice, and yeah, that would be likely the
 17 expectation. Yeah, that would be the expectation.
 18 Q Okay. Any other expectations in terms of the
 19 restrictions of the Madison police officers'
 20 involvement in that interview of Officer Kenny?
 21 A No, just simply that -- I think like with most
 22 interviews, DCI's the lead, DCI's going to author
 23 the report, outstanding of any circumstances,
 24 that's the general understanding, the expectation.
 25 Q Anything else?

1 depended what shift and -- I just know -- I say
 2 that because I know a majority of my contacts were
 3 Lieutenant Skenandore.
 4 Q And so the administrative contact is someone who
 5 would be interfacing primarily with you as the
 6 special agent in charge on the DCI side; is that
 7 correct?
 8 A Yes. Thank you. From a supervision standpoint.
 9 Q Okay. Okay. So I understand why Riesterer may
 10 have been -- well, strike that. So I understand
 11 Riesterer was the primary contact for Officer
 12 De La Rosa, but why was Riesterer participating in
 13 an interview of Officer Kenny?
 14 A Because Madison Police Department made that request
 15 and has made those requests to be part of those
 16 interviews with the involved officers.
 17 Q Who made that request?
 18 A Specifically I don't know. It -- in this case, it
 19 probably was Lieutenant Skenandore.
 20 Q Do you know who the request was made to?
 21 A It would have been -- it's not a formal request,
 22 it's probably as part of a conversation that we're
 23 talking about the investigation, Lieutenant
 24 Skenandore would have said to me, Detective
 25 Riesterer is the detective we'd like to have sit in

1 on the interview.

2 Q When you say the detective we'd like to have sit

3 in, was there an understanding or assumption that

4 there would be a Madison police officer sitting in

5 on this interview?

6 A Yeah, there's -- it goes back to practice. That is

7 something, when we initially had discussions in

8 2014, when they decided that they were going to

9 contact DCI to conduct those critical incidents or

10 these OIDs, these officer-involved death

11 investigations, that was one thing they requested,

12 they -- they asked --

13 Q When you say -- go ahead. When you say they, you

14 mean the Madison Police Department?

15 A Yes.

16 Q Okay. And so explain to me what this 2014 -- in

17 2014, this was -- so this is unrelated to the

18 Robinson shooting matter?

19 A Correct.

20 Q They had a general request -- strike that. The

21 Madison Police Department had a general request

22 that when DCI participates in officer-involved

23 shootings, a Madison Police Department employee be

24 allowed to sit in on the officer-involved

25 interview?

1 A Yes, we had discussions about that.

2 Q Okay. Well, what was the reason they wanted that

3 -- to be able to do that?

4 A Just to ensure that DCI was gathering all the --

5 the right information.

6 Q Any other reason?

7 A No.

8 Q Were there any concerns about that when they raised

9 that or when they made that request?

10 A Any concerns?

11 Q From DCI's perspective, with Madison's request?

12 MS. BENSKY: From DCI, you mean --

13 MR. SWAMINATHAN: From DCI.

14 MS. BENSKY: -- Agent Engels'

15 perspective?

16 MR. SWAMINATHAN: Yes.

17 THE WITNESS: Yeah, there was a concern

18 from me that I didn't know that it was a -- I

19 didn't -- I wasn't sure if it was going to be a

20 good practice, when we first talked about doing it.

21 BY MR. SWAMINATHAN:

22 Q So you had some concerns when it was -- when the

23 request was first made?

24 A I did, yes.

25 Q And did you voice those concerns?

1 A Yes.

2 Q And why -- what were your concerns?

3 A Simply that an involved officer from an agency may

4 not feel comfortable providing details about a

5 really critical incident with one of their own

6 members of their agency part of that interview.

7 Q Why is that?

8 A Well, they may share personal information that they

9 may not feel is relevant for somebody within their

10 own agency to hear; secondly, they may share

11 opinions that may not -- they may not feel

12 comfortable sharing with somebody from their own

13 agency, they may just simply not like the person

14 who's sitting in on the interview, it may be a

15 supervisor or an investigator in which they just

16 maybe have had unpleasant experiences with, that

17 they just don't feel comfortable with. It was my

18 opinion that it would be best not to have somebody

19 from Madison Police Department, just simply for the

20 -- the openness of the witness. That was my

21 initial kind of input when we had those

22 discussions.

23 Q Okay. And ultimately, how was that concern

24 resolved?

25 A We just discussed it amongst a group. I know I had

1 a conversation with my deputy administrator at the

2 time, Pat Mitchell, about the request, and Pat --

3 Pat understood, and I think we came up with a good

4 method, where the case agent, in this case would be

5 De La Rosa, would speak with either the officer or

6 their representation and advise them who the

7 Madison person was going to be and ensure they were

8 comfortable with that person and ensure that the --

9 the involved officer, because it's a voluntary

10 statement, is willing to give that statement in the

11 presence of somebody from the Madison Police

12 Department, and then secondly, specifically who was

13 that person.

14 Q Okay. You say it's a voluntary statement, just

15 explain what you mean by that.

16 A Well, they're not required to give a statement, so

17 it's voluntary.

18 Q Okay. And if they don't give a statement, can you

19 -- can you compel them to give a statement?

20 A We cannot, no.

21 Q Okay. Who can?

22 A Well, as part of the internal investigation as

23 their employer, the City of Madison could compel

24 them to give a statement.

25 Q Okay. You all, at DCI, are conducting a criminal

1 investigation when you -- when you get involved in
 2 these officer-involved shootings, correct?
 3 A That's our purpose.
 4 Q Okay. And when you're doing a criminal
 5 investigation, you're investigating particularly
 6 whether possibly a homicide was committed, correct?
 7 A Correct.
 8 Q Okay. And the -- essentially the single suspect in
 9 that homicide is the officer involved in the
 10 shooting, correct?
 11 A I wouldn't say suspect, but yes.
 12 Q Why wouldn't you say suspect?
 13 A Well, it's not -- it's not a term I would call an
 14 officer that used deadly force against somebody in
 15 their line of duty.
 16 Q If they did -- if they did so and it was
 17 unjustified, they --
 18 A Then it would be a suspect, yes.
 19 Q Okay. So -- but ultimately your job is to assist
 20 the district attorney in making the determination
 21 about whether it was justified or not?
 22 A Gathering facts.
 23 Q Okay. There's no other suspect in an
 24 officer-involved shooting than the officer who
 25 fired the gun, correct?

1 A Well, we conclude a certain witness was here, we
 2 conclude that there was video from here and we will
 3 make conclusions that this witness maybe is talking
 4 about something else. When the -- when we
 5 interview a witness that said I may have seen or
 6 heard or known something, we interview them, we may
 7 conclude there's no need to go further with that
 8 witness because their information is clearly not
 9 connected, so we'll make those type of conclusions.
 10 But it's all documented, regardless of our
 11 conclusion. But the ultimate conclusion of
 12 justification is really not one we make.
 13 Q Okay. But a lot of the conclusions you just sort
 14 of described that DCI might be making, I mean, fair
 15 to say those are conclusions related to the fact
 16 gathering process?
 17 A Yes.
 18 Q In other words, would it be correct to say DCI's
 19 role in the investigation is to gather facts,
 20 correct?
 21 A That's what I said, yeah.
 22 Q Okay. And you gather those facts and then is the
 23 purpose of gathering those facts to share them with
 24 the district attorney?
 25 A Yes.

1 A Sure. I see your point, so yes.
 2 Q Okay. All right. I don't know where I was going
 3 with that. Let's continue with that for a moment,
 4 just on the subject of the purpose of -- of DCI's
 5 involvement.
 6 A Sure.
 7 Q In -- and let me just ask you this, as -- we'll
 8 start with the general, what is DCI's role in an
 9 officer-involved shooting?
 10 A To lead the investigation and gather the facts as
 11 to what took place.
 12 Q And is DCI -- does DCI reach any conclusions as
 13 part of its role in an officer-involved shooting
 14 investigation?
 15 MS. BENSKY: Object to form.
 16 THE WITNESS: We reach conclusions, but
 17 not an ultimate conclusion as to what -- whether it
 18 was justified or not justified.
 19 BY MR. SWAMINATHAN:
 20 Q So what are the types of conclusions that DCI
 21 reaches?
 22 A Oh, geez, like in any investigation, I mean --
 23 Q I just want to make sure I'm clear on the
 24 distinction that you're making between what are the
 25 conclusions you don't reach and what you do reach.

1 Q Okay. And then the district attorney makes a
 2 determination about whether or not the shooting was
 3 justified or not justified; is that correct?
 4 A Yes.
 5 Q Okay. And does DCI participate at all in that
 6 decision, as to whether or not an officer should be
 7 charged?
 8 A Well, of course we participate by providing the
 9 information, but we don't participate in making the
 10 decision.
 11 Q Beyond providing the facts, you don't participate
 12 in that decision; is that correct?
 13 A Correct.
 14 Q Okay. Does DCI -- strike that. When DCI performs
 15 -- and -- strike that. DCI -- I think you
 16 mentioned this before, DCI's role in the
 17 investigation -- well, strike that. Does DCI reach
 18 any opinions about what happened during the course
 19 of an event as part of its role in an
 20 officer-involved shooting?
 21 A No.
 22 Q Okay. Does DCI, when -- when it's gathering facts,
 23 does it engage in any sort of analysis of those
 24 facts?
 25 MS. BENSKY: Object to form. Vague.

1 THE WITNESS: Well, yes.
 2 BY MR. SWAMINATHAN:
 3 Q Explain what you mean.
 4 A Well, it would be the same as conclusions.
 5 Q Okay. So -- and so maybe a better way to ask it
 6 is, will DCI, as it's gathering facts, say hey,
 7 these facts contradict these other facts?
 8 A Sure, you -- yes.
 9 Q So, for example, if a witness -- one witness might
 10 say one set of facts and you'll gather and report
 11 them, correct?
 12 A Yes.
 13 Q And if another witness says we'll -- says a
 14 different set of facts, you'll also gather those
 15 and report those, correct?
 16 A Yes.
 17 Q And if Witness A and B have said different things
 18 or things that might contradict each other, will
 19 you make note of those contradictions?
 20 A Typically, no.
 21 Q You're saying typically no, what is a circumstance
 22 in which you would?
 23 A I don't believe that we would.
 24 Q Okay. So that's not part of DCI?
 25 A Correct.

1 Q Okay. And ultimately, so I understand, DCI is --
 2 so is the audience for DCI basically the district
 3 attorney, in these officer-involved shooting cases?
 4 A Audience? I don't know who the audience is. We
 5 conduct them pursuant to statute, and so the person
 6 we're conducting them for would be the district
 7 attorney.
 8 Q And the district attorney is going to make a
 9 decision about whether the officer's conduct was
 10 justified, correct?
 11 A Yes.
 12 Q And so the decision that you're supporting is a
 13 decision by the district attorney about the
 14 officer's decision to pull the trigger, correct?
 15 A The --
 16 MS. BENSKY: Object to form.
 17 MS. HARRELL: Join.
 18 THE WITNESS: I missed -- I missed that
 19 question.
 20 MR. SWAMINATHAN: Yeah.
 21 BY MR. SWAMINATHAN:
 22 Q So the decision -- when you're gathering facts,
 23 you're trying to gather facts that are going to be
 24 relevant and important to the district attorney,
 25 correct?

1 A Yes.
 2 Q Okay. And so the -- and so I guess what I'm trying
 3 to get at is, what is the district attorney
 4 assessing; is the district attorney ultimately
 5 assessing the officer's decision to pull the
 6 trigger and whether it was appropriate or not?
 7 MS. BENSKY: Object to form and
 8 foundation. Asking to speculate.
 9 THE WITNESS: I just -- I can't even
 10 begin to try and guess what the district attorney's
 11 thought process is in trying to come to a
 12 conclusion.
 13 BY MR. SWAMINATHAN:
 14 Q I guess what I'm getting at is, you have to have
 15 some basic sense of what role the district attorney
 16 is playing in this process when you're trying to
 17 gather facts to assist them, correct?
 18 A Oh, yeah, I know his role very well, or their role,
 19 in this case of D.A. Ozanne.
 20 Q And in this case, D.A. Ozanne's role is to
 21 basically assess the officer's decision making; is
 22 that correct?
 23 A That's one of the things I would think he would
 24 assess.
 25 Q What else is he assessing?

1 A Well, he's going to assess the officer's role, he's
 2 going to assess the decedent's role, the witnesses'
 3 role, evidence, facts, training, I mean, common
 4 sense type stuff.
 5 Q That's all evidence that he's going to consider,
 6 correct?
 7 A Yes.
 8 Q All for the purpose of making a decision about
 9 whether the officer's decision to pull the trigger
 10 was justified or not justified, correct?
 11 MS. BENSKY: Object. Form and
 12 foundation.
 13 THE WITNESS: I'm not sure the -- the
 14 question.
 15 MR. SWAMINATHAN: Yeah.
 16 BY MR. SWAMINATHAN:
 17 Q I guess what I'm getting at is, he's considering a
 18 lot of information, right; he's considering
 19 information you said that he's getting from
 20 witnesses, from the officer, potentially related to
 21 the decedent, correct; he's -- he's got multiple
 22 sources of information, correct?
 23 MS. BENSKY: I'm just going to object to
 24 the extent that you're asking Agent Engels to
 25 speculate as to what the D.A. is doing or is not

1 doing. He can testify to his personal knowledge,
 2 but -- if -- if he knows.
 3 THE WITNESS: Yeah, and if you can just
 4 ask the question again.
 5 MR. SWAMINATHAN: Yeah.
 6 BY MR. SWAMINATHAN:
 7 Q I'm -- I'm focused on what is -- what is the D.A.
 8 analyzing at the end of the day? I understand the
 9 D.A.'s considering a number of sources of
 10 information, but what is the D.A.'s focus? Is
 11 there -- so let me ask a different way. Let me ask
 12 you this, is the district attorney making a
 13 determination about Madison Police Department
 14 policies and practices?
 15 MS. BENSKY: Objection. Foundation.
 16 MS. HARRELL: Objection. Foundation.
 17 THE WITNESS: I don't know what the
 18 district attorney is assessing.
 19 BY MR. SWAMINATHAN:
 20 Q When you're conducting your investigation, your
 21 fact gathering, are you helping -- are you
 22 collecting facts to assist the district attorney in
 23 assessing the policies and practices of the police
 24 department that's involved?
 25 A That's a different question, policies and

1 procedures. Are we assisting the district
 2 attorney in --
 3 THE WITNESS: Can you read me the
 4 question; is that possible?
 5 (Question was read back.)
 6 THE WITNESS: I don't think so much in
 7 gathering information about the policies and
 8 practices, more so the facts of what took place.
 9 If there's something pertinent to maybe a policy,
 10 typically the district attorney would ask us to
 11 gather that information about is a policy that the
 12 Madison Police Department have relevant to some of
 13 these facts.
 14 BY MR. SWAMINATHAN:
 15 Q But ultimately, you're not asked, when you guys get
 16 involved in these officer-involved shootings, to
 17 help them determine whether or not the policies and
 18 practices of the department are good -- good
 19 policies and practices; is that correct?
 20 MS. BENSKY: Object to form.
 21 THE WITNESS: I think I can simply
 22 summarize all of this by saying we're conducting a
 23 criminal investigation to simply gather all the
 24 facts that we can and get as much clear information
 25 and provide all of that to the district attorney.

1 MR. SWAMINATHAN: All right.
 2 BY MR. SWAMINATHAN:
 3 Q So ultimately, you're conducting a criminal
 4 investigation into the officer's conduct, correct?
 5 A Yes.
 6 Q Okay. And it's not a criminal investigation into
 7 the policies of a police department, correct?
 8 A Correct.
 9 Q And it's not a criminal investigation into the
 10 general practices of that police department,
 11 correct?
 12 A Correct.
 13 Q Okay. And when you say to criminal investigation
 14 into the officer's conduct, the focus is on their
 15 decision making, correct?
 16 MS. BENSKY: Object to form. Whose
 17 decision making?
 18 MR. SWAMINATHAN: The decision making of
 19 the officer.
 20 BY MR. SWAMINATHAN:
 21 Q In other words, you're -- when you say you're
 22 assessing the officer's conduct, you're assessing
 23 whether their decision to pull the trigger was
 24 justified or not justified, correct?
 25 MS. BENSKY: Objection. That's not what

1 he said at all. Misrepresents his testimony.
 2 THE WITNESS: Yeah, I can just clarify.
 3 MR. SWAMINATHAN: Please.
 4 THE WITNESS: That we're not using the
 5 worse assessing, and I -- I'm thinking maybe that's
 6 where we're all getting stumbled here.
 7 MR. SWAMINATHAN: Uh-huh.
 8 THE WITNESS: We don't make assessments
 9 so much on the officer's actions. We gather the
 10 facts as to what he or she did and we report them,
 11 so -- we don't assess in a report or in an opinion
 12 why he or she may have done something. Does that
 13 help?
 14 BY MR. SWAMINATHAN:
 15 Q In terms of DCI's role, is that -- is that what
 16 you're explaining to me?
 17 A As in our role in this whole process, that's our --
 18 our role is to gather the facts and provide it to
 19 somebody else to make the opinion -- to make the
 20 decision.
 21 Q And -- and the decision that's going to be coming
 22 down the road, that you know as an officer -- as a
 23 DCI investigator, is the district attorney making a
 24 decision about whether the officer's conduct was
 25 appropriate or not, correct?

1 MR. JOHNSON: Asked and answered.
 2 MS. BENSKY: Object to -- object to form.
 3 THE WITNESS: Okay. And with all of the
 4 objections, I'll just say yeah, I've answered that.
 5 Yes, I -- we understand we conduct the
 6 investigation and the district attorney is going to
 7 make the decision, and that's -- going to base that
 8 upon the facts that we provide.
 9 BY MR. SWAMINATHAN:
 10 Q Decision about what?
 11 A About --
 12 Q The district attorney is going to make a decision
 13 about what?
 14 MS. BENSKY: Object to foundation.
 15 THE WITNESS: Well, I think we're all
 16 talking about Tony Robinson and the
 17 officer-involved death investigation and whether
 18 the use of force was justified, and so when --
 19 whether it's the Tony Robinson case or any other
 20 investigation, we understand that the district
 21 attorney is ultimately making the decision on
 22 justification.
 23 MR. SWAMINATHAN: Right. Understood.
 24 BY MR. SWAMINATHAN:
 25 Q And the key focus of that decision is the officer's

1 decision making, correct?
 2 A I don't know what the key --
 3 MS. HARRELL: Objection. Foundation.
 4 THE WITNESS: -- I don't know what the
 5 key focus is of the district attorney.
 6 MR. SWAMINATHAN: Okay.
 7 BY MR. SWAMINATHAN:
 8 Q In terms of -- are you given any guidance about the
 9 standards by which the officer's conduct is going
 10 to be assessed, in an officer-involved shooting
 11 investigation?
 12 A I'm not sure I understand.
 13 Q Yeah. So -- so we talked for a moment about
 14 policies --
 15 A Uh-huh.
 16 Q -- is part of your role to provide the district
 17 attorney with guidance about whether the officer
 18 followed department policies or not?
 19 A No, I don't -- we don't provide guidance to
 20 district attorneys.
 21 Q Do you provide them with any -- do you provide the
 22 district attorney with any information about
 23 whether the officer followed the policies or not,
 24 of their department?
 25 A No, only if they ask.

1 Q Okay. In this case, was that asked?
 2 A I don't know.
 3 Q Did DCI review the policies of the Madison Police
 4 Department as part of the investigation into the
 5 Robinson shooting case?
 6 A The policies. There's a lot of policies. I -- the
 7 answer is I don't know.
 8 Q Do you know -- strike that. Are you aware of any
 9 Madison Police Department policies that were
 10 reviewed by DCI agents as part of the their
 11 involvement in the Robinson shooting investigation?
 12 A I'm not aware. I don't remember if they were.
 13 Q Okay. Do you recall ever reviewing yourself any
 14 Madison Police Department policies as part of your
 15 involvement in the Robinson shooting investigation?
 16 A No.
 17 Q You always interviewed the -- the officer involved
 18 in the shooting in officer-involved shooting
 19 investigations at DCI?
 20 A Do I?
 21 Q As in, does DCI, as a matter of policy and
 22 practice, always interview the officer involved in
 23 the shooting?
 24 A Always, I don't know; we sure like to.
 25 Q Do you recall any instances in which that hasn't

1 occurred?
 2 A No.
 3 (Exhibit 134 marked for identification.)
 4 BY MR. SWAMINATHAN:
 5 Q I'm handing you a document marked Exhibit 134.
 6 It's Bates stamped DCI 670 to 672, and it's titled
 7 a meeting with Andrea Irwin and family. Did you
 8 review this document in preparation for today's
 9 deposition?
 10 A Yes.
 11 Q Can you tell me what it is.
 12 A It's a recording documentation of my contact with
 13 Andrea Irwin and some of her family and a personal
 14 representative on March 8, 2015.
 15 Q When you reviewed this report in preparation for
 16 today's deposition, did you remember anything else
 17 about your meeting or conversation with Ms. Irwin
 18 on March 8 that's not documented in this report?
 19 A No.
 20 Q As you sit here today, do you remember anything
 21 else about that meeting with Ms. Irwin on March 8
 22 that's not documented in this report?
 23 A No.
 24 Q What was the purpose of -- of meeting with -- with
 25 Ms. Irwin on March 8?

1 A As I described before, to just provide them with
 2 any information, to ensure they knew who they could
 3 contact should they have questions and to gather
 4 any background information or relevant information
 5 related to our investigation.
 6 MR. SWAMINATHAN: Could you read back the
 7 last part, please.
 8 (Answer was read back.)
 9 BY MR. SWAMINATHAN:
 10 Q Did you gather any background information relevant
 11 to your investigation?
 12 A Hmm. Can I have a minute just to read it?
 13 Q Yes.
 14 MS. BENSKY: Take whatever time you need.
 15 THE WITNESS: And so what was the
 16 question?
 17 BY MR. SWAMINATHAN:
 18 Q Did you ask any back -- for any background or
 19 relevant information related to the investigation?
 20 A Specifically, I don't remember, but I'm sure we
 21 did. I -- I remember the general conversation. So
 22 yeah, there was some background information shared
 23 by Andrea Irwin and family members.
 24 Q And when you say background information, what do
 25 you mean?

1 A Just as to who he was, their feelings towards him.
 2 I don't recall anything specific to the -- to the
 3 event or the days leading up to the event, but I
 4 think it was more in general terms as to who he was
 5 as a person.
 6 Q This was information communicated -- background
 7 information communicated in the March 8 meeting
 8 with Ms. Irwin?
 9 A Yes.
 10 Q Okay. Is there any such information documented in
 11 this report?
 12 A No.
 13 Q Okay. So you had some of those communications,
 14 they're just not documented here; is that right?
 15 A Yes.
 16 Q Okay. Do you recall specifically what background
 17 information Ms. Irwin shared with you on March 8?
 18 A No. Just generalities, again, about their feelings
 19 towards Tony Robinson. I don't really remember a
 20 whole lot of discussion about background, I think
 21 it was more opinions. I think they shared probably
 22 less background information and more opinions.
 23 Q Opinions about what?
 24 A The process, just their -- their -- probably their
 25 disappointment, their disappointment in the death

1 of their -- of Andrea's son.
 2 Q Any specific background information about Tony
 3 Robinson that you recall them communicating on
 4 March 8?
 5 A No. And -- and if there had been something
 6 specific, it would be documented in here. If there
 7 was something relevant to our investigation, it
 8 surely would have been documented in here.
 9 Q Okay. There's a -- if you look at page 2, I think
 10 it's the first full sentence on that page, it says
 11 SA Engel -- or SAC Engels explained the process
 12 which DCI would take in its approach to the
 13 investigation and provided an estimated timeline.
 14 Can you -- can you tell me what you explained about
 15 the process which DCI would take in its approach to
 16 the investigation.
 17 A Specifically, I don't remember what I would have
 18 explained.
 19 Q What would you generally explain when you're
 20 explaining to someone, you know, who's the mother
 21 of the -- of the -- of the decedent about the
 22 process which DCI would take?
 23 A In simplest forms, I would share, first, who we
 24 are, because many people don't -- aren't familiar
 25 with DCI, and I would share how we're going to go

1 about gathering information, maybe as to why we're
 2 going to do certain things, maybe the relevant
 3 people involved as far as medical examiners, the
 4 crime lab, those types of process type questions,
 5 how we're going to interact with the district
 6 attorney, victim/witness type information,
 7 resources that may be available to them, how we
 8 would interact and then time -- a time estimation.
 9 Q What kind of a time estimation do you give?
 10 A Oh. It really depends on the circumstances.
 11 Q Do you know --
 12 A And -- and quite honestly, I -- it's always an
 13 estimation, it's just -- I only give one because
 14 people want to know, and it's a guess.
 15 Q What information do you communicate about -- or did
 16 you communicate about how you would interact with
 17 the district attorney is the phrase you used?
 18 A That we're collecting information and going to
 19 provide all the information to them and ensuring
 20 the family understands that the district attorney
 21 is the person that makes the decision, and that
 22 we're just collecting the information or gathering
 23 the facts.
 24 Q Did you form any ultimate opinions or conclusions
 25 about whether the shooting was justified in this

1 case?
 2 A No.
 3 Q Let me --
 4 MR. SWAMINATHAN: Let's mark this one
 5 Exhibit 135.
 6 (Exhibit 135 marked for identification.)
 7 BY MR. SWAMINATHAN:
 8 Q Handing you a document marked Exhibit 135, it's
 9 Bates stamped DCI 673 to 674. Can you tell me what
 10 this document is.
 11 A Sure. It's a report to -- it's a memo, what we
 12 call a memo, which is just a short form report to
 13 the case file documenting my contacts with --
 14 attempted contacts with Andrea Irwin and my
 15 communications with her and Jerome Flowers.
 16 Q Okay. When -- and you reviewed this document in
 17 preparation for today's deposition?
 18 A I did.
 19 Q Do you recall anything about these -- about the
 20 contacts that are documented here that's not
 21 contained in this report?
 22 A No.
 23 Q And I -- I don't know if I asked the question
 24 properly, when you reviewed this report in
 25 preparation for today's deposition, did you

1 remember anything about the contacts documented
 2 here that are not communicated in this report?
 3 A No.
 4 Q Okay. And as you sit here today, do you remember
 5 anything else about those contacts that's not
 6 communicated in this report?
 7 A No.
 8 Q Okay. What was the purpose of the set of contacts
 9 that are discussed here?
 10 A As I remember today, I would say it was two-fold;
 11 one, I had last talked with Andrea Irwin on
 12 March 8, and so on March 11, as I note, the purpose
 13 was to provide an update on the investigation; and
 14 then on March 12, I recall there was more of an
 15 urgency for me to speak with her, because I wanted
 16 her to be aware that the Department of Justice was
 17 going to provide some details of the investigation,
 18 and I wanted to ensure that she knew everything
 19 that was going to be provided.
 20 Q And did you share with her what information was
 21 going to be provided?
 22 A Let me just make sure here. Let me just read this.
 23 Okay. So, I'm sorry, the question was?
 24 Q Did you provide an update to Ms. Irwin about the
 25 investigation?

