United States District Court for the Western District of Texas
Austin Division

Tyree Talley,	§	
Plaintiff,	§	
	§	Case no. 1:21-cv-00249
v.	§	
	§	
City of Austin and	§	
John Does,	§	
Defendants.	§	

Plaintiff's Complaint and Request for Jury Trial

To the Honorable Court:

I. Introduction

This is a lawsuit about an as-yet unidentified Austin police officer or officers who shot Plaintiff Tyree Talley twelve times in the ear, arm, groin, and legs. Officer Doe(s) shot Tyree without any warning. Tyree is deaf. The officer(s) continued to shoot Tyree even after he was on the ground in the fetal position. Tyree was shot twelve times to punish him for participating in a peaceful protest against police brutality. Most of the bullets were fired *after* Tyree was on the ground.

This lawsuit is also about the City of Austin's appalling response to protests—especially its pattern of violently violating demonstrators' civil rights—during the weekend of May 30–31, 2020. The City compounded its mishandling of the situation by failing to investigate or attempt to deter further misconduct by Officer Does and other police.

Officers also failed to follow protocol required and failed to utilize services available to the APD when interacting with a deaf civilian. The Americans with Disabilities Act (ADA) and Section 504 prohibit discrimination and police misconduct against individuals based on disability.

(42 USC. § 12131, et seq. and 29 USC. § 794). No attempt was made by police to communicate to Tyree that he was required to clear the area. No extra steps or precautions were taken by APD before they started shooting into the crowd.

Finally, based on multiple credible sources, the City caused severe injuries by allowing its stockpile of "less-lethal" munitions to expire, and thus harden, and then arming its police with these expired munitions for crowd control during peaceful demonstrations.

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II. Parties

1. Tyree Talley is a resident of Austin, Texas.

2. The City of Austin is a Texas municipal corporation in the Western District of Texas. Brian Manley is Austin's policymaker when it comes to policing.

3. Defendant John Doe(s) are one or more as-yet unidentified (to Tyree or the Austin community, anyway) Austin police officer(s).

III. Jurisdiction

4. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

5. This Court has general personal jurisdiction over the Officer Defendants because they works and lives in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

6. This Court has specific personal jurisdiction over the Officer Defendants and the City because this case is about their conduct that occurred here in Austin, Texas.

IV. Venue

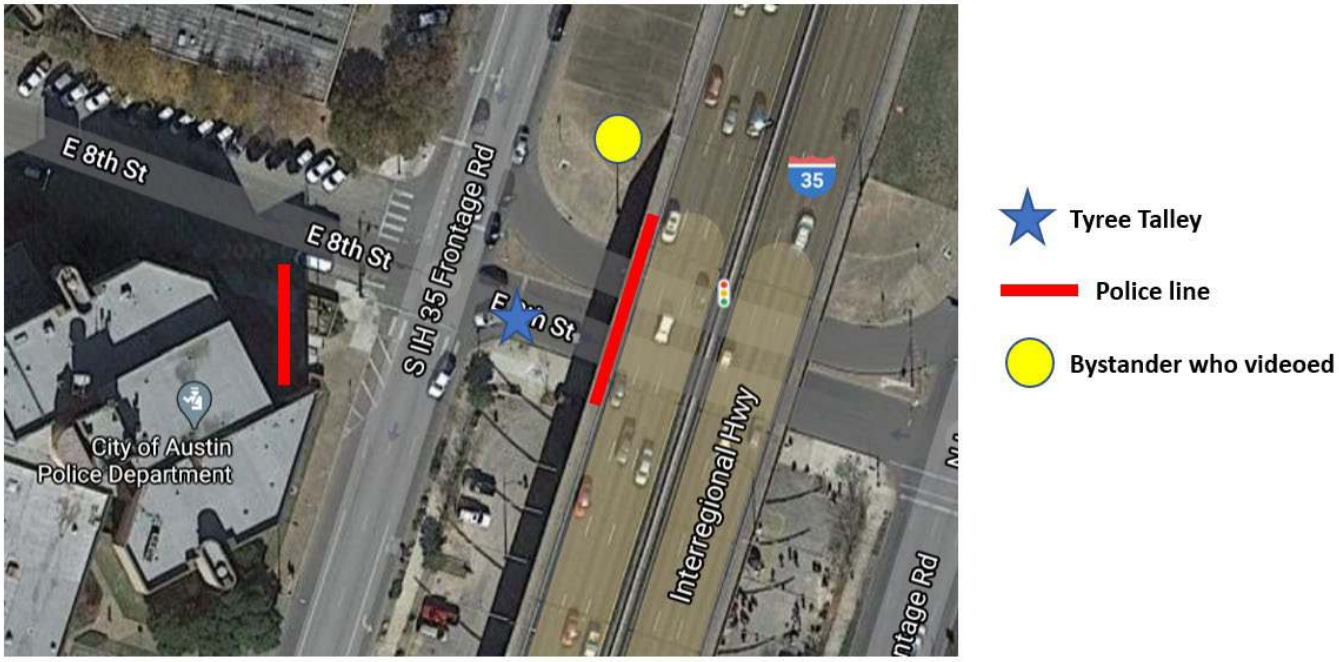
7. Under 28 U.S.C. § 1391(b), the Western District of Texas is the correct venue for this lawsuit because the events described above and below occurred in Austin.

V. Facts

A. Officers shot Tyree Talley without warning and even though he was doing nothing wrong.

8. On the evening of May 31, 2020, Tyree Talley was peacefully exercising his constitutional right to assemble and protest the government. Tyree and his friends were gathered with a group of protestors near the southeast corner of 8th Street and the I-35 frontage road. In other words,

Tyree was across the street from the Austin Police Department headquarters. Austin police officers were standing on the I35 bridge that carries interstate traffic above 8th Street and another line of officers was standing at the east end of the plaza in front of APD headquarters:



9. This picture taken by a bystander at approximately the same time that Tyree was shot shows the two police lines, one above the crowd on the bridge and the other on the elevated plaza in front of APD headquarters:

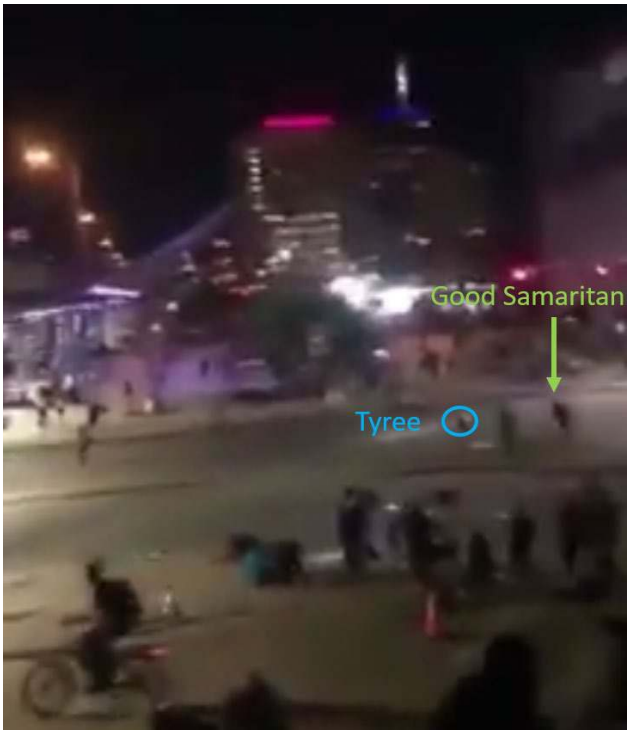
10. Tyree, who is deaf, did not hear or see any indication that law enforcement was commanding him to clear the area.

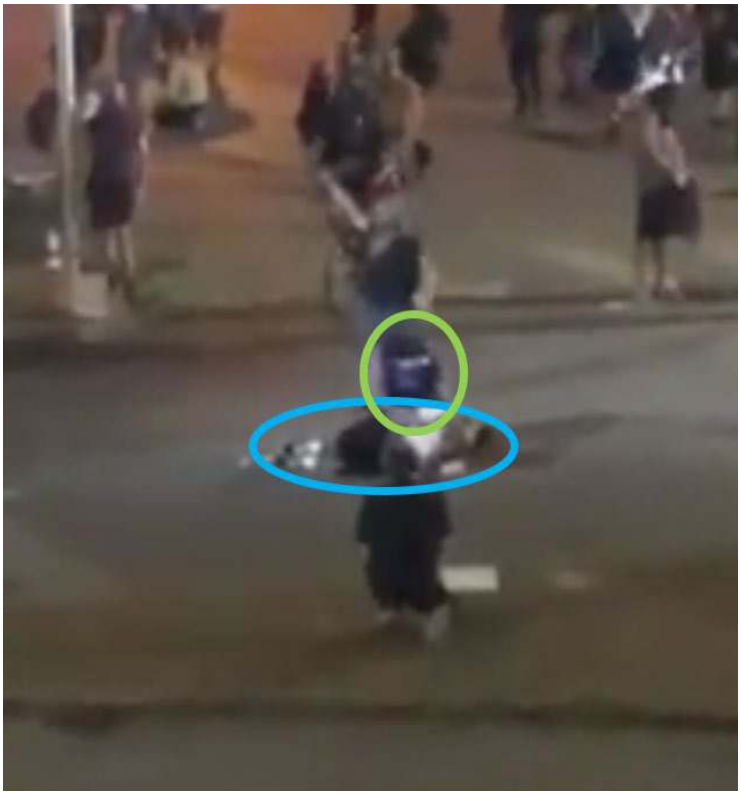
11. At approx. 9:15pm, Tyree felt something whiz by his ear. He felt his ear to see what happened and began to realize that he had been shot.

12. Less than a second later, and before he could react, Tyree was struck in the groin with an APD projectile and collapsed in the crosswalk in pain. This screenshot from bystander video shows Tyree collapsed in the street:

13. Tyree was then shot ten more times by Austin police *while he was on the ground in the fetal position*.

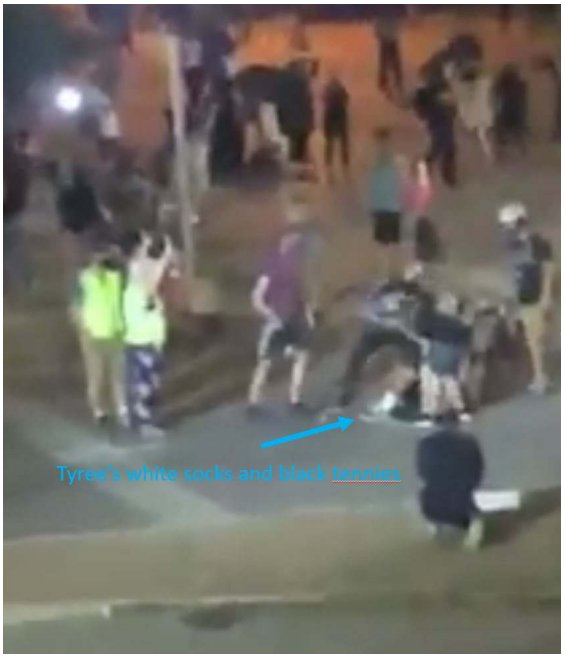
14. The bystander video shows a Good Samaritan run to help Tyree even as the audio shows that the police were still shooting:



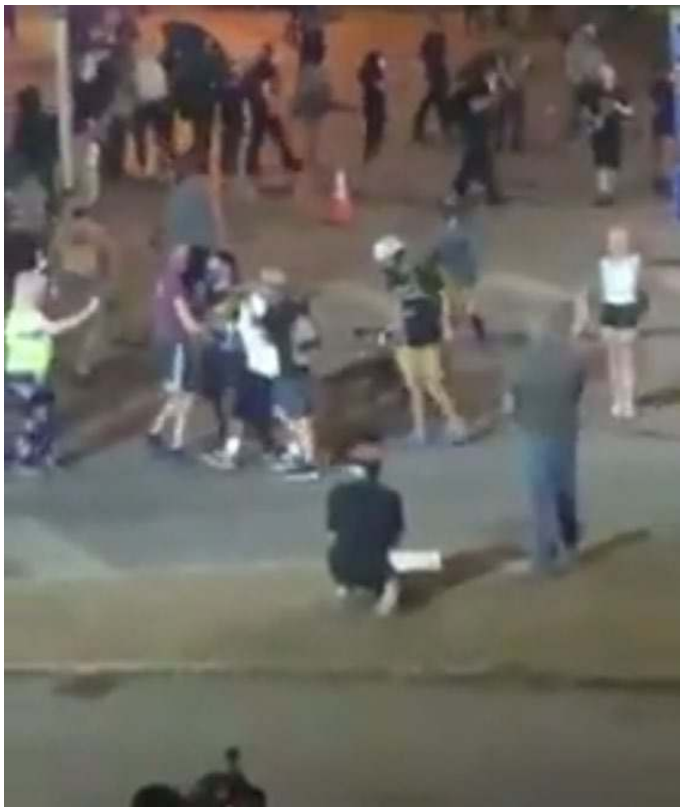


15. This photo taken by a member of the media at the same time as the second screenshot above at paragraph 14 shows the Good Samaritan tending to Tyree:

16. After the shooting stopped, five more people ran to help as seen in this screenshot from the bystander video:



17. The group was able to help Tyree get to his feet and helped him to limp away from the scene:



18. Tyree's wounds were treated at the emergency room at St. David's on Ben White.

19. He was unable to take care of himself or perform daily tasks, much less work, for weeks due to the pain. These pictures were taken at various stages of the healing process:

Right shoulder:

Right elbow:

Back of left and right thighs:

Right ankle:

20. Tyree also had lacerations on his genitals and back side from the police projectiles.

21. Some of the wounds became infected and Tyree was treated later at the Seton ER on 38th Street.

22. On May 31, *Texas Tribune* journalists collected spent munitions fired by Austin police at demonstrators, including Tyree, on May 30 and 31:

https://www.texastribune.org/2020/06/03/texas-police-force-protests-george-floyd/.

23. Austin police Chief Brian Manley later identified the types of munitions that he ordered his officers to carry and use on May 30 and 31. Under questioning from the Austin City Council—and referring to the picture of expended projectiles collected by *Texas Tribune* journalists (above)—he stated:

> And then since you've got these pictures up here, what I see is the 12-gauge munition is the one on the direct left. That is a foam baton round, and so that -- rubber bullets are -- and I guess maybe it's a misnomer -- rubber bullets are also from a 12-gauge shotgun something you do as a skip round into the answering or something. That is a foam baton round that we also have access and use of. That's what that larger one is that's being held there. And then of course the one in the middle is a gas can, and I don't know whether that is smoke or whether that was the cs can.

https://www.austintexas.gov/edims/document.cfm?id=341786 (Transcript Austin City Council, June 4, 2020).

24. Upon information and belief, the City armed its police on May 30 with expired munitions which had hardened over time and thus caused more severe injuries than munitions used within the manufacturers' recommended time frames.

B. Other protesters were also severely injured.

25. A group of emergency room doctors who had treated Austinites injured by police on May 30 and May 31 at Dell Seton Medical Center, published an op-ed in *The New England Journal of Medicine* about their observations. The doctors unequivocally concluded that these munitions should not be used for crowd control, stating:

> In Austin, Texas, tensions culminated in 2 days of vigorous protest, during which police used beanbag munitions for crowd control, resulting in numerous clinically significant injuries.
> . . .
> At the closest level 1 trauma center, located blocks from the protests in Austin, we treated 19 patients who sustained beanbag injuries over these 2 days.
> . . .
> Four patients had intracranial hemorrhages. One patient presented with a depressed parietal skull fracture with associated subdural and subarachnoid hemorrhages, leading to emergency intubation, decompressive craniectomy, and a prolonged stay in the intensive care unit. Another patient presented with a depressed frontal bone fracture with retained beanbag, which was treated with an emergency craniotomy and cranioplasty.
> . . .
> Although our report reflects the experience at only one center during a short period and we cannot determine the frequency of injuries when these munitions are used, these findings highlight the fact that beanbag munitions can cause serious harm and are not appropriate for use in crowd control. Beanbag rounds have since been abandoned by our local law enforcement in this context.

https://www.nejm.org/doi/full/10.1056/NEJMc2025923.

VI. Claims

A. Officer Doe violated Tyree Talley's First Amendment rights when he or she shot Tyree in retaliation for protesting police misconduct.

26. Tyree Talley incorporates sections I through V above into his First Amendment claim.

27. Tyree brings this claim under 42 U.S.C. § 1983.

28. Tyree exercised his right to free speech and his right to assemble with other demonstrators to protest police brutality on May 30, 2020.

29. Officer Doe shot Tyree because Tyree was protesting Austin police and other police departments around the country for their habitual use of excessive force. The Officer Defendant's decision to shoot Tyree with "less than lethal" rounds, and the decision to keep firing after he was incapacitated, was substantially motivated by Tyree's exercise of his First Amendment rights.

30. The Officer Defendant was acting under color of law when he or she shot Tyree as retribution for Tyree exercising his First Amendment rights. The Officer Defendant was acting under color of law when he or she directly and proximately caused Tyree's injuries.

B. Officer Doe violated Tyree Talley's Fourth and Fourteenth Amendment rights when he or she shot Tyree without justification.

31. Tyree Talley incorporates sections I through VI.A above into his Fourth and Fourteenth Amendment claims.

32. Tyree brings this claim under 42 U.S.C. § 1983.

33. The Officer Defendant is liable to Plaintiff under 42 U.S.C. § 1983 for his or her use of excessive force that constituted a deprivation of Tyree's Fourth and Fourteenth Constitutional right to due process.

34. The Officer Defendant's unlawful and unjustified use of force against Tyree was excessive and was objectively unreasonable in light of established law. The Officer Defendant shot Tyree even though Tyree did not pose a danger to anyone and *after* Tyree was on the ground in the fetal position. Tyree was not armed and never presented a threat to any of the individuals around him.

35. The force used by the Officer Defendant was unnecessary, excessive, and unreasonable under the circumstances because Tyree did not pose an immediate threat to the safety of police officers or others. The use of such excessive force was objectively unnecessary. Additionally, the use of such force was substantially motivated by Tyree's presence at a protest against police brutality. Tyree posed no threat to officers to justify the use of such force.

36. The Officer Defendant was acting under color of law when they shot Tyree. Defendant engaged in a willful, malicious, and reckless course of conduct that was intended to cause and, in fact, caused Tyree to suffer extreme and severe mental and emotional distress, agony, and anxiety.

37. Defendant's unlawful and unconstitutional use of force against Tyree directly and proximately caused his damages.

C. Officer Doe acted with such impunity and reckless disregard for civil rights, this case warrants damages that will deter this type of misconduct in the future.

38. Tyree Talley incorporates sections I through VI.B above into his punitive damages claim.

39. The Officer Defendant's actions and conduct were egregious, reckless, and endangered numerous peaceful protesters and bystanders. Tyree seeks punitive damages to deter this type of retaliation and excessive force against protesters who demonstrate against police brutality in the future.

D. The City of Austin's policy of using excessive violence to control demonstration crowds violated protesters' First, Fourth, and Fourteenth Amendment rights.

40. Tyree Talley incorporates sections I through VI.C above into his *Monell* claim.

41. Tyree brings this claim under 42 U.S.C. § 1983.

42. Austin had these policies, practices, and customs on May 30-31, 2020:

a. A policy of not using dangerous kinetic projectiles that caused severe and permanent injuries to control peaceful demonstrations,

b. A policy of using excessive force against non-violent demonstrators,

c. A policy not to adequately train officers regarding civil rights protected by the United States Constitution,

d. A policy not to adequately train officers in crowd control during non-violent protests,

e. A policy not to adequately supervise officers doing crowd control during non-violent protests,

f. A policy not to intervene to stop excessive force and civil rights violations by its officers during non-violent protests,

g. A policy not to investigate excessive violence by its officers against peaceful protesters, and

h. A policy not to adequately discipline officers for—and deter officers from—using excessive force and violating protesters' civil rights during demonstrations.

43. The City and Brian Manley knew about these policies and directed Austin police to comply with them. The City and Brian Manley developed and issued these policing policies with deliberate indifference to Tyree's and other peaceful demonstrators' civil rights.

44. The City and Brian Manley were aware of the obvious consequences of these policies. Implementation of these policies made it predictable that Tyree's constitutional rights would be violated in the manner they were, and the City and Brian Manley knew that was likely to occur. It was obvious that these policies would injure people on May 30. The City and Brian Manley

condoned and ratified the civil rights violations and the conduct that caused injuries on May 30 by continuing to mandate the same policies on May 31.

45. These polices were the moving force behind the Officer Defendant's violation of Tyree's civil rights and thus, proximately caused Tyree's severe injury.

E. The City was negligent when it used expired munitions against protesters.

46. Tyree Talley incorporates sections I through VI.D above into his negligence claim.

47. The City had a duty to every Austinite, including Tyree, to maintain and keep its stockpiles of police equipment functional and up to date. The City had a duty to Tyree and every other protester not to arm its police with expired munitions that become more dangerous with age when its police were sent to control crowds during demonstrations. Nonetheless, upon information and belief, the City knowingly armed its police with expired munitions on May 30, 2020 and thus breached its duty to Austinites including Tyree.

48. Upon information and belief, Tyree's injuries were more serious because the projectile was expired and had hardened. Upon information and belief, the City's failure to maintain unexpired munitions stores and the deliberate decision to use expired munitions against Tyree and other protesters directly and proximately caused Tyree's injuries.

F. Austin Police violated the Americans with Disabilities Act when they failed to provide communications aids and services or use the notes app on their APD-issued cell phone to communicate.

49. According to APD Officer Marler, who heads the department's community and culture team, APD's training for handling civilians with disabilities consists of two parts. One section, called Services for the Deaf, is mandated by the Texas Commission on Law Enforcement (TCOLE) and officers must complete it in order to receive their basic peace officer license. The other part

of the training is supplementary instruction specific to APD due to the large deaf population in Austin.

50. The TCOLE training works in conjunction with the ADA and requires that APD must provide communication aids and services. TCOLE also outlines the best practices for officers who are in emergency situations who are unable to obtain an interpreter quickly. Officers are encouraged to use the notes app on their APD-issued cell phone to write messages back and forth.

51. On May 30, 2020, Austin Police Officers failed to follow their own policies and completely disregarded Tyree's safety. Tyree was unable to hear the verbal commands to clear the area (if any) and was shot while he exercised his right to free speech and his right to assemble with other demonstrators. Officer Defendants violated Tyree's rights by failing to provide him reasonable accommodation in their execution of police tactics, including use of force.

VII. Damages

52. Tyree Talley incorporates sections I through VI above into this section on damages.

53. Tyree seeks recovery for all of his damages including past and future pain, past and future mental anguish, past and future disfigurement, past and future physical impairment, past and future loss of enjoyment of life, past and future medical expenses, past and future lost income, past and future loss of consortium, past and future loss of services, miscellaneous other economic damages including out-of-pocket expenses, pre- and post-judgment interest, attorney's fees, expenses, and costs.

VIII. Request for jury trial

54. Plaintiff requests a jury trial.

IX. Prayer

55. For all these reasons, Tyree Talley requests that the City of Austin be summoned to appear and answer Tyree's allegations and identify its employees who shot Tyree. After a jury trial regarding his claims, Tyree seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which he is entitled.

Respectfully submitted,
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Attorneys for Plaintiff

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE NITED STATES DISTRICT CO RT
FOR THE WESTERN DISTRICT OF TE AS
A STIN DIVISION

T REE TALLE ,
laintiff

v. **CIVIL ACTION NO. 1:21-cv-00249-RP**

CIT OF A STIN AND JOHN DOES,
efen ants.

DEFENDANT CITY OF AUSTIN'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE J DGE OF SAID CO RT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs' Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORI INAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Original Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

This Defendant denies the allegations contained in the first paragraph labeled "Introduction" in Plaintiff's Original Complaint.

PARTIES

1. pon information and belief, Defendant admits the allegations contained in Paragraph 1.

2. Defendant admits the allegations contained in Paragraph 2.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

3. Defendant denies the allegations contained in Paragraph 3.

J RISDICTION

4. Defendant admits the allegations contained in Paragraph 4.

5. Defendant admits the allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

VEN E

7. Defendant admits the allegations contained in Paragraph 7.

FACTS

8. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 of the Original Complaint and therefore denies same.

9. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 9 of the Original Complaint and therefore denies same.

10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Original Complaint and therefore denies same.

11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Original Complaint and therefore denies same.

12. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 of the Original Complaint and therefore denies same.

13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of the Original Complaint and therefore denies same.

14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Original Complaint and therefore denies same.

15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 15 of the Original Complaint and therefore denies same.

16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the Original Complaint and therefore denies the same.

17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of the Original Complaint and therefore denies the same.

18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of the Original Complaint and therefore denies same.

19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the Original Complaint and therefore denies same.

20. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the Original Complaint and therefore denies same.

21. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of the Original Complaint and therefore denies same.

22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the Original Complaint and therefore denies same.

23. pon information and belief, Defendant admits the allegations contained in Paragraph 23 of the Original Complaint.

24. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 of the Original Complaint and therefore denies same.

25. pon information and belief, Defendant admits the allegations contained in the first sentence of Paragraph 25. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 25 of the Original Complaint and therefore denies same.

CLAIMS

26. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.

27. Defendant admits the allegations contained in Paragraph 27.

28. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 28 of the Original Complaint and therefore denies same.

29. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 of the Original Complaint and therefore denies same.

30. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 of the Original Complaint and therefore denies same.

31. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.

32. Defendant admits the allegations contained in Paragraph 32 of the Original Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the Original Complaint.