1 A Yes.
 2 Q Okay. And what information did you communicate to
 3 her when you gave her an update?
 4 A I see did I a nice job of kind of just summarizing
 5 it all within the report.
 6 Q Okay. So what you recall communicating to her as
 7 an update is information that's contained in the
 8 subsequent paragraphs of this document; is that
 9 correct?
 10 A Yeah.
 11 Q Okay. Do you recall communicating any information
 12 -- well, strike that. As I read it, a lot of what
 13 you are communicating to Ms. Irwin pursuant to this
 14 document is information sort of updating her on the
 15 amount of investigative work that's been done, does
 16 that sound about right?
 17 A Yeah, the amount and probably the progress.
 18 Q Okay. Did you communicate any -- what's not
 19 documented here is communicating any information to
 20 her about what you were learning as part of -- as
 21 part of that investigative work, does that make
 22 sense?
 23 A Correct, facts.
 24 Q Okay.
 25 A Specific facts.

1 Q Specific facts you had learned as part of the
 2 investigation, do you communicate any of that
 3 information to Ms. Irwin?
 4 A Likely no.
 5 Q Okay. Was any of that information communicated by
 6 the Attorney General in the, you know, discussion
 7 with the media that was taking place at 2:30?
 8 A I don't remember.
 9 Q Did you know what was supposed to be communicated
 10 by the Attorney General in that meeting at the time
 11 you called Ms. Irwin?
 12 A Yeah, specifically what the Attorney General was
 13 going to share, did I know? No; in general terms,
 14 did I know? Yes, I think in general terms I knew
 15 that there was not going to include any facts or
 16 details --
 17 Q Okay.
 18 A -- of our investigation.
 19 Q Okay. So you knew at the time the Attorney General
 20 spoke that they were not going to be sharing any
 21 information they had learned during the
 22 investigation, only providing an update on here's
 23 the amount of work that's been done, that kind of
 24 thing?
 25 A Yes.

1 Q Okay. And so it was your expectation that if
 2 Ms. Irwin heard that public statement or that
 3 public communication from the Attorney General, she
 4 would not be learning anything new for the first
 5 time?
 6 A Correct. I wanted to ensure she wasn't going to
 7 learn anything new for the first time from the
 8 Attorney General speaking, and then, again, really
 9 to just kind of to answer any questions.
 10 Q In the communications that are discussed here from
 11 March 11 and March 12, did you ask Ms. Irwin any
 12 questions about Tony Robinson, his background or
 13 relevant information related to the incident?
 14 A I did not.
 15 Q Do you know if -- did -- did anyone who
 16 participated in those conversations on March 11 or
 17 March 12 ask for such information?
 18 A No, I say I did not ask for those specific details,
 19 because Special Agent De La Rosa was the case
 20 agent, and that would be his -- my expectation and
 21 his understanding, that's his role, trying to keep
 22 in mind I supervise this -- these moving parts, and
 23 I trust in Special Agent De La Rosa that he's going
 24 to do that when it's appropriate, when the family's
 25 ready to share, so -- I did not, no, but I know he

1 -- he did.
 2 Q Did you ever sit down and participate in any
 3 discussion with the family about Tony Robinson's
 4 background or -- or relevant information related to
 5 the investigation?
 6 A Again, only going back to that March 8 meeting;
 7 other than that general discussion, no.
 8 Q Okay. Other than the communications we've
 9 discussed today in the various documents, reports
 10 that you're involved with, did you have any other
 11 communication with the Robinson family that we've
 12 not -- that we've not discussed today?
 13 A No, not that I can recall.
 14 Q Did you prepare any other reports related to
 15 communication with the Robinson family?
 16 A No.
 17 Q Did you prepare any other reports as part of this
 18 investigation?
 19 A No.
 20 Q Okay. Did you have any other involvement in
 21 directly -- strike that. You obviously had a role
 22 in this investigation that was supervisory,
 23 correct?
 24 A Yes.
 25 Q And that was substantial, correct?

1 A I don't know.
 2 Q You also had separate -- apart from your
 3 supervisory role, you had communications directly
 4 with family members of the Robinson family,
 5 correct?
 6 A Yes.
 7 Q Okay. Did you have any other sort of direct
 8 involvement in the investigation or communications
 9 with witnesses or relevant people as part of the
 10 investigation?
 11 MS. BENSKY: Object to form.
 12 THE WITNESS: Did I -- I did not
 13 personally interview witnesses in this.
 14 MR. SWAMINATHAN: Okay.
 15 BY MR. SWAMINATHAN:
 16 Q I'm going to ask you a little bit about your
 17 background.
 18 A Uh-huh.
 19 Q Let's start -- let's start with high school, just
 20 to -- I'm not going to spend a lot of time there,
 21 but when did you graduate high school?
 22 A 1986.
 23 Q And what did you do after you graduated from high
 24 school?
 25 A I went to the University of Wisconsin-Platteville

1 and majored in criminal justice.
 2 Q And did you graduate from University of
 3 Wisconsin-Platteville?
 4 A I did.
 5 Q When did you graduate?
 6 A December of 1990.
 7 Q Okay. And did you take a job after you graduated?
 8 A Yes.
 9 Q What job did you take?
 10 A With the Dodge County Sheriff's Department as a
 11 correctional officer, in January of 1991.
 12 Q How long did you work for the Dodge County
 13 Corrections -- Corrections Office?
 14 A It's all the sheriff's department, it's all one,
 15 but I was assigned to the jail for three years.
 16 Q What did you do next?
 17 A I was hired as a deputy sheriff, so I was a patrol
 18 deputy in 2 -- in 1994.
 19 Q So '94, you went from working at the jail at the
 20 sheriff's office to working out in the streets
 21 basically?
 22 A Correct.
 23 Q Okay. And then how long were you a deputy sheriff,
 24 in Dodge County?
 25 A I remained a deputy sheriff, but I -- as a deputy

1 sheriff, I was assigned to drug investigations in
 2 1998, and 1999 it was my sole responsibility. So I
 3 was removed from patrol duties and was assigned to
 4 do drug investigations.
 5 Q And how long were you in that position?
 6 A Two years in -- as a deputy, and then in 1999, I
 7 was promoted to detective.
 8 Q And how long were you a detective with the Dodge
 9 County Sheriff's Office?
 10 A Until 2006, August 2006 when I left to take
 11 employment with DCI.
 12 Q So you joined DCI in 2006?
 13 A Yes.
 14 Q Why did you leave the Dodge County Sheriff's Office
 15 for the position at DCI?
 16 A Probably a desire to conduct investigations outside
 17 of just the general area of Dodge County, to
 18 conduct maybe more significant drug investigations,
 19 that's why I initially left.
 20 Q So you were working -- let me make sure I've got
 21 the time right, from about '94 to 2006, you were
 22 basically working as a police officer in Dodge
 23 County, correct?
 24 A Yes.
 25 Q Okay. During that period -- well, let me ask you

1 this, during that period, did you ever -- have you
 2 ever shot at a civilian?
 3 MS. BENSKY: What did --
 4 MR. SWAMINATHAN: Shot at a civilian.
 5 THE WITNESS: No.
 6 BY MR. SWAMINATHAN:
 7 Q Did any of your fellow officers in the Dodge County
 8 Sheriff's Office ever shoot at civilians while you
 9 were -- while you were there?
 10 A Yes.
 11 Q How many times did that occur?
 12 A Twice that I -- yeah, twice.
 13 Q Okay. Approximately when were each of those
 14 instances?
 15 A Hmm. The first one would have been sometime
 16 between 1991 and approximately 1997, and the other
 17 one would have been, I could be -- it would have
 18 been 1996 or '97.
 19 Q In either instance, did the officer kill the
 20 civilian whom they had shot at?
 21 A Yes.
 22 Q In -- in one or both?
 23 A In one in 1996 or '7. Yeah.
 24 Q Okay. In either --
 25 A It could have been -- it could have been '9 -- '94,

1 95, '96, '97.
 2 Q Okay. Did you know the -- either of the officers
 3 who were -- who had shot their -- their weapons in
 4 those two instances?
 5 A Yes.
 6 Q Did you know both of them?
 7 A Yes.
 8 Q Okay. Did you know them well?
 9 A Yes.
 10 Q Both of them?
 11 A Yes.
 12 Q Okay. Were the shootings deemed -- was there an
 13 investigation into each of the shootings?
 14 A The first one, I don't -- I don't really know.
 15 There was an investigation, obviously; I don't know
 16 who conducted it.
 17 Q Okay.
 18 A In the second one, yes, there was an investigation.
 19 Q And what was the conclusion of the investigation?
 20 A Both were justified.
 21 Q Both shootings that -- that you're aware of while
 22 you were at the Dodge County Sheriff's Office were
 23 deemed to be justified?
 24 A Yes. Both were -- resulted in no criminal charges.
 25 Q Okay. And in addition to not resulting in any

1 criminal charges, did they result in any internal
 2 discipline within the department?
 3 A Not that I'm aware of.
 4 Q Okay. Have you ever been shot at?
 5 A No.
 6 Q Were any of your colleagues ever shot at while you
 7 were at the Dodge County Sheriff's Office?
 8 A No.
 9 Q Okay. How many times have you unholstered your gun
 10 during the time you were at Dodge County -- at the
 11 Dodge County Sheriff's Office?
 12 A I'm presuming you're asking in the line of duty,
 13 not as a training or not removing it to clean it
 14 or not --
 15 Q Thank you.
 16 A Okay.
 17 Q Absolutely correct. In the line of duty.
 18 A Well, a lot of times.
 19 Q More than a hundred?
 20 A Yeah.
 21 Q What were the kind of circumstances in which you
 22 would have unholstered your gun in the line of
 23 duty?
 24 A There was an active shooter call, there were
 25 high-risk stops and a lot of search warrants, that

1 we were serving search warrants. Mainly in the
 2 course of traffic stops, clearing a building on a
 3 complaint of some sort.
 4 Q In those instances when you had your gun
 5 unholstered in the line of duty, were there
 6 instances when you'd target a -- a civilian, with
 7 your gun?
 8 A Yes.
 9 Q Okay. And how often would that occur?
 10 A How often? It's hard to quantify it on a regular
 11 basis, but it happened quite a few times.
 12 Q Okay. Did you ever fear for your life when you
 13 were at the Dodge County Sheriff's Office?
 14 A Yes.
 15 Q How many times has that occurred?
 16 A A bunch. I -- I don't -- it's hard to qualify.
 17 Q It -- it's something -- go ahead.
 18 A Are you looking for a number?
 19 Q Whatever's the easiest way for you to communicate
 20 it, a number or a -- or a frequency, however --
 21 however you can communicate it.
 22 A Yeah, I've been involved in a lot of search
 23 warrants and a lot of high-risk stops where I
 24 feared for my life.
 25 Q Okay. Have you reported to -- been asked to report

1 officer.
 2 Q Okay. And so then you're no longer in a specific
 3 bureau?
 4 A Correct.
 5 Q Okay. And how long were you with the Joint Task
 6 Force?
 7 A Just under a year, in 2011. It was early 2011 when
 8 I officially made the move, and in December of
 9 2011, I left to accept the special agent in charge
 10 position.
 11 Q Okay. So after you left that position, what did --
 12 what is the new position you had after you left the
 13 Joint Task Force?
 14 A Special agent in charge, the position I currently
 15 hold.
 16 Q Okay. Is that in a specific bureau?
 17 A My responsibilities include overseeing major crime
 18 agents. We really -- we don't have bureaus, so --
 19 not to be technical, but -- so I oversee the major
 20 crime agents, the narcotic agents, white collar and
 21 public integrity.
 22 Q How many agents do you oversee?
 23 A Ten -- nine or ten and a civilian support person.
 24 Q And so that nine to ten -- nine to eight that you
 25 oversee are in multiple of these different areas,

1 to the scene of a crime or possible crime and --
 2 and had fear about your own safety?
 3 A Yes.
 4 Q Okay. Is that something that's happened many
 5 times, during the course of your career?
 6 A Yes.
 7 Q Okay. I want to ask you about your positions in
 8 DCI. You joined DCI in 2006. What was your first
 9 position at DCI?
 10 A I was assigned narcotics investigations.
 11 Q Did you have other positions at DCI other than as a
 12 narcotics agent?
 13 A That was my primary assignment, but of course we
 14 assist on other critical events as needed.
 15 Q Was there a point at which you left the narcotics
 16 bureau?
 17 A Yes.
 18 Q When was that?
 19 A In 2011.
 20 Q And what was your -- what was -- where did you move
 21 from -- move to after narcotics?
 22 A I accepted an assignment with the Joint Terrorism
 23 Task force at FBI in Madison.
 24 Q Was that a DCI position?
 25 A Yes. It's just a -- an assignment as a task force

1 narcotics, white collar and so on?
 2 A Yes.
 3 Q Okay. Do you ever oversee all of the agents in a
 4 particular area, like major crimes?
 5 A I'm sorry, I missed that.
 6 Q Yeah. So -- so, for example, how many folks do you
 7 oversee who are in major crimes?
 8 A There are now four agents assigned.
 9 Q And at the time of the Robinson shooting matter,
 10 there were three, correct?
 11 A Yes.
 12 Q And -- so when you say you over -- when you -- at
 13 the time of the Robinson shooting matter, you
 14 oversaw three folks, were those all of the major
 15 crimes agents or were those just the three that you
 16 oversaw?
 17 MS. BENSKEY: Do you mean in all of DCI?
 18 MR. SWAMINATHAN: Yeah, that -- that's
 19 what I'm getting at. I just want to understand
 20 how -- what --
 21 BY MR. SWAMINATHAN:
 22 Q When you talk about major crimes, how big is that
 23 group; how many agents are in that group?
 24 A In the Madison region, there were three at that
 25 time and now there are four.

1 Q Okay. And so you oversaw all of the major crime
 2 agents in the Madison office; is that correct?
 3 A Yes.
 4 Q Okay. And -- and -- okay. And so you're special
 5 agent in charge of the Madison office?
 6 A Yes.
 7 Q Okay. And that's been your position since 2012?
 8 A Yes.
 9 Q Okay. What percentage -- you know, it -- in your
 10 position as a special agent in charge, what
 11 percentage of your time is spent working on
 12 officer-involved shootings?
 13 A Since the enact -- since Act 348 when into effect
 14 in 2014 -- well, it's hard to quantify. I do a lot
 15 of things, sir, so it's hard to break up my day
 16 and --
 17 Q Understood. Did you -- were you involved in any
 18 officer-involved shooting investigations prior to
 19 Act 348 in 2014?
 20 A Yes.
 21 Q How many?
 22 A Four to six maybe.
 23 Q How many have you been involved with since then?
 24 A Probably another four to six. Well, geez -- yeah.
 25 Roughly, yeah.

1 Q Okay. So since the act was passed in 2014, you
 2 have been involved with four to six
 3 officer-involved shooting investigations; is that
 4 right?
 5 A Yes.
 6 Q And is that in your capacity as a special agent in
 7 charge?
 8 A Yes.
 9 Q In other words, in all of those four to six
 10 investigation since 2014, you've been a supervisor?
 11 A Yes.
 12 Q Okay. What about the four to six prior to that?
 13 A I think there were a couple I supervised that were
 14 pre-Act 348, and then there was a handful that I
 15 assisted at as a special agent, prior to Act 348.
 16 Q I'm not clear on that. So just to make sure that
 17 I'm clear, there's four to six where you were a
 18 supervisor -- strike that. There were four to six
 19 where you were the sort of supervising special
 20 agent in charge that occurred after the act in
 21 2014, correct?
 22 A Yes.
 23 Q And then there were I think four to six you said
 24 prior to the passage of the act, correct?
 25 A Right.

1 Q Of those four to six, were you a supervisor in some
 2 and an investigator or a non-supervising
 3 investigating agent in others?
 4 A Yes.
 5 Q Okay. Can you give me the breakdown,
 6 approximately.
 7 A Again, I think there were two I supervised prior to
 8 Act 348 and the remaining would have been as an
 9 agent assisting.
 10 Q Okay. Focusing on the four to six prior to the
 11 enactment of the act, did any of those
 12 officer-involved shooting investigations result in
 13 charges against the officer?
 14 A No.
 15 Q Did any of them result in any discipline against
 16 the officers within their departments?
 17 A Not that I'm aware of.
 18 Q Okay. In the four to six that occurred since the
 19 passage -- passage of the act in which you've been
 20 a -- a supervising agent, did any of those result
 21 in charges against the officer?
 22 A No.
 23 Q Did any of them result in any discipline against
 24 the officers involved, by their departments?
 25 MS. BENSKY: Object to foundation.

1 THE WITNESS: I -- I don't know.
 2 MR. SWAMINATHAN: Okay.
 3 BY MR. SWAMINATHAN:
 4 Q Can you tell me any changes in how the
 5 investigations were conducted prior to the act and
 6 since the act has been passed?
 7 A The primary change is that we identify two agents
 8 who are responsible for leading the investigation.
 9 The other changes would be the summary report, how
 10 we complete that and disseminate that. Those would
 11 be the -- those would be the changes.
 12 Q So explain to me the change involving -- having two
 13 agents involved, what -- how was that a -- what was
 14 it previously and what was the new approach?
 15 A I think so it's more formalized now, because the
 16 law requires a -- two investigators from outside
 17 the involved agency. But really I don't know if
 18 it's had any significant change. We don't formally
 19 designate somebody, we don't give them a title,
 20 we've always had a lead agent or a case agent, so
 21 in that aspect it hasn't changed.
 22 Q Okay. What about in terms of the summary report,
 23 what changed?
 24 A Yeah, that's been the change. We formally didn't
 25 do a summary report, so now we do a summary report

1 to comply with Act 348 that requires the release of
 2 the report, you know, so that's -- the Department
 3 of Justice is -- that's the Department of Justice's
 4 assessment on fulfilling the law initially, is
 5 releasing the report, the summary report, so that's
 6 the change.

7 Q Okay.

8 A We formerly didn't do that.

9 Q Okay. Any other changes from pre-enactment of the
 10 2014 act versus after?

11 A Just the addition of three agents that were funded
 12 to try and help us comply with the act.

13 Q Okay. So you got some more resources?

14 A Three special agents.

15 Q Okay.

16 A One in Madison, one in Milwaukee and one in
 17 Appleton. It was left up to DCI as to where we
 18 assign them.

19 Q Anything else?

20 A No.

21 Q So as a practical matter, you know, putting aside,
 22 the -- I know there was a formal -- formalization
 23 about the policy about having an agent in charge or
 24 a lead agent and so on, but as a practical matter
 25 in terms of how DCI went about conducting these

1 investigations prior to the act and after the act
 2 was passed, is the only real practical change that
 3 now there was a requirement for a case summary
 4 report?

5 A Yes. Because we've always led the investigations,
 6 so -- that's really the only practical change that
 7 I see.

8 Q Okay. Why was DCI conducting officer-involved
 9 shooting investigations prior to the act, so
 10 that -- and let me ask it a better way, when you're
 11 involved in these investigations prior to 2014,
 12 what were the circumstances in which DCI was being
 13 asked to conduct those investigations?

14 A Somebody would have an officer-involved shooting,
 15 an agency would have an officer-involved shooting,
 16 and they would -- they would contact someone within
 17 DCI and request that we come in and conduct the
 18 investigation.

19 Q Okay. Was that done as a matter of a request or
 20 was it sort of -- was it required that they -- that
 21 there be an independent investigation into an
 22 officer-involved shooting?

23 A Well, there was no requirement prior to Act 348.

24 Q Okay.

25 A So it was a request.

1 Q Okay. And subsequent to the act being passed, it
 2 was a requirement that that be done, correct?

3 MS. BENSKY: Object to form.

4 BY MR. SWAMINATHAN:

5 Q That there be an independent investigation done; is
 6 that correct?

7 A I -- I missed the question.

8 Q Yeah. Sorry. So what -- in terms of -- strike
 9 that. Prior to the act being passed, the agency --
 10 or the -- the involved agency would contact DCI and
 11 essentially say I'd like you to be involved in
 12 doing these police shooting investigations; is that
 13 right?

14 A Yeah, that's --

15 Q I guess I'm saying -- I guess what I'm trying to
 16 get at is, what are the circumstances in which an
 17 involved agency is saying hey, I want to get DCI
 18 involved, to the extent you know?

19 A An event would occur, the involved agency would
 20 call DCI and tell us about the event and say could
 21 you come and investigate this.

22 Q They could do an investigation themselves, correct,
 23 prior to the enactment of the act?

24 A Yes.

25 Q Were there any particular circumstances that

1 explain why they wanted DCI to come in and do that
 2 rather than do it themselves?

3 A I don't know why they would or wouldn't call us.

4 Q Understood. Let me ask you this, in terms of your
 5 -- strike that. Did you receive any training on
 6 how to conduct officer-involved shooting
 7 investigations before you got involved in your
 8 first such investigation?

9 A No. Well, generalized training, yes; specific to
 10 officer-involved shooting, no.

11 Q When you say you received generalized training, can
 12 you explain.

13 A Evidence technician training, death investigation
 14 training, interview interrogation training, all --
 15 but nothing specifically titled officer-involved
 16 death investigation.

17 Q That type of training, the general training you
 18 just described, is that training you received when
 19 you joined DCI in 2006?

20 A It's been a progression throughout my career.

21 Q Okay. So what training -- let's start there. What
 22 training did you receive when you joined DCI in
 23 2006?

24 A Well, when I first joined, it would have been
 25 primarily related to narcotics investigations,

1 different training sessions or conferences, we --
 2 we teach schools, we teach law enforcement
 3 investigative techniques, like drug investigation
 4 school or the death investigation school or white
 5 collar or ICAC schools, so -- just some general
 6 training sessions related to narcotics, until 2011,
 7 my first -- really the one that I remember would be
 8 related to the Joint Terrorism Task Force.
 9 Q Okay.
 10 A That would have been the first training.
 11 Q First formal training?
 12 A Yeah.
 13 Q Okay. Let me just focus on officer-involved
 14 shooting cases.
 15 A Yeah.
 16 Q Subsequent to the enactment of the act, did you
 17 receive any training on how to conduct
 18 officer-involved shooting investigations?
 19 A Yes.
 20 Q What training did you receive?
 21 A I attended a session by Dr. Bill Lewinski of the
 22 Force Science Institute, and that would have been
 23 sometime middle of 2015.
 24 Q Any other training you received on officer -- on
 25 how to conduct officer-involved shooting

1 investigations other than the training you received
 2 from Dr. Bill Lewinski?
 3 A Dr. -- or professor I think it is, he's a doctor,
 4 he's got a Ph.D., Ed Geiselman, who's a professor
 5 at UCLA, and it was related to memory recall
 6 regarding critical incidents.
 7 Q When did you receive that training?
 8 A December of 2014.
 9 Q So after enactment of the act, the first training
 10 you received specific to officer-involved shooting
 11 investigations was from Professor Geiselman?
 12 A I'm sorry, Geiselman, G-I-E-S-E-L-M-A-N (sic.).
 13 Q Is that right, so the first training you received
 14 after the enactment of the act on officer-involved
 15 shooting investigations was from Professor
 16 Geiselman in December of 2014, correct?
 17 A Yes. And I'm -- yeah, that I can recall.
 18 Q And do you -- and is the next training you recall
 19 receiving about officer-involved shooting
 20 investigations the training with Professor Bill
 21 Lewinski?
 22 A Yeah, I think it's -- yes.
 23 Q Did you receive any other training on how to
 24 conduct officer-involved shooting investigations
 25 since the enactment of the act?

1 A No. Not since the enactment, no.
 2 Q And -- and prior to the enactment of the act, you
 3 hadn't received any specific officer-involved
 4 shooting investigation training; is that correct?
 5 A That's what I don't remember. I -- I'm sure I did
 6 as part of an in-service, maybe death investigation
 7 school when I attended, but nothing that sticks out
 8 as formal, specifically, only for that topic.
 9 Q Do you remember any informal training you received
 10 about how to conduct officer-involved shooting
 11 investigations prior to enactment of the act?
 12 A No, there would be nothing informal. It would be
 13 formalized.
 14 Q Okay. And can you remember anything about the
 15 training you received about how to conduct those
 16 investigations prior to enactment of the act?
 17 A No.
 18 Q Okay. In terms of -- and -- and did you -- do you
 19 recall receiving any informal training subsequent
 20 to the enactment of the act separate and apart from
 21 the trainings with the two professors we're about
 22 to discuss?
 23 A No.
 24 Q Okay. So let's start with the training with
 25 Professor Geiselman in December of 2014. Were any

1 materials handed out at that meeting?
 2 A Hmm. I think we have a -- we -- we either received
 3 a copy of his PowerPoint presentation or literature
 4 associated with his presentation.
 5 Q Do you still have a copy of those materials today?
 6 A I may.
 7 Q When is the last time you reviewed them?
 8 A There was one document that I -- I have that I
 9 opened up last night but didn't review, so probably
 10 since the training in December 2014.
 11 Q That was the last time you'd reviewed that
 12 document?
 13 A Yeah.
 14 Q Okay. When you say you opened --
 15 A And I don't -- I don't know even know that I -- I
 16 haven't really review that stuff since then, I
 17 just --
 18 Q Sorry. Go ahead.
 19 A Yeah.
 20 Q What is the document you opened last night but
 21 didn't review?
 22 A Just a PDF file of a -- some of the information
 23 from the Geiselman presentation.
 24 Q Anything else; any other document that you opened
 25 but didn't review before today's deposition?

1 A Not related to that one?

2 Q Any other subjects in which there were documents

3 you opened but didn't review?

4 A Related to Geiselman, no; but related to the Bill

5 Lewinski one, yes.

6 Q All right. You opened those also yesterday in

7 preparation for the deposition?

8 A Yes. I opened them to just see what they were.

9 Q Okay.

10 A Yeah.

11 Q Okay. So you also have materials, as you recall,

12 related to the training done by Mr. Lewinski; is

13 that correct?

14 A Yes.

15 Q Okay. So you believe you have materials related to

16 each of the trainings you received on

17 officer-involved shootings, correct?

18 A I know I have three photographs of a slide

19 presentation that he was providing that I just

20 looked at last night to just see what they were.

21 Q Okay. This is regarding Lewinski or the -- or

22 Geiselman?

23 A Lewinski.

24 Q Okay. Do you have any other materials that you re

25 -- well, strike that. Let's talk about the --

1 strike that as well. Why did you review those

2 documents in preparation for -- or open those

3 documents but not review them before today?

4 A I was just going through my information that I

5 maintained from training sessions or information I

6 may have received regarding OIDs, officer-involved

7 death investigations, just going to see what I had,

8 to see if there was anything worth reviewing.

9 Q What else did you have related to officer-involved

10 death investigations as you were going through this

11 review last night, other than the things we've

12 discussed so far today?

13 A A lot of just other articles related to use of

14 force, presentations that other agents may have

15 provided relating to OI -- OID investigations,

16 sample policies -- or not sample policies, but

17 policies from some agencies, just miscellaneous

18 documents.

19 Q You mentioned other presentations, or presentations

20 by other agents related to officer-involved death

21 investigations, can you tell me about those.

22 A Presentations related to how DCI conducts

23 officer-involved death investigations, information

24 related to -- there's a presentation related to a

25 previous officer-involved death investigation in

1 the City of Madison on East Washington Avenue,

2 Londrell Johnson; there's a presentation, kind of a

3 mix of officer-involved death investigations and

4 victim/witness resources and considerations.

5 Q Okay. Let's talk about the trainings. The first

6 training with Professor Geiselman --

7 A Uh-huh.

8 Q -- who attended that training?

9 A I know I did, Special Agent De La Rosa and Special

10 Agent Fernandez for sure.

11 Q Anyone else? Anyone else?

12 A There was somebody else from DCI there. Oh,

13 Special Agent Jay Yerges was there, he works out of

14 our Appleton field office, and there may have been

15 other DCI personnel there that I just don't

16 remember.

17 Q What -- what subject matters were covered in the

18 training?

19 A In generalities, just -- it was focused on memory,

20 and I think that's Dr. Geiselman's field of

21 research, recall. He's a psychologist.

22 Q All right. And what did Professor Geiselman teach

23 you all in that training?

24 A I don't specifically remember.

25 Q Do you recall anything about what he was

1 communicating to you all or teaching you all in

2 that training?

3 A The general topic of how stress affects recall and

4 -- one topic is sleep and time in which recall

5 comes, so those general type topics.

6 Q What did he say about that topic, about sleep and

7 recall?

8 A I don't specifically remember.

9 Q Did he provide any recommendations to you all about

10 how to conduct investigations in light of his

11 findings or teachings?

12 A I don't know if they're -- I don't -- don't

13 remember.

14 Q Did DCI make any changes to its policies about how

15 it conducted officer-involved shooting

16 investigations based on any of the findings or

17 teachings of Professor Geiselman?

18 A I think we formalized more of an understanding of

19 when we would maybe use video to review with an

20 involved officer, at what point in the interview

21 process we'd use video.

22 Q So what was the formalized policy on that issue

23 after the training from Geiselman?

24 A I don't know if it was a formalized policy, more of

25 a -- considerations, a documentation of -- to

1 consider when using it, at what point, when -- when
 2 it may be effective.
 3 Q And what form did that take, was it a policy, a
 4 practice, just a -- sort of a written document
 5 that --
 6 A I think it was a written document; I think it was
 7 like a memo.
 8 Q And so this memo that came out of the guidance or
 9 teachings or findings of Professor Geiselman, what
 10 did that memo communicate?
 11 A Yeah, and just for clarity, I don't know if it was
 12 a direct result of Geiselman or a direct result of
 13 Lewinski or anything else, I think it was more of a
 14 formalized -- try to have a standard or have some
 15 kind of documentation or consideration for agents
 16 when to use video, but I know that relates to
 17 Geiselman, because I know his -- some of the
 18 information from that presentation was kind of
 19 considered as part of formalizing that document.
 20 Q And so -- and so what was the -- what was
 21 communicated in that -- in that document, that memo
 22 or whatever it is, about the use of video with the
 23 officer involved in the shooting?
 24 A I don't specifically remember. In generalities,
 25 that there is times that it may be helpful for

1 recall to show an involved officer at the beginning
 2 of an interview, there may be times where it may be
 3 more helpful to show it after initial statement or
 4 there may be times where it may be more appropriate
 5 to show it at the end or not at all.
 6 Q Okay. And when you say show the video, what kind
 7 of video are we talking about?
 8 A Yeah. Video of -- that captures maybe some type
 9 of -- some part of the incident.
 10 Q Okay. What -- what considerations were documented
 11 in that memo about when it is appropriate to show
 12 them video that might capture some of the incident
 13 before taking their statement?
 14 A I don't know the specific details of it.
 15 Q Do you recall any -- any of the general guidance it
 16 provided on when that would be appropriate?
 17 A No.
 18 Q What was the reason it would be appropriate
 19 pursuant -- you know, as discussed in the memo or
 20 in this training?
 21 MS. BENSKY: The reason showing the video
 22 would be appropriate?
 23 MR. SWAMINATHAN: Yes. In advance of
 24 taking the statement.
 25 THE WITNESS: I don't remember. I mean,

1 I don't have it committed to memory.
 2 BY MR. SWAMINATHAN:
 3 Q Do you recall anything about what the
 4 considerations were as to when it would be
 5 inappropriate to show the officer video before
 6 taking a statement?
 7 A Not specifically in that memo.
 8 Q Okay. Let's put that to the -- let's put the
 9 training to the side, or the memo to the side for a
 10 the moment. As a practical matter, when you're
 11 conducting investigations, are there some instances
 12 in which you'll share video with an officer
 13 involved in a shooting before taking their
 14 statement and other instances when you won't?
 15 A Yes.
 16 Q Okay. What are the circumstances in which -- well,
 17 strike that. So your practice is that in some
 18 instances you will and in some instances you won't
 19 when you're involved in officer-involved shootings;
 20 is that correct?
 21 A Uh-huh, yes.
 22 Q What are the circumstances in which it is
 23 appropriate?
 24 A When it's going to aid in kind of refreshing their
 25 memory as to what took place, when -- it would be

1 appropriate when there was specific clarity, that
 2 it had some value to what their perspective was
 3 versus somebody else's perspective, that would be a
 4 time when it wouldn't be of value or wouldn't be
 5 recommended, when it's not an appropriate
 6 perspective. If there was a concern that the video
 7 was going to change, somehow influence the
 8 statement that they would give, so if the video
 9 only captures a certain portion of what happened
 10 versus a complete picture.
 11 Q That that would be -- what would that -- in that
 12 scenario --
 13 A It may be -- just all the -- you know, it's hard to
 14 just generalize, because each circumstance is
 15 different, and I think that's what we relate to in
 16 the memo and in -- in our analysis, our assessment
 17 on whether or not we're going to show an officer a
 18 video, it's all the details, what does the video
 19 show and is it going to be helpful to the officer,
 20 and if it's going to be helpful to the officer, at
 21 what point is it going to be helpful in the
 22 interview of that officer.
 23 Q Are there countervailing considerations, on the one
 24 hand it could be helpful to the officer --
 25 A Yes.

1 Q What are the countervailing considerations?
 2 A Like I just shared, it may not be complete, it may
 3 not be of quality. That's what I'm thinking of
 4 now.
 5 Q You mentioned a concern that the video might
 6 influence the statement that the officer was going
 7 to give, correct?
 8 A It's a consideration you want to ensure, yes.
 9 Q That's a consideration -- so -- strike that. So I
 10 just want to understand, when I ask you what are
 11 the circumstances in which it would be appropriate
 12 versus inappropriate --
 13 A Uh-huh.
 14 Q -- I want to understand how this idea that they
 15 could be influenced by the video comes into play,
 16 that's a circumstance in which it would be
 17 inappropriate to show them the video; is that
 18 right?
 19 MS. BENSKY: Object to form.
 20 THE WITNESS: There may be circumstances
 21 in an event where a video only captures a certain
 22 portion, that is factually as investigators we know
 23 not are a good representation of what took place,
 24 and to share that with an involved officer may not
 25 be appropriate.

1 BY MR. SWAMINATHAN:
 2 Q Why is that?
 3 A It may cause them to question what they -- they
 4 remember, it may have a negative impact, it may
 5 cause doubt for them, it may confuse them.
 6 Q Okay. What are other considerations, in terms of
 7 when it's appropriate versus when it's not
 8 appropriate to show the video, as a matter of
 9 practice, when you're leading these investigations?
 10 A Honestly, without reviewing kind of some of the
 11 research and the training I've been to and that
 12 memo, I just can't articulate that.
 13 Q Do you review those documents each time you're
 14 making this determination in an officer-involved
 15 shooting case?
 16 A No. And -- and here's why, maybe here's why you're
 17 sitting and wondering why can't this special agent
 18 in charge articulate to me why, I supervise things,
 19 so I put a lot of faith and trust in those agents,
 20 in De La Rosa, Fernandez, Holmes and now Special
 21 Agent Wilson that I supervise, that they've had the
 22 training, that they've done as many if not more of
 23 these, many have -- many of them have done more
 24 than I have, have conducted these investigations,
 25 more of these than I have, so I rely on them to

1 make these assessments, and so I think they're the
 2 subject matter experts, whereas when it comes to
 3 coordinating these events, I feel like that's my
 4 role and that's my strength, but when it comes to
 5 actually conducting an interview or making an
 6 assessment on showing video, I have input, but
 7 they're the people that have had the training and
 8 that have made these assessments for years more
 9 than I have.
 10 Q Do you ever participate in those decisions when
 11 they're made by the agents --
 12 A Yes.
 13 Q -- or the lead investigators?
 14 A I'm sorry. Yes.
 15 Q Do you do that in every instance when you're
 16 involved in an officer -- officer-involved shooting
 17 investigation where you're the supervisor in
 18 charge?
 19 MS. BENSKY: Are you talking specifically
 20 about the decision to show a video to an officer?
 21 MR. SWAMINATHAN: Yes. Before giving
 22 their statement.
 23 THE WITNESS: Do I have those
 24 conversations?
 25 MR. SWAMINATHAN: Let me ask it -- let me

1 make it clear.
 2 BY MR. SWAMINATHAN:
 3 Q Do you always participate in some fashion in that
 4 decision to -- whether or not to show an officer
 5 video before giving their statement when you're the
 6 supervisor in charge of an officer-involved
 7 shooting?
 8 A Always, I don't know; but in the ones that I have
 9 supervised, yes, we've had those conversations.
 10 Q Okay. So did you have some conversations or some
 11 input into the decision about whether or not
 12 Officer Kenny would be showed the video before
 13 giving his statement?
 14 A Yes.
 15 Q Okay. Who did you have -- what input did you have
 16 or let me ask it this way, what communications did
 17 you have about that issue?
 18 A The specific input, I don't recall what specific
 19 input I would have given, but I would have had that
 20 conversation with Special Agent De La Rosa.
 21 Q Anyone else?
 22 A Well, Special Agent Fernandez maybe, but not that I
 23 recall specifically.
 24 Q Do you recall any specifics about that conversation
 25 or conversations you had about this particular

1 issue?
 2 A No.
 3 Q Okay. So as you sit here today, you don't know
 4 what you might have said or not said about whether
 5 Officer Kenny should be shown the video before
 6 giving his statement?
 7 A Correct.
 8 Q Okay. Do you know whether he was shown the video
 9 before giving his statement or not?
 10 A I don't remember.
 11 Q Okay. Let's go back to this -- to the -- I just
 12 want to understand the sort of factors that are
 13 being considered.
 14 A Uh-huh.
 15 Q And I -- I apologize, I don't have the documents
 16 that you're referring to --
 17 A Uh-huh.
 18 Q -- so I can't -- I'd -- I'd show them to you and we
 19 could do it that way, it would probably be easier,
 20 but I -- I don't have the ability to do that, so I
 21 want to understand, would it be correct to say that
 22 essentially some of what's communicated in these
 23 memos or some of what's -- well, strike that.
 24 Let's start with the memos. To the extent there
 25 are memos or trainings that -- that talk about the

1 issue of whether or not to show video to an officer
 2 before taking their statement, would it be correct
 3 to say that those documents communicate various
 4 factors to be considered?
 5 A Yes.
 6 Q Okay. So what I understand so far from your
 7 testimony is that one factor to be considered that
 8 makes it more appropriate to show video is where it
 9 might help the officer remember things; is that
 10 correct?
 11 A Yes.
 12 Q Okay. And one factor that may make it not
 13 appropriate to show the officer the video is if you
 14 believe it could influence the statement they're
 15 going to give; is that correct?
 16 A Again, I don't know how it's worded, so -- so I
 17 don't know the factors that that memo, that
 18 document that was drafted by DCI, I don't know the
 19 factors that it assesses.
 20 Q Do you recall any of the factors that it discusses,
 21 not in specific terms, but just in general terms?
 22 A No.
 23 Q Okay. You do recall that there is one factor that
 24 has to do with whether it can help the officer's
 25 memory?

1 A I don't know. Quite honestly, I don't know what it
 2 contains.
 3 Q Okay. So let's do it then in terms of --
 4 A The --
 5 Q Go ahead.
 6 A -- the details.
 7 Q So then in terms of the -- as a general matter,
 8 putting aside whether you know it's in a document
 9 or not in a document, you're making this
 10 determination on a day-to-day -- not on a
 11 day-to-day basis, but when you're involved in
 12 officer-involved shootings, you are participating
 13 in the decision as to whether or not a video should
 14 be shown to an officer before taking their
 15 statement, correct?
 16 A Yes.
 17 Q Okay. And so you've got to consider certain
 18 factors, and your agents who work under you got to
 19 consider certain factors when they make that
 20 decision, correct?
 21 A Yes.
 22 Q Okay. And so as a practical matter when
 23 you're doing -- when you're engaged in that
 24 decision making, one factor that you take into
 25 consideration that makes it appropriate to share

1 the video with the officer is if it can help them
 2 improve their memory of the circumstances, correct?
 3 A That would be the sole purpose in doing it.
 4 Q Okay. And one countervailing factor that would
 5 make it inappropriate to show them the video would
 6 be if you had some concern it could influence the
 7 statement they're going to give; is that correct?
 8 A Yes.
 9 MS. BENSKY: Asked and answered several
 10 times.
 11 THE WITNESS: Yes.
 12 MR. SWAMINATHAN: Okay.
 13 BY MR. SWAMINATHAN:
 14 Q And are there other considerations that you take --
 15 that you're thinking of, in terms of factors that
 16 make it more appropriate to show an officer the
 17 video, other than the one about improving their
 18 memory?
 19 A I guess what I'm trying to get at is, I'm sure
 20 there's a lot of factors that make it -- that go
 21 into the consideration, and I unfortunately did not
 22 review that document before I came here, I haven't
 23 gone back and reviewed the training or the details
 24 as to why we do or don't do those things, so I
 25 unfortunately can't share the detail that you're

1 looking for.

2 Q And -- and putting aside -- and I appreciate that.

3 And I appreciate that you can't -- you don't recall

4 necessarily what those documents communicate. Do

5 you recall anything else about the considerations

6 you -- you think about, regardless of whether it's

7 in a document or not, when you participate in that

8 decision?

9 A Again, we consider all the circumstances and every

10 one of these is different, so -- the circumstances

11 of the event, the witnesses, the officer's

12 involvement and really what the video content may

13 be, how good the video is, the perspective, what it

14 all contains.

15 Q And in terms of -- and I think you might have said

16 this already, in terms of the video, if the video

17 -- the more that -- the more that the video is only

18 partial, that makes it more likely that it's not

19 useful or not appropriate to share, is that

20 correct, or is it the other way around?

21 A I'm not -- I don't know.

22 Q You don't remember?

23 A It would -- it would depend on the circumstances.

24 Q Okay. So as a practical matter, you're -- you've

25 led at least four to six of these officer-involved

1 shooting investigations, if -- have there been

2 instances when you've had partial video of the

3 incident?

4 A Well, let me think. Not that I can recall, that

5 we've had partial and -- I'm just not recalling

6 what cases we have and have not had video on.

7 Q Okay. As you sit here today, can you recall any

8 officer-involved shooting investigations you've

9 been involved with at DCI where you decided not to

10 share the video with the officer before taking

11 their statement?

12 A No.

13 Q And as you sit here today, can you recall instances

14 in which you were involved with officer-involved

15 shooting investigations at DCI and you decided to

16 share video with the officer?

17 A In this particular case, yes.

18 Q Any others?

19 A Yes, one for sure, another two, I'm not sure about

20 another, but I know there was video that existed,

21 so -- I know two for sure.

22 Q Okay. So you know at least two cases for sure

23 where you had video and you decided to show it to

24 the officer, other -- this is separate and apart

25 from the Robinson shooting case, correct?

1 A For an investigation that I was part of, yes.

2 Q What were factors that you took into consideration

3 in those cases that supported showing the officer

4 the video?

5 A The same factors that I shared with you before

6 about the event, the quality of the video, what it

7 captures as far as the officer's involvement, the

8 perspective, lighting conditions potentially, just

9 what does the video contain and how relevant is it

10 to the officer's actions.

11 Q Yeah. I guess what I'm asking is, what -- and then

12 what factors did you take into consideration that

13 suggested maybe it would be inappropriate to show

14 the officer the video in those two cases?

15 A The same factors that you take into account to see

16 if it was appropriate to show them.

17 Q Which were?

18 A What I just shared.

19 Q And please -- please identify those for me.

20 MS. HARRELL: Objection. Asked and

21 answered.

22 THE WITNESS: The video, the quality of

23 it, what it all contains and its relevancy to the

24 officer's actions, if it captures the officer's

25 actions, if it's going to be helpful to share that

1 to aid in their recall of the events.

2 BY MR. SWAMINATHAN:

3 Q Is that your primary consideration, whether or not

4 it will aid in their recall of the events?

5 A Absolutely.

6 Q Okay. Do you have any other considerations other

7 than your focus on -- if the officer says I

8 remember the events, would you then say okay, no

9 need to show the officer the video?

10 MS. BENSKY: Object to form. Asked and

11 answered. Calls for speculation.

12 THE WITNESS: It would again really

13 depend on what the officer remembers and the

14 events. Every one of these is different. If

15 there's something specific related to this you'd

16 like to ask, I'll try and answer it for you, but

17 we're -- we're talking in such generalities, we're

18 missing all of the circumstances that you -- all of

19 the factors you have to assess.

20 BY MR. SWAMINATHAN:

21 Q And -- and to be clear, you don't remember any of

22 the specific factors or circumstances you

23 considered with regard to the Robinson shooting

24 investigation when Officer Kenny was shown the

25 video, correct?

1 A I don't specifically remember those conversations,
 2 no.
 3 Q Okay. And do you remember -- and putting aside the
 4 conversations themselves, do you remember any of
 5 the factors that you considered as part of that
 6 decision?
 7 A No.
 8 Q Do you recall whether Officer Kenny ever said hey,
 9 I don't remember what happened, can you please show
 10 me the video?
 11 A I don't know.
 12 Q Do you know whether Officer Kenny -- do you -- do
 13 you know anything about what Officer Kenny
 14 communicated that would be relevant to whether or
 15 not to show him the video?
 16 A I don't.
 17 Q Okay. Did you know that information at any point
 18 during this investigation?
 19 A No.
 20 Q Is there anything else that was communicated to you
 21 by Professor Geiselman in the training that he
 22 provided?
 23 A No. And just what I spoke of.
 24 Q Okay.
 25 A In general.

1 reported to you participate in that training?
 2 A I don't remember who was there.
 3 Q Okay. You -- were there any recommendations about
 4 what you should do in officer-involved shooting
 5 investigations based on that training?
 6 A No.
 7 Q Did --
 8 A Not recommendations, no.
 9 Q -- did DCI make any formalized policies or
 10 practices or memos based on that information
 11 communicated in that training?
 12 A I think agents have been to -- there have been DCI
 13 special agents that have been to Force Science
 14 training, and those -- this information would have
 15 been similar to what they had received in the past,
 16 and so yes, that information would have been
 17 considered when developing the memo related to
 18 using a video during an interview.
 19 MR. SWAMINATHAN: It's 12:20.
 20 MS. BENSKEY: How much more do you think
 21 you have?
 22 MR. SWAMINATHAN: Probably about --
 23 probably an hour and a half.
 24 MS. BENSKEY: Okay.
 25 MR. SWAMINATHAN: I think we should

1 Q Focuses on issues related to memory, correct?
 2 A Correct.
 3 Q Okay. What about your training from Dr. Lewinski,
 4 what was that training about?
 5 A In general, human behavior during use of force
 6 events.
 7 Q Could you tell me more about that.
 8 A Reaction time, and there was discussion regarding
 9 videos and the perspective that a video may capture
 10 in a 2-D format versus a real life 3-D format and
 11 assessments whether videos could capture,
 12 accurately capture an officer's perspective of
 13 something. The majority of that presentation
 14 though was related to, that I recall, was more
 15 about reaction time, distance, subject -- between
 16 the subject and officer, and I really -- I remember
 17 -- I don't know if I was interrupted with business
 18 during the -- the presentation, but I know the --
 19 the early part was more about reaction time.
 20 Q Who else was in that meeting?
 21 A It was a presentation at the Attorney General's
 22 conference in middle of 2015, so it would have been
 23 a wide array -- a wide range of DCI agents, other
 24 law enforcement personnel.
 25 Q Did the major crimes officers or agents that

1 probably take a lunch.
 2 MS. BENSKEY: Let's take a little break.
 3 MR. SWAMINATHAN: Yeah. Do you want to
 4 take lunch or do you want to do a five -- a five-
 5 to ten-minute break and keep going?
 6 (A discussion was held off the record.)
 7 (A recess was taken from 12:22 p.m. until 12:30 p.m.)
 8 BY MR. SWAMINATHAN:
 9 Q You testified awhile back about sometimes when you
 10 re -- strike that. You testified about making
 11 changes using track changes in Microsoft Word, I
 12 think in -- when we were talking about that, it was
 13 in -- particularly with regard to the case summary
 14 report, correct?
 15 A Correct.
 16 Q Okay. Do you follow a similar practice or process
 17 when reviewing other types of reports other than
 18 the case summary report?
 19 A No.
 20 Q Okay. So it's just for the case summary report
 21 where you'll make changes and track changes and --
 22 and provide that back to the agent who drafted the
 23 report; is that correct?
 24 A Yes, because it's such an inclusive document. It's
 25 a difficult document to put together.