34. Defendant denies the allegations contained in Paragraph 34 of the Original Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of the Original Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of the Original Complaint.

37. Defendant denies the allegations contained in Paragraph 37 of the Original Complaint.

38. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.

41. Defendant admits the allegations contained in Paragraph 41 of the Original Complaint.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant denies the allegations contained in Paragraph 43.

44. Defendant denies the allegations contained in Paragraph 44.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48.

49. pon information and belief, Defendant admits the allegations contained in Paragraph 49.

50. pon information and belief, Defendant admits the allegations contained in Paragraph 50.

51. Defendant denies the allegations contained in Paragraph 51.

52. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.

53. Defendant denies the allegations contained in Paragraph 53.

54. This paragraph merely contains Plaintiff's request for a jury trial and thus no response is required of the Defendant.

55. Defendant denies the allegations contained in Paragraph 55 of the Original Complaint and specifically denies that the Plaintiff is entitled to any relief whatsoever of and from the Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 .S.C. § 1983.

4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTF LLY S BMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNE S FOR DEFENDANT CIT OF A STIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 27th day of May, 2021.

Via ECF e-filing:

Rebecca Ruth Webber
State Bar No. 24060805
rwebber@hendlerlaw.com
Scott M. Hendler
State Bar No. 09445500
shendler@hendlerlaw.com
HENDLER FLORES LAW, PLLC
1301 West 25th Street, Suite 400
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Telephone: (512) 439-3202
Facsimile: (512) 439-3201

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-DH**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants.	§	

DEFENDANT CITY OF AUSTIN'S DESIGNATION OF TESTIFYING EXPERT WITNESSES

Defendant City of Austin hereby identifies and designates the following testifying expert witnesses as follows:

I. TESTIFYING EXPERT WITNESSES

A. Retained Experts

1. Craig R. Miller
Dallas, Texas
(214) 803-4653

Mr. Miller is a retired Chief of Police for the Dallas Independent School District Police Department and former Deputy Chief of the Dallas Police Department. Mr. Miller is a Master Texas Peace Officer with 37 years of experience, a TCOLE State Certified Instructor and a Certified Analyst through the Force Science Institute. His extensive education, experience and background as well as his areas of expertise are more fully described in his Curriculum Vita which is attached to his report. Also attached are Mr. Miller's fee schedule and list of cases in which he has been retained as an expert.

Mr. Miller is an expert in police conduct, police practices and police administration. Mr. Miller is expected to testify as to any subject on which he has factual knowledge or is within his area of expertise. He will testify as to any police conduct, police policy or police training issues in this case. In general, Mr. Miller is expected to testify as to the policies, training, and investigations of the Austin Police Department relating to the 2020 George Floyd protests as well as the actions of APD officers at the time of Plaintiff's injury. The general substance of Mr. Miller's mental impressions and opinions are contained in his report which is attached hereto. Mr. Miller's opinions are based on the documents listed in his report as well as his training, education, experience.

B. Non-retained Experts

1. Defendant may call as non-retained experts any and all of Plaintiff's treating physicians, mental health providers and counselors who are expected to testify consistently with their medical records and counseling records and their deposition testimony, if any.

2. Brian Manley, former Chief of Police
Austin Police Department
715 E. 8th Street
Austin, Texas 78701

Chief Manley may testify regarding the policies, practices, training and investigations of the Austin Police Department relating to the 2020 George Floyd protests and may offer opinions based on his education, training and experience.

3. Joseph Chacon, Chief of Police
Austin Police Department
715 E. 8th Street
Austin, Texas 78701

Chief Chacon may testify regarding the policies, practices, training and investigations of the Austin Police Department relating to the 2020 George Floyd protests and may offer opinions based on his education, training and experience.

4. Attorneys' Fees
Anne Morgan, City Attorney
Meghan Riley, Division Chief, Litigation
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767-1088

5. Defendant reserves the right to call at trial or elicit expert opinion testimony on cross-examination from all testifying expert witnesses designated by any other party to this action and designate rebuttal expert witnesses.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
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Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2023, I served upon the below named parties as indicated:

Via CM/ECF to:
Rebecca Webber
Webber Law
State Bar No. 24060805
rebecca@rebweblaw.com
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Austin, Texas 78723
Telephone: (512) 669-9506
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Facsimile: (512) 439-3201

ATTORNEYS FOR PLAINTIFF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

Attachment A

June 4, 2023

Monte Barton
Assistant City Attorney
Austin City Attorney's Office
City Hall, 301 W. 2nd Street, P. O. Box 1546
Austin, Texas 78767

Expert Witness for the Defendant (City of Austin)

TYREE TALLEY
Plaintiff

v. Cause of Action No. 1:21-CV-00249

CITY OF AUSTIN and
JOHN DOES
Defendants

1. I have been retained as an expert witness in the above civil action. I am therefore submitting the following information and accompanying documents and methodology in support of my opinions and conclusions in response to your request for me to review materials related to this case on the issues involved.

BACKGROUND AND EXPERIENCE

2. I retired March 2019 as the Chief of Police for the Dallas Independent School District Police Department with a workforce of 220 personnel. The department included sworn officers, security officers and police dispatch. At the time of my employment, Dallas ISD was the 14th largest school district in the United States with a student population of 158,000. Additionally, there were 23,000 employees and 230 schools. I was the Dallas ISD Chief of Police from 2011 to 2019.

3. Prior to my position as the Dallas ISD Police Chief, I was employed by the Dallas Police Department (DPD) and served as the Deputy Chief of the Crimes Against Persons Division (CAPERS). In this assignment, I supervised 180 personnel with an operating budget of $18.5 million. I was responsible for all criminal investigations involving murder, robbery, sexual assaults, assaults and the crime scene investigation function for 1.3 million people.

4. Before I was promoted to Deputy Chief, I was the Homicide Unit Commander. I directly oversaw 750 murder investigations, 300 suicides, 75 Officer Involved Shootings (OIS), Death in Custody incidents (DIC) and murder-for-hire investigations. As the Homicide Unit Commander, I also served as head of the Special Investigations Unit for the 9th largest police department in the United States.

5. I came to the Dallas Police Department in February 1982 after graduating from the University of Memphis with a Bachelor of Arts Degree in Criminal Justice. I worked my way through the Dallas Police Department ranks as a patrol officer, patrol sergeant, vice sergeant, patrol watch commander, narcotics unit commander, traffic division commander, bomb squad commander, and ultimately the homicide unit commander. During my first year as a sector sergeant in 1986, nine of the ten officers that I supervised were involved in officer involved shootings in which either a suspect or officer was injured or killed. As a result of the many hours of experience and training I received, I have a very firm understanding of police operations from both the officer's position as well as police management.

6. I am a graduate of the Southwest Legal Foundation Command Management Supervisors Course and the Law Enforcement Management Institute of Texas through Sam Houston State University New Police Chief Course. Additionally, I am a Master Texas Peace Officer with 37 years of experience, a TCOLE State Certified Instructor, and a Certified Analyst through Force Science Institute. I also have been a member of the International Association of Chiefs of Police (IACP), Police Executive Research Forum (PERF) and the Texas Police Chiefs Association.

7. I have technical, professional and other specialized knowledge that will assist in understanding the facts and issues of the incident in question. My education and extensive experience provide a deep understanding of how law enforcement officers are trained and operate. This knowledge is the key to reaching a reliable evaluation of law enforcement officers' conduct. I have conferred with many other law enforcement experts regarding police operations and evaluations thereof. The facts and data on which I base my opinions are of a type reasonably relied upon by experts in the field of law enforcement in forming opinions or inferences therefrom. I also have a firm understanding of the requirements under the Fourth Amendment for detention and arrest.

DOCUMENTS REVIEWED FOR THIS ANALYSIS

8. On December 6, 2022, the Defendant's counsel, Monte Barton, presented me with evidentiary documents for my review in preparation for opining on this case. He requested that I prepare a concise declaration outlining my basic opinions. Those findings and opinions to date have been incorporated into this document.

9. It should be noted that before I agreed to be retained by the Defendant as an expert in this case, I insisted on conducting a preliminary review of key materials.

These included Mr. Tyree's Complaint, APD General Orders and City of Austin downtown video cameras. I used these to determine whether I could ethically offer opinions supportive of the Defendant. I conducted such a review and agreed to be retained by the Defendant.

10. As is usually the case in investigations such as this, I am aware that there may be additional documents or other evidence that might subsequently become available during the discovery process. I may be asked to review these as they may assist me in developing more detailed findings and opinions. Therefore, I reserve the right to amend my findings and opinions at some later date based upon my ability to review any additional records and/or items of evidence that I might subsequently receive.

11. The documents I have reviewed to date are listed below:

1. Plaintiff's Complaint
2. COA 37537 PTZ Camera Video
3. COA 37536 PTZ Camera Video
4. APD 0787-1575 APD General Orders
5. COA 3984-4254, SRT PPR
6. COA 3883-3935, Mass Arrest Procedures
7. COA 4270-4388 MMFT PPT
8. COA 4389- 4510
9. COA 4514-4535 SRT SOPs
10. COA 3815-3837 SRT Leadership Refresher
11. COA 4255-4269 SRT Lesson Plan
12. COA 3838-3877 MFF PPT June 2020
13. COA 3744-3784 MFF PPT, Feb. 2019
14. COA 4511-4513 APD May Day EAP
15. COA 3970-3983 SRT October 2020 Lessons Learned
16. COA 3785-3814 Integration of BPOT & SRT
17. COA 3936-3969 Mounted Patrol BPOT
18. COA 3878-3882 MMFF EAP June 2020
19. COA 3387-3558 TCOLE 3184
20. COA 3641-3717 Austin Police & the Deaf Community
21. COA 3719-3743 One Deaf – Austin Chronicle Article
22. COA 3574-36400 APD & the Deaf Community
23. COA 3335-3386 TCOLE 3184
24. COA 3718 Video Links for PPT Videos and ASL Training
25. COA 3559-3573 Services for the Deaf
26. COA 3169-3204 Less Lethal Shotgun PPT
27. COA 3268-3297 Less Lethal Basic Refresher
28. COA 3298-3334 New LL Projectile
29. COA 3221-3249 Less Lethal
30. COA 3205-3220 CTS Less Lethal Shotgun

31. COA 3250-3267 Less Lethal Refresher
32. COA 3155-3168 Less Lethal Shotgun Revised 2019
33. APD Police Chief Manley's Deposition
34. Jeff Noble Expert Report
35. Michael Maloney Expert Report
36. Jeff Noble Expert Report (Alyssa Sanders)

Black Lives Matter (BLM) – George Floyd Protests

12. In the days immediately following the death of George Floyd, law enforcement in the United States was forced to deal with riotous behavior. Police departments across the country were challenged to effectively control crowds that were larger than anything they had had to deal with in the past. Some protests were very controlled but at other times were violent and resulted in deaths and great property damage.

13. The majority of the large protests took place in larger cities in the United States such as Dallas, New York, Los Angeles, Chicago and Austin. In these cities, police commanders were challenged with personnel resources and tools to control the crowds. At times, the protesters were very violent in their dealings with law enforcement. A *New York Times* article, "George Floyd Protests: A Timeline", reported the following:

"At least six people have been killed in violence connected to the protests that started after George Floyd died in police custody.

After the death of George Floyd on May 25, protests and unrest have rocked Minneapolis and other cities. In cities across the United States, tens of thousands of people have swarmed the streets to express their outrage and sorrow during the day. That has descended into nights of unrest, with reports of shootings, looting and vandalism in some cities.

Since the death of Mr. Floyd, protests have erupted in at least 140 cities across the United States, and the National Guard has been activated in at least 21 states.

The police chief in Louisville, Ky. was fired after a restaurant owner was killed when police officers and National Guard troops shot toward protesters. And in Austin, Texas, the police chief said that a black protester who was shot in the head by officers was in critical condition.

In St. Louis and Las Vegas, officers were shot and wounded, and in New York City and Buffalo, N.Y., they were injured after being struck by cars."[1]

[1] *New York Times*, "George Floyd Protests: Timeline", Nov. 2021

14. Starting May, 29, 2020 (four days after Mr. Floyd's death), the Austin Police Department was required to respond to a series of large protests that had never been seen before by members of the department. Brian Manley's deposition (p.162) stated the following:

"Q: When? You were out there, and would you characterize what the worst—Would you characterize any part of it as a war zone?
A: In the – probably the worst one – I was not present at this one, but I know we had a group of officers that were on I-35, that were taking such a barrage of projectiles, that the commander actually, for the first time in his entire career, he put out an 'officer needs assistance', and for the first time in his entire career, and there was nobody able to come; that there were just no officers available. And so, I think that shows the level of a – 25-year experienced commander in the department who, for the first time in his career, had to ring the bell, that he needed help.

Q: And nobody came to help him?
A: Every other officer was engaged in a conflict or handling other issues. There was nobody available to go at that moment."[2]

Summary of The Incident

15. Starting May 29, 2020, the first of a series of George Floyd protests took place in Austin, Texas. These protests lasted 72 straight days. At times they were reported to be calm and orderly, while at other times the participants were more riotous towards officers working the events.

16. On May 30, 2020, Austin Police Department (APD) Officers were assigned on the front steps of police headquarters (the Main) and on the overhead of I-35. All of the APD officers were wearing clearly marked APD uniforms. The officers assigned at these positions were members of the Special Response Team (SRT) and had all attended Mobile Field Force Training (MFFT). The officers working these assignments were working in an Alpha/Bravo 12-hour work shift to assist in crowd control in the city.

17. Throughout the day as they stood alongside other officers, large crowds (more than 100) gathered. In some instances, the protesters were seen sitting on the guardrail with the officers less than a foot away. During this time, some protesters threw rocks, water bottles, smoke canisters and bricks at the officers. Many continued to chant/scream at the officers who were only a few feet away.

18. All of the officers assigned to protect the police headquarters and to ensure that I-35 remained open had received Mobile Field Force Trained (MFFT).

[2] Chief Manley's Deposition, P. 162

As a MFFT officer, they received crowd management training and were required to follow the Operations Manual for Crowd Management Situations. APD General Order 408 states the following regarding training:

"408.3 TRAINING AND PREPAREDNESS

Being prepared for incidents of civil unrest can be the key to reducing the potentially catastrophic consequences associated with these incidents. All sworn personnel are responsible for maintaining a level of proficiency in MFF training and tactics.

> (d) All personnel who have received specialty training in the deployment of impact munitions are responsible for maintaining a level of proficiency in those capacities."[3]

19. On May 30, 2020, at approximately 9:15 PM., Mr. Tyree Talley was protesting with a group of his friends. They were initially observed under I-35 on 8th Street across from the police headquarters building. Mr. Talley had a line of clearly marked APD officers behind him as they stood on top of I-35. He also had a line of clearly marked officers in front of him as they guarded the front of the police headquarters building.

20. At approximately 9:15 PM, Mr. Talley was observed on the City of Austin downtown camera system (#37537) standing with his friends. In Mr. Talley's complaint he stated that he is deaf and that he was downtown with deaf friends to protest the actions of APD officers. In the video at 21:16:25, Mr. Talley is observed to run from under I-35, where he had been standing with a group of people. In the video, Mr. Talley is wearing a white tee shirt and can be seen running on 8th street from under I-35 towards police headquarters, by himself. At 21:16:32 you can clearly see Mr. Talley throw a bottle with his right hand in the direction of the officers who are standing in front of police headquarters. It is just as Mr. Talley is throwing the bottle that he is fired at with less lethal ammunition by an unknown number of officers.

21. The APD Less Lethal Shotguns (Impact Munitions Delivery System) Training plan states the following:

"Deployment Considerations

- Approved munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious injury.
- Officers are not required to deploy if munitions cannot be deployed safely.
- Safety of hostages, innocent subjects and officers takes priority over the safety of suspects who engaged in criminal/suicidal behavior.

[3] Chief Manley's Deposition, P. 62

- Suspect armed with a weapon AND tactical circumstances allow for safe application of munitions.
- Riotous behavior – throwing rocks, bottles, or other dangerous projectiles creating risk or injury.
- Reasonable suspicion subject has already committed a crime of violence and is refusing to comply with lawful orders.
- Subject's capability to pose an imminent threat to the safety of officers or others.
- Availability of other force options and their possible effectiveness.
- Distance and angle to targets.
- Types and thickness of subject's clothing.
- Subject's actions dictate the need for an immediate response and the use of kinetic energy projectiles appear appropriate."[4]

22. In the above training considerations, it references that deployment considerations include "Riotous behavior – throwing rocks, bottles or other dangerous projectiles creating a risk or injury." It was the action of Mr. Tyree throwing the bottle (object) at the officers that prompted the officers to fire their less lethal rounds at him.

EXPERT'S OPINIONS & FINDINGS

23. The principles of police officers' use of force are thoroughly documented by several different law enforcement organizations. The names of these organizations that I draw my opinions from include the Federal Bureau of Investigation (FBI), the International Association of Chiefs of Police, the Texas Police Chiefs Recognition Program, Force Science Research Center, Lexipol and the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). All of these organizations help to establish guidelines for law enforcement standards related to arrest situations.

24. I used these basic law enforcement standards when I looked at the incident in which Mr. Tyree was struck by less lethal rounds fired by multiple unknown APD officers. I also used these standards when I reviewed the training the Austin Police Department provided to these officers in use of force and the standards for when it is appropriate to use less lethal munitions. When studying best practices, the one central question that must be answered in any situation is "What would a reasonable officer do, given the same circumstance?"

OPINION #1 (The Adequacy of APD Officer Training)

25. It is my opinion, which I hold to a reasonable degree of certainty, that APD officers are provided exceptional training by the Austin Police Department regarding use of force and the operation of the less lethal shotgun.

[4] APD Less Lethal Training, COA 3268-3276

The APD is in the top 1% of the largest police departments in the United States with 1,900+ sworn officers and their own police academy. As a former chief of police, I have the utmost respect for the quality training that takes place with APD.

26. Due to my experience as an expert witness and my extensive training from the Law Enforcement Management Institute (LEMIT – Sam Houston State University) Police Chief training courses, I am confident that APD does an outstanding job of training its officers. Compared to other agencies, particularly in the areas of use of force, APD is very thorough to ensure officers are well trained. The goal of the APD Academy is to put recruits through as many realistic arrest situations as they can in the exercises they conduct. All of the officers working on May 31, 2020, in front of police HQ graduated from the APD Academy and attended the required training for use of force, SRT Operations Manual, General Order 408 Mobile Field Force, and the operation of the less-lethal shotgun. The APD Academy less lethal shotgun lesson plan states the following:

"COURSE GOAL: The student will qualify with the less lethal shotgun & have an understanding of the capabilities of the DS 23 Drag Stabilizer bean bag round and a understanding of APD's policy and procedures in use and deployment of the less lethal shotgun."[5]

27. The APD Academy, in my professional opinion, is a very advanced and professional academy that currently puts officers through 32 weeks of training. These 32 weeks are nearly twice as much as the 667 hours that the Texas Commission on Law Enforcement (TCOLE) requires in order to become a licensed Texas Peace Officer. A July 2016 Bureau of Justice Bulletin regarding training on a national level states, "Excluding any required field training, the length of a basic law enforcement program was about 840 hours or 21 weeks."[6] After their academy graduation, all APD officers are then required to complete another 12 weeks of field training with a Field Training Officer (FTO). They then work in a probationary status after being released from field training.

APD General Order 408 was issued April 21, 2020 and was in place when this incident occurred. It is important to note that the APD General Orders are based off of the nationally accepted Lexipol model:

"**Policies that Protect**

Lexipol provides fully developed, state specific policies researched and written by subject matter experts and vetted by attorneys. Our policies are based on nationwide standards and best practices while also incorporating state and federal laws and regulations where appropriate. Best of all, we keep your policies updated for you, saving you time and money."[7]

[5] APD Less Lethal Training, 3268-3276
[6] July 2016 Bureau of Justice Bulletin, State & Local Law Enforcement Training Academies, 2013
[7] Public Safety Policies and Updates – Lexipol Policies and Training

28. The Austin Police Academy provides Control Devices and Techniques instruction to all of their officers through APD General Orders Section 206. In fact, they not only receive classroom instruction in control device procedures per the APD General Orders but also hands-on instruction from the APD Academy in the deployment of the less lethal shotgun.

General Order 206 – Control Devices and Techniques (4-21-2020)

"206.1.1 PHILOSOPHY

The use of control devices upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, reasonably believes it necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It also understands that vesting officers with the authority to use lawful and objectively reasonable force and protect the public welfare requires a careful balancing of all human interests.

206.2 CONTROL DEVICES AND TECHNIQUES OVERVIEW

206.2.1 WHEN DEVICES MAY BE USED
When a decision has been made to control, restrain or arrest a violent, threatening or escaping subject, an approved control device may only be used when its use appears objectively reasonable under the circumstances.

206.2.3 APPROVED CONTROL DEVICES
Only department issued or approved control devices and munitions shall be carried. Only department approved modifications may be made to any control device.

(a) The control devices approved by the Department are:
1. Baton and/or Impact Weapons (long, short, side-handle or expandable)
2. Chemical Agents (Oleoresin, Capsicum (OC) spray)
3. Kinetic Energy Projectiles and their delivery systems
4. TASER Device – See General Order 208 (TASER Guidelines)

206.5 KINETIC ENERGY PROJECTILES

This department is committed to reducing the potential for violent confrontations when subjects are encountered. Kinetic energy projectiles are less likely to result in death or serious bodily injury.

Kinetic energy projectiles are approved by the department and are fired from 12 gauge shotguns that are clearly identified as less lethal shotguns. Certain munitions can be used

in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

206.5.1 DEPLOYMENT

Approved munitions are justified and may be used in an effort to compel individuals to cease their actions when such munitions present a reasonable option for resolving the situation at hand.

> (a) Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officers determine that deployment of these munitions cannot be deployed safely.
> (b) The safety of hostages, innocent subjects and officers takes priority over the safety of subjects engaged in perceived criminal or suicidal behavior…

206.5.3 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT
Examples include, but are not limited to, the following types of situations where the subject:

> (c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury.

206.5.5 SHOT PLACEMENT AND DEPLOYMENT DISTANCES

Officers should generally follow their training instructions regarding minimum deployment distance and target areas. The need to immediately incapacitate the subject must be weighed against the risk of causing serious bodily injury or death.

The head and neck should not be intentionally targeted, however any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death to officers or others."[8]

29. It is my professional opinion that the Austin Police Academy is one of the finest police training academies in the United States. Each recruit, including the officers working on May 31, 2020, were supplied training in the area of use of force as well as the deployment of Kinetic Energy Projectiles by the department. To ensure the recruits have an understanding of the curriculum, they are tested on the material and required to score at least an 80% on the exam.

[8] APD General Order 206, COA 003078 - 003080

30. The Texas Penal Code is a part of instruction that all police officers in the State of Texas must learn before they become police officers. Included in the course of instruction provided to APD officers in the Academy is Penal Code 42.02 RIOT:

"(a) For the purpose of this section. "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;
(2) substantially obstructs law enforcement or other governmental functions or services; or
(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a), the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or a different type of class of offense, or is immune from prosecution.

(e) Except as provided in subsection (f), an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:
(1) in the furtherance of the purpose of the assembly; or
(2) an offense which should have been anticipated as a result of assembly."[9]

OPINION #2 (Whether APD Officers Used Excessive Force)

31. The reasonableness of a particular use of force is based on what a reasonable officer would do under the circumstances and whether a reasonable officer on the scene would view the force as reasonable without the benefit of 20/20 hindsight. This inquiry must take into account the fact that officers are sometimes required to make quick decisions about how much force is necessary while navigating a stressful, rapidly changing event.

[9] Texas Penal Code 42.02 Riot

32. Following the use of force incidents from May 30, 2020, APD generated multiple Assault on Peace Officer offenses (2020-1520375) involving known and unknown suspects who were throwing items at officers. In this incident, APD officers did not know the identity of Mr. Talley as he was taken from the scene by other protest participants.

33. After reviewing the videos and documents I have been supplied, it is clear that the actions of the crowd on May 31, 2020, had never before been seen or experienced by officers working the incident. It is clear that APD officers deployed their less lethal shotguns and struck Mr. Talley. However, no APD officers provided a sworn statement to SIU or IA for their involvement in this incident. It is my opinion that APD supplied all of the officers involved in the incident with Mr. Talley appropriate training on the operation of the less lethal shotgun and when it was allowable to use it. It is my opinion that all of the officers that fired their less lethal shotgun at Mr. Talley were instructed to use the weapon in compliance with their training and APD policies.

34. APD General Order 206 PHILOSOPHY Section 206.1.1:

"General Order 206 – Control Devices and Techniques (4-21-2020)
APD General Order 2026

206.1.1 PHILOSOPHY

The use of control devices upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, reasonably believes it necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It also understands that vesting officers with the authority to use lawful and objectively reasonable force and protect the public welfare requires a careful balancing of all human interests."[10]

35. The APD Academy instructs all officers on General Order 200.3 Response To Resistance:

"While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

(d) Injury to Officer Not Required – While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this order

[10] APD General Order 206

requires an officer to actually sustain physical injury before applying objectively reasonable force."[11]

36. As the *Graham v Connor* case pointed out, "The calculus of reasonableness must embody allowance for the fact that officers are forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation."[12]

37. In this incident in which Mr. Talley was injured, it was his action of throwing the bottle with his right hand towards the officers that prompted the officers to fire their less lethal shotguns. Mr. Talley can be seen in the video leaving from his group of friends and then running into the middle of the 8th street intersection and intentionally throwing a bottle in the direction of the officers standing in front of the headquarters building.