1 Q In the case of other reports, do you have a process
 2 or practice that you follow in terms of approving
 3 them or reviewing them?
 4 A Yes.
 5 Q What's that process?
 6 A The agent or the author of the report completes the
 7 report in the ACISS case management system, and
 8 ACISS is A-C-I-S-S, and through that formalizing
 9 electronic system, they're able to just forward it
 10 within the case management system to me, pops up on
 11 the screen, I read it, and if I approve it, I
 12 select a button, I hit approve and it shows up
 13 approved. If I reject it for some reason, it can
 14 go back to the sender and they -- I can add a
 15 comment section as to why I rejected it, and it
 16 would pop back up on their screen. Once I approve
 17 it, it just essentially -- it essentially just sits
 18 in the ACISS case management system.
 19 Q Anything else about the process you follow for
 20 non-case summary reports?
 21 A No, that's the standard process.
 22 Q Okay. So if it's the case that you reject a report
 23 and it goes back to the agent who drafted the
 24 report, will that be communicated or will that
 25 information be available in the ACISS system or in

1 accepted or rejected at all?
 2 A No.
 3 Q Okay. There's a record status information, do you
 4 see that; do you see that section on the printout?
 5 A Yes, I do.
 6 Q Would that section include information about
 7 whether the report was -- had been rejected at some
 8 point and resubmitted?
 9 A No.
 10 Q Okay. So as far as you know, if there are earlier
 11 rejections, you just don't know either way whether
 12 that information may still be available in ACISS?
 13 A Correct.
 14 Q Okay. Do you know if you rejected any reports in
 15 the Robinson shooting case?
 16 A I don't know that I did.
 17 Q Okay. You don't know either way?
 18 A I don't know either way.
 19 Q Okay. And when I say rejected, it may have later
 20 been approved obviously, but at some point, you --
 21 you requested additional information for non-case
 22 summary reports?
 23 A Yes. At some point they're going to be approved.
 24 Q Okay. I want to go back to the subject of
 25 training. Did you provide any training to your

1 a printout even after the board has subsequently
 2 approved; does that make sense what I'm asking?
 3 A Yes. And I don't know.
 4 Q You don't know. Okay. When -- would it be correct
 5 to say when you have these ACISS reports -- we
 6 looked at some reports that you drafted, for
 7 example, correct?
 8 A Uh-huh.
 9 Q So we -- why don't we look at one right now, let's
 10 look at, say, Exhibit 134.
 11 A Report No. 112.
 12 Q Yes. Where are you looking at Report -- I see.
 13 When you say Report No. 112, it's those last three
 14 digits at the end of the ACISS Investigative, and
 15 then there's a number, 15-1188/112?
 16 A Yes, sir.
 17 Q And that's what you refer to as Report 112?
 18 A Yes, sir.
 19 Q Okay. So this report -- for example, this is a --
 20 this first page of Exhibit 134 is a printout that
 21 comes out of the ACISS system; is that correct?
 22 A Yes.
 23 Q Okay. Would this -- would this type of printout
 24 that comes out of the ACISS system, does it
 25 communicate whether the report was originally

1 agents about how to conduct officer-involved
 2 shooting investigations?
 3 A No.
 4 Q Okay. Did you receive any training related to the
 5 performance of officer-involved shooting
 6 investigations about how to avoid bias during those
 7 investigations?
 8 A No.
 9 Q Did you receive any training about how to make sure
 10 you're impartial during one of those
 11 investigations?
 12 A No.
 13 Q Did you provide any training to any of your agents
 14 about how to maintain impartiality during an
 15 officer-involved shooting investigation?
 16 A No.
 17 Q Did you provide them with any training about how to
 18 avoid bias during the -- part of one of those
 19 investigations?
 20 A No.
 21 Q Okay. Is that a concern for you at all, that you
 22 or your agents might not be able to be objective or
 23 impartial during the course of an officer-involved
 24 shooting investigation?
 25 MS. BENSKY: Object to form.

1 THE WITNESS: Is it a concern --
 2 MR. SWAMINATHAN: That's the question.
 3 THE WITNESS: -- that myself or any of
 4 the agents I supervise would have bias?
 5 MR. SWAMINATHAN: Correct.
 6 THE WITNESS: No.
 7 BY MR. SWAMINATHAN:
 8 Q Why is it not a concern?
 9 A Primarily because I know their character and their
 10 work history, and I know they work hard to just
 11 gather facts.
 12 Q In -- putting aside whether or not you have a
 13 concern about the ability of yourself or your
 14 agents to be impartial, have you put in place any
 15 practices to ensure that you or your agents are
 16 impartial during an officer-involved shooting
 17 investigation?
 18 A No.
 19 Q Have you taken any steps to ensure that you and
 20 your agents are impartial during an
 21 officer-involved shooting investigation?
 22 A What -- no.
 23 Q Okay.
 24 A I'm not sure if you have any specific steps, but
 25 no.

1 Q Okay. I don't have any specific steps, but I'm
 2 asking you what -- what steps may exist, and it
 3 sounds like the answer is there are no specific
 4 steps that you're aware of that have been put in
 5 place in officer-involved shooting investigations
 6 to ensure the impartiality of the agents; is that
 7 correct?
 8 A Yeah, there are -- there are no policies and
 9 procedures or directives related to impartiality.
 10 Q Are there any policies, procedures or directives
 11 intended to ensure that you or your agents don't
 12 have any bias favorable to the law enforcement
 13 agents during an officer-involved shooting
 14 investigation?
 15 A No. And I don't think there's a policy specific to
 16 officer-involved death investigations at all.
 17 Q In any way shape or form, whether it's regarding
 18 impartiality or anything else, correct?
 19 A Correct. My -- my knowledge is that the only -- my
 20 knowledge of policy is the officer-involved summary
 21 report is part of the report policy that I
 22 referenced earlier. That's my only knowledge of
 23 any policy related to officer-involved death
 24 investigations.
 25 Q So we agree there's no policy about -- that's

1 designed to ensure impartiality or a lack of bias
 2 during an officer-involved shooting investigation,
 3 correct?
 4 A Correct.
 5 Q And now I'm asking about any practices or
 6 directives that are provided to ensure impartiality
 7 and a lack of bias in officer-involved shooting
 8 investigations?
 9 A No.
 10 Q Okay. You agree you have been a law enforcement
 11 agent for multiple decades, correct?
 12 A Multiple decades is just catching me there.
 13 Q Yes. We can do the -- we can do the math.
 14 A Yeah. That's scary, but yeah.
 15 Q Yes. Your agents -- each of the agents who works
 16 under you and participates in the officer-involved
 17 shooting investigations that you've supervised has
 18 been a law enforcement agent for at least a decade?
 19 A Related to major crimes, yes.
 20 Q You've been in the shoes of the officers who are
 21 involved in these shootings, correct?
 22 MS. BENSKY: Object to form.
 23 THE WITNESS: I -- if you could just be a
 24 little more specific.
 25 MR. SWAMINATHAN: Sure.

1 BY MR. SWAMINATHAN:
 2 Q I mean, you've been in a position where you're
 3 responding to a call and you show up on the scene
 4 and -- and there's someone who could present a
 5 danger, correct?
 6 A Yes.
 7 Q You've been in a situation where you responded to a
 8 call and you feared for your life, correct?
 9 A Yes.
 10 Q You've been in a situation where you've had your
 11 gun out and you've targeted at individuals and
 12 you've been concerned about whether or not I should
 13 be pulling the trigger or not, correct?
 14 A I don't think I've ever been concerned whether or
 15 not I should pull the trigger.
 16 Q Explain what you mean.
 17 A Well, you make it -- you're -- you're talking about
 18 pulling the trigger.
 19 Q Yeah.
 20 A I -- I don't view it as -- you're asking my
 21 perception?
 22 Q Right.
 23 A I don't view it as pulling the trigger. For me,
 24 it's use of force --
 25 Q I see.

1 A -- and what --

2 Q You've been in the position of having to make

3 split-second decisions about whether to use deadly

4 force with a gun, correct?

5 A Yes.

6 Q Okay. And that's a -- that's a -- that's the same

7 position that the officers are in when you're

8 investigating officer-involved shootings, correct?

9 MS. BENSKY: Object to foundation.

10 MR. JOHNSON: Join.

11 THE WITNESS: Can you repeat it or read

12 it?

13 MR. SWAMINATHAN: Can you read it back.

14 (Question was read back.)

15 MS. BENSKY: Same objection.

16 THE WITNESS: Yeah, I'm not sure how to

17 answer that.

18 MR. SWAMINATHAN: Let me -- let me ask it

19 differently.

20 BY MR. SWAMINATHAN:

21 Q I mean, essentially the officer who's being --

22 who's being investigating, who is the subject of

23 your investigation in an officer-involved shooting,

24 you've been in similar circumstances as the officer

25 whose actions you're investigating, correct?

1 MS. BENSKY: Object to form and

2 foundation.

3 MR. JOHNSON: Join.

4 THE WITNESS: It really depends on the

5 circumstance.

6 MR. SWAMINATHAN: I guess what I'm -- go

7 ahead.

8 THE WITNESS: I -- I have not been in the

9 exact --

10 MR. SWAMINATHAN: Of course not.

11 THE WITNESS: -- position.

12 MR. SWAMINATHAN: Of course not. I mean,

13 no one's suggesting that.

14 BY MR. SWAMINATHAN:

15 Q But you have been in circumstances where you walked

16 into a scene and you feared for your life, correct?

17 MS. BENSKY: Asked and answered.

18 THE WITNESS: Yeah. I've made that

19 clear, yep.

20 BY MR. SWAMINATHAN:

21 Q And you've been in circumstances where you're

22 there, you've got your gun out and you've got to

23 make decisions about whether to use force in a

24 matter of seconds, correct?

25 A Yes.

1 MS. BENSKY: Objection. Asked and

2 answered.

3 BY MR. SWAMINATHAN:

4 Q In other words, you've gone through the same kind

5 of decision making process that the officers are --

6 are going through that are being investigated in

7 these officer-involved shootings, correct?

8 MS. BENSKY: Objection to form and

9 foundation. You're asking him to speculate about

10 what someone else is going through at a certain

11 time.

12 MR. JOHNSON: Join.

13 THE WITNESS: Before all the objections,

14 my response is, I cannot assess if what they are

15 experiencing is the same position I've ever been

16 in. And to cut to the chase, I don't know what

17 they see, smell, hear, feel, know, so I can't

18 compare my experiences with that exact event that

19 we're investigating.

20 MR. SWAMINATHAN: Of course not, but

21 that's not controversial. I'm not saying --

22 because you haven't -- you -- we're not talking

23 about you having been in the exact same residence

24 at the same time and the same circumstances, of

25 course not.

1 MS. BENSKY: That's the question that

2 you're asking him --

3 MR. SWAMINATHAN: I'm not.

4 MS. BENSKY: -- and you're not getting

5 the answer that you want, so you keep asking him

6 the same question.

7 MR. SWAMINATHAN: I'm asking you a

8 different question.

9 BY MR. SWAMINATHAN:

10 Q And -- and -- and this is really what I mean, when

11 you asked me what I meant by have you been in their

12 shoes, what I'm talking about is you've been in

13 similar circumstances, have you been in similar

14 circumstances to the kind of circumstances the

15 officers are in who you're investigating in

16 officer-involved shootings?

17 MS. BENSKY: Same objection.

18 THE WITNESS: Similar circumstances, I

19 think -- is that the word?

20 MR. SWAMINATHAN: Yes, that's the phrase

21 that was used.

22 THE WITNESS: Yes, and I think we've --

23 yes.

24 MR. SWAMINATHAN: That's what I mean.

25 THE WITNESS: Uh-huh.

1 BY MR. SWAMINATHAN:
 2 Q So you've been in similar circumstances as the
 3 officers who are being investigated in
 4 officer-involved shootings, correct?
 5 A Yes.
 6 Q Okay. Do you -- do you sympathize with the
 7 officers facing those circumstances in
 8 officer-involved shooting investigations?
 9 A I don't know if I sympathize with them.
 10 Q You don't know either way?
 11 A It really depends on the circumstances.
 12 Q Are there circumstances in which you've sympathized
 13 with the officer who you're investigating in an
 14 officer-involved shooting?
 15 A Hmm. I've never really thought about it.
 16 Q You said it depends, when I asked you the question
 17 initially, what does it depend on as to whether or
 18 not you sympathize with the -- with the
 19 circumstances they're facing when you're
 20 investigating an officer-involved shooting?
 21 A Well, I guess, now in retrospect, maybe it depends
 22 really isn't the -- the best summary of my
 23 thoughts. I'm not sure I sympathize. I don't
 24 know.
 25 Q Okay. Have you had prior experience working with

1 assigned to the Dane County Drug Task Force, and
 2 that would be my point of contact as an
 3 investigator, so people within that task force work
 4 for Madison Police Department who, over the years,
 5 I had interactions with at Dodge County.
 6 Q In the approximately 50 or so times you interacted
 7 with the Madison Police Department while you were
 8 at Dodge County Sheriff's Office, did you have a
 9 good working relationship with them?
 10 A Yes.
 11 Q Okay. Did you work on any cases with them, where
 12 you were sort of jointly working on a case?
 13 A Not at Dodge County.
 14 Q Okay. Since joining DCI, have you worked with the
 15 Madison Police Department?
 16 A Yes.
 17 Q How many times -- or strike that. What are the
 18 circumstances in which you've worked with the
 19 Madison Police Department?
 20 A My first four years as a narcotics investigator,
 21 weekly basis on drug investigations, as they are
 22 part of the Dane County Narcotics Task Force.
 23 Q Other circumstances in which you worked with the
 24 Madison Police Department, other than -- than that
 25 task force?

1 the Madison Police Department during your law
 2 enforcement career?
 3 A Yes.
 4 Q Okay. Let's start with your time in the Dodge
 5 County Sheriff's Office. Did you have occasions
 6 when you worked with officers from the Madison
 7 Police Department?
 8 A Yes, through drug investigations.
 9 Q How many times did that occur while you were at the
 10 Dodge County Sheriff's Office?
 11 A Hmm. Less than 50.
 12 Q And can you just tell me a little more about the
 13 kinds of circumstances in which you would be
 14 interacting with the Madison Police Department
 15 while you were at the Dodge County Sheriff's
 16 Office.
 17 A Well, it could have been a host of things. One, it
 18 could have been as a correctional officer, if they
 19 were transporting inmates, picking up an inmate; as
 20 a patrol deputy, it could have been assisting,
 21 meeting at the county line or -- so there might
 22 have been interactions there; as an investigator,
 23 there's multiple occasions where I interacted with
 24 their investigators to do surveillance or to -- for
 25 jurisdictional purposes maybe, there's people

1 A Other? Mass casualty training sessions,
 2 potentially other -- like I know there was a
 3 missing person investigation, I'm trying to --
 4 through the Joint Terrorism Task Force, on
 5 occasion, not a whole lot, and then as a special
 6 agent in charge of supervising cases, some
 7 interactions on assessing whether or not we would
 8 support a case they may have, and then the primary
 9 interaction would be related to their previous
 10 officer-involved death investigations.
 11 Q How many of those were there?
 12 A I think they -- I think they were involved in one
 13 that took place in the Town of Madison, Fitchburg
 14 and City of Madison; there was one that involved --
 15 Brent Brozek was the decedent's name; one that
 16 involved Londrell Johnson, who was the decedent's
 17 name; and one that involved Ashley DiPiazza, who
 18 was the decedent's name. I'm sure there's other
 19 cases in which I've had interaction, but those --
 20 Q Would you say you've had frequent interactions with
 21 the Madison Police Department since being at DCI?
 22 A Yes.
 23 Q How often do you have contacts or communications
 24 with folks at the Madison Police Department in your
 25 job at DCI?

1 A It -- it varies. In the last few weeks, for
 2 example, or last couple months, very little. But
 3 then there are occasions where we're involved in an
 4 investigation, so it's a daily -- daily
 5 interaction.
 6 Q Have you worked at all -- well, strike that. There
 7 were certain Madison police officers who were
 8 involved in the actual incident itself in the
 9 Robinson shooting investigation, correct? And
 10 let's -- actually, let's do it this way, Officer
 11 Kenny, Officer Gary, Officer Christian, did you
 12 have any interactions with any of them prior to
 13 your involvement in the Robinson shooting
 14 investigation?
 15 A Not that I recall, and I was not familiar with any
 16 of them at the time of the investigation.
 17 Q Had you had any previous involvement with any of
 18 the lieutenants -- well, strike that. You had --
 19 you said you worked with Lieutenant Skenandore on
 20 the Robinson shooting matter?
 21 A Yes.
 22 Q He was a point of contact?
 23 A Yes.
 24 Q Had you worked with him on any previous matters?
 25 A Yes, in narcotics I had worked with Lieutenant

1 A No.
 2 Q Were you friends with any Madison police officers
 3 at the time of the Robinson shooting case?
 4 A No.
 5 Q Were there any Madison police officers you ever
 6 spent time with outside of work?
 7 A Yeah, briefly at a social event, one or two of
 8 them, two that come to mind, but --
 9 Q What was the -- what was the relationship?
 10 A Just a social setting, where maybe there was a
 11 retirement party for a law enforcement officer
 12 leaving, and we were at the same gathering.
 13 Q Was it a -- was it a -- so -- any other
 14 circumstances other than the retirement party
 15 example?
 16 A That would be the example.
 17 Q Okay. Was that a retirement of someone in the
 18 Madison Police Department or DCI or something else?
 19 A Something else. Something -- and I don't even
 20 remember the specifics, I'm using that as an
 21 example, I don't really recall -- I couldn't even
 22 tell you when or how, why. It's very limited. I
 23 just know that I've been in social settings where
 24 those folks have been there.
 25 Q Have you worked with Chief Koval in -- prior to his

1 Skenandore. On previous investigations, I -- my
 2 point of contact as a supervisor was Lieutenant Dan
 3 Olivas; prior to these officer-involved death
 4 investigations, I did not know Lieutenant Olivas.
 5 That's --
 6 Q In the time that you were working with Madison
 7 Police Department folks in the Narcotics Task
 8 Force, for your first four years in DCI --
 9 A Uh-huh.
 10 Q -- how many Madison police officers were part of
 11 that task force?
 12 A I'm going to just estimate, if there are 20 people
 13 assigned to the task force, at least ten of those
 14 are Madison police personnel.
 15 Q Did you have a good working relationship with those
 16 folks?
 17 A Most of them, yes.
 18 Q Were there any that you didn't have a good -- good
 19 relationship with?
 20 A There's always law enforcement officers that you --
 21 yeah, the working relationship is good, yeah.
 22 Q Okay. Do you stay in touch with any of them?
 23 A No, not on a personal level.
 24 Q Are you -- are you friends with any Madison police
 25 officers?

1 involvement, if at all, in the Madison -- in the
 2 Robinson shooting investigation?
 3 A No.
 4 Q Okay. Do you know about the extent of the
 5 involvement or interaction between the agents who
 6 work for you in major crimes and the Madison Police
 7 Department?
 8 A Yeah, in criminal investigations, sure.
 9 Q Explain.
 10 A I supervise their work, so if they're working with
 11 the Madison Police Department, majority of the time
 12 I would know.
 13 Q I see. Do you have any concerns or has it ever
 14 been a factor in your determination about who to
 15 involve in an officer-involved shooting to take
 16 into consideration their level of interaction or
 17 relationship with the involved agency?
 18 A No.
 19 Q Okay. Is it something that's considered as any
 20 part of policy or practice or directive of the --
 21 of DCI?
 22 A No.
 23 Q Is it something you've ever taken into
 24 consideration in your involvement as a supervisor
 25 in officer-involved shooting investigations?

1 A No.
 2 Q Does DCI have a policy of -- related to the
 3 destruction of notes?
 4 A Yes.
 5 Q What is DCI's policy?
 6 A Ooh. I don't think I know the particulars, but --
 7 that I can recite from policy, but essentially once
 8 the notes are no longer needed to complete your
 9 report, they're destroyed.
 10 Q Do you know why that's the policy?
 11 A I don't.
 12 Q How is that policy communicated to you?
 13 A In written format, as part of our DCI policies.
 14 Q Okay. And you've got a copy of the policy?
 15 A Yes.
 16 Q Okay. Did you ever learn why it was that they
 17 wanted you to destroy your notes?
 18 A It may say within the policy, but I don't recall.
 19 Q Don't recall. Have you always followed that
 20 policy?
 21 A Yes.
 22 Q Do you have your agents follow that policy?
 23 A Yes.
 24 Q Do you know if your agents follow that policy?
 25 A Yes.

1 MR. SWAMINATHAN: Okay.
 2 BY MR. SWAMINATHAN:
 3 Q Are you aware of any -- any requirements or any
 4 considerations about maintaining independence as a
 5 part of an officer-involved shooting investigation
 6 at DCI?
 7 A I am not aware.
 8 Q Okay. Do you take any steps to ensure that DCI
 9 agents involved in officer-involved shooting
 10 investigations are independent?
 11 A No.
 12 Q Did you have any interaction with the district
 13 attorney's office related to the Robinson shooting
 14 investigation?
 15 A Yes.
 16 Q Who did you speak with or interact with from the
 17 district attorney's office?
 18 A The -- District Attorney Ozanne.
 19 Q Anyone else?
 20 A No.
 21 Q How many communications did you have with District
 22 Attorney Ozanne?
 23 A My direct communications with him, from me to him,
 24 would have been zero or limited, very limited.
 25 That's kind of the role of the case agent, to do

1 Q Have you ever asked to review any of the notes of
 2 any of your agents during the course of an
 3 officer-involved shooting investigation?
 4 A No.
 5 Q Have you -- do you have any problem with that
 6 policy; would you prefer to keep your notes?
 7 A No.
 8 Q Do you keep drafts of any reports that you write?
 9 A No.
 10 Q Is that also part of the policy, or is that a
 11 practice?
 12 A It's more of a practice.
 13 Q Do your agents keep drafts or do you give them any
 14 instruction about whether to keep drafts?
 15 A I don't know.
 16 Q Do you give them any instruction about whether to
 17 keep drafts?
 18 A I don't.
 19 Q The statute related to officer-involved shooting
 20 investigations I think from 2014, does it have a
 21 requirement that the investigation or the
 22 investigator be independent?
 23 A I don't --
 24 MS. BENSKY: Object to foundation.
 25 THE WITNESS: -- I don't know.

1 that direct communication.
 2 Q And in this case, that would be?
 3 A De La Rosa.
 4 Q Okay. Did you have any substantive conversations
 5 about what you were learning in the investigation
 6 with District Attorney Ozanne?
 7 A Yes.
 8 Q Okay. How many sessions -- discussions did you
 9 have?
 10 A There were multiple. I can remember two for sure,
 11 but I'm guessing there -- there may have been more.
 12 Q What do you -- when was, approximately, the first
 13 of those two that you remember?
 14 A I have no idea.
 15 Q Do you recall anything that was communicated,
 16 substantively, in those two meetings?
 17 A No, just a review of the facts, kind of what we
 18 were learning, the progress of the investigation,
 19 what we had done, what we had yet to do, what was
 20 kind of on our task list, just details that he may
 21 ask regarding different -- different interviews or
 22 different tasks.
 23 Q Did -- did you provide him with a presentation or
 24 share any documents with him during those -- during
 25 those discussions?

1 A No presentations; documents, yes, all the documents
 2 you have as part of the case file.
 3 Q Okay. So the -- you were giving -- you were
 4 sharing with him copies of the reports in the
 5 context of these discussions with him?
 6 A Yes.
 7 Q Did he ask any specific questions that you recall
 8 about information you were learning or finding
 9 during your investigation?
 10 A Yes. He would ask specific questions.
 11 Q Do you recall any specific questions that he asked
 12 at all?
 13 A No.
 14 Q All right. As part of your -- strike that. I
 15 think when we -- we -- I asked you some questions
 16 before, I think one of the things you said was that
 17 the policies and practices of the police department
 18 are not one of the things you're assessing or -- I
 19 think you -- you didn't like the word assessing, so
 20 let me actually strike that. You're not involved
 21 in assessing or interpreting the policies and
 22 practices of the involved agency, correct?
 23 MR. JOHNSON: Asked and answered.
 24 MR. SWAMINATHAN: Actually, strike that.
 25 Let's -- let's actually move on.

1 Let's mark this Exhibit 68. This is
 2 the case summary report. It was previously marked
 3 Exhibit 68?
 4 MS. REPORTER: Do you want me to re-mark
 5 it?
 6 MR. SWAMINATHAN: You can -- yeah, you
 7 can just mark Exhibit 68 so we don't -- there's not
 8 another document.
 9 (Exhibit 68 marked for identification.)
 10 BY MR. SWAMINATHAN:
 11 Q I'm handing you the document marked Exhibit 68. Is
 12 this a document you reviewed -- and it's Bates
 13 stamped DCI 794 through 821. Is this a document
 14 you reviewed in preparation for today's deposition?
 15 A Yes.
 16 Q Can you tell me what this document is.
 17 A It is the case summary report authored by Special
 18 Agent Fernandez.
 19 Q Okay. And I think we talked about this earlier,
 20 but this is a document you approved in some form or
 21 fashion during the course of your involvement in
 22 the investigation, correct?
 23 A I reviewed it.
 24 Q Okay. And when you say you reviewed it, you
 25 ultimately -- as I understand the process, you

1 would have essentially approved it to be submitted
 2 on to -- to other folks in the ACISS system,
 3 correct?
 4 A Yeah. And something is striking me about the date,
 5 in looking at this.
 6 Q Please.
 7 A So I see that it's approved by Special Agent Crowe.
 8 Q Uh-huh.
 9 A So my question is, why is Special Agent in Charge
 10 Crowe approving this? I'm looking at the date, and
 11 I believe that during this April time period, I was
 12 away from work for multiple weeks, so -- I know
 13 that -- my -- my memory is that I saw initial
 14 versions of this as Special Agent Fernandez was
 15 working on it, but I don't know if I was around for
 16 the final approval, actually the final document.
 17 Q So when you say you saw initial versions, it's what
 18 we talked about before, sort of Word documents that
 19 you might have provided comments on or track
 20 changes to correct?
 21 A Correct.
 22 Q Okay. And then in terms of final approval, are we
 23 talking about an approval within the ACISS system
 24 that you may or may not have participated in?
 25 A Well, clearly I didn't make the approval in the

1 ACISS system, and I don't know -- and I don't
 2 remember what my involvement was with the final
 3 product, forwarding it up our chain of command
 4 before it was released publicly.
 5 Q Okay. You reviewed versions of this document,
 6 you're just not sure if you reviewed the final
 7 version of this document; is that an accurate way
 8 to -- to summarize your testimony?
 9 A I have since reviewed the final version, but prior
 10 to it, I don't think I reviewed the exact final
 11 version of it.
 12 Q Okay. When you reviewed versions of this document,
 13 maybe in earlier form --
 14 A Uh-huh.
 15 Q -- do you recall any comments or changes that you
 16 proposed with regard to this report?
 17 A No.
 18 Q Okay. You said you reviewed this version of the
 19 report more recently, correct?
 20 A Yes.
 21 Q Okay. When you reviewed this report, did you have
 22 any concerns about the information that's
 23 communicated in this report?
 24 A No.
 25 Q Did you view -- when you looked at this report --

1 and you read the whole report I take it; is that
 2 correct?
 3 A Yes.
 4 Q Okay. When you read this report, was there
 5 anything you said why is this in here, this
 6 shouldn't be in here?
 7 A Yeah, only last night, one, somewhere, it just
 8 seemed like there was a paragraph that wasn't -- it
 9 didn't contain any factual information, it was like
 10 background information, and I said oh, for future
 11 purposes, we probably wouldn't need to put that
 12 into a summary report.
 13 Q And can you identify that for me?
 14 A Without reading the whole thing, probably not.
 15 Q What was the -- what was the subject; what was it
 16 about?
 17 A It may have been the family was driving down
 18 Williamson Street, they were looking for a
 19 restaurant that didn't require a long wait, then
 20 there was some narrative about -- just went into a
 21 whole lot of detail as to them going out to eat and
 22 wanting to find a restaurant that didn't have a
 23 long line.
 24 Q So this was related to a witness interview?
 25 A Yes.

1 Q All right. It wasn't -- was it related to the --
 2 you used the word family, I just want to make sure,
 3 it wasn't related to the interview -- the section
 4 that discusses the interview with Ms. Irwin; is
 5 that correct?
 6 A Correct.
 7 Q Okay. Anything else that you -- you read in this
 8 report where you said this really shouldn't be
 9 here, it doesn't need to be here?
 10 A No.
 11 Q Okay. Anything -- when you read this report,
 12 any -- any instances where you said hey, you know,
 13 there's information missing from this that should
 14 be in this?
 15 A No.
 16 Q Okay. Anything when you read this that you said
 17 boy, I would have done this differently if I had to
 18 do it again?
 19 A No.
 20 Q All right. What is the purpose of this case
 21 summary report?
 22 A To comply with Act 348.
 23 Q And -- and what does this report need to do to
 24 comply with -- with Act 348?
 25 MS. BENSKY: Objection.

1 (Reporter clarification.)
 2 MS. BENSKY: Asking to make a legal
 3 conclusion.
 4 THE WITNESS: And so could you ask the --
 5 I forgot the question.
 6 MR. SWAMINATHAN: Yeah.
 7 BY MR. SWAMINATHAN:
 8 Q When you say -- you say the purpose of this is to
 9 comply with the act, what are you -- what -- what
 10 do you do with this report in order to make sure
 11 you comply with the act or what are you all doing
 12 to make sure you're complying with the act?
 13 A My understanding based upon supervisors that
 14 supervise me have decided that in order to meet the
 15 law's kind of intent to release the report, and I
 16 put the report in quotations, because that's how
 17 it's stated in the law, it doesn't give us a lot of
 18 direction on what the report is, because there's
 19 lots of reports, and it's virtually impossible to
 20 release all of these reports, one, because -- well,
 21 primarily because it requires redaction and
 22 different -- I'm sure you're familiar with,
 23 different requests allow for less redaction and
 24 some require more redaction, so in an effort to
 25 comply with the spirit of the law, I think on one

1 of the officer-involved death investigations,
 2 shortly after the enactment of the law, an agent
 3 wrote a summary and somebody said that's a really
 4 good way to comply with the law, to get something
 5 out timely to the public at the time of a decision
 6 by a district attorney and provide as much detail
 7 as you can while limiting -- while protecting the
 8 identity of witnesses and protecting information
 9 related to witnesses and certain facts that may not
 10 be able to be disclosed.
 11 Q So when you're looking at this report, one thing
 12 you know is that this is a report that is going to
 13 be shared with the district attorney, correct?
 14 A Yes, it's shared with the district attorney, but
 15 only as part of -- as part of our case file. I as
 16 a supervisor don't review -- don't view this
 17 document as a catch-all for the district attorney
 18 to review. Does that make sense?
 19 Q I think so. And as -- are you saying that's
 20 because the district attorney is going to be
 21 getting all of the more detailed reports?
 22 A Thank you. Yes.
 23 Q Okay.
 24 A They're going to see all of the facts and all of
 25 the details and all of the reports, this, and it's

1 title is a summary, which -- any good attorney is
 2 going to want details, not just a summary.
 3 Q And I think, from what you had just communicated in
 4 response to my previous question --
 5 A Uh-huh.
 6 Q -- it's also your understanding that this report is
 7 likely to be made public in some form, correct?
 8 A Yes. It's the -- the narrative content of it is
 9 the first thing that we -- the Department of
 10 Justice, the public records people, try and make
 11 public immediately upon a decision.
 12 Q And as I understand it, if there's a decision to
 13 charge the officer, it -- this will not be made
 14 public; is that correct?
 15 A I have no idea.
 16 Q If there -- if the decision is not to charge the
 17 officer, then this will be made public; is that
 18 correct?
 19 A Yes.
 20 Q Okay. And so it's your understanding that this
 21 is -- that this will likely be the first document
 22 from the investigation that will be shared from DCI
 23 to the public, correct?
 24 A Yes. And, again, I think it's the narrative. I'm
 25 not sure they actually put this document. But I

1 don't know.
 2 Q Understood.
 3 A But yes, the content is what's made public.
 4 Q I appreciate that. And so -- just so I'm clear on
 5 what you mean by that, the narrative as opposed to
 6 this document, you basically mean everything after
 7 page 1 is what would be made public; is that
 8 correct?
 9 A The cover sheet itself with the narrative, yes.
 10 Page 1 would be what's made public.
 11 Q In other words -- yeah. DCI Bates stamp 795
 12 through 821 is what will be made public, correct?
 13 A Yes.
 14 Q Okay.
 15 A I could be wrong, but my understanding is -- I
 16 think the things I've seen in the past are just the
 17 narrative and not so much the actual
 18 report, 15-1188/145.
 19 Q Is it your understanding that this document is
 20 going to be shared with anyone else other than the
 21 public as a general matter, and the district
 22 attorney? Is there any other audience basically
 23 for this report?
 24 A I don't know --
 25 MS. BENSKY: Object to foundation.

1 THE WITNESS: -- I don't know who that
 2 would be.
 3 MR. SWAMINATHAN: Okay.
 4 BY MR. SWAMINATHAN:
 5 Q When you're re -- when you're -- when you're sort
 6 of approving these reports, reviewing these
 7 reports, are you taking into consideration or
 8 thinking about the people who are going to be
 9 looking at this and using this are the district
 10 attorney and the public?
 11 A Yeah. For the purpose of protecting witness
 12 information really, that would be it.
 13 Q So it may be -- it's probably an unfair question.
 14 One person who you know is going to use this
 15 document at some point or another is the district
 16 attorney, correct?
 17 A I don't know if they'll use it or not.
 18 Q Okay. When you were preparing this report, you're
 19 aware that the district attorney is going to
 20 receive this document, correct?
 21 A Yes.
 22 Q Okay. Do you do anything in terms of what you
 23 include or don't include in this report in light of
 24 the fact that you know this is going to the
 25 district attorney?

1 A No. I think we probably focus more on -- less on
 2 that it's going to the district attorney and more
 3 on the fact that it's going to the public.
 4 Q Got it. And so what -- what do you -- what do you
 5 do in terms of what you include or don't include in
 6 light of the fact this is going to the public?
 7 A Like I mentioned, witness names, witness telephone
 8 numbers, witness addresses, those types of things.
 9 Q Anything else?
 10 A Like we talked earlier today, specific details of
 11 -- it's a summary. We don't dive into, for
 12 example, all of the medical terminology that may
 13 come from an autopsy. But it --
 14 Q Go ahead. But part of the purpose is in general to
 15 communicate to the public what was learned as part
 16 of this fact gathering process and investigation;
 17 is that right?
 18 A Correct.
 19 Q Okay. And is there -- is part of the purpose to
 20 give them sort of a fair and impartial assessment
 21 of what happened and what you learned in the
 22 investigation, in this summary report?
 23 MS. BENSKY: Object to form.
 24 THE WITNESS: It's just to give them a
 25 summary. I don't know about any other -- fair and

1 impartial, is that the word you used?
 2 MR. SWAMINATHAN: Yes.
 3 THE WITNESS: I don't --
 4 BY MR. SWAMINATHAN:
 5 Q Are you trying to ensure that information, whether
 6 it's good for the officer or bad for the officer,
 7 is summarized in this report?
 8 A I -- we are simply trying to place facts, a lot of
 9 facts, into a summarized version.
 10 Q Okay. Let's look at page -- the first page of the
 11 report, DCI 795.
 12 A Sure.
 13 Q The first paragraph of this report says Robinson
 14 was shot -- the last sentence of the first
 15 paragraph, Robinson was shot by law enforcement
 16 Officer Matthew Kenny of the City of Madison Police
 17 Department on March 6, 2015 after Robinson
 18 physically attacked Kenny. Do you see that?
 19 A Yes.
 20 Q What evidence is there that Tony Robinson
 21 physically attacked Kenny?
 22 A Officer Kenny's statement I believe would be the
 23 supporting information related to that.
 24 Q Anything else?
 25 A The scene may hold some indications that he was

1 attacked, may support his statement.
 2 Q I understand it may. I'm asking what did -- what
 3 are you aware of that was the basis for writing
 4 this sentence in this report?
 5 MS. BENSKEY: Object. He didn't write the
 6 sentence.
 7 THE WITNESS: Yeah, and my answer was
 8 going to be that that would probably be a question
 9 for Special Agent Fernandez.
 10 BY MR. SWAMINATHAN:
 11 Q But you reviewed this, correct?
 12 A I don't know if I reviewed that portion of it.
 13 Q You reviewed this report?
 14 A Yes.
 15 Q And this report contains the statement that
 16 Robinson physically attacked Kenny, correct?
 17 A Yes, it does.
 18 Q Do you know what evidence there is to support the
 19 claim that Robinson physically attacked Kenny?
 20 A I just shared that with you.
 21 Q And -- and tell me what evidence you're aware of, I
 22 know you said one thing you know is some -- are
 23 statements that Officer Kenny made, correct?
 24 A Correct.
 25 Q What else do you know of that supports that

1 sentence in this report?
 2 A I don't know of anything.
 3 Q Okay. And this sentence in this report, is this a
 4 statement about what Officer Kenny claims happened
 5 or is this a statement about DCI saying this is
 6 what the facts show?
 7 A This would be what Officer Kenny said happened.
 8 Q Okay. In other words, this is intended -- this is
 9 not intended to say that's the conclusion of DCI,
 10 this is merely intended to communicate that this is
 11 what Officer Kenny claims; is that correct?
 12 A Yeah, I'm not sure -- I'm not sure I can answer
 13 your question, because I didn't write the sentence,
 14 and I don't know what the intent of the sentence
 15 was.
 16 Q But you're reading the sentence and you want to
 17 ensure that this is something that's going to be
 18 useful and not be misinterpreted when it's
 19 communicated to the public, correct?
 20 A Yes.
 21 Q Okay. And so this sentence in this report, is it
 22 intended to communicate to the public that Tony
 23 Robinson attacked Officer Kenny or is it intended
 24 to communicate that Officer Kenny says that's what
 25 happened? That's all that I want to understand.

1 A I don't know what the intent is.
 2 Q Do you know what -- what was the interpretation you
 3 wanted for the public to have about this document
 4 that you were going to be sharing with them, about
 5 whether or not Officer Kenny was attacked by Tony
 6 Robinson?
 7 MR. JOHNSON: Objection. Form.
 8 Foundation.
 9 THE WITNESS: Yeah, and I missed the
 10 question.
 11 BY MR. SWAMINATHAN:
 12 Q As you sit here today, do you have a position on
 13 whether or not Tony Robinson attacked Officer
 14 Kenny?
 15 A Do I have a position?
 16 Q Yes.
 17 A What do you mean by a position?
 18 Q In other words, did he -- did he attack Officer
 19 Kenny?
 20 A Well, I wasn't there, I don't know, but if we go
 21 based upon what Officer Kenny said, then yes, he
 22 was attacked.
 23 Q That's what Officer Kenny says, correct?
 24 A Correct.
 25 Q Does DCI, as part of its investigation, it gathered

1 all these facts, did DCI ultimately say okay, we
 2 believe that yes, Officer Kenny was attacked or no,
 3 we don't have a position on whether or not he was
 4 attacked?
 5 A Can you ask the question in a --
 6 Q Yeah. Let me -- let me ask a different way.
 7 A Uh-huh.
 8 Q This sentence does not say Matthew Kenny claims
 9 that Tony Robinson physically attacked him,
 10 correct, it just says after Robinson physically
 11 attacked Kenny, correct?
 12 A Correct.
 13 Q In other words, it doesn't -- this sentence as it
 14 reads does not suggest that this is what Officer
 15 Kenny claims, it reads as though this is what
 16 happened, isn't -- do you agree with me?
 17 MS. BENSKY: Objection. The document
 18 speaks for itself.
 19 THE WITNESS: Yeah, I'm not sure of your
 20 question.
 21 BY MR. SWAMINATHAN:
 22 Q You don't understand?
 23 A Yeah, it's -- you're -- you're correct, it doesn't
 24 say Officer Kenny claims he was attacked by
 25 Robinson. It says he physically attacked Kenny,

1 and your question was something about, does DCI
 2 take a position?
 3 Q Sure. I guess what I'm trying to get at is, when
 4 -- when this sentence is written in this report --
 5 A Uh-huh.
 6 Q -- is the intention to communicate the fact of what
 7 happened in that encounter or is it intended to
 8 communicate what Officer Kenny claims happened?
 9 A Isn't that -- is that a fact though?
 10 Q Is it what a fact?
 11 A If Officer Kenny said it, isn't that a fact we
 12 consider?
 13 Q It is certainly -- what I'm asking you is simply,
 14 on the issue of whether or not -- well, let's ask
 15 it differently. I'm just trying to get at, does
 16 DCI believe or does it take a position on whether
 17 what Officer Kenny claims happened is true, in
 18 terms of whether or not he was physically attacked
 19 by Tony Robinson?
 20 A That would be up to the district attorney to decide
 21 whether or not he believed Officer Kenny was true
 22 about whether he was attacked.
 23 Q In other words -- understood. And so in this
 24 report, when you review this report, your intention
 25 is not to say that Officer -- that Officer Kenny

1 was physically attacked, your intention is to
 2 communicate to the public that that's what Officer
 3 Kenny is saying happened; is that correct?
 4 MR. JOHNSON: Objection to form.
 5 THE WITNESS: Yeah, and I missed the
 6 question again. I'm sorry.
 7 BY MR. SWAMINATHAN:
 8 Q So there's -- there's what Officer Kenny claims
 9 happened --
 10 A Uh-huh, yep.
 11 Q -- and there is what happened, agreed?
 12 MR. JOHNSON: Objection. Form.
 13 MS. BENSKY: I think he testified that
 14 the purpose of the report is just to report the
 15 facts gathered, and the report says what it says.
 16 He didn't write the report.
 17 BY MR. SWAMINATHAN:
 18 Q I just -- I just want to understand, it -- we're
 19 going to go through this report --
 20 A Uh-huh.
 21 Q -- and I want to understand what is the type of
 22 information that's going to be communicated here,
 23 and this sentence is a useful way to try to
 24 understand it --
 25 A Okay.

1 Q -- okay? And -- and I think we can move through
 2 the rest of the document more quickly if we can get
 3 this understanding. This report, at the end of the
 4 day, is going to communicate some information, no
 5 doubt, it's going to communicate information about
 6 what was found and what people said and -- and all
 7 those things. I don't think we have any dispute
 8 about that. But ultimately, each witness, whether
 9 it's Officer Kenny or any other witness, is going
 10 to say this is what I say happened, correct?
 11 A Yes.
 12 Q And that can be reported in this document, correct?
 13 A Yes.
 14 Q And the intention is to report that information in
 15 this document, correct?
 16 A Yes.
 17 Q And it is also the case that whether it's Officer
 18 Kenny or any other witness, they may say this is
 19 what happened, but what actually happened may be
 20 different, correct?
 21 A Well, it depends on what witness and really --
 22 yeah, there could be an instance where somebody
 23 says something and what happened was different.
 24 Q Okay. And all that I'm trying to understand is for
 25 purposes of this report --

1 A Uh-huh.

2 Q -- are you communicating, specifically when it

3 comes to claims made by witnesses, whether it's

4 Officer Kenny or other witnesses, are you

5 communicating this is what that witness claims

6 happened or is this report also intended to

7 communicate here is what actually happened?

8 A I think both.

9 Q Okay. And so with regard to whether or not Officer

10 Kenny was physically attacked, does this report

11 communicate that Officer Kenny was physically

12 attacked or -- or does it communicate that Officer

13 Kenny claims he was attacked?

14 MS. BENSKY: Objection to form and

15 foundation. You're asking him to speculate how the

16 public is going to interpret the report.

17 MR. SWAMINATHAN: That's not what I'm

18 asking. Go ahead.

19 THE WITNESS: It says what it says. It

20 doesn't say Officer -- you've already answered your

21 question, sir, respectfully. You've asked, does it

22 say that Officer Kenny said he was attacked or does

23 it say that he was attacked, and it clearly says he

24 was attacked.

25 MR. SWAMINATHAN: Okay.

1 BY MR. SWAMINATHAN:

2 Q So it -- this is intended to -- what -- what DCI

3 intends to communicate to the public, deliberately,

4 was that Officer Kenny was attacked; is that

5 correct?

6 A I don't know that's the intention of DCI, but

7 that's what it says.

8 Q Okay. When you reviewed this report, how did you

9 interpret this sentence, the first -- the sentence

10 in the first paragraph of this report going to the

11 public, how did you interpret that sentence?

12 A Two things; one, I don't recall how I interpreted

13 it; and secondly, I don't know that I reviewed

14 that.

15 Q Okay. Do you have -- what -- other than Officer

16 Kenny's statement, are you aware of any evidence

17 that Officer Kenny was physically attacked by Tony

18 Robinson?

19 MS. BENSKY: That's been asked and

20 answered several times. Also a lack of foundation.

21 He said he may not have read every single report in

22 this case.

23 MR. SWAMINATHAN: You can go ahead.

24 THE WITNESS: Yeah, I don't know every

25 fact in the case, generalities I do, but I have not

1 reviewed, for example, the crime scene report that

2 may contain evidence to corroborate what Officer

3 Kenny said. I don't specifically recall what

4 injuries Officer Kenny did or didn't have when he

5 was examined, and I haven't reviewed the medical

6 records, so -- there may be information that

7 corroborates what Officer Kenny said. I think

8 when --

9 MR. SWAMINATHAN: Understood. My

10 question is not may there be other evidence.

11 BY MR. SWAMINATHAN:

12 Q My question is, what evidence are you aware of,

13 other than Officer Kenny's statement, that he was

14 physically attacked? And if the answer is there

15 isn't any, I'll -- I'm not aware, that's fine. I

16 just want to know --

17 A That's not the answer. It's not that there isn't

18 any, it's that I --

19 Q I'm asking that you're aware of. My question is

20 exclusively about what you know of. Are you aware

21 of any evidence that Officer Kenny was physically

22 attacked other than Officer Kenny's statement?

23 That's what I'm asking.

24 MS. BENSKY: Do you mean that as we sit

25 here today what he is aware of off the top of his

1 head without reviewing all of the reports?

2 BY MR. SWAMINATHAN:

3 Q As we sit here today, are you aware of any other

4 evidence, other than Officer Kenny's statement,

5 that he was physically attacked by Tony Robinson?

6 A No, because I haven't reviewed any of the reports

7 other than what I authored.

8 Q Do you recall any other information that supports

9 the view that Officer Kenny was physically attacked

10 by Tony Robinson?

11 MR. JOHNSON: Asked and answered.

12 THE WITNESS: Well, I can't answer your

13 question because I don't recall all the facts of

14 this case.

15 BY MR. SWAMINATHAN:

16 Q Did you ever reach a conclusion during your

17 involvement in the Robinson shooting investigation

18 that Officer Kenny was physically attacked by Tony

19 Robinson?

20 A I don't know if I did or not.

21 Q Okay. Let's turn to DCI 796. That's page 2 of the

22 case summary report.

23 A Uh-huh.

24 Q The last paragraph of this report discusses the

25 entry wounds, do you see that?

1 A I do.
 2 Q And it continues on to the next paragraph. Could
 3 you read that -- that paragraph that begins at the
 4 bottom of page 2 and goes on to page 3, and let me
 5 know when you've done so.
 6 A Okay. I've read it.
 7 Q Okay. Did you review -- you review the gunshot
 8 entry wound evidence in this case?
 9 A I did not review it. I -- I don't know if I did.
 10 Q Okay. As you sit here today, you don't remember
 11 whether or not you reviewed the gunshot entry wound
 12 evidence?
 13 A Correct. Any review I would have had would have
 14 been through the review of a report authored by
 15 somebody else.
 16 Q Okay. Did you learn any information during the
 17 investigation about the trajectory of the bullet in
 18 Tony Robinson's body?
 19 A Only what was shared by Dr. Tranchida, who
 20 performed one of the autopsies.
 21 Q And do you remember what those findings were, in
 22 terms of the trajectory of the bullet --
 23 A No.
 24 Q -- or bullets? Is that information you knew at the
 25 time of the investigation?