OPINION #3 (The Austin Police Department Provides Specific Guidelines on the Use of the Less Lethal Shotgun)

38. It is my professional opinion, which I hold to a reasonable degree of certainty, that APD teaches officers qualified on the less lethal shotgun including how/when to use it. This policy is captured in Section 206 of the APD General Orders and is taught in the academy to officers. Additionally, only officers who have attended the Less Lethal Shotgun course of instruction are allowed to carry and use the weapon.

- The adoption of APD General Order 206 was consistent with the nationally recognized Lexipol guidelines.

- The adoption of General Order 206 and related subparts, which rely on the judgment of APD's trained officers, was reasonable by APD.

- General Order 206 and related subparts constitute a safe and reasonable policy regarding the use of the less lethal shotgun.

39. APD trained all of the officers working the events on May 30, 2020 in Mobile Field Force operations while in the police academy. They were also taught de-escalation and how to apply it during the course of performing their job. All of the officers armed with a less lethal shotgun in this incident were taught APD General Orders and Texas state law regarding use of force. Furthermore, they were instructed in the use of the less lethal shotgun and practiced with the weapon in the academy. It is my opinion that the Austin Police Department provided all of the officers using a less lethal shotgun on May 31, 2020 with excellent guidelines and training on the requirements of General order 206.5 (Kinetic Energy Projectiles).

[11] APD General Order 200.3 Response to Resistance
[12] *Graham v Connor*, 490 US 386-96-97

OPINION #4 (The Austin Police Department is Very Progressive in Training Officers in Working With The Deaf Community)

40. What is the Population of Deaf/Hard of Hearing in Austin, Texas?

"The 2014 Texas Census showed that in the Austin area there are currently 885,400 people, which is up from 812,025 in 2011. The population in 2016 was up to 931,830, which is over a 3% increase from the census in 2010.

According to the Mayor's Office, approximately 8.8% of Austin's residents are deaf (approximately 100,600)."[13]

41. Included in the training that APD officers receive, they are taught different facets of "Deaf Etiquette:

- In the academy you are taught that you do not allow people to get close enough to touch you.

- When deaf individuals need to get someone's attention they may wave in the other person's face or touch their arm. This is not necessarily cause for concern; it is how they are trying to communicate with you."[14]

42. APD officers are instructed in the academy that when time allows, there is an on-call agency who responds day or night to assist with interpreting. The interpreters are supposed to arrive on scene with 45 minutes.

43. In the APD academy officers are taught the TCOLE requirements necessary in order to become a licensed Texas Peace Officer. Included in this instruction is the following section:

"TCOLE: What the ADA requires

Law Enforcement agencies must provide the communication aids and services needed to communicate effectively with people who are deaf or hard of hearing, except when a particular aid or service would result in an undue burden or a fundamental change in the nature of the law enforcement services being provided."[15]

44. On May 30, 2020, Mr. Talley alleged that he was with a group of deaf/hearing impaired friends protesting on 8th Street near the police HQ. As noted in the above information, 8.8 % of the Austin general population fits into this category.

[13] APD &Deaf Community
[14] APD & Deaf Community
[15] APD & Deaf Community

It was unknown to the APD officers working in this area on May 31, 2020, that there was a group of deaf protesters in the street. The video clearly shows that Mr. Talley left his friends and ran by himself into the middle of 8th Street to throw an object at the officers standing in front of the police HQ. This action put the officers in fear for their safety and resulted in them firing on Mr. Talley. I am confident they followed their training and were justified in using their less lethal shotguns against him.

45. In the APD Academy all officers are required to take a four hour course titled Interacting with Drivers who are Deaf or Hard of Hearing. Also, in the APD Academy officers are taught and tested on General Order 609, Interpreter Services.

46. It is my opinion that the APD Academy is very progressive in teaching not just the TCOLE requirements related to dealing with deaf individuals, but also having their own General Order 609 related to deaf individuals.

Conclusion

47. It is my opinion, which I hold to a reasonable degree of professional certainty, that the Austin Police Department (APD) is a very progressive and professional police department. As a former police chief, I believe their General Orders provide clear guidance for police personnel and are very comprehensive. Also, I believe that the officers working on May 30 - 31, 2020 in front of The Main and on I-35 received appropriate instruction from APD on the use of the less lethal shotgun. Additionally, I believe that APD provided all officers involved in this incident with an understanding of Texas Penal Code 42.02, Riot.

48. Based upon the documents I have reviewed; it is my opinion that the investigation into the actions of the officers involved in the incident with Mr. Talley were consistent with national standards.

49. Following the incident in which Mr. Talley was injured he filed a complaint with the Office of Police Oversight (OPO). This complaint was forwarded to The APD Internal Affairs Division for investigation. At this time, no officer has been identified in this incident and the administrative investigation has been paused pending the outcome of multiple criminal cases.

- **COMPENSATION**

Compensation for my expert witness services is $350 per hour. This is a preliminary report and may have to be supplemented when more information is available.

- **Resume – Attached**
- **List of Cases in which I have been retained - Attached**

Submitted by,

Craig R. Miller

Appendix

CRAIG R. MILLER

Available to Travel

Lt4653@yahoo.com www.chiefcraigmiller.com

EXPERT WITNESS – CONSULTANT & SUBJECT MATTER EXPERT

Career Law Enforcement Officer – Chief of Police

Major City – Major Crimes – Use of Force – School District Security

Accomplished leader who thrives on the energy and excitement of the investigative process balanced by a calming presence that is experienced by staff, superiors, and the public. Focused on getting the job done and accomplishing the objective. Listens, learns, and finds the most capable people available to do the job. Comfortable interacting with people at all levels of an organization as well as respecting the chain of command. Known as a positive person who manages others with respect.

Officer Involved Shootings & Death in Custody Investigations

Deadly /Excessive Force– Police Procedure – Premise Liability – Undercover Police operations – School Safety

Organization Leadership – Criminal Investigations

High Profile Incidents – Budget & Personnel Management – Emergency Management

Decisive – Organized – Calm Under Pressure – Personable – Team Builder – Media Relations

SUBJECT MATTER EXPERT WITNESS

EXPERT WITNESS **2012 – Present**

As a subject matter expert, represents both plaintiffs and defendants in civil and criminal litigation in federal and state courts. Prior to representing a client, reviews facts including videos and reports to determine whether to participate in the case. Reputation for being "extremely professional and prepared".

Areas of expertise include

- Death In Custody Investigations
- Law Enforcement Tactics
- Officer Involved Shootings
- Police Management School Safety
- Police Use of ForceUndercover Operations

POLICE EXPERIENCE

DALLAS INDEPENDENT SCHOOL DISTRICT, Dallas, TX **2011 – 2019 (Retired)**

14th largest US public school system with 160,000 students, 20,000 employees and $1.2 billion operating budget

Chief of Police

Direct the Emergency Management Department and safety plans for the Dallas ISD. Oversee 220 personnel (sworn, non-sworn, dispatch, private security) with 100 vehicles and $13 million budget. Manage contracts for video cameras, coordinate security for buildings and responsible for campus fire and burglar alarm response.

- Created and implemented a program of "hire and train" in which the school district hires individuals and then sends and funds their attendance at the Regional Police Academy (COG) in Arlington, TX, successfully hiring individuals who attended DISD schools and then placing them as police officers in those school where they were instrumental in bridging the culture gap between the students and school safety
- Post Sandy Hook, requested and received funding for $2.1 million for safety enhancements at all 153 elementary schools that previously had not had security such as camera systems, access control, and buzzer intercom at entry points
- Created new standardized "use of force" training for DISD police personnel
- Developed and implemented a new shift structure resulting in more effective utilization of personnel

DALLAS POLICE DEPARTMENT, Dallas, TX **1982 – 2011**

9th largest police department in the U.S., covering 342 square miles and serving a diverse population of 1.2 million

Deputy Chief, Crimes Against Persons (2010 – 2011)

Responsible for the investigation of all murders, rapes, assaults, and business robberies in the City of Dallas. Also oversaw the Crime Scene Response Unit that is responsible for all physical evidence and DNA collection. Serve as Department Spokesperson to the media for all major violent crimes in the city. Oversaw $3.3 million outsourcing contract with Southwest Institute of Forensic Science. Managed 180 sworn officers and civilian employees and a budget of $18.5 million.

- Instrumental in the implementation of the Sexual Awareness Nurse Examiner (SANE) program, expanding the number of facilities that handled sexual assault victims
- Developed grant application and received state funding for Cold Case DNA for fiscal year 2011-2012
- Foster relationships with the Dallas County District Attorney's Office that leads to arrest and convictions.

Homicide Unit Commander (2007 – 2010)
Oversaw 750+ murder investigations and 300+ suicides during CAPERS assignment. Interact daily with the press, including 100's of both print and video media interviews. Physically present at 75 officer-involved shootings (OIS) involving 100+ officers.

- Led the Special Investigations Unit (SIU) that oversees "officer involved" shootings, and death in custody investigations
- Exceeded the national clearance for homicides
- Reduced homicides, the leading indicator of violent crimes, 27% from 200 in 2007 to 148 in 2010
- Created and built the Cold Case Homicide squad (sergeant and 4 officers)

Tactical Services Commander/Explosive Ordinance Unit (2004 – 2006)
Oversaw the mounted patrol, canine squad, and the bomb squad

- Developed grant application resulting in $100,000 state funding for new equipment, including bomb suits

Narcotics Division Unit Commander (1997 – 2004)
Handled day-to-day operations for street level narcotics activity and also oversaw narcotics seizures, asset forfeiture and intelligence operations

- Initiated and spearheaded investigation that led to the resolution of the infamous "fake drug" conspiracy at the Dallas Police Department, resulting in a $10 million settlement to innocent victims, the convictions of multiple police officers, and the resignation of the Chief of Police
- Working with the federal authorities, led the revision of the Standing Operating Procedures of the Narcotics division that dramatically increased controls over narcotics officer operations

Abatement Unit Commander (1995 – 1997)
Legal Services Unit Commander (1999)
Traffic Division Unit Commander (1993 – 1994)
Work directly with the FBI and Secret Service in creating security and transportation plans
Southwest Patrol Watch Commander (1992 – 1993)**, Commander of Computer Crime Analysis** (1991 – 1992
Early Career with the Dallas Police Department (1982 – 1991) Police Officer and Sergeant

EDUCATION, CERTIFICATIONS & PROFESSIONAL AFFILIATIONS
BA, Criminal Justice, Memphis State University
Force Science Certification Course (40 hours) – 2015 "Force Science Analysis"

Continuing Education
Graduate of the FEMA Emergency Management Institute
Hazardous Device Supervisors School, Huntsville, AL

Southwest Legal Foundation, University of Texas at Dallas
Graduate of the Command Management School Supervisor's Course

Law Enforcement Management Institute of Texas, Sam Houston State University
New Chief Development Program

Professional Affiliations
International Association of Chiefs of Police (IACP) | Police Executive Research Forum (PERF)
Texas Police Chiefs Association (TPCA) | North Texas Police Chiefs Association (NTPCA)

- Officer Involved Lethal Force Investigations Course – Instructor, 2014 to present

Appendix C

Craig Miller - Case History (Expert Witness)

Ms. Chris Edwards
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Grady Bolton
V
City of Austin, Austin Police Sergeants Randy Dear, Manuel Jimenez and Officers Michael Nguyen, Rolando Ramirez,

Result:	Verdict for Defendant (City of Austin)
Testified:	Yes (Federal Court – Judge Sparks)
Deposition:	No
Report:	Yes
Defendant:	City of Austin (2018)

Mr. Howard Schaffner
Hoefeld and Schaffner
30 N LaSalle Street
Chicago, Illinois, 60602
(312) 372-4250

Nwaeke
V
City of Chicago

Circuit Court of Cook County, Illinois

Result:	Decision for City of Chicago
Testified:	Yes
Deposition:	Yes
Report:	No
Plaintiff:	Prince Nwaeke (2018)

Mr. Jason Schuette
Assistant City Attorney
City of Dallas
1500 Marilla St.
Dallas, Texas 75201
(214) 670-1333

Cassandra Luster, et al.,
V
City of Dallas

Result: Verdict for the Defendant City of Dallas
Testified: No
Deposition: Yes
Report: Yes
Defendant: City of Dallas (2018)

Mr. Jason Schuette
Assistant City Attorney
City of Dallas
1500 Marilla St.
Dallas, Texas 75201
(214) 670-1333

Rene Hernandez, et al.,
V.
City of Dallas

Result: Pending
Testified: No
Deposition: No
Report: Yes
Defendant: City of Dallas (2018)

Ms. Christine Duperroir
Burt Barr & Associates
203 E. Colorado Blvd.
Dallas, Texas 75203
(214) 943-0012

Marcus and Audrey Dawson individually and as Representative of the Estate of Christian Dawson
V.
Cider Property Inc., a Texas Corporation: Srinivas Pohar: Utopian Ventures, LLC D/B/A Azure Banquet Hall

Result:	Settled out of Court
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	Azure Banquet Hall (2018)

Mr. Noel Capps
Renaud, Cook, Drury, Mesaros, PA
One North Central, Ste. 900
Phoenix, AZ, 85004-4117
(602) 307-9900

Georgia Terry, surviving mother of decedent Lynn Debra Freeman, for and on behalf of all who may may statutory right of recovery,
V.
City of Flagstaff, a political subdivision of the State of Arizona; and Terros, Inc., an Arizona non-profit corporation, d/b/a Terros Health and Terros Healthcare,

- Superior Court of the State of Arizona in County of Coconino

Results:	Pending
Testified:	No
Deposition:	No
Report:	No
Defendant:	Terros Healthcare (2018)

Mr. Al Ellis
Sommerman, McCaffity, & Quesada
3811 Turtle Creek Blvd., Suite 1400
Dallas, TX 75219
(214) 720-0720

Mary Stroope, as Independent Administrix of the Estate of Richard Delle
V.
Home Depot

- 160th District Court, Dallas County, Texas

Results:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	Mary Stroope (2018)

Mr. Wayne Harper (Harper Law)
35 West Granite Street
P. O. Box 506
Butte, Montana 59703
(406) 782-5729

Thomas Madsen,
V.
Gallatin County, a Governmental Entity of the State of Montana, and John Does 1 Through 5

- Montana Eighteenth Judicial District Court, Gallatin County

Results:	Pending
Testified:	No
Deposition:	No
Report:	No
Plaintiff:	Thomas Madsen (2018)

Ms. Jane Bishkin
TMPA Attorney
10000 N Central Expressway
Dallas, Texas 75231
(214) 212-2377

Sergeant William Eurto

V.

State of Texas
Tarrant County, Texas

Results:	No Bill (GJ Hearing)
Testified:	No
Deposition:	No
Report:	No
Defendant:	Sgt. Willam Eurto (Bedford Police Department) 2019

Ms Amy Staples
Loevy & Loevy
18 Village Plaza PMB 181
Shelbyville, Ky. 40065
(312) 243-5900

Pearlie Sue Gambrel as Administrator for the Estate of Jessie Mills v Knox County

- Eastern District of Kentucky, Southern Division

Results:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiff:	Jessie Mills (2019)

Ms. Tatia Wilson
Assistant City Attorney
City of Dallas
1500 Marilla St
Dallas, TX 75201
((214) 671-9553

Timpa v Dillard (COD), Civil Action No. 3: 16cv3089 – N

Results:	MSJ for Dallas
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of Dallas (2019)

James Roberts
Scott Palmer PC
15455 Dallas Parkway
Addison, TX 75001

Alfredo Valencia v Davis (Abilene PD)

Results:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	Alfredo Valencia (2019)

Mr. Robert Rogers
Lyon, Gorsky, Gilbert & Livingston
12001 N. Central Expressways #650
Dallas, Texas 75243
(214) 965-0090

State of Texas v Amber Guyger
Dallas County

Result:	Murder Trial (Guilty)
Testified	No
Deposition:	No
Report:	No
Defendant:	Amber Guyger (2019)

Ms. Melissa Cranford
Messer, Rockfellar & Fort, PLLC
6371 Preston Rd.
Frisco, Texas 75034
(972) 424-7200

Brandie Cunningham v Wood County, Thomas Castloo

Result: Pending
Testified: No
Deposition: No
Report: No
Plaintiff: Brandie Cunningham (2019)

Mr. Nathan Inurria
Farah Law Group
1211 Hyde Park Blvd.
Houston, TX 77006
(888) 481-9359

Casey Brown v City of Houston
(U.S. District Court, Southern District of Texas)

Result: Pending
Testified: No
Deposition: No
Report: Yes
Plaintiff: Casey Brown (2019)

Mr. Phillip Linder
Barrett, Bright, Lassiter, Linder, Perez, LLP
3300 Oak Lawn Ave
Dallas, Texas 75219
(214) 252-9900

Maria Blocker v State of Texas (Dallas County)

Result: Case settled at Trial
Testified: No
Deposition: No
Report: No
Defendant Maria Blocker (2019)

Page 8

Ms. Elizabeth Wang
Loevy & Loevy
20160 Broadway
Boulder, Colorado, 80302
(720) 502-2103

Richard Winfrey Jr., & Megan Winfrey v Johnson

Result:	Settled
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	Richard Winfrey Jr. & Megan Winfrey (2019)

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Ms. Amy Messer
Assistant City Attorney
City of Dallas
1500 Marilla St
Dallas, TX 75201
((214) 671-9553

Kelson v City of Dallas, Civil Action No. 3:18cv3308-E

Results:	Pending – Police excluded
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of Dallas (2020)

Ms Amy Staples
Loevy & Loevy
18 Village Plaza PMB 181
Shelbyville, Ky. 40065
(312) 243-5900

William Virgil
v
City of Newport, City of Cincinnati, City of Norwood, Newport Police Officers Mark Brandt, Norm Wagner, Pat Moore, Howard Niemier, Sarah Desentry, Sgt. Bradford, Lt. Col. Ken Page, Lt Tom Fromme, Lt Rick Sears, Cincinnati Police Officers Mike Slayback, Robert Cardone, Mike Phillips and Norwood Police Officer Steve Daniels

- Eastern District of Kentucky, Covington Division

Results:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	William Virgil (2020)

Ms. Chris Edwards
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Neal Studzinski
V
City of Austin, Lewis Holland, Christopher Taylor, Karl, Krycia, Jon Bundick, Joseph Lorett and Richard Anthony Ross

Result:	MSJ
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of Austin (2020)

Mr. Gray Laird
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Fabrizio Bisetti
V
City of Austin, Brendan McMorrow

Result: Pending
Testified: No
Deposition: No
Report: Yes
Defendant: City of Austin (2020)

Anthony & Peterson, LLP
500 N. Waters Street
Corpus Christi, Texas 78401
(361) 687-1000

Michael Aranda, Individually and as Representative of the Estate of Alejandro Chavez (Plaintiffs)
V
Jayla Monay Sherley, Individually and Madrigal Enterprises, LLC d/b/a Texas Rose Restaurant & Club

Result: Pending
Testified: No
Deposition: No
Report: Yes
Plaintiff: Michael Aranda 2020

Ms. Elizabeth Wang
Loevy & Loevy
20160 Broadway
Boulder, Colorado, 80302
(720) 502-2103

Adam Gray v City of Chicago Police Department

Result:	Case Settled
Testified:	No
Deposition:	Verdict for the Plaintiff
Report:	Yes
Plaintiff:	Adam Gray (2020)

Ms. Chris Edwards
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Bernstein v. City of Austin and Travis County

Result:	MSJ City of Austin
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of Austin (2020)

Mr. Woody Glass
Ward & Glass
1601 36th Ave. NW
Norman, Oklahoma 73072
(405) 360-9700

Michael Dudley Cooper v. City of Walters, Ok.

Result:	Settled out of court
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	Eric Cooper (2020)

Hal Cook
Cook & Cossio
620 w. 3rd Street, Suite 404
Little Rock, Arkansas 72201

Randy McDaniel v. City of Pine Bluff

Result:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiff:	Randy McDaniel (2020)

Ms. R. Spence
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Norman McIntosh v Chicago PD Officers Bach, Evans & Furgoli

Result:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiff:	Norman McIntosh (2021)

Travis Harrison
Ward & Glass
1601 36th Ave. NW
Norman, Oklahoma 73072
(405) 360-9700

Norberg v Lincoln County Oklahoma et al.

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	Ellen Norberg (2021)

Kelly Gier
Kelly Gier Law Firm
505 W. 12th Street
Austin, Texas 78701
(512) 348-6642

Lincoln Alexander v. State of Texas (Murder)

Result:	Pending
Testified:	No
Deposition:	No
Report:	No
Defendant:	Lincoln Alexander (2021)

Justin Weiner
Law Offices of Mike Head & Justin Weiner
219 S. Prairieville Street
Athens, TX 75751
(903) 675-4300

Jeremy Cook v. State of Texas (Att. Capital Murder)

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	Jeremy Cook (2021)

Dan Richards
Richards, Rodriguez & Skeith, LLP
816 Congress Ave. Suite 1200
Austin, TX 78701
(512) 391-8230

Anthony Evans v City of Austin

Result:	Case Settled Out of Court
Testified:	No
Deposition:	Case Settled
Report:	No
Defendant:	City of Austin (2021)

Christine Karcher
Downs & Stanford
2001 Bryan Street
Dallas, TX 75201 (214) 748-7900

DeMarcus Gates v. Frontline Protective Services

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	Frontline Protective Services (2021)

Mr. Gray Laird
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546 (512)974-2147

Meredith Drake
V
City of Austin, et al

Result:	Case Settled Out of Court
Testified:	No
Deposition:	Case Settled
Report:	No
Defendant:	City of Austin (2021)

Adolfo Ruiz
Denton Navarro Rocha Bernal & Zech, P.C.
2517 N. Main Ave.
San Antonio, Texas 78212

Zinter, Miller, Howd, Mead, Pierce, Brown, Bailey, Gonzales, Egan, Green, Springer, Gardiner, Herrara, Green Richard
v.
City of Leon Valley

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of Leon Valley, Texas (2021)

Mr. Mark Kasonovich
Fitzpatrick & Kosanovich
P.O. Box 831121
San Antonio, TX 78283
(210) 408-6793

Fabrizio Bisetti
V
City of Austin, Brendan McMorrow

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of Austin, Officer McMorrow (2021)

Mr. Mark Ralls
Hoblit Darling Ralls Hernandez & Hudlow LLP
6243 IH 10 West
San Antonio, Texas 78201

Mr. Mark Kosanovich
Fitzpatrick & Kosanovich
P.O. Box 831121
San Antonio, Texas 78283

Amanda Wood
Plaintiff
v.
City of San Antonio, Texas
Defendants

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of San Antonio (2022)

Michael Urbis
San Antonio City Attorney
203 S. St Mary's St. 2nd Floor
San Antonio, Texas 78205

Ninfa Ruiz & Rodrigo Jardon Ayala
Plaintiff
v.
City of San Antonio, and Joe Castaneda
Defendants

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	City of San Antonio (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Rosalinda Nuno Trevino
V
City of Austin, Officer John Hattaway

Result: Pending
Testified: No
Deposition: No
Report: Yes
Defendant: City of Austin (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Isiah Hutchinson Estate
V
City of Austin, Officers WRIGHT, O'NEILL, WOODS & NELSON III

Result: Pending
Testified: No
Deposition: No
Report: yes
Defendant: City of Austin (2022)

Ms. R. Spence
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Anthony Jakes v Chicago PD, Officers Kill, Boudreau, Caesar, Bonke,, Pack, DeLacy

Result:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiff:	Anthony Jakes (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

M. Patricia Cantu and Roberto Cantu
V
City of Austin, Chief Brian Manley

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2022)

Mr. Gray Laird
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Jose Herrera
V
City of Austin, et al

Result:	Case Settled
Testified:	No
Deposition:	Case Settled
Report:	Yes
Defendant:	City of Austin (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Jason Gallagher
V
City of Austin, Officers Gonzalez-Galvan, Siegel, McCulloch

Result:	Case Settled
Testified:	No
Deposition:	Case Settled
Report:	yes
Defendant:	City of Austin (2022)

Elizabeth Guerrero-Southard
Assistant City Attorney
City of San Antonio
203 S. St. Mary's Street
San Antonio, Texas 78205

Lance Alexander
V
City of San Antonio, Officer John Doe

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of San Antonio (2022)

Ms. Heather Lewis Donnell
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Allan Seward v Det. Camillo R. Antonini, ET AL. (Mount Vernon PD)

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Plaintiff:	Allan Seward (2022)

Ms. Heather Lewis Donnell
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Rayvon Rutherford and Reginald Gallman v Det. Camillo R. Antonini, Sgt. Sean J. Fegan, Robert Puff, City of Mount Vernon, Brianna M. Mecca, Kenneth Bruce, Delfim Ferreira, Patrick King, Peter Vitelli, Jesus Garcia, Osvalldo Medina, Joseph Valente

Result:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiffs:	Rayvon Rutherford & Reginald Gallman (2022)

Elizabeth Guerrero-Southard
Assistant City Attorney
City of San Antonio
203 S. St. Mary's Street
San Antonio, Texas 78205

Joshua LaPlace
V
City of San Antonio, Six Individual Officers, Chief McManus, SAPD

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of San Antonio (2022)

Ms. Rachel Brady
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Ricardo Rodriguez
V
Chicago Police Department, Detectives Guevara and Halvorsen

Result:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiffs:	Ricardo Rodriguez (2022)

Mr. David Owens
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Ian Simmers
V
King County, City of Bothell, Det. Hopkins, Sgt. Rusk, Det. McSwain, Det. Raftus, Det. Baxter, Chief Eericks, Sgt. Sclaegel, Bothell Police Department

Result:	Pending
Testified:	No
Deposition:	Yes
Report:	Yes
Plaintiffs:	Ian Simmers (2022)

Mr. Casey Campbell
Schell, Cooley, Campbell
5057 Keller Springs
Addison, Tx 75001
(214) 665-2000

Famiyl of Aaron Cortez
V
Aveanna Healthcare

Result:	Pending
Testified:	Yes - Arbitration
Deposition:	No
Report:	Yes
Defendant:	Aveanna Healthcare (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Sydni Beuhler
V
City of Austin, Officers Smart, Gonzalez and Allare

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2022)

Austin Independent School District
Ms. Alexa Gould
Rogers, Morris & Grover, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

Crystal Ayou
V
Austin Independent School District

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	Austin ISD (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Nicole Underwood
V
City of Austin, Austin Police Department

Result:	Case Settled Out of Court
Testified:	No
Deposition:	Case Settled Out of Court
Report:	yes
Defendant:	City of Austin (2022)

Mr. Locke Bowman
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

Tina Jimerson/John Brown
V
Dallas County Sheriff Dept., Fordyce Police Department, Donny Ford, Ronnie Pool, Lt. Bradshaw, Michael Joe Early, Inv. Godwin

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Plaintiffs:	Jimerson/Brown (2022)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Javier Ambler
V
City of Austin, Austin Police Department

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2022)

Elizabeth Guerrero-Southard
Assistant City Attorney
City of San Antonio
203 S. St. Mary's Street
San Antonio, Texas 78205

Mathias Ometu
V
City of San Antonio, Officer Day, Officer Serna & Chief McManus, SAPD

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of San Antonio (2023)

Mr. Elliott Slosher
Loevy & Loevy
311 N. Aberdeen St.
Chicago, Il 60607
(312) 243-5900

State of Illinois
V
Patrick Taylor

Result:	Pending
Testified:	No
Deposition:	No
Report:	Yes
Defendant:	Patrick Taylor (2023)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Volter-Jones
V
City of Austin, Austin Police Department

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2023)

Mr. Monte Barton
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Tyree Talley
V
City of Austin, Austin Police Department

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2023)

Mr. Gray Laird
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Modesto Rodriguez
V
City of Austin, Austin Police Department

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2023)

Mr. Gray Laird
Assistant City Attorney
Austin City Attorney
City Hall, 301 W.2nd Street, P.O. Box 1546
Austin, Texas 78767 – 1546
(512)974-2147

Michael Ramos
V
City of Austin, Austin Police Department

Result:	Pending
Testified:	No
Deposition:	No
Report:	yes
Defendant:	City of Austin (2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants	§	

DEFENDANT CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant City of Austin, Texas files this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

I. Introduction

Plaintiff Tyree Talley brings a §1983 claim for excessive force against Officer John Doe(s) and a §1983 *Monell* claim against the City of Austin. The claims arise out of an incident which occurred on May 30, 2020 during protests near the Austin Police Department. Plaintiff threw a bottle at police officers and, in response, was struck by less lethal beanbags allegedly fired by one or more police officers. Plaintiff also brings a §1983 *Monell* claim against the City of Austin. The City denies the Plaintiff's claims and maintains that Plaintiff cannot meet his considerable evidentiary burden to establish liability against the City under 42 U.S.C. §1983. The Plaintiff does not have viable claims against the City of Austin. Accordingly, summary judgment in favor of the City of Austin is proper as a matter of law.