1 A Yes, we provided the presentation, but it's not
 2 something that I've retained.
 3 Q None of that information about -- about what that
 4 the trajectory of the bullets were is communicated
 5 in this report, would you agree?
 6 A I would agree.
 7 Q Okay. Is that something that normally would be
 8 included in a report like this?
 9 A I don't know what's normal for these reports.
 10 Q Well, is it something you think, as you sit here
 11 today, it should be included in a report like this?
 12 A I think an argument could be made either way. One
 13 argument could be made that it would be more
 14 information. But I go back to the primary
 15 function -- function of the summary report is to
 16 just summarize information, not to detail every
 17 fact, so -- I really don't have an opinion on
 18 whether it should or shouldn't be in here.
 19 Q Well, trajectory information could be highly
 20 relevant, correct?
 21 MS. BENSKY: Object to foundation.
 22 THE WITNESS: It could be highly relevant
 23 to the investigation and to the facts that the
 24 district attorney is going to want to consider; I
 25 -- I don't know if it's highly relevant to the

1 summary report. I -- I don't know.
 2 BY MR. SWAMINATHAN:
 3 Q What are the circumstances in which you'd want to
 4 include information about the trajectory of the
 5 bullets in a case summary report in an
 6 officer-involved shooting investigation?
 7 A I -- I don't know.
 8 Q As a general matter, you try to include relevant
 9 information in a summary report, correct?
 10 A Yes.
 11 Q Okay. And as a general matter, if something is
 12 irrelevant, you're not going to include it in the
 13 summary report, correct?
 14 A Yes. If we included all relevant detail, not just
 15 information, all detail, this would not be a
 16 summary report, it would be a regurgitation of all
 17 the facts in these two binders.
 18 Q Well, when people are filling out reports, for
 19 example, of interviews --
 20 A Uh-huh.
 21 Q -- your agents are not including only relevant
 22 information, they're trying to include as much
 23 detail as possible about what they -- what was said
 24 during those interviews; isn't that true?
 25 A Yes, because that's the document related to that

1 interview. Again, I think we're missing the point
 2 on what this document is. It is a summary to
 3 summarize information, to give kind of a very large
 4 overview, high-level perspective of a complicated
 5 event with a lot of detail.
 6 Q Sure. And so you're taking information that's in
 7 all these more detailed reports and you're
 8 summarizing -- you're picking and choosing which
 9 portions of it to include in a case summary report;
 10 is that true?
 11 MS. BENSKY: Objection. He did not pick
 12 and choose the information in there.
 13 THE WITNESS: Yes. And my answer was
 14 going to be, Special Agent Fernandez put this
 15 document together, so you'd have to ask her.
 16 BY MR. SWAMINATHAN:
 17 Q But you have some responsibility -- I didn't mean
 18 to cut you off. You have some responsibility for
 19 ensuring this report serves its purpose, correct?
 20 A Yes.
 21 Q And you have some responsibility for approving
 22 reports like this, correct?
 23 A Yes.
 24 Q Okay. And you agree that a case summary report
 25 takes the more detailed reports and evidence that

1 is -- that is contained in the rest of the
 2 investigation and chooses portions of it to include
 3 in the summary, correct?
 4 A Yes.
 5 Q Okay. And so in terms of what information you're
 6 going to choose to include in the summary, the more
 7 relevant something is, the more likely you're to
 8 include it in this case summary report, correct?
 9 A The more relevant something is, the more likely
 10 were I to put it in this report; that was the
 11 question?
 12 Q Yes.
 13 MS. BENSKY: Object to form.
 14 THE WITNESS: Yeah, I don't know if
 15 that's the general rule of thumb.
 16 MR. SWAMINATHAN: Tell me why that's
 17 wrong. Tell me, why would -- why do you hesitate
 18 to say that if something's relevant, you're
 19 generally going to want to include it here and if
 20 something's irrelevant, you'd exclude it?
 21 MS. BENSKY: I object to the word
 22 relevant.
 23 THE WITNESS: My -- the way I would
 24 summarize this is what your perspective of relevant
 25 versus what another citizen's perspective of

1 relevant may be different and what Special Agent
 2 Fernandez as she was creating this, and honestly it
 3 could have been an oversight that she just didn't
 4 put it in there.
 5 BY MR. SWAMINATHAN:
 6 Q And that's ultimately, in part, what I'm getting
 7 at, is information about the trajectory of the
 8 bullet the kind of thing that you might regularly
 9 see in a report like this?
 10 A Maybe. I don't know. I don't -- I would have to
 11 look at all of our summary reports and ask if --
 12 and -- and review if we've ever talked about
 13 trajectory in a summary report.
 14 Q Well, here's another thing, you -- we talked
 15 earlier about your involvement in reviewing case
 16 summary reports in officer-involved shooting
 17 investigations --
 18 A Uh-huh.
 19 Q -- and I think you said part of your practice is
 20 hey, I often have substantive comments, which
 21 includes saying here's additional information we
 22 should include in a report, correct?
 23 A Yes.
 24 Q Okay. And what is the kind of consideration you're
 25 making when you say hey, here's information that we

1 should be adding to this report that's not there; I
 2 assume it's some notion of relevance, is that -- is
 3 that wrong?
 4 A No, that's correct.
 5 Q Okay. So the basic idea is if something is
 6 relevant, you generally want to get the relevant
 7 information into this report, correct?
 8 MS. BENSKY: Objection to form.
 9 THE WITNESS: It depends on what the
 10 relevant information is.
 11 BY MR. SWAMINATHAN:
 12 Q What's an example of a type of relevant information
 13 that you would deliberately leave out of a report
 14 like this?
 15 A Well, give me some time to think. A piece of
 16 relevant information that I would leave out of a
 17 report? It really would depend on somebody's
 18 definition of relevant, their perspective of what's
 19 relevant. I -- I don't think I can give you an
 20 example.
 21 Q Can you think of an example of something you
 22 consider relevant that you would leave out of a
 23 report like this?
 24 A I cannot think of an example.
 25 Q Okay. Did -- did DCI conduct any analysis of the

1 trajectory of the bullets through Tony Robinson's
 2 body?
 3 A Through his body, no, I believe that would be the
 4 role of the medical examiner.
 5 Q Okay. And so to the extent any analysis was done,
 6 it was not done by DCI folks, it was done by the
 7 medical examiner, correct?
 8 A Correct.
 9 Q Okay. And then to the extent DCI is communicating
 10 anything about that, it would just be communicating
 11 the findings of the medical examiner in this
 12 report; is that right?
 13 A Yes.
 14 Q Did DCI do any analysis of whether or not the --
 15 the evidence about the trajectory of the bullets
 16 was consistent or inconsistent with Officer Kenny's
 17 testimony?
 18 MS. BENSKY: You mean his statement?
 19 MR. SWAMINATHAN: Yes, his statement. I
 20 apologize. Let me -- let me re-ask the question.
 21 THE WITNESS: I -- I understand the
 22 question. Given that the crime -- Wisconsin Crime
 23 Lab is responsible for crime scene examination and
 24 they're kind of the subject matter experts, and
 25 Special -- Special Agent Holmes worked with them, I

1 would say if anybody did analysis or an assessment
 2 of trajectory, it would be those folks. If the
 3 question is, did we then, as DCI, make an analysis
 4 of whether or not Officer Kenny's statement -- I --
 5 I -- I don't know -- I don't know that we -- we
 6 did.
 7 BY MR. SWAMINATHAN:
 8 Q You don't remember any such analysis being done by
 9 DCI?
 10 A No.
 11 Q Okay. Was any analysis done by DCI about whether
 12 or not the trajectory of the bullets -- well,
 13 strike that. Did DCI do any assessment about
 14 whether Officer Kenny's testimony was consistent
 15 with any other evidence in the case, other than the
 16 trajectory of the bullets?
 17 A Can you ask -- I'm sorry.
 18 Q Yeah. Did DCI do any analysis of whether Officer
 19 Kenny's statement about what happened was
 20 consistent with, let's say any evidence in the
 21 case?
 22 A Kind of clarify analysis.
 23 Q Yeah.
 24 A Because I'm not sure what you're asking.
 25 Q Basically what I'm saying is, did they ever say

1 hey, let's -- let's take Officer Kenny's statement
 2 and see if it jibes with the other evidence?
 3 A No, because I think you'd be asking us to form
 4 opinions on something that would be more
 5 appropriate for the district attorney to form an
 6 opinion on. I think if the district attorney had a
 7 question about did Officer Kenny's statement jibe
 8 with what the evidence presented, the district
 9 attorney would direct us to conduct further
 10 analysis, so that would maybe be more of a question
 11 for the district attorney, because it's more of us
 12 trying to form an opinion versus just gathering
 13 facts.
 14 Q All right. So is that something that occurred in
 15 this case, the district attorney coming back to you
 16 all and saying hey, can you do some additional
 17 analysis or -- or comparison for us about
 18 Officer -- Officer Kenny's testimony and how it
 19 syncs up with the rest of the evidence?
 20 A No.
 21 Q Okay. And -- and so -- so that I'm perfectly clear
 22 on this, if the question is asked, did DCI find
 23 Officer Kenny's testimony to be consistent or
 24 inconsistent with any of the -- any of the other
 25 evidence in this case, is the answer DCI never

1 thought about that; DCI didn't do that type of
 2 analysis?
 3 A That's not the answer.
 4 Q Okay. Please -- please help me understand.
 5 A The answer is we don't make findings.
 6 Q If -- if someone says -- comes to trial and says
 7 hey, isn't what Officer Kenny said exactly
 8 consistent with other evidence in the case, and
 9 they ask that to a -- to someone like you, as a DCI
 10 agent, what's the answer?
 11 A What kind of trial?
 12 Q The trial -- if there's a trial in this case down
 13 the road as to Officer Kenny's conduct.
 14 MS. BENSKY: Object to form.
 15 THE WITNESS: A criminal trial?
 16 MR. SWAMINATHAN: A -- a -- just a trial
 17 about Officer Kenny's conduct in this case, and
 18 you're asked, was Officer Kenny's statement about
 19 what happened consistent with the other evidence in
 20 the case, and they ask that question to you, what's
 21 your answer?
 22 MR. JOHNSON: Same objection.
 23 THE WITNESS: I don't know that I can
 24 form that opinion without really studying every
 25 fact and detail of the case.

1 BY MR. SWAMINATHAN:
 2 Q And that's not something you did as part of your
 3 involvement in the Robinson shooting investigation;
 4 is that correct?
 5 A Me personally, no.
 6 Q Did any of your other agents perform that type of
 7 analysis?
 8 A No, because we gather facts and allow the district
 9 attorney to make those types of analysis.
 10 Q That's not DCI's role, correct?
 11 A Correct.
 12 Q Okay. I want to turn your attention to -- to the
 13 bottom of page 3.
 14 A Uh-huh, sure.
 15 Q The last paragraph begins Madison police officers
 16 had been dispatched, and then it provides some
 17 additional information. Take a moment to review
 18 that -- that paragraph and let me know when you've
 19 done so.
 20 A Okay.
 21 Q All right. And I'm focused in particular on the
 22 last sentence of this paragraph, have you had a
 23 chance to review that sentence?
 24 A Yes.
 25 Q What -- what document or what evidence in this case

1 says that Tony Robinson was strangling someone at
 2 1125 Williamson Street?
 3 A That Tony Robinson was -- I'm sorry?
 4 Q Strangling someone at 1125 Williamson Street, the
 5 residence?
 6 A I don't know what information in the investigation
 7 has revealed that.
 8 Q Are you --
 9 A I don't -- I don't know.
 10 Q You don't know. Okay. Let's turn to page 5.
 11 A Yep.
 12 Q There's a reference here to a witness named K.B.,
 13 do you see that?
 14 A Yes.
 15 Q And do you recall from your involvement in this
 16 investigation or your review of documents in
 17 preparation for today's deposition that K.B. is a
 18 reference for Kathleen Bufton?
 19 A The name I don't know, but I -- I do know that she
 20 was the downstairs tenant.
 21 Q Okay. Can you tell me what you remember about your
 22 involvement in any interviews or discussions about
 23 interviews with the downstairs tenant, Kathleen
 24 Bufton.
 25 A My involvement with her interview was none. I

1 A Yes.
 2 Q And Agent Holmes?
 3 A Yes.
 4 Q Anyone else?
 5 A No -- I don't remember.
 6 Q Do you recall just one such discussion or -- or
 7 more than one such discussion?
 8 A I remember one, because I know there were multiple
 9 contacts with her by Agent Holmes and I don't
 10 remember why.
 11 Q Do you remember why the issue came up at all, about
 12 reinterviewing her?
 13 A No. Really the bottom line is if we were going to
 14 reinterview her, it was something to either
 15 corroborate or ask her another question, and I
 16 don't know why we would have done that.
 17 Q Okay. Let me ask you about recordings. What are
 18 the practices that you propagate to your agents in
 19 terms of when to record interviews in an
 20 officer-involved shooting investigation?
 21 A I don't think at the time of this there was any
 22 formal standard protocol, so --
 23 Q Did you have a practice that you generally wanted
 24 your agents to follow?
 25 A Not at the time of this, no.

1 wasn't involved.
 2 Q Uh-huh.
 3 A Special Agent Holmes I know that was one of the
 4 first things he did or that had been done upon our
 5 response, and that's my recollection of his
 6 involvement with her.
 7 Q Do you recall that Agent Holmes interviewed
 8 Ms. Bufton, the downstairs resident, and then later
 9 reinterviewed her?
 10 A Yes.
 11 Q And do you recall participating in the discussion
 12 with Agent Holmes about reinterviewing Ms. Bufton?
 13 A Yeah. Yes, there was a -- yeah, I remember there
 14 was a discussion about following up with her, yes.
 15 Q Tell me about that discussion.
 16 A I don't remember.
 17 Q So you remember that there was such a discussion,
 18 but you don't remember anything about that
 19 discussion?
 20 A Correct. And I know that -- if there was a-- there
 21 was a discussion.
 22 Q Who participated in that discussion?
 23 A No idea.
 24 Q Okay. You -- you were involved in that discussion
 25 though, you recall that?

1 Q Okay. Did you give any instructions or direction
 2 to your agents about an interview you'd want them
 3 to record?
 4 A Not that I recall.
 5 Q Okay. And you said not at the time of this, does
 6 that suggest that now there are some policies
 7 around when to record interviews in
 8 officer-involved shooting investigations?
 9 A I think when we reviewed in 20 -- when did this --
 10 March of 2015?
 11 Q That's when the -- that's when the incident
 12 happened --
 13 A This incident took place?
 14 Q -- yes.
 15 A You know, it's been an ongoing process of reviewing
 16 how we conduct these investigations, and I know
 17 sometime in the middle of 2015, there were -- there
 18 was some discussion from Deputy Administrator
 19 Mitchell that we should get into a practice of
 20 recording -- try to record every witness interview,
 21 so that's why I'm just kind of recalling. But at
 22 the time of this, there wasn't anything formalized
 23 or -- there wasn't a standard, really, practice.
 24 Q When you were involved in the Robinson shooting
 25 investigation, do you remember any discussion about

1 which interviews to record and which ones not to
 2 record?
 3 A No.
 4 Q Do you recall anything else about Kathleen Bufton
 5 and DCI's investigation related to Kathleen Bufton?
 6 A Nothing.
 7 Q Let's turn to the next page, please. This is DCI
 8 800, page 6. There's a section that begins
 9 Robinson's earlier activity on March 6, 2015, do
 10 you see that?
 11 A Yes.
 12 Q And then, as you'll recall, there's a number of
 13 pages that discuss interviews with witnesses who
 14 provide some information about Robinson's
 15 activities earlier in the day, I think that goes
 16 through page 14, do you see that, through a section
 17 that says -- where it begins other critical
 18 witnesses?
 19 A I do.
 20 Q Okay. And so that's information that communicates
 21 interviews with witnesses who had information about
 22 what Tony Robinson had been doing earlier in the
 23 day, correct?
 24 A Yes.
 25 Q Do you agree that none of the information in those

1 sections was information known to Officer Kenny at
 2 the time he arrived on the scene?
 3 A I don't know what he knew.
 4 Q You don't know either way?
 5 A No.
 6 Q Okay. For purposes of a report like this, why is
 7 there so much information about things that were
 8 happening earlier in the day -- well, strike that.
 9 At the time of this investigation, at the time you
 10 were reviewing this report initially, did you know
 11 what information was available to Officer Kenny and
 12 what information was not available to Officer
 13 Kenny?
 14 A No.
 15 Q Does this document communicate somewhere what
 16 information was known to Officer Kenny versus what
 17 information was not known to Officer Kenny at the
 18 time he shot Tony Robinson?
 19 A In this document?
 20 Q Yes.
 21 A Without reviewing it, I don't know, other than what
 22 we just reviewed earlier in the document about what
 23 was summarized, which was given out by dispatch.
 24 Q Is it your understanding that the information given
 25 by dispatch is -- is all of the information known

1 to Officer Kenny at the time?
 2 MS. BENSKY: Asked and answered.
 3 THE WITNESS: I don't know.
 4 MR. SWAMINATHAN: Okay.
 5 BY MR. SWAMINATHAN:
 6 Q You've -- you referred earlier to an
 7 officer-involved shooting template, correct?
 8 A As part of our report writing policy?
 9 Q Yes.
 10 A Yes.
 11 Q Does that template suggest that you should make
 12 clear in the report, here's the information the
 13 officer knew and here's other information that we
 14 might have learned later that may be relevant to
 15 the investigation but the officer did not know?
 16 A Yeah, the template nor the policy doesn't get into
 17 that detail.
 18 Q Is there any attempt to make any kind of
 19 distinction, so it's clear to the public what
 20 information the officer knew versus what
 21 information they didn't know?
 22 A No.
 23 Q Okay. If you could turn to DCI 811.
 24 A Okay.
 25 Q There's a section that begins with the interviews

1 of Madison police officers, and the first heading
 2 in that section is the interview of Officer Kenny,
 3 do you see that?
 4 A Yes.
 5 Q How was this section of the report created?
 6 A I don't know.
 7 Q Do you know what information was relied on to
 8 create this section of the report?
 9 A I don't specifically. I can -- I don't know.
 10 Q Did you review this portion of the report at all to
 11 ensure that it was accurate?
 12 A Again, I don't know which parts of this summary
 13 report I reviewed before, during -- or before or
 14 after my absence.
 15 Q One of the -- you agree one of the key interviews
 16 in an officer-involved shooting investigation is
 17 the interview of the officer involved, correct?
 18 A Yes.
 19 Q Okay. Do you have any practices about how this
 20 section of the case summary report discussing that
 21 interview of that officer involved is supposed to
 22 -- is supposed to be written or what's to be
 23 included or not included, any -- any practices
 24 about that?
 25 A No practices that I'm aware of.

1 Q Any -- any guidance or directives about, you know,
 2 comparing it to the transcript of the statement or
 3 to a -- to a recording or anything else for
 4 purposes of ensuring this section is accurate and
 5 thorough?
 6 A No.
 7 Q When you reviewed this in preparation for today's
 8 deposition, was there anything about the section
 9 on -- on the interview of Officer Kenny that stood
 10 out to you as being an omission or too much detail?
 11 A No.
 12 Q Okay. I want you to turn to the third paragraph of
 13 this document -- sorry, of page 18.
 14 A Okay.
 15 Q DCI 812. The last sentence says dispatch
 16 subsequently advised that the subject had left the
 17 gas station, had run into a residence and was
 18 strangling someone. Is it your understanding that
 19 dispatch -- dispatch advised that the subject was
 20 strangling someone in the residence at 1125
 21 Williamson Street?
 22 A Is it my understanding?
 23 Q Yes.
 24 A Based upon reading the sentence, yeah, that could
 25 be -- that could be perceived that way.

1 Q Okay. And so it could be perceived as saying that
 2 that's what dispatch communicated, correct?
 3 A Yes.
 4 Q Okay. Do you know if that's accurate?
 5 A I don't.
 6 Q Okay. Did you do any check to make sure that that
 7 information was accurate at the time that you
 8 reviewed this report or a version of this report?
 9 A Had I reviewed this part of the report, I likely --
 10 and had I saw that, I likely would have recommended
 11 a clarification -- not even a clarification, maybe
 12 a change in the sentence structure. I think that's
 13 what may be the -- the problem with that sentence,
 14 is sentence structure, where the word strangling
 15 someone is at in the sentence, or that it's not
 16 phonetically clear at what point they were
 17 strangling somebody.
 18 Q You're saying this sentence has some ambiguity in
 19 it as written; is that right?
 20 A I don't -- didn't use that word.
 21 Q Okay. Explain what you meant. I just didn't -- I
 22 didn't mean to put words in your mouth.
 23 A It just maybe isn't -- the sentence maybe isn't
 24 written in the proper chronological order.
 25 Q Okay. So what is the proper chronological order?

1 A I don't know, but I know the strangling that is
 2 being referenced here would have happened before
 3 Tony Robinson had run into the residence, although
 4 I don't remember all the facts, so I don't know if
 5 that incident on the sidewalk with that citizen or
 6 the person was alleged to have been strangled -- I
 7 don't remember the specific events. I don't know
 8 if that event took place and then Tony Robinson ran
 9 into the house and came out, I don't know. But I
 10 -- I believe the order would have been more
 11 appropriate to have the strangling of someone
 12 earlier in the sentence, to show chronologically,
 13 and I don't know what dispatch advised, if that is
 14 the exact order in which dispatch advised it.
 15 Q It -- and this sentence could be misinterpreted to
 16 suggest that he had strangled someone after he had
 17 run into the residence, correct?
 18 A It could be, yes.
 19 Q Okay. I want to turn to -- let's see, one, to,
 20 three, four, fifth paragraph down on page 18.
 21 A Yes.
 22 Q It -- it says Officer -- it begins Officer Kenny
 23 could hear signs of a disturbance, Officer Kenny
 24 made his way up the driveway, he noticed a door
 25 that was completely open and could see a narrow
 staircase, and then it says Officer Kenny heard
 sounds of incoherent yelling and screaming, this
 section, is this intended to communicate that that
 is what actually happened or that's what Officer
 Kenny was communicating in his statement?
 A I think both.
 Q Can you explain.
 A Well, I think it's intended -- what were the two
 questions?
 Q Yeah. Is this what -- is that what -- is this
 report in this section intended to communicate
 that's what happened or that that's what Officer
 Kenny is saying happened?
 MS. BENSKY: Object to form.
 MR. JOHNSON: Join.
 THE WITNESS: I don't know what the
 intent was.
 MR. SWAMINATHAN: Okay.
 THE WITNESS: Because I -- I didn't
 author it.
 BY MR. SWAMINATHAN:
 Q This section of the report, is it intended to
 communicate conclusions about what actually
 happened or is it intended to communicate what
 Officer Kenny said happened?

1 A That was what Officer Kenny said happened.
 2 Q Okay. And so, for example, if you look at -- let's
 3 say the second to last paragraph --
 4 MS. BENSKY: I just note that this whole
 5 thing is a summary of the interview with Officer
 6 Kenny, as you see on page 17.
 7 BY MR. SWAMINATHAN:
 8 Q Would it be correct to say that if you wanted to
 9 provide greater clarity in this paragraph, that
 10 section could begin Kenny claims he heard signs of
 11 a disturbance, Kenny claims he heard sounds of
 12 incoherent yelling and screaming?
 13 A I think what -- typically we use as past tense, and
 14 we use an introductory sentence or paragraph that
 15 said on this day, Officer Kenny -- result -- so
 16 Officer Kenny provided the following information
 17 during the interview, colon, and then by using past
 18 tense, it's clear that this is what Officer Kenny
 19 is saying.
 20 Q Okay.
 21 A And it's not a conclusion.
 22 Q Okay. Let's turn to the section on -- well, strike
 23 that. I wanted to -- to ask you, is there any
 24 section in this report or anywhere in this report
 25 where it discusses the existence of audio and video

1 recordings of some or all of the shooting incident?
 2 A I don't remember.
 3 Q Do you recall seeing that in this report when you
 4 reviewed it in preparation for the deposition?
 5 A I don't.
 6 Q Can you take a look now and tell me if this report
 7 includes any information about there being audio
 8 and video that reflects some or all of the -- of
 9 the incident.
 10 A No. In reviewing it, I don't see any mention of
 11 squad car video.
 12 Q Should it be referenced or --
 13 MS. BENSKY: Just for the record, it's
 14 referenced on page 23, during scene examination.
 15 It says during the investigation, through
 16 interviews and squad video examination, it was
 17 determined that Officer Kenny was the only person
 18 who fired a gun.
 19 And also on page 23, it says review
 20 of Dane County dispatch recordings and 911 calls,
 21 compact discs of those are referenced.
 22 The very beginning on page 2, there
 23 is a reference to the forensic unit took
 24 photographs and checked video recordings of the
 25 area.

1 On page 3, there's also reference to
 2 surveillance video.
 3 MR. SWAMINATHAN: That --
 4 MS. BENSKY: And just for the record, the
 5 report says what it says and just because Agent
 6 Engels wasn't able to read this 27-page report here
 7 in five minutes and point out every instance
 8 doesn't mean that it's not in the report.
 9 MR. SWAMINATHAN: Your objection is
 10 noted. The -- the objection identifies audio and
 11 video that's not the audio and video that I just
 12 asked Agent Engels about, which is specifically
 13 the -- the video of the incident. And I believe
 14 Agent Engels' testimony is correct.
 15 BY MR. SWAMINATHAN:
 16 Q Is there anything you'd augment about your
 17 testimony, in terms of whether or not this document
 18 references the video of what took place during the
 19 incident at 1125 Williamson Street?
 20 A And if it is contained within this report? No.
 21 Q Okay. You don't see it anywhere in this report,
 22 correct?
 23 A Other than what has been now pointed out on page 23
 24 about squad video examination. There's --
 25 Q Is there -- go ahead.

1 A -- there's no other mention of the squad car video.
 2 Q Okay. Is there any discussion of what is -- what
 3 was seen -- or I'm sorry, strike that. Is there
 4 any summary of what the squad car video showed of
 5 the incident?
 6 A No.
 7 Q Should that be included in this report; was that an
 8 omission or was that something that would be
 9 deliberately excluded from a report like this?
 10 A I don't know.
 11 Q You don't know either way?
 12 A No.
 13 Q As you sit here today, if you were to prepare a
 14 report, a case summary report, or review a case
 15 summary report in which you had the video that
 16 existed in the Robinson shooting matter, would you
 17 expect that you'd include that, or some discussion
 18 of that video, in the case summary report?
 19 MS. BENSKY: Object to form.
 20 THE WITNESS: I don't know what I would
 21 do.
 22 BY MR. SWAMINATHAN:
 23 Q Is there often a section in these kind of reports
 24 called -- about exhibits, where you list exhibits?
 25 A Not that I'm aware of.