II. Facts

The facts of the underlying events are detailed in the Combined Motion to Dismiss, and in the alternative, Motion for Summary judgment, filed by John Doe(s) and the City of Austin, which is incorporated by reference [filed July 31, 2023]. The City of Austin's Police Department (APD)

maintains extensive and detailed policies and procedures regarding the use of force, forbidding the use of excessive force, and requiring close investigation of all incidents involving police officer use of force. (Exhibit 1, Henderson Decl, ¶¶ 1-23, and Attachment 1). APD disciplines officers determined to have used excessive force, and regularly reviews whether officers show a pattern of using force that calls for closer scrutiny. *Id.* at ¶¶ 19-23. In addition, APD has rigorous hiring standards and carefully screens its potential employees to determine that they do not pose any unusual risk of using excessive force. *Id.* at ¶ 4-6. APD also trains all of its cadets and officers on all facets of police work, including the use of force, proper search and seizure, crowd control, duty to intervene as well as the rights of persons with disabilities. (Ex. 2, Lyons Decl.). APD's training requirements far exceed the minimum standards required by the state. *Id.*

A. Use of Force Policies and Investigation

At the time of this incident, May 30, 2020, APD had policies in place specifically forbidding the use of excessive force. The policies specified when an officer may use force, and, when appropriate, the level of force that may be used. A copy of the policies in effect at the time of this incident is attached and incorporated herein (Ex. 1, Henderson Decl, Attach. 1) (APD General Orders valid 4/21/2020 to 5/31/2020). The policies are set out in Chapter 2 - Response to Resistance and Pursuit. APD policies also included a specific policy (GO 200.1.3) regarding the duty to intercede when an officer has a reasonable opportunity to prevent harm, and GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, as well as policies addressing control devices including kinetic projectiles, crowd control, emergency management and interpreter services.

APD officers are required to report any use of force to a supervisor. APD investigates every reported use of force by one of its officers. *Id.* APD initially tailors investigations for use of force incidents depending on the level of force used. APD applies its highest level of scrutiny for any incident categorized as Level 1 (which includes in-custody deaths). Henderson Decl ¶¶ 8-19. For any Level 1 use of force, the APD's special investigations unit (SIU) conducts a complete criminal investigation of the incident—securing and gathering evidence and working with prosecutors to present the evidence to a grand jury. *Id.* SIU has all of APD's resources at its disposal—including crime scene personnel, DNA testing, drug testing, and firearms testing. *Id.* At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases to a grand jury to consider whether to indict. *Id.* at ¶¶ 12; 19. Concurrent with the SIU criminal investigation, APD's Internal Affairs Division (IAD) conducts its own review to determine whether the officer violated any APD policies (regarding the use of force or other policies). *Id.* at ¶¶ 10-13. IAD has complete access to the evidence gathered by SIU. *Id.* IAD investigators may also compel officers to give statements regarding their actions. *Id.* IAD may also take its own investigatory steps. *Id.* Ultimately, IAD presents its evidence to the involved officer's chain-of-command, including the chief of police. *Id.* at ¶¶ 13-14. The chief of police makes the final decision whether to discipline the officer. *Id.* According to APD's disciplinary matrix, any officer who uses deadly force in violation of APD policy will be terminated from his employment. *Id.* at ¶ 15, Attachment 1 at APD GO Policy 903. APD has disciplined officers who violated APD policies regarding use of force. *Id.*

B. APD Hiring

APD has a rigorous and thorough hiring process to ensure that its cadets and potential police officers are honest, professional, and possess the appropriate temperament to be APD police officers. In particular, all successful applicants to APD's police academy must fill out a detailed application, undergo a comprehensive background check, pass a cognitive exam, pass an oral interview, pass a polygraph test, undergo a psychological examination, pass a physical, and pass a physical fitness test. *See* Ex. 1, Henderson Decl. ¶¶ 4-6. APD will not hire any applicants whose background or psychological evaluation indicates that they pose a higher-than-normal risk of using excessive force, or that they are otherwise unfit for law enforcement work. *Id.*

C. APD Training

APD has policies and procedures in place requiring all officers to be appropriately and robustly trained for their positions. In particular, every APD officer must be licensed by the Texas Commission on Law Enforcement (TCOLE). (Ex. 2, Lyons Decl). Furthermore, before becoming an officer, every APD cadet receives considerably more than the minimum amount of training required by TCOLE. *Id.* Before becoming full-time officers, every APD officer must successfully complete an eight-month course of instruction at the APD training academy. *Id.* In addition to a wide range of other policing topics, APD cadets receive both practical and classroom instruction on use of force. *Id.* APD cadets receive considerably more training in use of force than the 24 hours required by TCOLE. *Id.* This classroom training includes instruction on the standards for use of force espoused by the Supreme Court in *Graham v. Connor*, and *Tennessee v. Garner*. *Id.*

APD officers and cadets also receive considerable training on interacting with the public. In general, APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public. (Ex. 2, Lyons Decl). At the academy, cadets receive

instruction in use of force, including less-lethal munitions, search and seizure, communicating and interacting effectively with the public including those with disabilities, crowd control, and the entire range of other core police skills. *Id.*

D. APD Officer Discipline

APD has numerous policies and procedures to ensure that officers accused of wrongdoing are properly investigated and, if appropriate, disciplined. (Exhibit 1, Henderson Decl. ¶¶ 7-20, and Attach. 1). APD has a set of policies that all officers must obey. *Id.* Officers are provided with a copy of APD policies. APD policies govern all forms of officer conduct, from appropriate arrest procedures to appropriate use of force. *Id.* The APD Chief of Police is responsible for making policy within APD and for disciplining officers. *Id.* at ¶ 3. As described above, every APD officer involved in a use of force incident must report it to his or her supervisors. *Id.* ¶¶ 7-20, Attach. 1. APD supervisors, internal affairs, or the APD's SIU conducts a review of every reported use of force. *Id.* at ¶¶ 7-20, Attach. 1.

In cases involving Level 1 uses of force, the chief of police will closely review the results of the internal investigation and make a decision whether the officer violated policy. *Id.* at ¶¶ 14-16. If the chief believes that an officer has violated APD general orders, he may discipline that officer with an oral reprimand, written reprimand, unpaid suspension, or terminate the officer's employment. *Id.* at ¶ 15. At the time of this incident, APD general orders included a disciplinary matrix. Under the matrix, if the chief finds that an officer used excessive or unreasonable deadly force, the officer will be terminated. *Id.* at Attach. 1.

APD also proactively screens its officers to identify those that may, among other things, pose a higher-than-normal risk of using excessive force. Specifically, it uses algorithms that will notify an officer's supervisors if the officer is the subject of a high number of citizen complaints

or has more frequent than expected uses of force. Supervisors must re-review each use of force or complaint to determine if the officer poses any unusual risk. *Id.* at ¶ 21. APD's disciplinary process also has substantial citizen oversight. (Exhibit 1, Henderson Decl., ¶¶ 17-18). At the time of this incident in May 2020, the OPO monitored APD in several ways. For instance, OPO staff sat in on interviews conducted by IAD investigators to ensure that they are conducted fairly and impartially. The OPO received complaints from the public and ensured that they were investigated by IAD. The OPO also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

STANDARD OF REVIEW

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325. Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

III. ARGUMENT & AUTHORITIES

A. Claims against Municipalities under 42 U.S.C. §1983

The general contours of municipal liability for the conduct of its employees under 42 U.S.C. §1983 are well-defined in the Fifth Circuit. A city may not be held liable if the court finds that the plaintiff's constitutional rights were not violated. *City of Los Angeles v. Heller*, 475 U.S.

796, 799 (1986); *Mace v. City of Palestine*, 333 F.3d 621, 625 (5th Cir. 2003). Even if a city employee or police officer violated a plaintiff's constitutional rights, a city may not be found liable under §1983 under a theory of *respondeat superior*. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978); *Johnson v. Deep East Texas Regional Narcotics Trafficking Task Force*, 379 F.3d 293, 308 (5th Cir. 2004). Cities are almost never liable under §1983 for the isolated actions of their employees, and they can only be held liable for acts that are directly attributable to it "through some official action or imprimatur." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001).

To establish municipal liability under §1983, a plaintiff must show: (1) an official policy (2) promulgated by the municipal policy maker (3) which was the moving force behind the violation of a constitutional right. *Id.* A policy or custom is official only "when it results from the decision or acquiescence of the municipal officer or body with final policymaking authority over the subject of the offending policy." *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989); *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 847 (5th Cir. 2009). To establish the "moving force" element, a plaintiff must show a direct causal link between the policy and the constitutional violation. *Piotrowski*, 237 F.3d at 580; *Peterson*, 588 F.3d at 848.

Where a plaintiff alleges that his injury resulted from the lack of an appropriate policy, instead of from a facially unconstitutional policy, a plaintiff must establish municipal liability by showing that the city's failure to adopt a policy needed to circumvent predictable violations of federal law amounted to deliberate indifference. *James v. Harris County*, 577 F.3d 612, 617 (5th Cir. 2009); *see also City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989) (discussing city liability for lack of training); *Piotrowski*, 237 F.3d at 579-80 (municipal liability for lack of supervision). To show "moving force" causation based on a municipality's alleged failure to train, supervise,

investigate, or otherwise adopt appropriate hiring or retention policies, a plaintiff must show that the decision not to adopt appropriate policies or procedures amounts to deliberate indifference. *Valle v. City of Houston*, 613 F.3d 536, 542 (5th Cir. 2010). In other words, "the plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. Deliberate indifference is a high standard—a showing of simple or even heightened negligence will not suffice." *Id.* (internal quotes and citations omitted).

The Fifth Circuit has emphasized the need for *Monell* plaintiffs to establish both the causal link ("moving force") and a city's degree of culpability ("deliberate indifference" to federally protected rights.) *Snyder v. Trepagnier,* 142 F.3d 791, 796 (5th Cir. 1998); *Piotrowski,* 237 F.3d at 580. "These requirements must not be diluted, for "[w]here a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability." *Snyder,* 142 F.3d at 796.

B. Plaintiff's Claims against the City should be Dismissed.

Plaintiff contends that the City had a number of "policies, practices and customs" at the time of this incident which allegedly reflected deliberate indifference to Plaintiff's constitutional rights. (Doc. 1, ¶¶ 42-45). The bulk of these alleged policies involve the failure to properly train, discipline, and supervise officers. *Id.* Plaintiff alleges that the City's training and policy failures were a proximate cause of his injuries. *Id.*

First, the Plaintiffs' claims should be dismissed because Plaintiff has no viable claim that Officer John Doe violated Plaintiff's constitutional rights. For the reasons set forth in John Doe(s) and the City's Combined Motion to Dismiss, and in the alternative, Motion for Summary Judgment, the Court should dismiss Plaintiff's claims against Doe since Plaintiff has failed to

identify Doe and the statute of limitations has run.

Moreover, Austin Police officers did not violate Plaintiff's constitutional rights by using excessive force or otherwise. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). For the reasons set forth in Doe's Motion to Dismiss and, in the alternative, Motion for Summary Judgment, the force used on Plaintiff was objectively reasonable. It is well-established that a municipality may not be held liable if a plaintiff's constitutional rights were not violated. *Heller,* 475 U.S. at 799. ("[I]f the [police officer] inflicted no constitutional injury on [the plaintiff], it is inconceivable that [the city] could be liable to [plaintiff]."). As a result, since police officers inflicted no constitutional harm onto Plaintiff, the Plaintiff does not have a viable claim against the City of Austin. Accordingly, summary judgment in favor of the City of Austin is proper as a matter of law.

Even if Plaintiff's excessive force claim somehow survives, Plaintiff still does not have sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City had a policy or practice of using excessive force or using excessive force during peaceful protests; (2) the City is liable for failing to train APD officers or (3) the City is liable for failing to adequately supervise or discipline APD officers.

1. Plaintiff has not established a policy or practice of using excessive force or using excessive force during peaceful demonstrations.

Plaintiff alleges that the City of Austin had a policy or practice of "not using dangerous projectiles that caused severe and permanent injuries to control peaceful demonstrations" and "using excessive force against non-violent demonstrators." (Doc. 1, ¶ 42). None of the allegations are supported by the evidence.

First, if Plaintiff is really alleging under Paragraph 42(a) that the City has a policy of **not** using dangerous projectiles to control peaceful demonstrations, the City agrees. If this is simply a

typo in the Complaint, and the Plaintiff contends that the City has a policy of "using dangerous projectiles," there is insufficient evidence to support the allegation.

It is undisputed that APD had policies in place forbidding excessive force. These policies, in considerable detail, discussed the standards for the application of force and the use of kinetic projectiles. (Ex. 1, Henderson Decl ¶¶ 8-11, Attach. 1). Additionally, APD had policies which address crowd control and emergency management (Ex. 1, Attach. 1). And APD policy 200.1.3 set the duty to intercede when an officer had a reasonable opportunity to prevent harm. Plaintiff does not make any specific allegations about how these policies are deficient, nor does he identify a specific written policy that he contends is unconstitutional. Instead, Plaintiff appears to contend that APD does not enforce them since it fails to adequately investigate the use of force. To prove his claim, Plaintiff must establish that there is some pattern in the use of excessive force that demonstrates that the City had an unwritten policy permissive of excessive force. *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 850 (5th Cir. 2009). Likewise, Plaintiff must prove that the City had an unwritten policy permissive of excessive force during non-violent protests. Simply put, Plaintiff has produced no evidence to support these allegations.

A pattern amounts to an official policy "when it is so common and well-settled as to constitute a custom that fairly represents municipal policy." *Id.* at 850 (internal quotes and citations omitted). To establish that prior incidents constitute a pattern, a plaintiff must show that the incidents have occurred for so long or with such frequency that policymakers must know that the improper conduct is the ordinary and accepted practice of the municipal employees. *Id.* A pattern will not be established based on isolated incidents. Instead, the pattern must be composed of incidents that are numerous and similar to the specific violation alleged. *Id.* at 850-851. "Prior instances must point to the specific violation in question; notice of a pattern of similar violations

is required." *Valle v. City of Houston,* 613 F.3d 536, 548 (5th Cir. 2010) A pattern requires similarity and specificity; "[p]rior indications cannot simply be for any and all 'bad' or unwise acts, but rather must point to the specific violation in question." *Estate of Davis v. City of N. Richland Hills,* 406 F.3d 375, 383 (5th Cir. 2005). To meet these criteria, a plaintiff must place the prior incidents in context. For instance, the mere existence of 27 complaints of excessive force over a four-year period does not show a pattern of allowing excessive force when the city has a large police force that makes thousands of arrests per year. *Id.* at 851.

Here, Plaintiff has no evidence to demonstrate a pattern of prior incidents that are sufficiently numerous and similar to this incident to show that the City tolerates the use of excessive force by its officers or that it has a practice of employing excessive force to control demonstrations or protests. Plaintiff has produced no evidence to support a finding that at the time of the incident involving the Plaintiff, on the first day of the George Floyd protests, Austin Police Department had a custom or practice of using kinetic projectiles during demonstrations. In sum, there is no evidence that APD officers had ever been confronted with a similar protest or demonstration of this size and scope and with similar physical threats presented to officers by objects thrown by a crowd. See Ex. 1, Decl. Henderson, ¶ 16 (May 30, 2020 protests unprecedented in size, scope and unlawful activity)

A recent decision in the Northern District of Texas is instructive. In *Monacelli v. City of Dallas,* 2022 WL 4668054 at *2 (N.D. Texas, September 30, 2022), the plaintiff, a freelance journalist, was covering the George Floyd protests in Dallas when Dallas police officers deployed chemical irritants and kinetic impact projectiles at the crowd. The plaintiff was struck in the leg by kinetic projectiles fired by the officers. *Id.* Other individuals in the crowd, including journalists, were also struck by the projectiles. *Id.* The plaintiff filed suit against the City of Dallas asserting

a *Monell* claim, arguing that the City of Dallas had a policy and practice of using excessive force against non-threatening, peaceful protestors and journalists covering protests…" *Id.* at *5. In an effort to allege a sufficient widespread practice or custom, the plaintiff in *Monacelli* relied on a prior incident two years earlier which received considerable media attention when an officer fired multiple kinetic projectiles at protestors to deter them from marching. *Id.* at *7. The Plaintiff also alleged that on the day before the subject incident, an officer fired a pepperball weapon at another protestor, and the officer was not charged with a crime. *Id.* at *7. The District Court granted the City of Dallas's motion to dismiss, holding that the plaintiff's allegations of isolated incidents are insufficient to satisfy the elements of a "persistent, widespread practice of City officials or employees which…is so common and well-settled as to constitute a custom that fairly represents municipal policy." *Id.,* quoting *Piotrowski v. City of Houston,* 237 F.3d 567, 579 (5th Cir. 2001).

Here, Plaintiff does not allege or prove a series of prior incidents sufficient to constitute a policy or practice of using excessive force in general, using excessive force to control demonstrators or not intervening to stop excessive force during protests. The stringent standard in *Peterson* requires prior incidents that are numerous and similar to the specific violation alleged. *Peterson,* 588 F.3d at 850-851; *see also Roque v. Harvel,* 2020 WL 6334800 *10, (W.D. Tex., March 23, 2020). Plaintiff has not met that burden here.

2. No moving force causation

Plaintiff must meet the heightened standard of moving force causation in order to hold a municipality liable under §1983. *Valle v. City of Houston*, 613 F.3d 536, 546 (5th Cir. 2010). Because APD investigates and routinely disciplines officers who use excessive force, Plaintiff cannot prove that any alleged policy permissive of excessive force was the moving force behind the alleged violations in this case. *See James v. Harris Cty.*, 577 F.3d 612, 618-19 (finding that

alleged policies of lax investigation and discipline in officer-involved shootings could not have been the moving force behind the violations because the officer did not have any knowledge of such policies).

Plaintiff has produced no evidence that a policy or practice played any role in the use of force on Talley, who was actively throwing a bottle in the direction of officers. Plaintiff has no evidence that the officers were influenced by any other prior use of force incident or alleged APD custom of committing constitutional violations while controlling demonstrations. Plaintiff's bald assertions about APD's alleged policies and customs are nothing but pure conjecture and fall far short of proving direct causation. Accordingly, Plaintiff's claims should be dismissed.

3. The Plaintiff's Inadequate Training Claims should be Dismissed.

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick v. Thompson*, 563 U.S. 51, 131 S. Ct. 1350, 1359 (2011). For a plaintiff to prevail on a failure to train claim, he must allege with specificity how a city's training program is inadequate. *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). A plaintiff seeking to recover on a theory of failure to train must prove that: "(1) [the city's] training policy or procedures were inadequate, (2) [the city] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the plaintiff's injury]." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010).

To show deliberate indifference in the context of a failure to train allegation, a plaintiff may pursue two paths. *Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 484 (5th Cir. 2014). The first, and more common path, involves proving that the city had notice of a pattern of prior violations which involved events similar to what transpired when the plaintiff's rights were allegedly violated. *Id.*, *citing Sanders-Burns*, 594 F.3d at 381. Alternatively, a plaintiff can show, based on

a single-incident alone, that "in light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in violations of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Sanders-Burns*, 594 F.3d at 381, *quoting Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 386 (5th Cir. 2005). This "single-incident" path is "difficult, although not impossible," for plaintiffs to successfully follow. *Id.* This is because it is not sufficient for a plaintiff to show that additional training may have avoided the injury, but a plaintiff (following either path) must show that the training was so inadequate that it would pose a "patently obvious risk of recurring constitutional violations." *Kitchen*, 759 F.3d at 485.

As part of his failure to train claim, Plaintiff contends that the City had unconstitutional policies in place and failed to properly train its officers in the proper use of force and failed to properly train its officers regarding civil rights by alleging that the City had the following inadequate training policies:

> "(c) A policy not to adequately train officers regarding civil rights protected by the United States Constitution;
>
> (d) A policy not to adequately train officers in crowd control during non-violent protests;" (Doc. 1, ¶ 42).

Plaintiff only makes bald allegations without adequate factual details as to how he claims the City's training of its officers is constitutionally inadequate. In this case, Plaintiff has no evidence to support an inadequate training claim. APD provides comprehensive training to its cadets and police officers. (Ex. 2, Lyons Decl); *see Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) (finding that compliance with state training minimums "counsels

against" finding a failure to train). It is undisputed that the City provides extensive training to its officers (which far exceeds TCOLE state minimums) and specific training—both in practical application and in the law—on the use of force as well as de-escalation, intervention and institutional bias. Accordingly, Plaintiff cannot show that the City was deliberately indifferent to the need for more or different training. (Ex. 1, Henderson Decl, Attach. 1):

Plaintiff has identified no specific failure of the City's training policies. Plaintiff also has not demonstrated how any other incidents would have put the City on notice of a need for specific or altered training. Plaintiff also has not produced evidence why different training procedures should have been obvious to the City. At its essence, Plaintiff's training claim against the City is little more than bare assertions, unsupported by the type of detailed allegations and evidence mandated by cases like *Monell* and *Connick*. Accordingly, Plaintiff's failure to train claims should be dismissed.

4. Plaintiff Has Not Established a Policy or Practice of Inadequate Supervision, Discipline, and Investigation.

Plaintiff cannot establish that the City has a policy or practice of failing to supervise and discipline its officers or failing to adequately investigate the use of force by its officers. These claims are analyzed under virtually the same stringent, deliberate indifference standard as the failure to train claim. *See Porter v. Epps*, 659 F.3d 440, 446-47 (5th Cir. 2011) (requiring a plaintiff to prove deliberate indifference for failure to promulgate policy, train, and supervise claims); *Gros v. City of Grand Prairie, Texas*, 34 Fed. Appx. 150 *6 (5th Cir. 2002) (per curiam) (requiring a plaintiff to prove deliberate indifference for hiring, training, and supervision claims); and *Barrios-Barrios v. Clipps*, 825 F.Supp.2d 730, 744 (E.D. La. 2011) (citing *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410-11 (1997) (analyzing hiring, training, and supervision claims under a deliberate indifference standard). A showing of even heightened negligence does not suffice to demonstrate

deliberate indifference. *Brown*, 520 U.S. at 407.

To prove deliberate indifference in the context of hiring or retention claims, a plaintiff must show that the policymaker hired or retained an individual knowing that the person posed an obvious risk of committing constitutionally unlawful excessive force. *Brown*, 420 U.S. at 412; *see also Estate of Davis*, 406 F.3d at 382-85 (holding that there was no deliberate indifference even though the city knew that the officer had inappropriately fired a weapon, had a propensity for violence, and received several citizen complaints about the officer); *Snyder v. Trepagnier*, 142 F.3d 791, 198 (5th Cir. 1998) (finding no deliberate indifference even though the plaintiff introduced evidence showing that the officer was stressed, had a quick temper, and had exhibited aggressive behavior). To prove deliberate indifference in the context of a claim that a city failed to supervise or discipline a police officer accused of excessive force, a plaintiff must identify the individual supervisor who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to cause harm by using excessive force. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011). In essence, for all of these types of claims, a plaintiff must prove (usually through demonstrating a pattern of prior similar violations) that the risk of the officer using excessive force was obvious to policymakers. *Id.*

In this case, Plaintiff again only makes a bare allegation that the City did not properly discipline, supervise or take other reasonable steps to supervise officers on the use of force, civil rights, and crowd control during demonstrations. (Doc. 1, ¶42) Simply put, Plaintiff has produced no evidence that an APD officer was inadequately supervised on the date of this incident and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation. As a result, Plaintiff's inadequate supervision and discipline claims are

without merit and should be dismissed.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss the Plaintiff's claims against it with prejudice with all costs assessed to the Plaintiff. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 31st day of July, 2023.

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, *Plaintiff,*	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
CITY OF AUSTIN AND JOHN DOES, *Defendants.*	§	

DECLARATION OF ROBIN HENDERSON

STATE OF TEXAS
COUNTY OF TRAVIS

I, Robin Henderson, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. My name is Robin Henderson, I am over the age of eighteen years, and I am authorized to make this declaration in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as the Chief of Staff for the City of Austin Police Department (APD). I have been the Chief of Staff for APD since December, 2021. I am a certified Texas law enforcement officer. Overall, I have been a professional law enforcement officer with APD since 1997. Prior to becoming Chief of Staff, I held numerous patrol, investigative, supervisory, and management positions with the Austin Police Department.

3. As the Chief of Staff, I assist the Chief of Police in managing the personnel, budget, and police operations for APD. The Chief of Police has final responsibility for setting the operational policies ("APD Policies"), hiring standards, and training standards for APD. I also have personal knowledge of how APD (and the City of Austin) investigates complaints against

officers and of the discipline of sworn APD officers. The Chief of Police has final authority over internal affairs investigations and police officer discipline, subject to State of Texas Civil Service laws and the Meet and Confer Agreement between the City of Austin and the Austin Police Association (the "Agreement"). Through my employment as the APD Chief of Staff, I have personal knowledge of the Agreement, APD work rules and APD policies, APD training requirements, personnel and hiring information for APD police officers, and APD investigative and disciplinary policies and procedures.

I. APD Hiring

4. The Chief of Police has final authority to hire new APD cadets. I know that all APD applicants must undergo and pass a written cognitive test, sit for an oral interview before a board of APD officers, pass a medical examination, and pass a physical fitness test. Additionally, before any new cadets are hired, APD's recruiting division conducts comprehensive employment, criminal, and military background checks. All applicants must also undergo and pass a psychological evaluation and a polygraph examination before hiring. APD does not hire any candidates whose background or psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work.

II. APD Investigations and Discipline

5. APD has policies and procedures in place to ensure that officers accused of violating APD policies are investigated and, if appropriate, disciplined. APD has a set of policies that all officers must obey. The APD policies govern all manner of officer conduct, including, but not limited to, pursuit of fleeing suspects, appropriate arrest procedures, reasonable suspicion and detention, use of APD computers, officer discipline, and use of force. Every APD officer is issued a set of these policies. As the APD policies are updated or revised, they are distributed to all

officers. All officers must acknowledge, in writing, receipt and understanding of any new policies. A copy of the policies in effect at the time of this incident is attached and incorporated herein (Austin Police Department General Orders valid 4/21/2020 to 5/31/2020). This includes the policies set out by APD General Order 200.1 Purpose and Scope, GO 200.1.1 Philosophy, GO 200.1.2 Definitions, GO 200.1.3 Duty to Intercede, GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, GO 206 Control Devices including kinetic projectiles and shot placement, GO 300.3 Crowds, GO 407 Emergency Management, GO 408 GO Mobile Field Force, and GO 609 Interpreter Services.

6. At the time of this incident, May 30, 2020, APD had policies in place specifically forbidding the use of excessive force. These policies specify when an officer may use force, and, when appropriate, the level of force that may be used. These policies are set out in Chapter 2 - Response to Resistance and Pursuit. APD policies also included a specific policy (GO 200.1.3) regarding the duty to intercede when an officer has a reasonable opportunity to prevent harm, and GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, GO 206 Control Devices including Kinetic Projectiles and Shot Placement.

7. Officers who violate the APD policies with respect to use of force are subject to discipline up to, and including, termination. APD's use of force reporting and investigation requirements are set forth in Policy GO 211. APD monitors its officers' use of force by requiring

all officers who use force to report their use of force. APD conducts a review of and inquiry into every reported use of force to determine whether it comported with APD's policies. APD employs a sliding scale to determine the extensiveness of review and inquiry into each use of force – less serious uses of force (e.g., those involving the use of chemical spray or use of a takedown technique) are reviewed by supervisors and the officer's chain of command, while more serious uses of force (e.g. use of lethal force or incidents resulting in an in-custody death) are reviewed by APD's Internal Affairs Division (IAD) and APD's Special Investigations Unit (SIU). An intermediate level of investigation is conducted for uses of force classified as "Level 2," which include weaponless blows to a subject's head. These uses of force require a detailed inquiry packet, review by the officer's chain of command, and review by the APD's Force Review Board.

8. If an incident involves different levels of force, a single review is conducted, and the incident is classified using the most serious level of force applied. For example, if an incident involves an in-custody death then the incident is classified as Level 1, and receives the most stringent review.

9. Following every Level 1 use of force, the APD's Special Investigations Unit (SIU) performs a criminal investigation into the police officer's actions. Officers selected to work in SIU are all experienced investigators who have experience investigating high-profile crimes. SIU detectives have the full panoply of APD resources at their disposal for the investigation—including crime scene specialists, firearms and trajectory analysis, DNA analysis, etc. SIU detectives work closely with the Travis County District Attorney (assuming the incident occurred in Travis County) to gather and present the evidence collected to a grand jury. At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases involving an APD police officer to a grand jury to consider

whether to indict.

10. APD maintains an internal affairs unit (IAD). IAD is responsible for investigating any violation of general orders by APD officers—including all in-custody deaths. IAD investigators are all experienced law enforcement officers who hold the rank of sergeant or above. All formal complaints about APD officers, whether generated internally or externally, are investigated by IAD. IAD is responsible for producing a report on the allegation and detailing the evidence collected, which includes compelled statements given by the officer (if officers refuse to give statements to IAD, they may be terminated from their employment). IAD also has complete access to all of the evidence gathered by SIU.

11. In cases of Level 1 uses of force, including all in-custody deaths, the Chief of Police reviews the IAD report. The Chief of Police also seeks the recommendations of the officer's chain-of-command (the sergeant, lieutenant, commander, and assistant chief) regarding whether they believe the officer violated policy based on their independent review of the evidence. When appropriate, the Chief of Police will conduct a disciplinary review hearing with the officer to get his or her side of the story. Following the hearing, if one is conducted, and after hearing the recommendations of the chain of command, the Office of the Police Monitor (now known as the Office of Police Oversight (OPO)), and the Citizens Review Panel (now known as the Community Police Review Commission (CPRC)), the Chief of Police determines whether the officer violated APD policies and, if so, the appropriate discipline.

12. Under Texas civil service law, and the Agreement, the Chief of Police can discipline officers by oral reprimand, written reprimand, unpaid suspension, demotion, or indefinite suspension (termination). The APD Chief of Police uses a "disciplinary matrix" to determine the level of punishment for particular offenses. APD has, in fact, disciplined officers

who were found to have violated APD policies regarding the use of force. A true and correct copy of APD's disciplinary matrix (APD GO Policy 903) is attached hereto.

13. APD maintains disciplinary records for its officers. Additionally, there is considerable citizen oversight of APD and IAD. The City established the Office of Police Monitor, now known as the Office of Police Oversight (OPO) in 2002. The Community Police Review Commission (CPRC) was established in 2018 and met for the first time in October 2020. At the time of this incident in May. 2020, the OPO monitored APD in several ways. For instance, OPO staff sat in on interviews conducted by IAD investigators to ensure that they are conducted fairly and impartially. The OPO received complaints from the public and ensured that they were investigated by IAD. The OPO also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

14. At the time of this incident, the CRP (Citizens Review Panel, now known as the Community Police Review Commission (CPRC)), was a panel of citizens selected by the Austin City Council to monitor APD. The CRP conducted public hearings, during which it received complaints from the public regarding APD, discussed completed IAD investigations, and it received information from APD and OPO staff. The CRP also reviewed ongoing investigations in closed sessions, and had complete access to IAD files. The CRP could vote to recommend discipline in certain cases or could request that the Austin City Manager hire an independent third-party firm to conduct a review of an IAD investigation or a specific incident.

15. APD has assessment tools in place that can identify officers who may pose an unusual risk for using excessive force. For example, APD uses an algorithm that will automatically send notifications to an officer's supervisors if the officer reports more than a specified number of uses of force over a specified period of time. (Supervisors may also be notified if an officer uses

excessive sick leave, is the subject of a number of complaints, or is involved in a number of vehicle collisions). If such a notification occurs, the officer's supervisors must re-review each of the officer's uses of force or citizen complaints to determine if the officer acted appropriately, or if the officer needs additional training, counseling, or disciplinary action. This process is followed even though every use of force and every citizen complaint receives a thorough review when it first occurs.

III. May 30, 2020 Protests

16. The protests on May 30, 2020 which took place in front of the Austin Police Department Headquarters and along the I-35 corridor were of an unprecedented scale and scope for the City of Austin and the Austin Police Department. While the Austin Police Department had handled many peaceful protests and demonstrations over the years, the Austin Police Department had not encountered prior protests and demonstrations with the degree of unlawful behavior of non-peaceful protestors, including throwing projectiles at police officers and blocking and taking over roadways, that was demonstrated on May 30, 2020.

17. In support of this declaration and Defendant City of Austin's Motion for Summary Judgment, the following Attachment[s] are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

Attachment 1: APD General Orders in effect 4/21/2020 to 5/31/2020.

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 25th day of July, 2023.

#3441

ROBIN HENDERSON

Attachment 1

Austin Police Department

General Orders

CHIEF'S MESSAGE

I am proud to present the newest edition of the Austin Police Department General Orders. The General Orders are designed to assist all employees in accomplishing the Department's mission in a professional and lawful manner. Adherence to these orders also helps safeguard employees and the Department against civil litigation and ensures that employees will be protected when their individual actions are scrutinized, especially after a critical incident.

All employees will abide by these orders and are responsible for keeping themselves current on the content of this manual.

Stay safe,

Brian

Brian Manley

Chief of Police

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LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

IACP Code of Ethics, adopted 37 Tex. Admin. Code § 1.112

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CANONS OF POLICE ETHICS

Article 1: Primary Responsibility of Job

The primary responsibility of the police service, and of the individual officer, is the protection of people of the United States through the upholding of laws. Chief among these laws is the Constitution of the United States and its Amendments. The law enforcement officer always represents the whole of the community and it's legally expressed will and is never the arm of any political party or clique.

Article 2: Limitations of Authority

The first duty of a law enforcement officer, as upholder of the law, is to know its bounds upon him in enforcing it. Because he represents the legal will of the community, be it local, state, or federal, he must be aware of the limitations and proscriptions which the people, through the law, have placed upon him. He must recognize the genius of the American system of government which gives to no man, groups of men, or institutions, absolute power; and he must ensure that he, as a prime defender of that system, does not pervert its character.

Article 3: Duty to be Familiar with the Law and with Responsibilities of Self and Other Public Officials

The law enforcement officer shall assiduously apply himself to the study of the principles of the laws which he is sworn to uphold. He will make certain of his responsibilities in the particulars of their enforcement, seeking aid from his superiors in matters of technicality or principle when these are not clear to him. He will make special effort to fully understand his relationship to other public officials, including other law enforcement agencies, particularly on matters of jurisdiction, both geographically and substantively.

Article 4: Utilization of Proper Means to Gain Proper Ends

The law enforcement officer shall be mindful of his responsibility to pay strict attention to the selection of means in discharging the duties of his office. Violations of law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. If the law is to be honored, it must be by those who enforce it.

Article 5: Cooperation with Public Officials in the Discharge of Their Authorized Duties

The law enforcement officer shall cooperate fully with other public officials in the discharge of authorized duties, regardless of party affiliation or personal prejudice. He shall be meticulous, however, in assuring himself of the propriety, under the law, of such actions and shall guard against the use of his office or person, whether knowingly or unknowingly, in any improper or illegal action. In any situation open to question, he shall seek authority from his superior officer, giving him a full report of the proposed service or action.

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Article 6: Private Conduct

The law enforcement officer shall be mindful of his special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officer and the police service. The community and the service require that the law enforcement officer lead the life of a decent and honorable person. Following the career of a police officer gives no person special perquisites. It does give the satisfaction and pride of following and furthering an unbroken tradition of safeguarding the American republic. The officer who reflects upon this tradition will not degrade it. Rather, he will so conduct his private life that the public will regard him as an example of stability, fidelity, and morality.

Article 7: Conduct Toward the Public

The law enforcement officer, mindful of his responsibility to the whole community, shall deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and will require compliance with the law. He will do neither from personal preference or prejudice but rather as a duly appointed officer of the law discharging his sworn obligation.

Article 8: Conduct in Arresting and Dealing with Law Violators

The law enforcement officer shall use his powers of arrest strictly in accordance with the law and with due regard to the rights of the citizen concerned. His office gives him no right to prosecute the violator nor to mete out punishment for the offense. He shall, at all times, have a clear appreciation of his responsibilities and limitations regarding detention of the violator. He shall conduct himself in such a manner as will minimize the possibility of having to use force. To this end, he shall cultivate a dedication to the service of the people and the equitable upholding of their laws, whether in the handling of law violators or in dealing with the law abiding.

Article 9: Gifts and Favors

The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus, he should be firm in refusing gifts, favors or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

Article 10: Presentation of Evidence

The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice. In so doing, he will ignore social, political, and all other

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distinctions among the persons involved, strengthening the tradition of the reliability and integrity of an officer's word.

Article 11: Attitude Toward Profession

The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement, he shall strive to make the best possible application of science to the solution of crime, and in the field of human relationships, shall strive for effective leadership and public influence in matters affecting public safety. He shall appreciate the importance and responsibility of his office and shall hold police work to be an honorable profession rendering valuable service to his community and country.

IACP Canons of Police Ethics, adopted 37 *Tex. Admin. Code* § 1.113

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PHILOSOPHY, VALUES, VISION AND MISSION

Philosophy of the Austin Police Department

The protection of life is the primary core value and guiding principle of the Austin Police Department. As such, all employees will strive to preserve human life while recognizing that duty may require the use of deadly force, as a last resort, after other reasonable alternatives have failed or been determined impractical. The department's basic goal is to protect life, property, and to preserve the peace in a manner consistent with the freedom secured by the United States Constitution. It is our duty to guarantee these inalienable rights in strict accordance with the highest principles of our society. Operating with the statutory and judicial limitations of police authority, our role is to enforce the law in a fair and impartial manner. It is not our role to legislate, render legal judgment, or punish.

Employees should, by professional attitude and exemplary conduct, ensure all persons are treated with respect and courtesy. Employees should be cognizant of the fact that they are a part of the community they serve and are accountable to the community for their decisions and the consequences of those decisions. Employees should make every effort to involve the community in problem solving, crime suppression, and crime prevention. Employees should strive to know the residents they serve. Positive contact between employees and residents will enhance the public understanding of the employee's role in society and help build partnerships from which crime and fear of crime can be reduced.

Knowledge of the law itself and the ability to understand those ideals upon which the law is built are the cornerstones of law enforcement. Compassion and discretion will play an important role within the philosophy of any employee.

Employees of the Department are professionals. We must realize our main responsibility is the protection of the community and the preservation of human life and dignity. We are guided by the philosophy set forth here and the policies and procedures incorporated into this and other Department manuals.

Department Values - I. C.A.R.E.

Integrity - the cornerstone of Police work; without it, public trust is lost.

Courage - to make the right professional decision.

Accountable - to the community, the Department, and coworkers.

Respect - of the community, the Department, and most importantly, self.

Ethical - professional actions and decision making.

Vision Statement: A trusted and respected Department that collaborates with our community to make Austin the safest city in America.

Mission Statement: To keep you, your family, and our community safe through innovative strategies and community engagement..

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SUPERVISORY REFERENCE GUIDE

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206 Control Devices

208 Taser Guidelines

211 Response to Resistance Reporting Guidelines

214 Vehicle Pursuits

215 Foot Pursuits

306 Search and Seizure

318 Detention, Filed Interviews, and Field Photographs

319 Arrests

321 Care and Transport of Prisoners

346 Crash Investigating and Reporting

402 Incident Reporting and Documentation

408 Mobile Field Force

412 Hostage, Barricaded, and Suicidal Subject Incidents

414 Bomb Threats

455 Social Media

618 Property and Evidence Collection

803 Duty Firearms

804 Department Vehicles

900 General Conduct and Responsibilities

901 Special Investigations

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903 Discipline Matrix

908 Reporting of Employee Arrests and Police Involvement

916 Drug and Alcohol Free Workplace

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Chapter 1 - Department Organization and Administration

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Law Enforcement Authority

100.1 PURPOSE AND SCOPE

Law enforcement officers are granted the authority to perform their functions based on established legal authority. This department does not tolerate abuse of law enforcement authority.

100.2 PEACE OFFICER POWERS

Sworn members of this department shall be considered peace officers pursuant to Tex. Code of Crim. Pro. art. 2.12. The authority of any such peace officer extends to any place in the State of Texas and assigns the duty to every peace officer to preserve the peace within the State of Texas and their jurisdiction through all lawful means. A peace officer shall perform the duties as required under the Tex. Code of Crim. Pro. art. 2.13.

Special or limited peace officer powers or authority to arrest may be granted to others as specified in Tex. Code of Crim. Pro. art. 2.121 - 2.125.

100.3 CONSTITUTIONAL REQUIREMENTS

All employees shall observe and comply with every person's clearly established rights under the United States and Texas Constitutions.

100.4 LAW ENFORCEMENT JURISDICTION

Employees should be aware that there are numerous law enforcement agencies within and surrounding the City. These agencies have jurisdiction within the confines of their geographical boundaries or areas of control. This includes, but is not limited to, the following:

(a) Federal law enforcement officers possess full federal authority nationwide as given to them under the United States Code (U.S.C.). Federal Law Enforcement Officers are authorized to enforce various laws at the federal, state, county, and local level. The Federal Building in Austin is a federal reservation. The Federal Police have patrol jurisdiction and the FBI has investigative jurisdiction.

(b) The Department of Public Safety (DPS) is a state entity which has statewide jurisdiction to conduct criminal investigations, issue traffic citations, and investigate intra-state crashes. This includes the Texas Rangers and DPS Troopers.

(c) Sheriff's Offices are county level entities which have jurisdiction to conduct criminal investigations and enforce County Ordinances within their county. They have statewide jurisdiction to arrest for any criminal offense committed within their presence or view. They have countywide jurisdiction to issue traffic citations. Local Sheriff's Offices includes the Travis County Sheriff's Office (TCSO), the Williamson County Sheriff's Office (WCSO) and the Hays County Sheriff's Office (HCSO).

(d) Constable Offices are county level entities which have countywide jurisdiction to serve civil process and conduct criminal investigations. They have statewide jurisdiction to

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serve warrants and arrest for any criminal offense committed within their presence or view. They have countywide jurisdiction to issue traffic citations. Constable Offices are broken up into Precinct's and Travis County has five (5) Constable Precincts.

(e) Municipal Police Departments are city level entities which have citywide jurisdiction to conduct criminal investigations. They have jurisdiction in their municipality and concurrent counties to issue traffic citations and statewide jurisdiction to arrest for any criminal offense committed within their presence or view. The Austin Police Department is a Municipal Police Department.

(f) Independent School Districts (ISD) and higher education police have concurrent jurisdiction on school property. This includes, among others, Austin Community College Police, Austin Independent School District Police (AISD-PD) and The University of Texas Police Department (UTPD).

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Austin Police Department
General Orders

Chief Executive Officer

102.1 PURPOSE AND SCOPE

The Texas Commission on Law Enforcement (TCOLE) has mandated that all sworn officers and dispatchers employed within the State of Texas shall receive initial certification by TCOLE within prescribed time periods.

102.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

Any chief executive officer of this department shall, as a condition of continued employment, complete the course of training prescribed by TCOLE and obtain the Basic Certificate by TCOLE within the time frame prescribed by Tex. Educ. Code § 96.641 (Tex. Occ. Code § 1701.358).

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Austin Police Department
General Orders

Oath of Office

104.1 PURPOSE AND SCOPE
Officers of this department are sworn to uphold the federal and state constitutions and to enforce federal, state and local laws.

104.1.1 OATH OF OFFICE
Upon employment, all sworn employees shall be required to affirm and sign the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer. The oath shall read as follows:

"I _____, do solemnly swear that I will faithfully and impartially discharge and perform all duties incumbent upon me as a Police Officer of the City of Austin, according to the best of my skill and ability, agreeable to the Constitution and laws of the United States and the State of Texas.

I further solemnly swear that I will be faithful to the demands for truth and honesty, as established by my profession and the Austin Police Department. I will devote my efforts and skills to the honorable profession of policing, and to the service of the neighborhoods and individuals of this community, the City of Austin.

So help me God."

104.1.2 CODE AND CANONS OF ETHICS
All sworn employees shall adhere to the Code of Ethics and Canons of Police Ethics in the General Orders preface, as adopted by the International Association of Chiefs of Police (IACP).

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Austin Police Department
General Orders

Community Policing

105.1 PURPOSE AND SCOPE

The purpose of this general order is to identify the tenets of Community Policing, which serves as the basis for this Department's mission and guiding principles. Community Policing is beyond a philosophy, it is a practice. The Austin Police Department is committed to Community Policing which strives to build mutual respect, collaborative partnerships, fair and impartial policing, and procedurally just behavior with the community that we serve. The Department's goal is to have an understanding of the traditions, culture, and history of the neighborhoods in which they serve in order to develop proactive solutions to problems and increase overall trust in policing. Likewise, the Department is required to provide information and training to the community so community members gain an understanding of police practices and procedures, as well as an understanding of the traditions and culture of law enforcement.

105.2 DEFINITIONS

(a) **Community Policing** - Building positive relationships, one contact at a time, by being present, engaged, and visible in our community to address crime and improve the general well-being of residents and visitors of Austin.

(b) **Procedurally Just Behavior** - Four Principles

1. Treating people with dignity and respect.
2. Giving individuals "voice" during encounters.
3. Being neutral and transparent in decision-making.
4. Conveying trustworthy motives.

(c) **SARA Problem Solving Model**

1. Scanning – Identify and prioritize problems.
2. Analysis – Research known elements of the problem.
3. Response – Develop solutions to eliminate or reduce the frequency of the problem.
4. Assessment – Evaluate the success of the solution.

105.3 COMMUNITY POLICING MODEL

The Department will use the following concepts to help develop community policing goals and objectives, as well as provide a basis for evaluation and accountability.

(a) Types of problems within individual neighborhoods and the Austin community as a whole

(b) Alternative solutions to the problems

(c) Implemented solutions

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(d) Quality of the relationship between the police and other departments and agencies

(e) Fear of crime

(f) Signs of crime within the community

(g) Crime patterns

(h) Degree of citizen involvement in program implementation and problem-solving activities

(i) Responsiveness to citizen demands

(j) Complaints about police behavior (looking at the types of complaints, not the numbers)

(k) Quantity and quality of information about serious crimes from the public

105.4 COMMUNITY PARTNERSHIPS

(a) All employees will actively engage the public in its operations to gain information on local problems, seek cooperation and support in identifying solutions, gather feedback about agency policies and programs, engage in joint crime prevention programs, and provide information and elicit opinions about current and proposed policing policies and programs. Some of the ways this may be accomplished include, but are not limited to, the following:

1. **Community Engagement** – The Department supports and is involved with civic and neighborhood events when possible. Events may include holiday celebrations, ethnic festivals, youth events, etc.

2. **Interaction with Youth** – The Department interacts with youth and youth groups on a regular basis, and participates in both planned and unplanned activities with youth and youth groups.

3. **Meetings** – The venue for police and the community to meet and discuss issues of public safety, including the plans and methods used to enhance public safety. Meetings may include formal, regularly scheduled meetings with neighborhood groups, merchant groups, Community Advisory Boards, and ad-hoc meetings with community members concerned with neighborhood problems.

(b) All employees play a significant role in engaging community members in all interactions, not just when they are addressing a public safety problem. On a daily basis, every encounter with a citizen has the potential to increase community trust.

(c) The following community stakeholders are key players in developing police-community programs and partnerships. They may be engaged individually or in combined meetings, forums, advisory boards, or similar groups.