1 Q Were there any attachments or exhibits to this case
 2 summary report?
 3 A No. For the primary reason it's a case summary,
 4 so, again, it's trying to summarize the events. It
 5 can't be perfect, it can't contain all the
 6 information, it can't contain all the details or it
 7 wouldn't be a summary.
 8 Q Is there a section of the -- strike that. Did you
 9 ever review the video of -- from -- from Officer
 10 Kenny's squad car that showed what -- that showed
 11 what happened at 1125 Williamson Street?
 12 A Yes.
 13 Q Okay. How many times did you review that video?
 14 A Hmm. I think multiple times on the -- the day we
 15 received the video and reviewed it as an
 16 investigative team. And then I would have reviewed
 17 it again multiple times after it was paired with
 18 the audio from Sergeant Gary's squad.
 19 Q When was -- who -- who did that process, of pairing
 20 the audio and the video?
 21 A Analyst Larry Flessert, of DCI.
 22 Q That -- that's someone who works for DCI?
 23 A Uh-huh.
 24 Q When did that pairing occur?
 25 A I don't remember.

1 Q Was that done in the first couple days of the
 2 investigation, was it done down the road?
 3 A It was done prior to the district attorney's
 4 decision. That's -- I mean, we can look and I'm
 5 sure there's a report that Larry Flessert completed
 6 on the exact date that that was done.
 7 Q So Mr. Flessert would have prepared a report when
 8 the audio and video were synced; is that right?
 9 A He may have, or somebody may have completed one on
 10 his behalf.
 11 Q Okay. Do you recall if the audio and the video
 12 were synced as of the time that Officer Kenny was
 13 interviewed in this case? And --
 14 MS. BENSKEY: I would -- I -- I -- before
 15 he answers that question, I would like an
 16 opportunity to look at the report if he wants to.
 17 It's Report No. 109.
 18 THE WITNESS: Sure, if I could look at
 19 Report 109 --
 20 MR. SWAMINATHAN: Sure.
 21 THE WITNESS: -- and then I could find
 22 the date that that happened and then the date
 23 Officer Kenny was interviewed, that would answer
 24 our question.
 25 MR. SWAMINATHAN: Sure.

1 THE WITNESS: And then while I'm looking
 2 at this, if somebody can tell me when Officer Kenny
 3 was interviewed, that would be --
 4 MR. SWAMINATHAN: That was on -- I'll
 5 represent that that was on March 9.
 6 THE WITNESS: Okay.
 7 MS. BENSKEY: That's the second page.
 8 THE WITNESS: Okay. So it seems as
 9 though Analyst Flessert did that analytical work
 10 between March 12 and March 13, and you've shared
 11 that Officer Kenny was interviewed on March 9, so
 12 it would have been after Officer Kenny's interview.
 13 BY MR. SWAMINATHAN:
 14 Q So having had a chance to review relevant DCI
 15 reports, the audio and video were synced as of
 16 March 13; is that correct?
 17 A Yes.
 18 Q Okay. And prior to March 13, you didn't have audio
 19 and video synced together; is that correct?
 20 A Correct.
 21 Q Okay. I just want to ask you, if you basically
 22 start from page 4 of this case summary report, it
 23 basically has a summary of various witness
 24 interviews that -- that basically continue all the
 25 way through page -- the top of page 23, do you see

1 that?
 2 A I do. I was just looking at that before, when you
 3 were -- talked about the witness interviews and the
 4 officer interviews.
 5 Q Okay. So that's, what, 17 pages of summary of
 6 various witness interviews, correct?
 7 A Yes.
 8 Q And then from page 23 to page 24, basically less
 9 than two pages, there's summaries of the scene
 10 examination, the review of the dispatch recordings,
 11 the autopsy findings and the forensic results, do
 12 you see that?
 13 A I do.
 14 Q Is that typical; is there -- why is it that there's
 15 a lot more discussion about interviews and, you
 16 know, less than two pages about the rest of the --
 17 of the evidence?
 18 MS. BENSKEY: Object to foundation.
 19 THE WITNESS: I can answer it three ways.
 20 One, I don't know what's typical, because these are
 21 all very different; two, I didn't write the report,
 22 so I don't know; and finally, I think those areas
 23 are very detailed areas that, for example --
 24 MR. SWAMINATHAN: When you say those --
 25 sorry. I didn't mean to cut you off.

1 THE WITNESS: Thank you. Let me just be
2 specific. For example, the crime -- the scene
3 examination area is a summary of the crime lab's
4 work and their report. There's a lot of details.
5 I think it's better to summarize and do the best we
6 can to summarize it, although it may not please
7 everyone, and allow people to read the report and
8 actually get the facts and the details, all of the
9 details out of the report.

10 The same would be for the Dane
11 County dispatch recordings, could summarize all of
12 those recordings, but it's probably best for people
13 to just listen to the recordings if they'd like.

14 Autopsy findings would be the same,
15 in particular because there's a lot of medical
16 terminology, so it's probably best for people to
17 just -- for us to be minimal in our information.

18 MR. SWAMINATHAN: Go ahead.

19 THE WITNESS: And the same with the
20 forensic results.

21 BY MR. SWAMINATHAN:

22 Q Wouldn't the fact that it's complex or detailed be
23 a reason for someone knowledgeable, like the DCI
24 agents who deal with these kinds of documents
25 regularly, to actually summarize it given that

1 Q All right. Let's turn to the section on family
2 contact. Do you see that?

3 A Yes.

4 Q And -- and stop -- maybe pause for one more second.

5 A Uh-huh.

6 Q I would also note that this document doesn't
7 contain any discussion about Officer Kenny's past
8 discipline or past conduct, do you agree?

9 A It does not.

10 Q Okay. Is that something that should be included in
11 a report like this?

12 A I don't know.

13 Q Is that something that you all looked into in the
14 course of your involvement in the Robinson shooting
15 investigation?

16 A No.

17 Q Why not?

18 A Because we focused on this particular event and the
19 facts regarding this event.

20 Q But you didn't do that same thing or provide that
21 same level of respect for Tony Robinson; isn't that
22 true?

23 MS. BENSKY: Objection.

24 MS. HARRELL: Object to form.

25 MR. JOHNSON: Join.

1 you're preparing this document with at least one
2 eye to the fact that this is going to the public?

3 MS. BENSKY: Object to form.

4 THE WITNESS: That could be one
5 perspective.

6 BY MR. SWAMINATHAN:

7 Q That's not your perspective?

8 A My perspective is if we did that, these summary
9 reports wouldn't be 27 pages long, they'd be
10 127 pages long and they wouldn't serve the purpose
11 of what they're intended to be, as a summary
12 report.

13 Q But you've got 22 pages about witness interviews?

14 A Sure. And how do you summarize 22 witnesses?

15 Q So part of the reason -- I think you're saying the
16 fundamental reason you don't include more detail in
17 this section about these non-interview components
18 of the investigation is in part because of space,
19 you just don't want this to become too -- too long;
20 is that correct?

21 A Yeah.

22 Q All right.

23 A Yes.

24 Q Any other reasons?

25 A No.

1 THE WITNESS: That --

2 BY MR. SWAMINATHAN:

3 Q If you included information about Tony Robinson's
4 prior convictions or prior arrests or prior
5 history, would that have been inappropriate to
6 include in this report?

7 A I don't know. We didn't, did we?

8 Q Turn to page 25.

9 A Okay. Yes.

10 Q The second full paragraph begins A.I. said Robinson
11 was a gentle giant and only wanted to belong. Then
12 it goes on to talk about his involvement in an
13 armed robbery.

14 A Okay.

15 Q Why -- why did you include information about a
16 prior conviction for armed robbery?

17 A I didn't.

18 Q Why is this information included in this report?

19 A I don't know. I think it's part of the summary of
20 what our contacts were with the family and that's
21 information they shared and that's --

22 Q Do you believe that's information that should be in
23 this report?

24 A I don't really have an opinion that it should or
25 shouldn't be.

1 Q You don't have any problem with that information
 2 being included in this report?
 3 A No.
 4 Q If you were reviewing this document today to decide
 5 whether or not to include that information in the
 6 report that's going to be shared with the public,
 7 would you leave that information in?
 8 A I don't know what I would do.
 9 Q Well, as you sit here today, what would you do;
 10 you -- you're sitting here, you've got the same
 11 report --
 12 A Uh-huh.
 13 Q -- you've got the circumstances, would you suggest
 14 that -- would you --
 15 MS. BENSKY: Object. This is so far
 16 afield. This really -- I mean, it's -- it's --
 17 we've been here over five hours, and he said this
 18 is a summary of an interview with Tony Robinson's
 19 mother, and this is what she said. His opinion as
 20 to whether or not a different person who wrote this
 21 report should have put this in the report is
 22 totally irrelevant.
 23 MR. SWAMINATHAN: It's not irrelevant. I
 24 mean, the -- the -- I'm getting at a certain amount
 25 of bias in how DCI handled its investigation, and

1 I'm entitled to explore that, and it is extremely
 2 troubling to me that one minute after a DCI agent
 3 says that information about the officer's history
 4 is not relevant, there's all this discussion about
 5 the -- the decedent's history. That's -- that's
 6 totally inappropriate. And so I want to understand
 7 why this kind of information is included. It's --
 8 it's -- I'll be honest, it's infuriating, as
 9 someone who represents the family, and I want to
 10 understand why this kind of information gets put in
 11 a report like this when you wouldn't do that to the
 12 officer.
 13 MS. BENSKY: Okay.
 14 MR. SWAMINATHAN: That's all that I want
 15 to understand.
 16 MS. BENSKY: Don't -- don't argue with
 17 him. This is information that the decedent's
 18 mother shared that a different agent put into the
 19 report, so calm down, I understand you're upset,
 20 but that's -- but the -- the question is not --
 21 he -- he didn't write the report.
 22 BY MR. SWAMINATHAN:
 23 Q You had a responsibility for ensuring -- for -- for
 24 reviewing this report, and you knew when you
 25 reviewed this report that it would go to the

1 public, correct?
 2 A I think you're -- you're not remembering that on
 3 April 6, when this was approved, I wasn't here, I
 4 wasn't working, I didn't approve this report, and
 5 you're not remembering or you're choosing to ignore
 6 the fact that I only reviewed certain portions of
 7 this summary report, those portions that I don't
 8 remember what I reviewed, so what you're asking for
 9 is my opinion.
 10 And I think we're also missing the
 11 point that the process at DCI is that an agent
 12 writes this, that it's reviewed at some point by a
 13 supervisor, me, or somebody else, the typical chain
 14 of command, then it goes up to another supervisor
 15 who reviews it and then another supervisor who
 16 reviews it, so there's a lot of layers of -- I
 17 don't think there's an intent to put something like
 18 this into the report or omit something else from
 19 the report, I know there's not an intent. There's
 20 not an intent to say the words armed robbery in a
 21 -- in a paragraph with Tony Robinson, that's not
 22 the intent, nor is it the intent to exclude
 23 something about Officer Kenny's previous
 24 employment, so --
 25 BY MR. SWAMINATHAN:

1 Q Well, it is the intent to exclude something about
 2 Officer Kenny's employment, because you agree DCI
 3 doesn't look into the officer's prior discipline or
 4 prior shootings when it prepares a report like
 5 this, correct?
 6 A We didn't in this case, and -- nor was there
 7 direction from the district attorney for us to look
 8 into that, because the district attorney ultimately
 9 helps us determine kind of the scope of what do we
 10 need to do next, what -- what have we not done, and
 11 I know the district attorney was aware of those
 12 previous -- that previous incident with Officer
 13 Kenny and Officer Kenny's employment history, and
 14 there was no direction for us to -- to do any
 15 investigation or comparison.
 16 Q You agree the information about Tony Robinson's
 17 past conviction for armed robbery is totally
 18 irrelevant to the issue of whether or not Officer
 19 Kenny's conduct was appropriate or not?
 20 MS. BENSKY: Object to form.
 21 MR. JOHNSON: Join.
 22 THE WITNESS: Yeah, I don't know if my
 23 opinion really matters because I'm not the one
 24 making the -- the decision.
 25 MR. SWAMINATHAN: I'm not asking whether

1 it matters or not.
 2 BY MR. SWAMINATHAN:
 3 Q I'm asking you, do you agree that it is totally
 4 irrelevant to the consideration of Officer Kenny's
 5 conduct?
 6 MS. BENSKY: Objection. You're asking
 7 him to make a legal conclusion in a charging
 8 decision.
 9 THE WITNESS: Yeah, I don't know that
 10 it -- I could say whether or not it's relevant,
 11 because I'm not the one making the decision.
 12 BY MR. SWAMINATHAN:
 13 Q You make decisions as DCI agents and as a
 14 supervising agent about what information from a
 15 thousand-page investigation should be included in a
 16 summary report, correct?
 17 A I do on a typical basis. However, again, I didn't
 18 make the decision on this report because I didn't
 19 approve this report, and I -- as I sit here today,
 20 I don't know who ultimately made the final decision
 21 and said looks good, I think we can approve that
 22 report.
 23 Q This report was ultimately approved by Agent Crowe,
 24 correct?
 25 A Correct.

1 Q And it was -- it was also approved by other
 2 agents --
 3 A Reviewed.
 4 Q -- or other supervisors, correct?
 5 A I'm sorry. Yes, reviewed.
 6 Q By other agents as well?
 7 A I don't know.
 8 Q And --
 9 A I'm sure there was a peer review process, yep.
 10 Q Okay. And ultimately all of those folks would have
 11 reviewed this version of the report, correct, the
 12 final version?
 13 A I don't -- I don't know that.
 14 Q Okay. And as you sit here today, you have no
 15 problem with the inclusion of a statement about
 16 Tony Robinson's former -- prior convictions in this
 17 summary report?
 18 MS. BENSKY: Asked and answered.
 19 THE WITNESS: I -- I don't have an
 20 opinion, if that's --
 21 MR. SWAMINATHAN: Can -- can you read
 22 back my question, please.
 23 (Question was read back.)
 24 THE WITNESS: It doesn't talk about a
 25 conviction. It just talks about Andrea Irwin's

1 summary of what she told Special Agent De La Rosa.
 2 BY MR. SWAMINATHAN:
 3 Q As we sit here today, do you have any problem with
 4 this report telling the public that Tony Robinson
 5 had a prior conviction for armed robbery?
 6 A No.
 7 Q Do you recall there being a point in the
 8 investigation when it was determined that Anthony
 9 Lamone and Javier Lamone should be reinterviewed or
 10 there should be some follow-up conversation with
 11 them?
 12 A Yes.
 13 Q Can you tell me what you remember about that.
 14 A Oh, I just don't recall the details of -- of why.
 15 I do recall that, like many times, in any
 16 investigation, after you talk to witnesses the
 17 first time and then you talk to other witnesses and
 18 just people, whether they're a witness or not a
 19 witness, that share information with you, there's
 20 questions that you'd want to ask that you didn't
 21 ask the first time, so that was one of the reasons.
 22 Q Do you -- go ahead.
 23 A That was the reason, just to --
 24 Q Yeah.
 25 A -- a follow-up interview.

1 Q So sort of -- you remember generally that there was
 2 some effort to -- to follow up with them, but you
 3 don't remember the specifics about why that was the
 4 case, right?
 5 A Correct.
 6 Q And do you remember anything about what follow-up
 7 information you obtained from them?
 8 A I don't. Because I don't know that we actually
 9 conducted the interviews of one of them, or maybe
 10 even both, but I know one of them ultimately spoke
 11 to a district attorney investigator instead of us.
 12 Q Do you know what -- what was communicated to the
 13 district attorney investigator?
 14 A I don't. I know there was a report generated, and
 15 we made that part of our case file.
 16 Q Do you recall generally what was communicated from
 17 -- to the district attorney investigator?
 18 A I don't.
 19 Q Okay. Did have you any conversations with the
 20 attorney for Officer Kenny?
 21 A No. And I -- I qualify that with I don't know if
 22 that attorney or an attorney was with Officer Kenny
 23 when he met with us after this was over. And if
 24 the attorney was with Officer Kenny, there were no
 25 conversations other than what was held in that

1 meeting.

2 Q Did you learn any information during the course of

3 your investigation to suggest that Tony Robinson

4 had a gun or other weapon with him?

5 A No.

6 Q Did you learn any information to suggest that

7 Officer Kenny believed that Tony Robinson had a

8 weapon or gun with him?

9 A I don't know as I sit here today without reviewing

10 Officer Kenny's statement and the dispatch logs, so

11 -- no, outside of what Officer Kenny would have

12 shared in his statement and what was shared through

13 dispatch, I don't know.

14 Q Okay. The case summary report that was prepared,

15 does it state anywhere that DCI found that Tony

16 Robinson was unarmed?

17 A I don't know.

18 Q Okay. You don't know either way?

19 A I don't know either way.

20 Q You've reviewed it -- sorry. Go ahead.

21 A Yeah, having read it, I don't remember seeing that.

22 Q Would you expect to see -- go ahead.

23 A I -- I thought there was a statement by one of the

24 officers that as Officer -- as Tony Robinson was on

25 the ground and he lifted his hands up, as they're

1 providing critical care, he saw that there was

2 nothing in his hands, but that's the only

3 recollection I have.

4 Q Okay. Do you -- if -- if that's not included in

5 this report, would that be an omission?

6 A No, I don't think so.

7 Q In other words, if the report doesn't say Tony

8 Robinson was unarmed, you don't have a problem with

9 that not being in the report?

10 A Right, because it's a summary report. It's -- it's

11 reviewing the facts of what people told us and what

12 we -- what we learned in specific witnesses or

13 scene examination or -- so --

14 Q That's a fact though, correct?

15 A That's a fact.

16 Q So that's not a fact that you think should be --

17 that should definitely be in a summary report?

18 MS. BENSKY: Object to form.

19 THE WITNESS: Well, I don't -- I don't

20 know if we need to put -- I don't know if we need

21 to -- I think a -- somebody who reads this reads

22 the facts, and -- so I don't need to know -- I

23 don't know if we need to make a -- a sentence that

24 says by the way, he was unarmed, because I -- I

25 don't -- I'm not sure where that would go. I don't

1 know -- I'm not sure how we would document that.

2 BY MR. SWAMINATHAN:

3 Q Isn't the fact that Tony Robinson was unarmed a

4 highly relevant fact in the context of this

5 investigation?

6 MS. BENSKY: Object to foundation.

7 THE WITNESS: I don't know if it's for me

8 to say if that's highly relevant or --

9 BY MR. SWAMINATHAN:

10 Q Is it a relevant fact in this investigation that he

11 was unarmed?

12 A Well, I don't --

13 MS. BENSKY: Same objection.

14 THE WITNESS: -- I don't know.

15 BY MR. SWAMINATHAN:

16 Q You have no opinion on whether it's relevant that

17 Tony Robinson was unarmed?

18 A I think it's one fact to look at when the district

19 attorney would review what led to the incident.

20 Q Is it a fact that's relevant enough that you think

21 it would be something worth including in a summary

22 report, like the case summary report?

23 A Again, you asked that, and I've told you, I'm not

24 sure where -- how we would document it. I mean,

25 we've -- we've documented the facts, so -- and I

1 don't --

2 Q Are you saying there's not a page in this 27-page

3 report where you could state that Tony Robinson was

4 unarmed?

5 A Yeah, you sure could put it in there.

6 Q Okay. And what I'm asking is, is that the kind of

7 information that's sufficiently relevant and it

8 ought to be included in a summary?

9 MS. BENSKY: Object to foundation.

10 THE WITNESS: I don't -- I don't know. I

11 didn't make the final decision what was in this

12 summary report.

13 BY MR. SWAMINATHAN:

14 Q Your answer is you don't know?

15 A Yeah, because I -- I didn't make the final decision

16 what's in the summary report, and I think the

17 purpose, again, of the summary report is to

18 summarize the facts and --

19 Q As a supervising agent who reviews these kinds of

20 reports, do you have any problem with the idea that

21 this document doesn't state as a fact that Tony

22 Robinson was unarmed?

23 A Yeah, I'm not sure that I --

24 Q My question is just, would you -- do you have a

25 problem with that being included or not being --

1 with that not being included?
 2 A No.
 3 Q Okay.
 4 MR. SWAMINATHAN: Do you know what
 5 exhibit number the Kenny -- the transcript of
 6 Officer Kenny's statement is? Otherwise I'll just
 7 mark it with a new number.
 8 MR. JOHNSON: I don't have that off the
 9 top of my head. Sorry.
 10 MR. SWAMINATHAN: Do either of you guys
 11 know it? I'll just mark it with a new number.
 12 (A discussion was held off the record.)
 13 (Exhibit 136 marked for identification.)
 14 BY MR. SWAMINATHAN:
 15 Q I'm handing you a document marked Exhibit 136.
 16 A Thank you.
 17 Q It's Bates stamped DCI 822 through 886.
 18 MR. JOHNSON: Did you say 822?
 19 MR. SWAMINATHAN: 822 to 866.
 20 MR. JOHNSON: Thanks.
 21 MR. SWAMINATHAN: Sorry, 886.
 22 BY MR. SWAMINATHAN:
 23 Q Did you review this document in preparation for
 24 today's deposition?
 25 A I did not.

1 Q Have you reviewed this document at any point during
 2 your involvement in the Robinson shooting
 3 investigation?
 4 A No, I don't think I have. No, not in its entirety.
 5 Q So you reviewed -- you've reviewed parts of this
 6 report?
 7 A I have not reviewed this report.
 8 Q Have you reviewed -- and -- strike that. This
 9 report from Agent Fernandez basically includes a
 10 transcript of an interview with Officer Kenny,
 11 correct?
 12 A Yes.
 13 Q Okay. Have you reviewed that transcript of the
 14 interview of Officer Kenny?
 15 A No.
 16 Q Had you reviewed it at any time during what --
 17 during -- strike that. Had you reviewed it when
 18 you were involved with the Robinson shooting
 19 investigation?
 20 A I don't think I had.
 21 Q Okay. Had you listened to the recording of the
 22 interview with Officer Kenny?
 23 A No.
 24 Q Okay. So as you sit here today, you've never
 25 listened to or read the statement of Officer Kenny

1 in the -- in the Robinson shooting matter; is that
 2 correct?
 3 A I don't think I have.
 4 Q Okay. Let's turn --
 5 A And I would just -- I would note again, this was
 6 approved April 7, and so this would have been
 7 during the time frame in which I was away.
 8 Q Thank you. Do you know -- and I will probably know
 9 the answer to this, but I have to have a clear
 10 record.
 11 A Yeah.
 12 Q Do you know if Officer Kenny made any changes to
 13 the transcript of -- or statement that's documented
 14 here as his interview?
 15 A I would have no idea. I think that would be an
 16 appropriate question for Special Agent Fernandez or
 17 De La Rosa.
 18 Q Okay. Would you turn to page 24 of 62, DCI 848.
 19 A Okay.
 20 Q All right. Actually, let me just -- I'm sorry, let
 21 me move back to page -- page 1 of the narrative.
 22 A Okay.
 23 Q Or page 2 of the narrative. All right. So page 1
 24 of the interview itself, which is DCI 825, do you
 25 see that?

1 A Yes, I do.
 2 Q All right. So there it says the witnesses present
 3 are Officer Kenny, Special Agent De La Rosa,
 4 Officer Kenny's attorney, Roger Palek, and his
 5 business agent, Jerry Tomczak, and then a Madison
 6 police detective, Michelle Riesterer, do you see
 7 that?
 8 A Yes.
 9 Q Okay. We talked earlier about the involvement
 10 of -- of Madison Police Officer Riesterer in this
 11 interview, correct?
 12 A Yes.
 13 Q Okay. Do you -- did you participate in any
 14 discussion about whether Ms. Riesterer would sit in
 15 on this particular interview with Officer Kenny?
 16 A No. Not that I recall, no.
 17 Q Did you have any discussion with Officer De La Rosa
 18 before the interview of Officer Kenny, specifically
 19 with regard to the interview and what would be
 20 asked and all those kinds of things?
 21 A Not that I recall, and if I did, I would just kind
 22 of go back to what I said before, I'm more of a
 23 coach, I may have been a player at one time, but
 24 now I allow the people that actually do this and do
 25 it really well and are practiced at it and have

1 studied it and prepared for it, I trust in them, so
 2 to answer your question, no.

3 Q Okay. Turn to page 24 of 62 of the report, DCI
 4 848.

5 A Okay.

6 Q All right. And if you need to read a little bit of
 7 the information on the previous page, into page 24,
 8 you can do that, but I'll tell you my question
 9 first, so you can -- you can decide if you need to
 10 do that. Do you see where it says in the middle of
 11 the page, okay, so what we're going to do now,
 12 Michelle and I will step out and you guys can
 13 review it on your own as much as you need to. It's
 14 approximately 12:36 p.m. Do you see that? It's --

15 A Yep.

16 Q Yep. Line 1093 is where it begins. Do you see
 17 that?

18 A Okay. Yes.

19 Q All right. So basically your understanding that
 20 Officer Kenny and his attorney and business agent
 21 were given an opportunity to review the video from
 22 his squad car essentially for a period by
 23 themselves while Officer -- while Agent De La Rosa
 24 and Police Officer Riesterer left the room,
 25 correct?