1. **Neighborhood Members and Groups** - This includes people who live, work or otherwise have an interest in the neighborhood such as volunteer groups, activists, formal and informal neighborhood leaders, residents, visitors, and commuters.

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2. **Nonprofits and Service Providers** - These providers include such entities as victim advocate groups, support groups, community developments corporations, service clubs, and faith based communities.

3. **Private Businesses** - This may include individual businesses or through groups such as the Chamber of Commerce, local business consortiums, corporate management, or others.

4. **Media** - Print, television, and related mass media should be engaged to strengthen relationships with the community by communicating public safety and quality of life issues, soliciting feedback for development of solutions, presenting the Department's current strategies and proposed initiatives for addressing local problems, and conveying information about the Department's varied public services, events, and activities.

5. **Governmental Agencies** - The Department will coordinate programs and services with other local and state governmental agencies that provide services and programs to complement and enhance the Department's mission, as well as those of partner agencies. These include, but are not limited to, human services, child welfare, corrections, probation and parole, other state and local law enforcement agencies, public works, schools and other City departments.

105.5 DEPARTMENT ORGANIZATION

(a) In order to enhance the ability of officers to interact, communicate, and form relationships with individuals and neighborhoods, officer assignments may be on a long-term basis to geographical regions and/or areas corresponding to neighborhood boundaries.

(b) Supervisors may provide officers discretion to pursue criminal investigations, identify problems and formulate solutions, individually or in conjunction with other officers working as a team. Supervisors may request officers and investigators with specialized experience and training to assist in particularly complex or specialized investigative solutions.

(c) When possible, the Department will allocate resources and finances, and where appropriate, request supplemental financial support, to support operational components and programs of Community Policing and problem solving.

(d) Supervisors will promote and incentivize all employees to take responsibility for their role in community policing by taking personal responsibility for identifying community problems and formulating solutions that serve both the well-being of the community and crime prevention.

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Austin Police Department
General Orders

Department Manuals

106.1 PURPOSE AND SCOPE

Department manuals are the written procedures, guidelines and rules that formulate Department orders to provide employees with clear information and direction as to the expectations and responsibilities relating to the performance of their duties. This general order defines the use of each type of manual, restricts the authority to issue, and provides distribution and maintenance guidelines to ensure that all personnel become acquainted with the contents of any manual affecting their position.

106.1.1 LEGALITY OF CONTENTS

If any section, subsection, item, clause, or phrase contained in any written directive is found to be illegal or otherwise incorrect or inapplicable, such finding shall not affect the validity of the remaining portions of the written directive.

106.2 GENERAL GUIDELINES

(a) Due to the amount of information needed to operate an organization the size and complexity of the Austin Police Department, Department Manuals are compiled into the following:

1. General Orders.
2. Special Orders.
3. Standard Operating Procedure Manuals.
4. Operations Manuals.

(b) The Chief is the ultimate authority for the provisions of Department Manuals and will ensure compliance with all applicable Texas law.

(c) The Chief or designee may approve and authorize exceptions to individual provisions within any Department Manual or directive.

1. Exemptions may be made after a legitimate business need has been clearly articulated and it is determined that failure to provide the exemption would severely interfere with a person's or work group's ability to achieve department goals (e.g. Undercover officers having to comply with all provisions of the Dress and Grooming Code).
2. Exemptions will not necessarily be referenced within the directives; however, it is the responsibility of the assistant chiefs and commanders to ensure that any exemptions are documented in a form where they can be identified and verified. All exemptions will require periodic review to determine their continued applicability and/or the need for alteration.
3. Exemptions will not be authorized which allow employees to infringe upon residents' rights to be treated fairly, humanely, and equitably under the law.

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106.2.1 DEFINITIONS

The following words and terms shall have these assigned meanings within all Department Manuals and directives, unless it is apparent from the content that they have a different meaning:

City - The City of Austin (as a government entity).

Civilian/Non-Sworn - an employee of the Austin Police Department having no arrest authority as defined for sworn officers. Civilian personnel may be employed and affiliated with APD in a variety of supporting roles, and may be uniformed, but lack the authority to make a full-custody arrest.

Department/APD - The Austin Police Department.

Employee/Member/Personnel - All persons employed by the Austin Police Department. This includes sworn officers, civilian employees, unpaid interns and volunteers.

Child - Generally any person under the age of 17 years. Certain sections of general orders may differ in the age range of a Child due to statute specifications.

Manual - The Austin Police Department General Orders.

Officer/Sworn - An employee of the Austin Police Department who is commissioned by the City of Austin as a law enforcement officer and granted those general peace officer powers prescribed by constitution, statute, or ordinance in the jurisdiction.

Order - A written or verbal instruction issued by a superior.

TCOLE- The Texas Commission on Law Enforcement.

Rank - The job classification title held by a sworn employee.

106.2.2 FORMATTING AND ABBREVIATION CONVENTIONS

(a) The following formatting conventions will be used for each Department Manual and directive:

1. The document will begin with a scope and purpose statement and conclude with specific directive information.
2. The subject of the document will be included in the header and the published date will be included in the footer.

(b) The following are acceptable substitutions:

1. Special Orders may be abbreviated as "SO."
2. An individual order may be referenced as "General Order X."
3. Individual sections of an order may be referenced as "Section 106.X" or "§ 106.X."

106.2.3 GRAMMATICAL CONSTRUCTION OF MANUALS

(a) The meaning of words or phrases not specifically defined shall be interpreted to have the meaning and intent established in common usage.

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(b) No exception to directives will be made based on verb tense, gender, or number. The following rules of grammar shall apply throughout all Department Manuals and directives:

1. Present tense wording includes the past and future; Future tense wording includes the present.
2. The use of a specific gender is inclusive of all genders.
3. The use of the singular number includes the plural, and the plural includes the singular.
4. Verb forms:
   (a) The words "shall", "will", and "must" are mandatory in intent and are used to specify a required action.
   (b) The word "should" is advisory in intent. While not mandatory, an advised action should be followed if the situation permits and the action is deemed practical.
   (c) The word "may" is permissive.
5. The use of "e.g.," means "for example;" its use is not intended to be an all-inclusive list.

106.2.4 ACKNOWLEDGMENT OF DEPARTMENT MANUALS AND MANUAL REVISIONS

(a) As a condition of employment, all employees are required to electronically or physically sign a statement of receipt acknowledging that the employee:

1. Has received a copy or has been provided electronic access to the General Orders; and
2. Is responsible for reading and becoming familiar with the General Orders; and
3. Will obtain any necessary clarification of the General Orders; and
4. Will keep abreast of all revisions to the General Orders.

(b) Supervisors/managers will ensure their employees are issued any applicable SOP(s) and/or Ops Manual(s) specific to that work assignment.

1. Employees are required to electronically or physically sign an issuance receipt upon receiving an SOP and/or Ops Manual.
2. Physical issuance logs will be maintained by the Unit Supervisor.

(c) Supervisor/managers will ensure their employees are made aware of any applicable Department Manual revision.

1. Employees are required to review and acknowledge revisions upon receiving an update to any Department Manual through INFORMA.
2. Physical issuance logs will be maintained by the Unit Supervisor.

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106.3 GENERAL ORDERS

The General Orders are a statement of the current directives and general practices of the Department. Except where otherwise expressly stated, all employees are to conform to the provisions of this manual. It is recognized, however, that police work is not always predictable and circumstances may arise which warrant departure from these guidelines. It is the intent of this manual to be viewed from an objective standard, taking into consideration the sound discretion entrusted to members of the Department under the circumstances reasonably available at the time of any incident.

(a) Upon issuance of an updated General Orders, all prior and existing General Orders are revoked.

(b) A computerized version of these General Orders will be made available on the Department network for access by all employees.

(c) Department directives issued after this manual shall stand over General Orders until such orders have been updated.

106.4 STANDARD OPERATING PROCEDURE MANUALS

Standard Operating Procedure (SOP) Manuals contain procedures and guidelines specific to a rank, Unit, Command, or multiple Commands.

(a) Procedures contained in SOP Manuals shall not conflict with the policies, procedures or rules established in General Orders. However, exceptions to specific parts of the General Orders may be approved by an assistant chief/director.

(b) SOP Manuals are generally considered public documents; information of a sensitive law enforcement nature should therefore be included in an Operations Manuals.

(c) SOP Manuals that encompass an entire Command of the Department shall take precedence over SOP manuals that encompass a specific Unit within that Command.

106.5 OPERATIONS MANUALS

Oftentimes a need arises for extremely detailed procedural information of a confidential nature. This information will be placed in an Operations Manual (Ops Manual) and kept separate from the SOP Manuals. Due to their inherent sensitive law enforcement nature, Ops Manuals are not considered public documents.

(a) Manuals of this nature have the same force and effect as an SOP Manual. Procedures contained in these Manuals shall not conflict with the policies, procedures, or rules established in General Orders. However, exceptions to specific parts of General Orders may be approved by an assistant chief/director.

(b) These Manuals may consist of materials produced professionally by a source outside of the Department, in addition to any intra-departmentally produced information.

(c) Materials may be included in these manuals due to:

1. Their detailed and extensive nature.
2. Their applicability to a very limited number of employees.

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3. A need to maintain confidentiality of the information (e.g., investigative strategy) within a specific work group.

106.6 REVISION OF DEPARTMENT MANUALS

Any Department employee may suggest a revision to a Department Manual. Employee's suggesting a revision of the contents to a Department Manual shall complete a *Request for Revision to General Order/Procedure/SOP* form.

(a) Revision requests that affect multiple Commands (e.g. Patrol, District Representatives, Sector Detectives) or the entire Department will be forwarded through the employee's chain-of-command to the Risk Management Unit or directly to APDPolicy@austintexas.gov on form PD0057.

(b) Revision requests that affect a single Command will be forwarded through the employee's chain-of-command to the appropriate commander/manager. If approved by the appropriate commander/manager, the revision request will be forwarded to the Risk Management Unit or directly to APDPolicy@austintexas.gov on form PD0057

(c) Final approval for revision requests are handled as follows:

1. General Orders revisions require the final approval of the Chief.
2. Patrol SOP revisions require the final approval of the affected commanders and assistant chiefs.
3. All other SOP and Ops Manual revisions require the final approval of the affected commanders/managers.
4. A signed copy of the approved revisions will be sent to the Risk Management Unit.

106.6.1 RISK MANAGEMENT UNIT

The Policy Development Unit is responsible for:

(a) Coordinating the submission of Department Manual revision requests to the Policy Review Committee and Command/Executive Staff, as appropriate.

(b) Implementing all approved Department Manual revisions into a Special Order.

(c) Integrating all outstanding Special Orders into the affected Department Manual as needed.

(d) Maintaining the current version and archiving all previous versions of all Department Manuals.

106.6.2 POLICY REVIEW COMMITTEE

The Policy Review Committee (PRC) is responsible for reviewing proposals for revisions to Department general orders that would impact the entire Department or multiple Commands. The PRC shall adhere to the following procedures:

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(a) The PRC will meet monthly to review the quarterly changes recommended to General Orders, or on an as needed basis to initiate or review internally proposed revisions to applicable Department Manuals.

(b) In order for a PRC meeting to convene, a quorum of at least fifty percent of the members of the PRC must be in attendance for the entirety of the meeting.

(c) The PRC will ensure proposed changes do not contradict existing agency directives or applicable laws.

(d) Nothing in this order shall preclude the Chief from directly approving a Department order or from appointing a focus group to review any order revision and provide feedback in those areas where there is no consensus, the issues are complex, and/or exigent circumstances exist.

106.7 REVIEW OF DEPARTMENT MANUALS

(a) The Chief will cause the entire General Orders to be reviewed and updated as necessary to ensure it conforms to actual Department operations and complies with law.

(b) Commanders/managers will cause their affected SOP and Ops Manuals to be reviewed and updated as necessary to ensure it conforms to actual Department operations and complies with law.

1. A complete up-to-date copy of each SOP and Ops Manual shall be submitted to the Risk Management Unit by December 1 of each year, regardless of whether there have been any revisions.

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Austin Police Department
General Orders

Organizational Structure and Responsibility

110.1 PURPOSE AND SCOPE

The organizational structure of this department is designed to create an efficient means to accomplish our mission and goals and to provide for the best possible service to the public.

110.2 SWORN RANKS ESTABLISHED

Sworn employees are classified by the following ranks:

(a) Chief of Police.

(b) Assistant Chief of Police.

(c) Commander.

(d) Lieutenant.

(e) Sergeant.

(f) Corporal/Detective.

(g) Police Officer.

110.2.1 CHIEF OF POLICE

The Chief of Police is the director of the Department and assumes responsibility for the overall management of the organization, authorizes the institution of programs which keep APD effective in responsiveness to a wide variety of community needs, and guides the Department in progressive leadership and technology arenas. The Chief is responsible for keeping the City Manager informed of Department activities and accomplishments.

110.2.2 ASSISTANT CHIEF OF POLICE

(a) Assistant chiefs assume management responsibility over all matters relating to the fulfillment of the functions within their Command. Assistant chiefs work in conjunction with each other to provide unified direction to the multiple segments of the organization, assisting the Chief in the management of the agency.

(b) One assistant chief is designated as Chief of Staff. In addition to any other duties incumbent upon the position of an assistant chief, this person will serve in the absence or unavailability of the Chief, be the Chief's direct designee in all matters, and coordinate the activities of the other assistant chiefs. The Chief of Staff is responsible for the daily management of Department Operations.

110.2.3 COMMANDER

Commanders exercise line command over the employees assigned to them and assume staff responsibility over matters relating to the operations within their assigned command.

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110.2.4 LIEUTENANT
Lieutenants exercise line command and provide advice and guidance to those employees assigned to them, as well as being responsible for keeping the respective commander informed about the activities and accomplishments of those employees.

110.2.5 SERGEANT
Sergeants exercise line command over the employees of their assigned unit and function as the first line supervisory level within the Department. They are responsible for ensuring service delivery, compliance with general orders, making recommendations to their lieutenants for improvements in operations, and to guide, train, direct, and motivate those they supervise.

110.2.6 CORPORAL/DETECTIVE

(a) Corporals/detectives are responsible for:

1. Ensuring service delivery, employee compliance with general orders, and making recommendations to the sergeant for operation improvements.
2. Conducting criminal investigations, interviewing witnesses and suspects, and assisting crime victims in filing complaints for criminal acts committed against them.
3. Serving as training instructors and in other non-enforcement roles for the Department.

(b) Corporals/detectives will exercise line command over the employees of their assigned Unit in the absence of the sergeant due to approved leave, training, or a special assignment.

(c) Corporals/detectives may be given limited supervisory authority to support the role of the sergeant.

(d) Corporals may not be hired to work overtime in a supervisory role.

110.2.7 POLICE OFFICER
Police officers make up the majority of the Department's sworn personnel and often are the first to make contact with the public. Assignments vary in content but generally include patrol and community interaction. They are responsible for keeping their respective supervisors informed about their activities and accomplishments.

110.3 DEPARTMENT ORGANIZATION AND COMMAND PROTOCOL
APD's ability to make organizational adjustments to meet changing needs is essential in order to maximize the use of assigned resources. To ensure stability, the basic Department structure should not be changed in the absence of a demonstrated need brought about by changing community conditions. Redistribution of personnel and resources may occur as a result of any Department reorganization. APD-HR will maintain personnel allocation information.

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110.3.1 SUCCESSION OF COMMAND
The Chief of Police exercises command over all personnel in the Department. During planned absences, the Chief of Police will designate a person to serve as the acting Chief of Police.

(a) Except when designated as above, the order of command authority in the absence or unavailability of the Chief of Police is as follows:

1. Chief of Staff.
2. An assistant chief, in order of seniority.
3. A commander, in order of seniority.

110.3.2 UNITY OF COMMAND
The principles of unity of command ensure efficient supervision and control within the Department. Generally, each employee shall be accountable to one supervisor at any time for a given assignment or responsibility. Except where specifically delegated authority may exist by order or special assignment (e.g., K-9, SWAT), any supervisor may temporarily direct any subordinate if an operational necessity exists.

110.3.3 SPAN OF CONTROL
The number of employees under the immediate management of a single supervisor should not normally exceed fifteen (15). However, when staffing requirements are anticipated to exceed fifteen per supervisor, the span of control should be based upon the complexity/variety of the tasks of subordinates and the potential for a supervisor to adequately oversee the number of employees involved.

110.3.4 DELEGATED AUTHORITY
At all levels of the Department, authority will be delegated to employees to make decisions necessary for the effective execution of their responsibilities. Employees are accountable for the use of, or the failure to use, delegated authority.

110.3.5 DETERMINATION OF SENIORITY

(a) The senior officer at a police incident shall be determined by rank, then by seniority within rank.

(b) Seniority of civilian employees shall be determined as follows:

1. Competent authority will designate a person to be in charge of a particular situation or group.
2. In the absence of designation of command, seniority will be determined by job classification, then by length of continuous service within the classification.

110.4 EMPLOYEE RESPONSIBILITIES
Employees are at all times individually responsible for conducting themselves in a professional and ethical manner and for treating coworkers with respect and dignity. The intent of this section

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is to clearly state that unprofessional behavior will not be tolerated in the workplace. Employees shall maintain loyalty to the Department as is consistent with the law and personal ethics.

110.4.1 CHAIN-OF-COMMAND

Employees are responsible for knowing their chain-of-command and operating within it except when impractical to do so.

(a) If an employee bypasses the chain-of-command, the employee will notify his affected supervisor as soon as practical.

(b) When a written directive requires an employee notify an immediate supervisor and the immediate supervisor is not readily available, the employee will:

1. Notify the person designated as the acting supervisor; or
2. Notify his next-level manager; or
3. Notify another supervisor of equal rank/grade with similar responsibilities (e.g., another patrol sergeant, another forensics supervisor).

110.4.2 AUTHORITY AND ACCOUNTABILITY

Delegation of authority is essential to the good working order of any organization.

(a) Employees shall exercise the responsibility and authority of the position to which they are assigned in accordance with the job specifications and work rules of that agreement.

(b) Authority to complete a task shall be commensurate with the responsibility placed on employees by the supervisor.

(c) Supervisors are ultimately responsible for the action of themselves and their subordinates; supervisors who delegate tasks to subordinate employees are ultimately accountable for ensuring the task is completed.

(d) Employees shall be held accountable for their use, or failure to use, their delegated authority.

110.4.3 OBEDIENCE TO ORDERS

The Department is an organization with a clearly defined hierarchy of authority. This is necessary because obedience of a superior's lawful command is essential for the safe and prompt performance of law enforcement operations. This section also applies to orders received by an employee in the field training program from a Field Training Officer (FTO).

(a) Orders from a supervisor to a subordinate will be in clear and understandable language, civil in tone, and issued pursuant to departmental business.

(b) Employees will not publicly criticize nor comment derogatorily to anyone about instructions or orders they have received from a supervisor.

(c) Employees will promptly obey any lawful order from a supervisor of higher rank, regardless if the supervisor is outside of the employees' chain-of-command.

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1. Employees will obey any lawful order from a supervisor even if the order is relayed through an employee of a lower rank.

(d) Employees who are given an otherwise proper order which appears to be in conflict with an existing policy or previous order will respectfully inform the supervisor issuing the order of the conflict.

1. If the supervisor issuing the order does not alter or retract the conflicting order, the order will stand.
2. The supervisor issuing the conflicting order will be responsible for the consequences, if any, of the conflicting order.

(e) Employees who are given an order which they believe violates a provision of a Meet and Confer Agreement, constitutes a safety hazard, or is in some other way improper, will respectfully inform the supervisor issuing the order of such belief.

1. If the supervisor does not alter or retract the order, the order will stand and will be obeyed.
2. The employee may initiate a formal grievance to seek redress.

(f) Unlawful orders are prohibited.

1. Supervisors will not knowingly or willfully issue any order which is a violation of any law.
2. Employees will not obey an order that is a violation of any law.
   (a) Responsibility for refusal to obey rests with the employee and he will be strictly required to justify the action.
   (b) Obedience to an unlawful order is not considered a defense for an unlawful action.
3. If in doubt as to the legality of an order, employees will either request clarification of the order or confer with higher authority.
   (a) An employee receiving an unlawful order will notify the issuing supervisor that compliance with the order, as issued, is unlawful.
   (b) If the supervisor does not rescind the order, the employee will request the presence of the next-level supervisor in the chain-of-command.
   (c) The supervisor will contact the next-level supervisor and request his presence at the scene.
4. An employee receiving an unlawful order will report that fact in writing to the Chief by memorandum through the next-level supervisor in the chain-of-command as soon as practicable. The memorandum will contain the facts of the incident and the actions taken.

110.4.4 INSUBORDINATION

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious

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disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

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Austin Police Department
General Orders

APD Standing Committees

111.1 PURPOSE AND SCOPE

This order sets forth the established standing committees of the Department.

111.2 STANDING COMMITTEES AND BOARDS

The following standing committees and boards exist within the Department. A list of the committee members will be maintained on the APD Main SharePoint Site in the Committee folder:

(a) Awards Committee

(b) Budget Committee

(c) Chaplain Advisory Committee

(d) Fleet and Equipment Committee

(e) Force Review Board

(f) Funeral Committee

(g) Homeland Security Committee

(h) Policy Review Committee

(i) Training Curriculum

(j) Wellness Committee

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Administrative Communications

114.1 PURPOSE AND SCOPE
Administrative communications of this department are governed by the following orders.

114.2 PERSONNEL DIRECTIVES
Personnel Directives may be issued periodically by the Chief to announce and document all promotions, transfers, hiring of new personnel, separations, individual and group awards and commendations or other changes in status.

114.3 DEPARTMENT CORRESPONDENCE
All Department correspondence must be delivered though the sender's chain-of-command and cannot be stopped by anyone until it reaches the addressee. Employees will use the appropriate Department memorandum or form when composing and submitting Department correspondence.

114.3.1 INTERNAL CORRESPONDENCE
Internal correspondence consists of correspondence from a Department employee to another employee or group within the Department (e.g., memorandum, PRF). Employees will use the appropriate Department memorandum or form when submitting internal correspondence.

(a) Internal correspondence should be submitted electronically in order to conserve physical resources and to provide an electronic record or history of the document, when practicable.

1. Correspondence that requires the sender's signature should be submitted on paper; however, correspondence that requires only the addressee's signature can be submitted electronically.
2. Correspondence that is submitted on paper but could otherwise be submitted electronically (e.g., memoranda) must be initialed or signed by the sender and each recipient.
3. Internal memoranda will not be altered by any recipient within the chain-of-command although individual notes may be added or attached.

(b) Correspondence forwarded through the chain-of-command shall be delivered to the addressee within a reasonable time of initial receipt.

(c) Employees may request a reply from the addressee to address the issue or confirm receipt of the correspondence; however, the addressee is not required to provide one unless the request is from a designee of the Chief (e.g., IA, SIU) or from a supervisor of a higher rank.

1. Employees who do not receive a requested response from an addressee within a reasonable amount of time may go to each level in their chain-of-command,

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starting with their immediate supervisor and up to the addressee, in order to confirm that the correspondence was received.

114.3.2 EXTERNAL CORRESPONDENCE

External correspondence consists of correspondence from a Department employee to a person or group outside the Department.

(a) External correspondence will be written on Department letterhead.

(b) In order to ensure that letterhead and name of the Department are not misused, Department letterhead shall only be used for official business and with the approval of the appropriate commander.

114.4 SURVEYS

Surveys made in the name of the Department require authorization from the Chief of Police or designee. Surveys made for internal purposes should be approved by the appropriate supervisor.

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Austin Police Department
General Orders

Forms Control

115.1 PURPOSE AND SCOPE
This order establishes directives over the development, modification, review, and approval of APD forms to ensure accountability. This directive does not apply to forms supplied by other agencies and used by Department employees.

115.2 FORMS CONTROL
The Risk Management Unit is responsible for the coordination of forms development and control process.

(a) The Risk Management Unit will conduct an annual review of APD forms to ensure:
    1. Each APD form is assigned an appropriate APD form number.
    2. Information on Department forms is not duplicated.
    3. New and modified forms include the functions the form will be used for.
    4. The format is consistent with the records maintenance and data-processing requirements of the Department.
    5. The master roster of all APD forms is updated.

115.2.1 DEVELOPMENT, MODIFICATION, REVIEW, AND APPROVAL OF DEPARTMENT FORMS
Requests for the development, modification, or review of any APD form will be made by memorandum through the chain-of-command to the employee's commander/manager.

(a) The memorandum should contain:
    1. Purpose of the development, modification, or review of the form; and
    2. Effect on other Department written directives; and
    3. Department areas that use or will use the form.

(b) Commanders/managers will make a recommendation regarding the request. If the request is approved, forward it to the forms control coordinator in the Risk Management Unit.

(c) The Chief or designee will approve any APD form prior to use.

115.2.2 REPRODUCTION OF EXISTING FORMS
No blank APD forms will be reproduced without the APD form number printed on the document.

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Austin Police Department
General Orders

Security and Release of Records and Information

116.1 PURPOSE AND SCOPE

The purpose of this section is to establish a comprehensive reference and procedure for the maintenance and release of department reports and records in accordance with applicable law and in compliance with the Meet and Confer Agreement.

This order does not prevent the Department from voluntarily making part or all of specific information available to the public, unless disclosure is expressly prohibited by law or the information is confidential under law (Tex. Gov't Code § 552.007; Local Gov't Code § 143.089).

116.2 PUBLIC REQUESTS FOR RECORDS

Records created by this agency are subject to inspection and release to the public unless otherwise expressly exempt from public disclosure by statute or judicial order (Tex. Gov't Code § 552.001). Public requests for records of this Department shall be processed in accordance with Texas Government Code, Chapter 552, regarding public information and this order.

The Department shall prominently display a sign that contains the basic rights of a person who requests public information, the responsibilities of the Department and the procedures, including fees, for inspecting or obtaining copies of records (Tex. Gov't Code § 552.205).

The Tex. Gov't Code § 552.001 provides that records created by a public agency shall be subject to inspection and release pursuant to request, except pursuant to exemptions set forth in Chapter 552 of the Texas Government Code or otherwise established by statute or judicial order. Public requests for records of this department shall be processed as follows:

116.2.1 SUBMISSION OF PUBLIC REQUESTS FOR RECORDS

Any member of the public, including the media, may request access to records of this Department by submitting a request for the record(s) sought in the following manner:

(a) In person at:
    1. APD Headquarters located at 715 E 8th Street, Austin; or
    2. Austin City Hall located at 301 W 2nd Street, Austin;

(b) By email to public.information@austintexas.gov;

(c) Through the City's Website at www.AustinTexas.gov/PIR.

(d) Mailed to City of Austin, Public Information Request, P.O. Box 689001, Austin, Texas 78768-9001.

Requests by fax are not accepted. Any other form of receipt outside of the aforementioned will not be considered received.

116.2.2 RECEIVING PUBLIC REQUESTS FOR RECORDS

A request will not be considered received unless it is sent to the proper email address as listed in section 116.2.1, or it is received by one of the other listed methods. If a Department employee

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Rodriguez/Talley v COA et al
Rodriguez/Talley
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receives a request for public information by electronic mail, the employee shall respond with this message:

“Pursuant to Section 552.301(c) of the Government Code, the City of Austin has designated certain addresses to receive requests for public information sent by electronic mail. For requests seeking records held by the Austin Police Department, the address is: public.information@austintexas.gov. Your request will NOT be considered received unless it is sent to the proper address.”

Once this message has been communicated to the requestor, no further response is required.

If an employee receives a request for public information in any other manner listed in section 116.2.1, that employee is responsible for forwarding the request to Central Records.

116.2.3 PROCESSING OF PUBLIC REQUESTS FOR RECORDS

The processing of requests is subject to these limitations:

(a) The authorized receiving employee shall determine if the requested record is available and/or subject to any exemption from disclosure.

(b) The requesting party may be required to pay in advance any established fee for each record sought depending on the volume of the request (Tex. Gov't Code § 552.261). The Department Legal Advisor will be advised of this information and will process the cost letter.

(c) The Department shall not be required to create records which do not otherwise exist; however, existing records may be copied in such a manner as to provide the requesting party with unrestricted portions of any record.

116.2.4 RESPONDING TO PUBLIC REQUESTS FOR RECORDS

The Public Information Act requires governmental bodies to respond promptly to written requests for information. "Promptly" means as soon as possible under the circumstances and without unreasonable delay. Failure to comply with the Act may result in the mandatory release of information that otherwise could have been withheld. The statute also contains civil and criminal penalties for intentional violations.

(a) Media requests and requests from students will be forwarded to the Department’s Public Information Office.

(b) With the exception of booking photos, employees shall not release information that has not gone through the open records process and is cleared through the Department Open Records Supervisor or Department Legal Advisor.

(c) After reviewing the request and the information being requested, the Open Records Supervisor will decide whether the information should be released or will be denied due to exemptions outlined by the Attorney General. The Open Records Supervisor, or their designee, will notify the requestor of the denial.

(d) If an Attorney General’s ruling is requested within 61 days of response to an open records request, the Open Records Supervisor, or their designee, will notify the Department Legal Advisor in order to request a ruling.

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116.3 OUTSIDE AGENCY REQUESTS FOR RECORDS

The Department recognizes requests from other agency should be processed in a timely manner. Therefore, these requests are received and processed by the Department directly.

116.3.1 SUBMISSION OF OUTSIDE AGENCY REQUESTS FOR RECORDS

Outside agencies must use their agency letterhead to submit a request for records. Additionally, requests sent via email must come from a government email address, i.e.,.gov,.org. Each request must identify the specific record sought. Requests and subpoenas can be submitted in the following manner:

(a) In person at APD Headquarters located at 715 E 8th Street, Austin;

(b) By email to agency.requests@austintexas.gov;

(c) Faxed to (512) 974-6662;

(d) Mailed to Central Records, Austin Police Department, P.O. Box 689001, Austin, Texas 78768-9001; or

(e) In any manner to any employee of the Austin Regional Intelligence Center (ARIC).

116.3.2 RECEIVING OUTSIDE AGENCY REQUESTS FOR RECORDS

If an employee, other than an ARIC employee, receives an outside agency request for records, that employee is responsible for forwarding the request to Central Records for processing. Emailed requests shall be forwarded to agency.requests@austintexas.gov.

116.4 REPORT RELEASE RESTRICTIONS

Absent a valid court order or other statutory authority, records and/or unrestricted portions of such records of this department shall be made public subject to the following restrictions.

116.4.1 GENERAL CASE AND CRIME REPORTS

Certain information pertaining to any of the items listed below will not be released unless authorized by the Department Legal Advisor:

(a) **Victim Information** - Victims of crimes who have requested that their identifying information be kept confidential (Tex. Code Crim. Pro. art. 57.02), victims who are minors and victims of certain offenses shall not be made public. It is a misdemeanor to release confidential victim information to unauthorized persons (Tex. Code Crim. Pro. art. 57.03).

(b) **Confidential Information** - Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved or information that would endanger the successful completion of the investigation or a related investigation shall not be made public (Tex. Gov't Code § 552.108).

1. Analysis and conclusions of investigating officers may also be exempted from disclosure.

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2. If it has been noted in any report that any individual wishes to protect his right to privacy under the Texas Constitution, such information may not be subject to public disclosure.

3. Information on the actual identity of any victim who has filed a pseudonym form (Tex. Code of Crim. Pro. §§ 57.02 and 57B.02).

(c) **Specific Crimes** - Certain types of reports involving, but not limited to, child abuse/ neglect (Tex. Fam. Code § 261.201), minors and juveniles (Tex. Gov't Code § 552.148 and Tex. Fam. Code § 58.106) and elder abuse Tex. Hum. Res. Code § 40.005) shall not be made public. Certain individuals may be allowed redacted copies of child abuse or neglect reports; these records may be released only in accordance with Family Code § 261.201(k) and (l).

(d) **General Information** - Absent statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Tex. Gov't Code § 552.

116.4.2 ARREST REPORTS

Arrestee information shall be subject to release in the same manner as information contained in other reports as set forth above.

In addition to the restrictions stated above, all requests from criminal defendants and their authorized representatives, including attorneys, shall be subject to release as prescribed by law.

Local criminal history information including, but not limited to, arrest history and disposition, fingerprints and booking photos shall only be subject to release to those agencies and individuals as prescribed by law.

116.4.3 TRAFFIC CRASH REPORTS (CR-3)

Traffic crash reports and related supplemental reports are privileged and for the confidential use of only those identified by law. Employees shall not release traffic crash reports without the legal authority to do so. Authorized persons are identified under the Texas Transportation Code and HB 2633.

116.4.4 PERSONNEL RECORDS

Personnel records, medical records and similar records which would involve personal privacy shall not be made public (Local Gov't Code § 143.089).

Requests for peace officer personnel records are deemed confidential and shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order. Requests for such personnel records shall be forwarded to the City's Human Resources Department (Civil Service). If the requestor wishes to receive a copy of the Department's personnel records (g file), the request will be forwarded to the Department Legal Advisor.

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116.4.5 INTERNAL AFFAIRS FILES

Subpoenas for documents or items from files maintained by Internal Affairs (IA) will be directed to the IA commander or lieutenant. No documents or items will be released pursuant to a subpoena without authorization from the Department Legal Advisor.

(a) Any open records request for IA files will be referred to the Department Legal Advisor.

1. When IA is notified that an open records request has been received for a particular file, IA personnel will review the file and forward to the Department Legal Advisor for redactions to be completed.

2. The Department Legal Advisor will be consulted before any file is released in relation to an open records request to ensure that any necessary redactions have been completed.

3. If the request is submitted through the Civil Service Commission, the original redacted case file will be transferred to the Commission as soon as possible to ensure compliance with the statutory deadline for responding to the open records request (10 business days or less).

116.4.6 VIDEO RECORDINGS FROM DWI STOPS

Pursuant to House Bill 3791, the Department is required to release to a person (or their designee) stopped or arrested on suspicion of DWI, a copy of any video of the stop, arrest, field sobriety tests, and all other interactions with the officer.

116.4.7 BODY WORN CAMERA VIDEO

Chapter 1701 of the Occupations Code outlines the requirements for releasing information recorded by body worn cameras including recordings as evidence. An officer or other employee commits an offense (Class A Misdemeanor) if the officer or employee releases a recording created with a body worn camera without the permission of the department.

(a) Recordings as evidence

1. Except as provided by Subsection (a)(2), a recording created with a body worn camera and documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and the longest retention period has been met.

2. The department may release to the public a recording described by Subsection (a)(1) if the Chief of Police or his designee determines that the release furthers a law enforcement purpose. At the request of the Chief of Police, the Internal Affairs Unit (IA) or the Special Investigations Unit (SIU) may grant temporary access to a video described in this section on Evidence.com for the purpose of making a copy for public release. The person or persons to whom access was granted shall notify IA or SIU once they have completed making the copy. Copies shall be made within 7 days. IA or SIU will then update Evidence.com.

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(b) Public Requests for Body Worn Camera Videos

1. When submitting a request for BWC video, a member of the public is required to provide the following information:
   (a) The date and approximate time of the recording;
   (b) The specific location where the recording occurred; and
   (c) The name of one or more persons known to be a subject of the recording.
2. A failure to provide all of the information required by Subsection (b)(1) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.
3. The department may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.
4. A BWC recording is confidential and may not be released to the public if the recording was not required to be made under department orders and does not relate to a law enforcement purpose.

116.5 OTHER RECORDS

Any other record not addressed in this order shall not be subject to release where such record is exempted or prohibited from disclosure pursuant to state or federal law, including, but not limited to provisions of the Evidence Code relating to privilege.

Any record which was created exclusively in anticipation of potential litigation involving this department shall not be subject to public disclosure unless authorized by the Department Legal Advisor (Tex. Gov't Code § 552.111 and 552.103).

116.5.1 PERSONAL IDENTIFYING INFORMATION

Employees shall not access, use or disclose personal identifying information, including an individual's photograph (except booking photo), social security number, driver identification number or identification card number, type driver’s license, expiration date, driving restrictions and/or endorsements, state of issue, email address, date of birth and the individual's medical or disability information, which is contained in any driver license record, motor vehicle record or any department record except as authorized by the Department and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721 and 18 USC § 2722).

Motor vehicle records will be reviewed to redact license plate number, VIN, state of issuance, registered owner, owner address, lienholder information, issue date, expiration date, and insurance policy number.

The only exception is when an individual is requesting their own personal information.

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116.6 SUBPOENA DUCES TECUM

When a Department employee is personally served with a subpoena duces tecum:

Any subpoena duces tecum or discovery request should be promptly provided to a supervisor for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

All questions regarding compliance with any subpoena duces tecum should be promptly referred to the Department Legal Advisor so that a timely response can be prepared.

When a subpoena duces tecum is received in the Open Records Unit, the Subpoena will be logged in and promptly reviewed and processed. All questions regarding compliance with any subpoena duces tecum shall be promptly referred to the Department Legal Advisor.

116.7 RELEASED RECORDS TO BE DOCUMENTED

Release of records by a Department employee who was personally served pursuant to a subpoena duces tecum shall be documented by:

(a) Hard Copies, CD, or Flash Drive:

1. Release form (PD0212) identifying the individual to whom the records were released and who released the records shall be attached to a cover letter listing all records released.

(b) Email of records:

1. Release form (PD0212) shall be completed with an attached a copy of the email detailing to whom the records are being released and a listing all records released.

116.8 PRIVACY AND SECURITY OF RECORDS

Austin Police Department employees shall not access, view, distribute, or allow anyone else to access, view, or distribute any hard copy or electronic record, file, or report, except in accordance with Department orders and with a legitimate law enforcement or business purpose, or as otherwise permissible by law.

All reports including, but not limited to, initial, supplemental, follow-up, evidence and property reports, shall be maintained in a secure manner accessible only to authorized personnel.

116.9 RECORDS RETENTION

All records will be maintained in accordance with City Code Chapter 2-11 Records Management. A copy of department retention schedules may be obtained by contacting the Department Records Analyst or the Office of the City Clerk. They are also maintained at http://coaspweb1/sites/wiki/OCC/Lists/Approved%20Records%20Control%20Schedules/Austin%20Police%20Department.aspx

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Security and Release of Records and Information

No employee shall dispose of any record maintained by this department without proper authorization from the Records Administrator or Records Analyst.

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Austin Police Department
General Orders

Criminal History Record Information

118.1 PURPOSE AND SCOPE
This order provides guidelines for the release of Criminal History Record Information (CHRI), security of that information and persons authorized to release and receive that information (Tex. Gov't Code §§ 411.082, 411.085, 411.087 and 411.089).

118.2 AUTHORITY
This order is established pursuant to the mandates under Texas Government Code for the Department of Public Safety to maintain, control, disseminate the information and determine who has access to CHRI.

118.3 DEFINITIONS
Criminal History Record Information (CHRI) - Information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal criminal charges and their dispositions (Tex. Gov't Code § 411.082(2)).

Criminal Justice Agency - Is a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice, or a non-governmental railroad or campus police department that has obtained an originating agency identifier from the FBI (Tex. Gov't Code § 411.082(3)).

Criminal Justice Purpose - An activity that is included in the administration of criminal justice, or screening of applicants for employment with a criminal justice agency (Tex. Gov't Code § 411.082(4)).

Authorized Recipient - Any person or agency authorized by court order, statute or case law to receive CHRI.

118.4 AUTHORIZED RECIPIENTS OF CHRI
The Department is entitled to receive CHRI from the Texas Department of Public Safety (Tex. Gov't. Code § 411.089). CHRI may only be released to authorized recipients. All law enforcement personnel with proper identification are authorized recipients.

CHRI may be obtained by authorized recipients for criminal justice purposes only. The information may be disseminated via radio devices when needed and if necessary to another criminal justice agency for a criminal justice purpose (Tex. Gov't. Code § 411.089).

118.4.1 TERMINAL AGENCY COORDINATOR (TAC)
The Police Technology Lieutenant is the designated Terminal Agency Coordinator (TAC) for the Austin Police Department. The TAC is responsible for ensuring compliance with this procedure

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and with applicable records security regulations and requirements imposed by federal and state law, as well as resolving specific questions that arise regarding authorized recipients of CHRI.

118.4.2 RELEASE OF CHRI
Only the persons listed below are authorized to release CHRI. Each authorized person releasing CHRI is responsible to ensure that each request granted appears legitimate and that the requester is an authorized recipient.

(a) Terminal Agency Coordinator.

(b) All Communications Center personnel.

(c) All sworn law enforcement personnel.

(d) Personnel specifically designated by the TAC and trained to receive CHRI information.

118.4.3 RELEASE OF CHRI TO FIELD PERSONNEL
CHRI shall not generally be transmitted by radio, cell phone, or through computer terminals to field personnel or vehicles except in cases where circumstances reasonably indicate that the immediate safety of the officer or the public are at significant risk. Examples of situations where the transmission of summary criminal history information would be justified include a hostage situation or an armed suspect; a routine investigation or traffic enforcement stop would not be sufficient justification.

(a) Personnel shall not have access to CHRI until a background investigation has been completed and approved.

(b) Nothing in this procedure is intended to prohibit broadcasting warrant information concerning wanted persons.

118.4.4 POLICE CADETS
Police cadets are authorized access to criminal history information when under the direct supervision of a Field Training Officer.

118.5 JUVENILE RECORDS

Nothing in this procedure is intended to alter existing statutes, case law or the policies and orders of both the county's juvenile board and the designated juvenile court regarding the release of juvenile offender records. Juvenile records and information are confidential and may only be disclosed pursuant to Tex. Fam. Code § 58.005.

118.6 REVIEW OF CRIMINAL OFFENDER RECORD

The Texas Department of Public Safety provides the authority and procedure whereby an individual may review his own criminal history record (Tex. Gov't Code 411.135).

An individual seeking to review his arrest or conviction record should be directed to contact the Texas Department of Public Safety. The requirements and fees can be found at http://www.txdps.state.tx.us.

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118.7 COMPUTER ACCESS AND DESTRUCTION OF CHRI

118.7.1 CHRI COMPUTER TERMINAL SECURITY
OMNIXX Computer terminals capable of providing access to automated CHRI are located at various locations throughout the Department.

(a) No employee shall be authorized to operate computer terminal equipment with access to CHRI until the operator has completed the appropriate training.

118.7.2 DESTRUCTION OF CHRI
Employees are responsible for destroying CHRI documents they receive once the document has served the purpose for which it was obtained. Documents shall be destroyed by shredding.

118.8 CERTIFICATION REQUIREMENT
All personnel authorized to process, view and/or release CHRI shall be required to maintain certification as required by the Texas Department of Public Safety.

118.9 PENALTIES FOR MISUSE OF RECORDS
The Tex. Gov't Code § 411.085 makes it a Class B misdemeanor to obtain CHRI in an unauthorized manner, to use the information for an unauthorized purpose, to disclose the information to a person who is not entitled to the information or to provide a person with a copy of the person's criminal history record information or to violate any rule pertaining to CHRI adopted by Department of Public Safety under state law. In addition, Tex. Gov't. Code § 411.085 makes it a second degree felony if the CHRI is obtained, used or disclosed for remuneration or the promise of remuneration. The following violations may also result in administrative penalties:

(a) Divulging the content of any criminal record to anyone other than authorized personnel.

(b) Obtaining or attempting to obtain information from department files other than that to which an employee is entitled in accordance with his official duties.

118.10 EXPUNCTION OF FILES
For the purposes of this section, "expunge" means to remove all data or materials relating to a particular arrest from all files in such a manner that there is no indication that such data or materials ever existed or have been removed.

(a) Expunction is done by physically destroying such data or materials, or by sending all such material to District Court pursuant to a court order. Expunction of files will be done in compliance with Chapter 55 of the Code of Criminal Procedure and will include any record(s), arrest and identification files from any section which would have such files.

(b) Expunction procedures may relate to:

1. Arrest records which are indexed, accessed, and filed by individual name, and which are retrieved by reference to name (such as "rap sheets").

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2. Any data or materials identifying an individual, such as fingerprints, fingerprint classifications, photographs, or other items contained in an information system that are accessible by name, and which indicate any arrest or criminal offender information including, but not limited to, that contained in:

   (a) Arrest index cards (Identification).

   (b) Computer data banks known offender files.

118.10.1 EXPUNCTION REQUESTS

(a) The APD legal advisor is designated as the recipient of requests for expunction. Any employee receiving a request for expunction of Department records shall immediately hand deliver the request to the legal advisor.

(b) The Identification Unit and Central Records Unit are the authorized coordinating bodies for implementing expunction procedures as ordered by the court.

1. All Department personnel will provide assistance and support to the Identification Section and Central Records Section in order to ensure compliance with this order.

2. The Identification and Central Records managers or designees are responsible for returning all expunged records and files to the legal advisor in a timely manner.

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Inspections

123.1 PURPOSE AND SCOPE

The inspection process compares Departmental formal expectations with actual performance. This process is an essential mechanism for evaluating the quality of departmental operations; ensuring that the Departmental goals are being pursued; identifying the need for additional resources; and ensuring control is maintained throughout the Department.

123.1.1 TYPES OF INSPECTIONS DEFINED

(a) Staff Inspection, An inspection performed by the Inspections Unit that generally focuses on agency procedures to promote an objective review of departmental administrative and operational activities, facilities, property, equipment, and personnel outside the normal supervisory and/or line inspection

(b) Line Inspection, An inspection performed at frequent intervals by line supervisors to ensure that departmental employees are adhering to established policies and procedures. Examples are:

1. Personal appearance (dress and groom),
2. Use and maintenance of equipment,
3. Driver's License, or
4. Weapon.

123.1.2 INSPECTION FREQUENCY AND RESPONSIBILITY

(a) Staff Inspections are conducted by the Inspections Unit as directed by the Chief or his designee. Specific responsibilities of the Inspection Unit are outlined in the Risk Management SOP.

(b) Line Inspections are conducted by supervisors in accordance with:

1. Chapter 3, Field Operations, Custody, and Traffic Enforcement Guidelines,
2. Chapter 5, Field Support Operations, and
3. Chapter 8, Equipment Policies.

123.1.3 COMPLIANCE REQUIRED

The Inspection Unit acts under direct authority of the Chief and compliance with a Staff Inspection is required.

(a) The Chief will receive an inspection report containing the recommendation(s) of the Inspections Unit. The report will contain the responses to those recommendations by the affected Commander(s).

(b) The Chief has final approval and/or appropriate disposition of the recommendations.

(c) Employees designated by the Chief, or his designee, with the responsibility for implementation, additional research and/or follow-up of the final recommendations shall adhere to the Chief's designated timeline.

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Watch Lieutenant

124.1 PURPOSE AND SCOPE

The Watch Lieutenant (WL) is a lieutenant that assists CTECC in matters which may require management level decisions.

124.2 WATCH LIEUTENANT RESPONSIBILITIES

The WL is entrusted with the responsibility, among many others, to maintain efficient department operations at all times but especially during those situations that place stresses on critical department resources. This important task is one that separates the WL function from other lieutenant positions.

(a) The WL may be called upon to move personnel resources within and amongst divisions.

(b) At times the WL's decision regarding movement of those resources may be counter to the wishes of the lieutenant in direct command. It is understood that the authority of the WL supersedes that of his or her peers during those emergency situations.

(c) Specific responsibilities of the WL are outlined in the Watch Lieutenant SOP.

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Austin Police Department
General Orders

Meet and Confer

127.1 PURPOSE AND SCOPE

Chapter 143 of the Texas Local Government Code allows the City of Austin to adopt a collective bargaining process called "Meet and Confer." This process allows the City and the Department to negotiate and enter into a written agreement with the labor organization representing sworn employees concerning wages, work hours and other terms of employment. The written agreement is known as the "Meet and Confer Agreement."

127.2 MEET AND CONFER NEGOTIATIONS PROCESS

Under the City Charter and City-HR policies, the City Manager has overall responsibility for negotiating and administering contracts for the City, and shall manage the City's participation in the Meet and Confer process. The Chief is responsible for managing the Department's participation in the process. The City Manager and the Chief will conduct Meet and Confer negotiations jointly.

(a) **City Bargaining Team**

1. The City Manager and the Chief will designate the members of the City bargaining team serving as the City's sole and exclusive bargaining agent.

(b) **Sworn Employee Bargaining Team**

1. The Austin Police Association (APA) is a labor organization that is currently designated by a majority of the sworn employees as their bargaining unit for the Meet and Confer negotiation. The City will only participate in negotiations with the APA.
2. The APA may request information from the Department or City that is relevant to the negotiation or administration of the contract agreement. Any such requests shall be made by the APA's primary negotiator and submitted to the City bargaining team.

(c) The City and sworn employee bargaining teams shall negotiate in good faith and establish ground rules to govern the bargaining process.

127.3 MANAGEMENT OF MEET AND CONFER AGREEMENT

(a) The City will abide, in both letter and spirit, to a negotiated labor agreement that has been signed by City Management, approved by a majority of the City Council, and ratified by a majority of the APA voting membership.

(b) Subsequent to ratification of the agreement by all parties, the City Manager and Department shall review and amend all written directives to coincide with the terms of the Meet and Confer agreement.

(c) APD will disseminate any information relative to the new Meet and Confer Agreement to the supervisors of bargaining team personnel.

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Chapter 2 - Response to Resistance and Pursuit

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Response to Resistance

200.1 PURPOSE AND SCOPE

This order recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this order is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This order is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

Additionally, this order will provide directives and guidelines on the following:

(a) De-escalation principals and techniques.

(b) Parameters relating to the use of objectively reasonable force.

(c) Reporting requirements.

(d) Providing medical assistance to injured subjects.

200.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

Officers should recognize that their conduct prior to the use of force may be a factor which can influence the level of force necessary in a situation.

200.1.2 DEFINITIONS

Bodily Injury - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(a)(8)).

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(a)(46)).

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De-escalation - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

De-escalation Techniques - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

Deadly Force - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

Force - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

Non-Deadly Force - Any application of force other than deadly force.

Objectively Reasonable - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

200.1.3 DUTY TO INTERCEDE

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

200.1.4 RESPONSE TO RESISTANCE RELATED ORDERS

(a) General Order 200 (Response to Resistance).

(b) General Order 202 (Firearm Discharge Situations).

(c) General Order 204 (Leg Restraint Guidelines).

(d) General Order 206 (Control Devices and Techniques).

(e) General Order 208 (TASER® Guidelines).

(f) General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(g) General Order 212 (Force Review Board).

200.2 DE-ESCALATION OF POTENTIAL FORCE ENCOUNTERS

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

Nothing in this de-escalation policy requires an officer to place themselves in harm's way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need

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to abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This de-escalation policy is intended to complement, not replace or supersede, other portions of the APD Policy Manual or specific officer training that addresses de-escalation.