1 A Yes, that's what it appears.

2 Q Okay. And they -- essentially Officer Kenny was in
 3 the room with his attorney and business agent from
 4 approximately 12:36 p.m. to 1:53 p.m. with the
 5 video, correct?

6 A I don't know if they were in there the whole time
 7 with the video or if they were in there with -- I
 8 don't know what took place between 12:36 and 1:53.

9 Q Okay.

10 A But it sounds like at 12:36 they left them with the
 11 video and they resumed the interview at 1:53, it
 12 says returning from a break, so -- that leads me to
 13 believe there was also probably a break in
 14 conjunction with the reviewing of that video.

15 Q Sure.

16 A But that's merely an assumption, so --

17 Q Right. And so putting aside the amount of time --

18 A Yep.

19 Q -- Officer Kenny and his attorney and agent were
 20 allowed to review the video for some period of time
 21 on their own, and then subsequently Officer Kenny
 22 was asked questions about what took place during
 23 the incident, correct?

24 A Yes.

25 Q Okay. Does that raise any concerns for you, is

1 that typical, atypical, can you give me any sense?

2 A No, it doesn't raise a concern with me, one,
 3 because I trust Special Agent De La Rosa's
 4 judgment, as to when he would show the video;
 5 and -- and two, it may have helped with the recall
 6 of Officer Kenny as to what took place, so I'm not
 7 -- no concern.

8 Q You agree at the time that -- that Officer Kenny
 9 and his attorney and agent were allowed to review
 10 the video, up to that point, Officer Kenny has
 11 never been asked any questions about what happened
 12 at the time he shot Tony Robinson and what he saw
 13 and observed, correct?

14 A Without reading all what took place between --
 15 before 12:36. It sounds like he was giving his
 16 background information as to what happened right
 17 before the incident, how he traveled to the
 18 incident and he arrived on Willy Street, and then
 19 it sounds like it's at that point he was shown the
 20 video.

21 Q Okay. And so -- and your understanding is prior to
 22 this date on March 9, when he's sitting down for
 23 the statement, he had not previously provided any
 24 statement to -- to DCI about what happened at the
 25 time he shot Tony Robinson, correct?

1 A That's correct.

2 Q Okay. So this is the first time DCI's going to
 3 learn from Officer Kenny what his story is about
 4 what happened, correct?

5 A Correct.

6 Q Okay. And he was given an opportunity to review
 7 the entire video with his attorney and agent before
 8 having to answer those questions; is that correct?

9 A Correct.

10 Q Okay. And prior to sitting down for this interview
 11 on March 9, he was also given an opportunity to
 12 walk through the scene where the shooting took
 13 place; is that correct?

14 A I don't know if he walked through the scene, but he
 15 was at the scene, and, I -- again, I just want to
 16 be careful with the words we choose, I don't know
 17 if he walked through it, up the stairway and down
 18 the stairway or if he was just at the scene, but he
 19 was at the scene and he did a walk-through, yes.

20 Q Okay. And -- and so tell me about DCI's policy
 21 about doing -- well, strike that. So at the time
 22 he's asked questions about what happened, he's been
 23 given an opportunity to walk through the scene and
 24 to review a video of what took place?

25 A Yes.

1 Q Okay. Is that in any way problematic?

2 A No. I think the walk-through is probably

3 particularly helpful in allowing Officer Kenny or

4 any other officer to kind of recall what was all

5 happening, the surrounding -- to get a sense for

6 the surroundings and the size and the direction and

7 maybe bring back all those senses and all those

8 memories, that's going to allow for us to get the

9 most detailed and accurate statement, so the

10 walk-through, no.

11 And I would say the same with the

12 video, and particularly this video, because having

13 watched the video, I know it doesn't show what took

14 place in the stairway where the event took place,

15 and so there's not a concern from my standpoint in

16 showing Officer Kenny the video, because it doesn't

17 capture the -- the event.

18 Q So if the video had captured the event, then you'd

19 have more concern?

20 A I have no idea. I'd have to see the video.

21 Q Okay. You said the walk-through is particularly

22 helpful -- well -- well, strike that. Officer

23 Kenny is the subject of a criminal investigation,

24 correct?

25 A Yes.

1 Q Do you grant other subjects of criminal

2 investigations outside of an officer-involved

3 shooting investigation like this the opportunity to

4 do a walk-through before asking them any questions?

5 A If they're cooperating, yeah, we have; we would,

6 potentially.

7 Q How regularly do you do that?

8 A Not regular.

9 Q Is it rare?

10 A Yes.

11 Q Okay. It would be very rare to grant somebody who

12 is the subject of a criminal investigation an

13 opportunity to walk through the entire scene before

14 asking them any questions about what occurred,

15 wouldn't you agree?

16 MS. BENSKY: Object. That misrepresents

17 what he said.

18 THE WITNESS: So yeah, that's not what I

19 said, but --

20 BY MR. SWAMINATHAN:

21 Q Do you agree with that?

22 A You're going to have to ask it again or another

23 way, because I'm not --

24 Q Do you agree that it would -- that it is extremely

25 rare to take the subject of a criminal

1 investigation and give them an opportunity to do a

2 walk-through of the scene before asking them any

3 questions about what happened?

4 A Again, it would be -- it's rare because it really

5 depends on the circumstances, and these are -- this

6 is a rare circumstance, so yes, that's -- it's

7 unusual, but it's unusual because, unlike --

8 Q Sorry, and I don't mean to -- criminal

9 investigations are not rare, correct?

10 A Hold on.

11 Q Yeah, go ahead. No, go ahead.

12 A That he was rude.

13 Q No, I'm sorry. Go ahead.

14 A Yeah. In your typical homicide investigation, you

15 typically don't have somebody -- you have a citizen

16 who uses deadly force against somebody else, and

17 they don't -- they may not have the privilege,

18 unless they have some self-defense privilege, so

19 you're comparing apples and oranges when you --

20 when you're asking me the question.

21 Q What's the apples and oranges?

22 A They're both homicide investigations, so they're

23 both a fruit, but the -- one is involving a law

24 enforcement officer who may be justified in using

25 deadly force, whereas typically in a homicide

1 investigation, you don't have somebody who has that

2 justification to use it, unless there's clearly

3 circumstances where people may -- may have a

4 self-defense privilege, but -- so yes, it's

5 unusual.

6 Q And let me ask this, you've got a scenario where --

7 you investigate homicides where you've got someone

8 who's, for the most part -- strike that. The vast

9 majority of homicide investigations you do, the

10 suspect is not a law enforcement officer, correct?

11 A Correct.

12 Q And what makes this unique is here the subject of

13 the investigation is a law enforcement officer,

14 correct?

15 A Correct. And I would add that unlike most homicide

16 investigations, the person who is the focus in the

17 investigation in this particular matter is

18 cooperating with law enforcement, which is unlike

19 most of the other homicide investigations we do.

20 If I had a homicide investigation where somebody

21 said I shot this person and I would like to tell

22 you all about it, and I'm going to tell you exactly

23 what happened from start to finish, it really would

24 help me if we went out there and I showed you where

25 it was at, because it's complicated, I would say

1 you got it.

2 Q Is that something Officer Kenny said in this

3 case --

4 A I don't know.

5 Q -- that he really would like to review the scene?

6 A I don't know.

7 Q Is the reason Officer Kenny was given an

8 opportunity to do a walk-through because he was

9 cooperating in the investigation or because what

10 makes it unique is he's a law enforcement officer

11 who's the subject of a criminal investigation?

12 A Because he's cooperating in the investigation. And

13 if there was a citizen who shot and killed somebody

14 and said I'm going to tell you everything that

15 happened, I don't think it would be unusual or rare

16 -- maybe it would be rare, because I don't think it

17 happens a whole lot, unfortunately, I don't think

18 it would be unusual or out of line to say let's go

19 out to where this happened. And we do it on a

20 basis where somebody ultimately tells us a lie in

21 an investigation as a citizen, suspect, and then

22 later turns around and says I want to tell you what

23 happened, and we say let's go out to where it

24 happened and show us.

25 Q An that's not uncommon, where you would -- that's

1 pretty typical, where you take somebody out who's

2 the suspect -- well, strike that. What's typical

3 is you take somebody who's a suspect and ask them

4 questions about what happened, and then, after

5 they've answered questions, you might take them to

6 the scene to answer further questions, because now

7 you might have caught them in a contradiction,

8 correct?

9 A But the apple and the orange here is typically

10 they're not cooperating.

11 Q Okay. So there's nothing about the fact that he's

12 a law enforcement agent that makes this scenario

13 different; it's just the fact that he was

14 cooperating that makes this different?

15 A That's -- yeah, that's how I -- I view it.

16 Q Okay. So if he hadn't been cooperating, he

17 wouldn't have been given the opportunity to do a

18 walk-through, for example?

19 A Then he wouldn't probably have done one, because he

20 wasn't cooperating.

21 Q Okay. And would it be typical in the case of the

22 non-law enforcement agent who's the subject of a

23 criminal investigation to not only give them an

24 opportunity to do a walk-through, but to have their

25 attorney present while they do that walk-through?

1 MS. BENSKY: Object to form.

2 THE WITNESS: Well, if it's a voluntary

3 statement and they request an attorney or they tell

4 us they have a representative or an attorney, we

5 have to honor that.

6 BY MR. SWAMINATHAN:

7 Q Do you have any concern that Officer Kenny had an

8 opportunity to sit down and review the video with

9 his attorney before being asked any questions about

10 what happened in that stairwell?

11 A No, because I've answered that already --

12 Q Okay.

13 A -- as to why.

14 Q Okay. If Officer Kenny had desired a lie about

15 what happened in that stairwell, do you agree that

16 giving an -- giving him an opportunity to do a

17 walk-through and giving him an opportunity to

18 review the video that was available would give him

19 an opportunity to essentially tell a story

20 consistent with the evidence?

21 MS. BENSKY: Object to form and

22 foundation.

23 MS. HARRELL: Join.

24 MR. JOHNSON: Join.

25 THE WITNESS: And I can just say that I

1 -- I can't even begin to guess what somebody would

2 do if they were going to do something else. I

3 don't -- I'm -- I can't tell their mindset.

4 BY MR. SWAMINATHAN:

5 Q That -- that wouldn't be a downside at all of

6 showing him -- letting him do a walk-through and

7 showing him the video, is that he might be able to

8 come up with a story that's consistent with those

9 other pieces of evidence?

10 MS. BENSKY: Same objection.

11 MR. JOHNSON: Join.

12 THE WITNESS: And it's my same answer.

13 BY MR. SWAMINATHAN:

14 Q What's the -- what's the answer?

15 A I can't begin to even -- I can't predict what

16 somebody else would do if they were going to do

17 something else and their mindset. I -- I just can

18 look at the facts of this and relay the assessment

19 that Special Agent De La Rosa made in having the

20 walk-through done and -- and showing the video in

21 that Officer Kenny wanted to cooperate and provide

22 a statement, and to get the most accurate

23 statement, neither of those two things, I don't

24 think, were going to affect the accuracy of his

25 statement.

1 Q What's that?
 2 A They were probably going to --
 3 Q Sorry.
 4 A -- they -- they would hopefully be more likely to
 5 improve his statement, just because he's able to
 6 recall oh, this is where I was or -- you know, all
 7 the -- the environment in which he was in.
 8 Q Were any of the witnesses in the Robinson shooting
 9 case given an opportunity to retrace their steps
 10 before statements were taken from them?
 11 A I don't know. And I'm not sure that it was
 12 necessary to do that with any other witnesses.
 13 Q We talked earlier about there being circumstances
 14 or factors to consider in terms of when it's
 15 appropriate to show an officer video --
 16 A Uh-huh.
 17 Q -- before taking their statement and when it would
 18 be inappropriate, do you recall that?
 19 A Yes.
 20 Q Okay. So what I'm asking now about is one of the
 21 circumstances, one of the factors you had to take
 22 into consideration when you're going to show an
 23 officer a video and let them do a complete
 24 walk-through before you ask them any questions, and
 25 my question is, is there a downside to having

1 granted Officer Kenny an opportunity to do a
 2 walk-through and to review the video of the
 3 incident before asking him any questions?
 4 MS. BENSKY: Well, object to form. And
 5 secondly, he's answered that several times.
 6 THE WITNESS: And if somebody was going
 7 to lie, they're going to lie.
 8 BY MR. SWAMINATHAN:
 9 Q So is the answer no, there's no downside?
 10 A I'm not sure if there's a downside or not. I think
 11 that really is a perspective question.
 12 Q And if you agree that -- and if they -- if they're
 13 going to lie, they're going to lie, something you
 14 just said, would you agree that if you give them
 15 access to all the evidence before you ask them any
 16 questions, they can come up with a better lie?
 17 MS. BENSKY: Object to form.
 18 MS. HARRELL: Foundation.
 19 THE WITNESS: And it's not all the
 20 evidence, and it's really a -- a review of the area
 21 and -- and a review of the video. And again,
 22 I'll -- I'll note, one more time, is that with the
 23 video, it doesn't show what took place, so --
 24 showing the video is -- I don't have concern about,
 25 nor do I have concern about the walk-through.

1 BY MR. SWAMINATHAN:
 2 Q The -- the -- let's -- let's take Officer Kenny out
 3 of it for a moment. Do you agree with this general
 4 principal, if someone is going to lie, if you give
 5 them access to the evidence, they can come up with
 6 a better lie?
 7 MS. BENSKY: Objection. You're asking
 8 him to speculate.
 9 THE WITNESS: Yeah, that's theory, and
 10 that's -- the obvious answer is yes.
 11 MR. SWAMINATHAN: Okay.
 12 BY MR. SWAMINATHAN:
 13 Q So the answer is yes, that's common sense?
 14 A In that hypothetical, large scale theory that
 15 you're proposing, yes.
 16 Q And it's not just theory, it's common sense,
 17 correct?
 18 A Yes.
 19 Q Okay. And that common sense, that theory is
 20 exactly why it's very rare to do that for any --
 21 any other criminal investigation, to provide the
 22 evidence to the subject --
 23 MS. BENSKY: Object --
 24 MR. SWAMINATHAN: -- before you ask them
 25 any questions, correct?

1 MS. BENSKY: -- object to form. And that
 2 is completely not what he had testified to earlier.
 3 THE WITNESS: And I would just add,
 4 again, it's rare, but it doesn't mean we wouldn't
 5 do it. Just because something's rare doesn't make
 6 it a bad idea.
 7 MR. SWAMINATHAN: Right.
 8 BY MR. SWAMINATHAN:
 9 Q But the fact that you don't do it in the vast
 10 majority of instances is a reflection of that very
 11 principal, you don't want to give somebody an
 12 opportunity to tell a better lie, correct?
 13 A No, it's --
 14 Q Okay. Go ahead.
 15 A -- it's --
 16 THE WITNESS: What did he just say?
 17 Could you just --
 18 MR. SWAMINATHAN: Sure. Read that back,
 19 please.
 20 THE WITNESS: -- read that back to me,
 21 please.
 22 (Question was read back.)
 23 THE WITNESS: That's not the reason.
 24 It's because the vast majority of the circumstances
 25 don't involve people that are cooperating with law

1 enforcement.

2 And, again, I would go back to if

3 tonight you unfortunately had to use deadly force

4 against somebody that broke into your home or your

5 apartment and you shot and killed them and you

6 said, Agent Engels, I want to tell you everything

7 that happened and we knew the snapshot of what took

8 place, if we had some background information that

9 you may have been justified in using force, I don't

10 think that there's -- I think there's an upside to

11 being able to have you recall where certain things

12 were at and certain positions were at, and if there

13 was a surveillance camera that caught the -- caught

14 part of it, that maybe allowed to you refresh your

15 memory, I don't -- although that's rare, I see it

16 as possible, I see that as something that

17 potentially could be helpful.

18 BY MR. SWAMINATHAN:

19 Q In that example if I said to you -- as long as I'm

20 cooperative and I'd say all right, lay out all your

21 evidence for me, you'd let me look at all the

22 evidence because I'm cooperating?

23 A That's not what I said.

24 Q Isn't that true based on what you're telling me, or

25 why do I have it wrong?

1 A If you said lay out all your evidence, I would say,

2 respectfully, no, we're going to limit it to --

3 we're going to let you take a look at this, and we

4 may let you look at the video, depending what's on

5 the video, how much it captures, how good it is,

6 all those circumstantial things that we consider

7 and assess. I -- I wouldn't lay out all the

8 evidence, nor did we lay out all of the evidence to

9 Officer Kenny.

10 Q Okay. Does DCI have a 72-hour policy related to

11 when interviews are conducted of officers -- strike

12 that. Let me ask one other question first to

13 finish up this issue.

14 A Uh-huh.

15 Q Did Officer -- are you aware of Officer Kenny ever

16 communicating that he needed to be able to do a

17 walk-through and review the video in order to

18 remember what took place that day?

19 A I don't know. That would really be a question for

20 Special Agent De La Rosa, who's communicating -- he

21 was the link, the primary communicator between

22 Officer Kenny -- with Officer Kenny and -- and his

23 representative.

24 Q Does Officer -- does -- does DCI have any policies

25 about when the interview of the officer involved

1 should take place?

2 A No policies.

3 Q Does it have any practices about when the interview

4 should take place of the officer involved?

5 A No, I think -- practices I think there's an obvious

6 standard practice that it's voluntary, so we'll

7 take it -- I can tell you what -- the way I

8 supervise a case. If -- whenever a cooperative

9 subject wants to provide a voluntary statement,

10 I'll take it. If that would be -- not I, but I

11 would say we as an investigating group, I'd say

12 we'll take it. You may have an officer who's

13 involved in an incident that says I want to talk to

14 you right now, and it's been eight hours or two

15 hours, I'm willing to take the statement.

16 Q Does -- does DCI have any kind of policy or

17 practice about waiting 72 hours?

18 A Yeah, I think there's a practice.

19 Q Tell -- tell me what that practice is relating to

20 72 hours.

21 A Sleep cycles, allowing somebody to get some sleep

22 cycles, to provide for that memory recall, to kind

23 of facilitate in order for us to get the most

24 detailed, accurate statement from -- from somebody

25 involved in a high-stress event.

1 Q The idea is that by waiting 72 hours, their memory

2 will be better; is that right?

3 A Yes.

4 Q Okay. Is that same thing done for the other people

5 who were interviewed in the Robinson investigation

6 case, wait 72 hours?

7 A No.

8 Q Would you agree that the vast majority of the --

9 the key witnesses and eye witnesses in the Robinson

10 case were interviewed within 72 hours of the

11 incident?

12 A Yes.

13 Q Were there any witnesses for whom you deliberately

14 waited 72 hours before asking them any questions

15 about what happened other than Officer Kenny?

16 A No.

17 Q Are there any restrictions on how, when you can

18 interview the officer involved that are based on

19 union contracts or union requirements?

20 A Not that I'm aware of.

21 Q Okay. Were there any Madison Police Department

22 policies or practices that placed any restrictions

23 or how or -- on how or when you could interview

24 Officer Kenny?

25 A I don't know. And if there were, I'm not sure that

1 really matters to us.
 2 Q Explain what you mean by that.
 3 A Well, those would be administrative matters, and --
 4 their union contract may say something, but really
 5 this is a criminal investigation and --
 6 Q You wouldn't have to abide by that policy or --
 7 strike that. You wouldn't have to -- you wouldn't
 8 have to abide by some policy of the Madison Police
 9 Department on that issue, correct?
 10 A Correct. Not only would I not -- not I, but not
 11 only would we not have to abide by it, but it may
 12 not -- we may not care.
 13 Q Would the same thing be true of a union contract
 14 that might apply?
 15 A Yes. That's what I consider administrative, yes.
 16 Q Sorry. I -- and I was trying to make a
 17 distinction.
 18 A Yeah.
 19 Q I was just trying to cover the -- two subjects, one
 20 is union contracts and one is Madison Police
 21 Department policies and practices. In both the
 22 case of the Madison Police Department policies --
 23 policies and practices and union contracts, even if
 24 those documents created restrictions on how and
 25 when the officer involved should be interviewed,

1 A Yes.
 2 Q And we've talked about your role in approving
 3 various reports and reviewing various reports,
 4 including the case summary report, correct?
 5 A Yeah.
 6 Q Any -- any other involvement in the Robinson
 7 shooting matter that we haven't discussed that you
 8 think we should cover?
 9 A No.
 10 Q Okay. The last question I have is we've reviewed
 11 your -- strike that. We've reviewed your -- strike
 12 that. You've reviewed the case summary report in
 13 preparation for today's deposition, correct?
 14 A Yes.
 15 Q And you've had a chance to review -- review it
 16 and -- and we've talked about at length during this
 17 deposition, correct?
 18 A Yes.
 19 Q Is there anything else that you learned during your
 20 involvement in the Robinson shooting investigation,
 21 in your conversations with agents, with Madison
 22 police officers or anyone else that you believe is
 23 important to what happened in the Robinson shooting
 24 case that's not documented in the case summary
 25 report?

1 DCI doesn't have to follow those and may not care;
 2 do I have that right?
 3 A You have that right.
 4 Q Okay.
 5 MR. SWAMINATHAN: I need three minutes to
 6 just check my notes and make sure I don't have
 7 anything else.
 8 MS. BENSKY: Sure.
 9 (A recess was taken from 3:09 p.m. until 3:13 p.m.)
 10 BY MR. SWAMINATHAN:
 11 Q All right. Do you have any other involvement in
 12 the Robinson shooting investigation other than the
 13 things we've discussed today?
 14 A No.
 15 Q And to be clear, we've talked about several reports
 16 that you wrote related to your contacts with the --
 17 Tony Robinson's family, correct?
 18 A Yes.
 19 Q We've talked about your role in coordinating and
 20 supervising the interviews and work that was done
 21 by other agents who were working under you,
 22 correct?
 23 A Yes.
 24 Q We've talked about some communications that you had
 25 with the district attorney, correct?

1 A No. And it's a summary report, so no.
 2 Q And -- and to put a final point on it, there's
 3 nothing you recall any Madison police officer or
 4 DCI agent or anyone else telling you that you
 5 thought was very important information about what
 6 took place on March 6 that's not documented in the
 7 March 6 case summary report; is that correct?
 8 A As I sit here today, I just don't know what it
 9 would be.
 10 Q You can't -- you can't think of anything?
 11 A Without reviewing all the reports and starting this
 12 -- trying to recall all of those details and really
 13 fine tooth combing that summary report, no.
 14 Q Okay. You reviewed -- you spent some time looking
 15 over the DCI reports in preparation for today's
 16 deposition, correct?
 17 A I missed that. What was it?
 18 Q You spent some time reviewing the DCI reports that
 19 were prepared in the Robinson shooting matter in
 20 preparation for today's deposition, correct?
 21 A Yeah, just a few.
 22 Q Okay. And you spent some time looking at your own
 23 documents and papers in -- last night in
 24 preparation for this deposition, correct?
 25 A Yes.

1 Q And you reviewed the case summary report in
 2 preparation for this deposition, correct?
 3 A Yes.
 4 Q Okay. And none of those steps that you took to
 5 prepare for today's deposition caused you to
 6 remember anything related to what happened on
 7 March 6 that you believe is important that isn't
 8 documented in the case summary; is that correct?
 9 MS. BENSKY: Asked and answered.
 10 THE WITNESS: Yes. And the reason why,
 11 sir, is the facts are documented in these two
 12 binders, and the purpose of the summary report is
 13 to be a summary.
 14 MR. SWAMINATHAN: Okay.
 15 BY MR. SWAMINATHAN:
 16 Q And this is the last question then, did you have
 17 any conversation, the kind of conversation that
 18 wouldn't be documented in a DCI report, you know,
 19 maybe a conversation with another DCI agent or a
 20 conversation with a Madison police officer, the
 21 kind of thing that may not be documented in a
 22 report, that you recall as you sit here today that
 23 you believe is important to understanding what
 24 happened on March 6?
 25 A No.

1 MR. SWAMINATHAN: Okay. I have nothing
 2 else.
 3 THE WITNESS: Okay.
 4 MR. SWAMINATHAN: Thank you for your
 5 time.
 6 (Deposition concluded at 3:17 p.m.
 7 (Original exhibits attached to original
 8 transcript. Copies of exhibits attached to copies
 9 of transcript.)
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1 STATE OF WISCONSIN)
) SS:
 2 MILWAUKEE COUNTY)
 3
 4 I, Shelly Loniello, Registered
 5 Professional Reporter and Notary Public in and for
 6 the State of Wisconsin, do hereby certify that the
 7 preceding deposition was recorded by me and reduced
 8 to writing under my personal direction.
 9 I further certify that said
 10 deposition was taken at the WISCONSIN DEPARTMENT OF
 11 JUSTICE, 17 West Main Street, Madison, Wisconsin,
 12 on the 19th day of April, 2016, commencing at
 13 9:08 a.m.
 14 I further certify that I am not a
 15 relative or employee or attorney or counsel of any
 16 of the parties, or a relative or employee of such
 17 attorney or counsel, or financially interested,
 18 directly or indirectly, in this action.
 19 In witness whereof, I have hereunto
 20 set my hand and affixed my seal of office on this
 21 30th day of May, 2016.
 22
 23 _____
 24 SHELLY LONIELLO, RPR
 Notary Public
 25 My commission expires July 01, 2017.