200.2.1 ASSESSMENT AND DE-ESCALATION

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

(a) Assessing Risks and Benefits – After an officer has gathered sufficient information to ascertain anticipated threats at the scene, they shall consider whether de-escalation is appropriate. Factors that should be considered are:

1. whether the officer believes the search, arrest or transportation must be undertaken immediately;
2. what risks and benefits may be associated with delaying immediate action;
3. what contingencies may arise;
4. whether the situation requires a supervisor's response;
5. whether other officers may be needed on the scene, including special units, such as CIT or CINT;
6. whether other resources (e.g. less-lethal weaponry, special equipment, or other emergency professionals, interpreters or other persons) are needed; and
7. other factor(s) relevant to assessing risks, benefits and contingencies.

Having completed the above outlined assessment the officers shall, if reasonable, identify and employ appropriate de-escalation techniques.

(b) Use of De-escalation Techniques – Employing de-escalation techniques may involve securing additional resources, tactical repositioning, and employing verbal persuasion.

1. Securing Additional Resources -- Officers may utilize additional resources which are reasonably calculated to lessen or possibly eliminate the need to respond to resistance in a situation. To the extent possible and reasonable, in light of the totality of the circumstances, officers should avoid physical confrontation until such time as additional resources have arrived to assist. Additional resources may include:
   (a) less lethal weaponry;
   (b) additional officers;
   (c) officers with special training, such as CIT or CINT; or

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(d) any other persons whose presence may help de-escalate the situation (e.g., emergency medical professionals, interpreters, or supportive family members).

2. Tactical Repositioning -- To delay or avoid physical confrontation, officers may wish to employ any one or more of the following tactical repositioning measures, to the extent possible and reasonable in light of the totality of circumstances:

   (a) maintain safe physical distance from the subject;

   (b) maintain cover behind existing or assembled physical barriers; or

   (c) communicate from a location that is concealed from the subject.

3. Verbal Persuasion -- To the extent possible and reasonable under the totality of the circumstances officers may use one or more of the following verbal techniques to try to calm an agitated subject and promote rational decisions.

   (a) Treat the subject with dignity and respect, the way the officer would wish to be treated if they stood in the subject's shoes;

   (b) Listen to the subject's side of the story and permit them to express frustration;

   (c) Explain what the officer is doing, what the subject can do, and what needs to happen;

   (d) Explain why the officer is taking a specific action, again permitting the subject to respond and acknowledging their perspective;

   (e) If possible, provide the subject with alternatives, even though those alternatives may be limited;

   (f) Advise the subject of the consequences for noncompliance;

   (g) Offer reasonable, professional advice if it is expected to help; or

   (h) Provide the subject with reasonably sufficient time within which to respond to directives.

200.3 RESPONSE TO RESISTANCE

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

(a) Assessment shall be ongoing – As the circumstances of a situation change, the force necessary to affect a detention, arrest, search, or transportation of a subject or to protect officer or other persons from imminent harm may also change. Officers will therefore need to re-evaluate their determination of the appropriate response to resistance as circumstances change.

(b) Officer Discretion - Understanding that no order can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the objectively reasonable response to resistance in each incident.

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(c) Improvising Permitted - Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use a standard tool, weapon, or method provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.

(d) Injury to Officer Not Required - While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this order requires an officer to actually sustain physical injury before applying objectively reasonable force.

(e) Reporting Required - Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

200.3.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

(a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

1. Reasonable opportunity for the officer to engage in de-escalation;
2. The conduct of the individual being confronted as reasonably perceived by the officer at the time;
3. Officer and subject factors such as age, size, relative strength, skill level, injury/ level of exhaustion and number of officers versus subjects;
4. Influence of drugs and alcohol or mental capacity;
5. Proximity of weapons;
6. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained;
7. Time and circumstances permitting, the reasonable availability of other resources to the officer;
8. Seriousness of the suspected offense or reason for contact with the individual;
9. Training and experience of the officer;
10. Potential for injury to citizens, officers and subjects;
11. Risk of escape;

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12. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
13. Other exigent circumstances.

200.3.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

(a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful;

(b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful; or

(c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

200.3.3 NOTICE OF AUTHORITY AND IDENTITY

If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

200.4 DEADLY FORCE APPLICATIONS

An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

(a) Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.

(b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:

1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

200.5 REPORTING THE RESPONSE TO RESISTANCE

Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting, and Review).

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200.5.1 NOTIFICATION TO SUPERVISORS
Supervisor notification shall be made as soon as practicable following any force incident or allegation of force.

200.5.2 DUTY TO GIVE AID AND MEDICAL CARE
Prior to booking or release, medical assistance shall be obtained for any subject who has sustained visible injury, expressed a complaint of injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain, or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel as soon practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

200.5.3 ASSISTING MEDICAL PROFESSIONALS

(a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in General Orders 211 and 200.5.1.

    1. Medical personnel are:

        (a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)

        (b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties

(b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to General Orders 211 and 200.5.1 Response to Resistance by:

    1. Notifying their supervisor, and

    2. Completing an incident report including the title code 8400.

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Firearm Discharge Situations

202.1 PURPOSE AND SCOPE

The purpose of this order is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This order is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this order can only form the basis for departmental administrative actions.

202.1.1 POLICY

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

(a) An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
   (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
   (b) The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

(b) To stop a dangerous and aggressive animal:

1. In circumstances where officers encounter any animal which reasonably appears to pose an imminent threat of bodily injury to officers or others, officers are authorized to use objectively reasonable force up to and including deadly force (when lesser means would be impractical) to neutralize the threat. If time and distance permit, an officer may consider using the following less-lethal options:
   (a) Fire Extinguisher
   (b) Oleoresin Capsicum spray
   (c) TASER Device
   (d) Assistance of Animal Control
2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g., dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g., fire extinguisher, TASER Device, oleoresin capsicum (OC) spray, assistance of animal control). Nothing in this order shall prohibit any officer

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from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impracticable.

3. In the event force is used against an animal by an officer and the animal is injured or there is a reasonable belief the animal was injured, regardless of whether visible injury exists, officers shall make a reasonable attempt to ensure the animal receives care for its' injuries. This may include but is not limited to:
   (a) Contacting the owner to arrange private treatment in an appropriate time frame.
   (b) Contacting Animal Control to have the animal collected and treated
   (c) Arranging transport of the animal to a veterinary facility
   (d) Transporting the animal to a veterinary facility

(c) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impracticable.

(d) For target practice or recreational shooting at an approved range or any area where firing a weapon would be safe and not a violation of law.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible.

202.1.2 WARNING SHOTS
Warning shots are prohibited.

202.1.3 MOVING VEHICLES
This order is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

(a) Officers shall exercise good judgment and will not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

(b) Unless it reasonably appears that it would endanger officers or the public, officers will move out of the path of any approaching vehicle.

(c) When encountering a vehicle being operated in a threatening manner, officers may leave a position of cover only:
   1. to utilize an avenue of escape
   2. move to a position of better cover, or
   3. if the need to apprehend the suspect or stop the threat outweighs the danger imposed to the officer or any other person.

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(d) Disabling a vehicle by use of a firearm will only be attempted under extraordinary circumstances. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

202.1.4 DISPLAY OF FIREARMS
Firearms may be readied for use in situations where it is anticipated they may be required. Firearms shall not be displayed or pointed in a threatening or intimidating fashion unless it is objectively reasonable to believe there is a substantial risk that the situation may escalate to the point where deadly force would be permitted. Firearms shall be secured or re-holstered as soon as reasonably practicable when it is determined that deadly force is no longer necessary.

202.2 REPORT OF INTENTIONAL FIREARM DISCHARGE AGAINST A PERSON

For any intentional firearm discharge against a person, regardless of whether the person is hit, the incident shall be handled as a Level 1 Force Incident and the employee shall comply with the reporting procedures prescribed in Policy 211 (Response to Resistance Inquiry, Reporting and Review).

202.3 REPORT OF INTENTIONAL FIREARM DISCHARGE AGAINST AN ANIMAL

This section is written to cover the reporting procedures for the following situations:

(a) The humane destruction of a seriously injured animal.

(b) In defense against an attacking or dangerous animal.

Any intentional firearm discharge which results in an injury to another person will be investigated by SIU (211.2.1).

202.3.1 REPORTING A FIREARM DISCHARGE FOR THE HUMANE DESTRUCTION OF A SERIOUSLY INJURED ANIMAL
The following reporting guidelines shall be followed for the humane destruction of a seriously injured animal or an attacking or dangerous animal.

(a) Employees who need to destroy a seriously injured animal for humane reasons shall first request approval from a supervisor.

(b) Employees shall complete an incident report entitled Injured Animal Firearm Used (Title Code 3449-7). The incident report should detail the circumstances requiring the animal's destruction. The authorizing supervisor should be identified in this report.

(c) Supervisors who approves the destruction shall:

1. Add a comment in the CAD call notating their notification and approval.
2. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
    (a) Involved employee's chain of command up to the lieutenant.

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3. Review the primary reporting employees' incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident

(d) Each level of the chain-of-command, up to the lieutenant, shall review the incident and complete a case note to document their review. In the event the reviewing lieutenant identifies concerns with the destruction, he/she will notify the commander.

(e) The chain-of-command shall determine what, if any, corrective action is needed.

(f) Employees are not required to be placed on restricted duty.

202.3.2 REPORTING A FIREARM DISCHARGE AGAINST A DANGEROUS AND THREATENING ANIMAL

The following reporting guidelines will be followed for the destruction of a dangerous or attacking animal.

(a) Employees who destroy an attacking or dangerous animal will notify their supervisor or another on-duty supervisor in the absence of their immediate supervisor, as soon as practical.

(b) The supervisor, or designated acting supervisor, will respond to the scene and conduct an on-scene investigation of the incident, interview witnesses, and insure digital photographs are taken and downloaded into the Digital Crime Scene Management System.

(c) The involved employee(s) are required to complete an incident report entitled Dangerous Animal - Firearm Used (3434-7) detailing the event and the reason(s) for selecting deadly force over other force options..

(d) Investigating supervisors will complete a supplement to the incident report detailing their investigation and findings.

(e) The investigating supervisor will notify, via e-mail, each member of the involved employee's chain of command up to the assistant chief when the investigation is ready for review. This notification will include the incident report number. Each member of the chain-of-command through the assistant chief shall add a Versadex case note to the incident report indicating they have reviewed the incident.

(f) The chain-of-command will determine what, if any, corrective action is needed.

(g) Employees are not required to be placed on restricted duty.

202.4 REPORT OF UNINTENTIONAL FIREARM DISCHARGE

This section is written to cover the reporting procedures for the following unintentional firearm discharge situations:

(a) While at the APD firearms range.

(b) While at an approved firearms training site.

(c) While on-duty.

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(d) While off-duty.

202.4.1 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE AT THE APD FIREARMS RANGE OR APPROVED FIREARMS TRAINING SITE

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while at the APD firearms range or approved firearms training site.

DEFINITIONS:

Unintentional Discharge- The discharge of a firearm that the shooter did not intend to occur.

Preventable Discharge- An unintentional discharge that constitutes a gross deviation from Department training received prior to the incident or a discharge which exhibits a failure to exercise the care that a reasonably prudent employee would have exercised in similar circumstances.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(b) If there is no injury or the injury is only to self:

1. Employees will report the discharge immediately to range personnel and request emergency medical assistance if needed.
    (a) The Learned Skills sergeant will be notified immediately.
    (b) Employees may be immediately disqualified and placed on restricted duty depending on the severity of the incident.
2. The Learned Skills Unit will:
    (a) Notify the involved employee's immediate supervisor regarding the incident.
    (b) The training instructor will completed an UD/PD form and forward it to the Learned Skills Sergeant.
    (c) The Learned Skills Sergeant will review the UD/PD form and make the determination on whether the firearms discharge was unintentional or preventable. He/she will prepare a memorandum addressed to the employee's immediate supervisor regarding the incident and send a copy to the Learned Skills Lieutenant.
3. If the discharge is determined to be unintentional the employee's chain-of-command will handle the inquiry.
4. If the discharge is determined to be preventable the incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
    (a) The Learned Skills Lieutenant will review the prepared memorandum and complete an Internal Affairs complaint and forward it to Internal Affairs.
5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

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202.4.2 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE ON-DUTY
The following reporting guidelines will be followed when an on-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(b) If there is no injury:

1. Employees will report the situation immediately and request their immediate supervisor to respond to the scene.
2. Employees may be placed on restricted duty.
3. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
   (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.
   (b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.
   (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
4. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

202.4.3 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE OFF-DUTY
The following reporting guidelines will be followed when an off-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(b) If there is no injury:

1. Employees will report the situation immediately and request an on-duty supervisor to respond to the scene.
2. Employees may be placed on restricted duty.
3. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):
   (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.

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(b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.

(c) The employee's chain-of-command will determine what, if any, corrective action is needed.

4. If the incident occurs out of city, the proper law enforcement authority having jurisdiction must be notified. The employee's supervisor will coordinate the investigation with the responsible agency.

5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

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General Orders

Leg Restraint Device

204.1 PURPOSE AND SCOPE

The proper use and application of a leg restraint device can reduce the potential of injury and damage to property when dealing with violent or potentially violent subjects. This order provides guidelines for the proper use of these devices.

204.1.1 PHILOSOPHY

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. A leg restraint device should only be used when officers reasonably believe it is necessary to augment other restraints while performing their lawful duties; a leg restraint device is never to be used as punishment.

204.2 POLICY

When an officer encounters circumstances where it reasonably appears necessary to restrain the legs to prevent escape or restrain a violent or potentially violent subject during the course of a detention, arrest, and/or transportation, only Department approved RIPP Hobble or Ankle/Leg Iron restraint devices shall be used and only in the Department approved manner for temporary immobilization of the legs.

Patrol sergeants and corporals will be assigned leg irons as part of their issued equipment on their personal inventory list. When the sergeant or corporal is no longer assigned to a patrol shift they will return the leg iron to Police Equipment.

204.3 AUTHORIZED USE

(a) Only those officers trained in the use of the leg restraint device are authorized to employ it on any subject.

(b) The leg restraint device shall only be used after a subject has been handcuffed.

(c) In determining whether to use a leg restraint device, officers should consider the following:

1. If the officer and/or others are subject to harm due to the assaultive behavior of a violent, resisting, and/or attacking subject.
2. If it is objectively reasonable to protect the subject from his own actions (e.g., hitting his head against the interior of the Patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).

204.4 PROCEDURE

The leg restraint device is designed to reduce the likelihood of injury to the restrained subject or others, and to reduce the likelihood of property damage caused by the restrained subject by preventing him from using his legs in a manner likely to result in injury or damage. The following guidelines shall be used when applying a leg restraint device:

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(a) If practicable, officers should notify a supervisor of the intent to apply the restraint. In all cases, a supervisor shall be notified as soon as practicable after the application of the restraint and the name of that supervisor shall be noted in a report or supplement.

(b) This device shall not be used to hog tie. Once the subject's legs have been bound, the safety clip of a restraint shall not be attached to the chain of the handcuffs.

(c) Absent a medical emergency, the subject being restrained shall remain restrained until the officer arrives at the jail or other facility or the subject no longer poses a threat.

(d) Once secured, the subject should be placed in a seated or upright position. Subjects shall not be placed on their stomach for an extended period as this may potentially reduce their ability to breathe.

1. The restrained subject should be constantly watched by an officer while in the restraint. The officer is to ensure the subject does not roll onto and remain on his stomach.
2. The officer should look for signs of labored breathing and, where practicable, take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
3. In the event that it appears reasonably necessary to restrain a subject in such a position that the subject's ability to sit upright is restricted, an officer should monitor the subject in an effort to minimize restricted breathing. The subject should be placed in an upright position as soon as it reasonably appears safe and practicable.

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Control Devices and Techniques

206.1 PURPOSE AND SCOPE

In an effort to reduce and minimize altercation related injuries to officers, the public and subjects, the Department authorizes the use of selected control devices. These control devices are approved in order to control violent or potentially violent subjects. It is anticipated that the use of these devices will generally result in fewer altercation related injuries to officers and subjects. The order below is for the use and maintenance of control devices.

206.1.1 PHILOSOPHY

The use of control devices upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, reasonably believes it necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and protect the public welfare requires a careful balancing of all human interests.

206.2 CONTROL DEVICES AND TECHNIQUES OVERVIEW

206.2.1 WHEN DEVICES MAY BE USED

When a decision has been made to control, restrain or arrest a violent, threatening or escaping subject, an approved control device may only be used when its use appears objectively reasonable under the circumstances.

206.2.2 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device and/or technique shall be documented as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting and Review).

206.2.3 APPROVED CONTROL DEVICES

Only Department issued or approved control devices and munitions shall be carried. Only Department approved modifications may be made to any control device.

(a) The control devices approved by the Department are:

1. Baton and/or Impact Weapons (long, short, side-handle or expandable).
2. Chemical Agents (Oleoresin Capsicum (OC) spray).
3. Kinetic Energy Projectiles and their delivery systems.
4. TASER Device - See General Order 208 (TASER® Guidelines).

(b) Every control device shall be periodically inspected by the employee's supervisor or the designated instructor for a particular control device. All daily inspections, routine maintenance, charging and cleaning shall remain the responsibility of the employee assigned the device.

(c) All damaged, inoperative, or expended control devices shall be returned to the Property Control Office for disposal, repair and/or replacement.

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206.2.4 TRAINING FOR CONTROL DEVICES

(a) Only employees trained and certified in the use of a specified control device are authorized to carry and/or use that device. Proficiency training must be monitored and documented by a certified device, weapons, or tactics instructor.

(b) Civilian employees may use issued chemical agents for self-defense only. Recertification for chemical agents issued to civilian employees shall occur annually.

(c) Officers shall re-certify annually for all control devices they have been previously approved to carry with the exception of the TASER®. Recertification for the TASER® shall follow the guidelines set forth in General Order 208 (TASER® Guidelines).

(d) All formal training and proficiency for control devices shall be documented in the employees' training file.

(e) Employees failing to demonstrate proficiency with a device shall be provided remedial training. Employees failing to pass remedial training shall not be permitted to carry the device and may be subject to other provisions prescribed by the Training Division.

206.3 BATON AND IMPACT WEAPON GUIDELINES

The baton and/or an impact weapon is authorized for use when, based upon the circumstances perceived by the officer, such force reasonably appears justified and necessary to result in the safe control of a subject.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury. The head, neck, spine and groin should not be intentionally targeted except when the officer has an objectively reasonable belief the subject may cause serious bodily injury or death to the officer or others.

206.4 CHEMICAL AGENT GUIDELINES

Chemical agents are devices used to minimize the potential for injury to employees, offenders, or other subjects. They should be used only in situations where such force reasonably appears necessary.

(a) Authorized employees may use chemical agents when the application of the chemical agent is objectively reasonable to:

1. Subdue or control a violent or physically resisting subject.
2. Subdue or control a subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm employees, himself, or others.
    (a) Employees should give a verbal warning followed by a reasonable opportunity to voluntarily comply when practicable.
    (b) Employees must be able to articulate their use of the chemical agent.
3. Apprehend a subject fleeing lawful arrest or detention.
4. Address situations where there is a reasonable expectation that it will be unsafe for employees to approach within contact range of the subject.

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5. Repel physical attacks from humans or animals.
6. Compel subjects to leave an enclosure.
7. Disperse violent crowds or riots.

206.4.1 PROHIBITED USES
The following are prohibited uses of chemical agents:

(a) To torture, psychologically torment, elicit statements or inflict undue pain on any individual.

(b) Horseplay or practical jokes.

(c) Demonstrations without the permission of a supervisor.

(d) When a subject exhibits **only** verbal and/or passive resistance to arrest or authority.

(e) When a subject is under physical restraint unless the subject is still aggressively resisting and lesser means of controlling the subject have failed.

206.4.2 CARRYING OF OLEORESIN CAPSICUM SPRAY
Uniformed employees carrying the OC spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field employees may carry the OC spray as authorized, consistent with the needs of their assignment or at the direction of their supervisor.

206.4.3 TREATMENT FOR CHEMICAL AGENT EXPOSURE
Subjects who have been affected by the use of chemical agents should be afforded means of cleansing the affected areas as soon as practicable. Those subjects who complain of further severe effects shall be afforded a medical examination by competent medical personnel.

206.4.4 TRANSPORTING OF PRISONERS SUBJECTED TO CHEMICAL AGENT EXPOSURE
When transporting prisoners who have been subjected to chemical agents, officers shall ensure that the prisoner stays upright with a clear airway and is not placed in a prone position to avoid possible positional asphyxia. Officers must be especially careful when tightly restraining combative subjects following the use of chemical agents.

Before booking, officers shall advise jail personnel when a prisoner has been subjected to chemical agents.

206.5 KINETIC ENERGY PROJECTILES
This department is committed to reducing the potential for violent confrontations when such subjects are encountered. Kinetic energy projectiles are less likely to result in death or serious physical injury.

Kinetic energy projectiles are approved by the Department and are fired from 12 gauge shotguns that are clearly identified as less lethal shotguns. Certain munitions can be used in an attempt to

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de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

206.5.1 DEPLOYMENT
Approved munitions are justified and may be used in an effort to compel individuals to cease their actions when such munitions present a reasonable option for resolving the situation at hand.

(a) Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officers determine that deployment of these munitions cannot be deployed safely.

(b) The safety of hostages, innocent subjects and officers takes priority over the safety of subjects engaged in perceived criminal or suicidal behavior.

206.5.2 VERBAL WARNINGS
A verbal announcement of the intended use of the kinetic energy projectile should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

(a) The purpose of the warning is for the following:

1. Provide the individual with a reasonable opportunity to voluntarily comply.

2. Provide other officers and individuals with warning that a kinetic energy weapon may be deployed.

(b) The fact that a verbal and/or other warning was given, or the reasons it was not given, shall be documented in any related reports, as well as any responses by the subject.

(c) When the less lethal kinetic energy projectile is deployed on scene, the officer carrying the weapon shall announce over the air as soon as practicable that the less lethal shotgun/40mm weapon was deployed and be acknowledged by the dispatcher.

(d) When given, the verbal warning should be "IMPACTING" to prevent any confusion as to which weapon system is being deployed.

206.5.3 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT
Examples include, but are not limited to, the following types of situations where the subject:

(a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.

(b) Has made credible threats to harm himself or others.

(c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury.

(d) There is reasonable suspicion to believe that the subject has already committed a crime of violence and is refusing to comply with lawful orders.

206.5.4 ADDITIONAL DEPLOYMENT CONSIDERATIONS

(a) Before discharging projectiles, the officer should consider the following factors:

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1. The subject's capability to pose an imminent threat to the safety of officers or others.
2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
3. The credibility of the subject's threat as evaluated by the officers present, and the subject's physical capacity/capability to carry out the threat.
4. The availability of other force options and their possible effectiveness.
5. Distance and angle to target.
6. Type of munitions employed.
7. Type and thickness of subject's clothing.
8. The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

(b) The use of Kinetic Energy Projectiles should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, and the officer reasonably believes that the need to control the individual outweighs the risk of using the Kinetic Energy Projectile.

1. As a breaching tool for windows in vehicles, especially when the vehicle is occupied.
2. As a breaching tool for windows of a structure, especially if it places occupants at risk of injury.

(c) An officer who is currently assigned to Special Operations Command and who has been trained in the use of Kinetic Energy Projectiles as a breaching tool may use that technique in a way that is consistent with their training.

206.5.5 SHOT PLACEMENT AND DEPLOYMENT DISTANCES

Officers should generally follow their training instructions regarding minimum deployment distances and target areas. The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The head and neck should not be intentionally targeted, however any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death to officers or others.

206.5.6 REPORT OF USE

All kinetic energy projectile use shall be documented in the related incident report/supplements and notification made to a supervisor in compliance with General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(a) Specific information on the use of a kinetic energy projectiles should include, but is not limited to, the following:

1. Articulable reasons for the use of the kinetic energy projectile weapon.

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2. Information on the type of individual who was subject to the kinetic energy projectile(s) (e.g., age, sex, health conditions).
3. Any special circumstances surrounding the use of the kinetic energy projectile(s).
4. Whether the kinetic energy projectile(s) application was successful.
5. Where the projectile(s) impacted the subjects body.
6. Number of kinetic energy projectiles deployed.
7. Number of times subject was impacted by kinetic energy projectile(s).
8. Approximate distance the kinetic energy projectile(s) was deployed from the subject.

(b) Photographs of impact sites should be taken. Expended projectiles should be collected and the expended projectile(s) shall be submitted into evidence for future reference. The evidence packaging should be marked "Biohazard" if the projectile(s) penetrated the subject's skin.

206.6 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has an objectively reasonable belief that the use of such a technique appears necessary to further a legitimate law enforcement purpose.

(a) Officers should consider the following when using pain compliance techniques:
1. The potential for injury to the officers or others if the technique is not used.
2. The potential for serious injury to the individual being controlled.
3. Whether the pain compliance technique is effective in achieving an appropriate level of control.
4. The nature of the offense involved.
5. The level of resistance of the individual(s) involved.
6. The need for prompt resolution of the situation.
7. If time permits (e.g., passive demonstrators), other reasonable alternatives.

(b) The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved or other more appropriate alternatives can reasonably be utilized.

206.6.1 USE OF FORCE TO SEIZE EVIDENCE

(a) Pressure point techniques are the maximum amount of force authorized to seize evidence (e.g., narcotics) when there is probable cause to believe it is being held or hidden in the mouth of a subject.

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(b) Soft/empty hand control is the maximum amount of force authorized to seize blood from a subject pursuant to a mandatory blood draw.

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General Orders

TASER Device Guidelines

208.1 PURPOSE AND SCOPE

The TASER® is intended to control a violent or potentially violent individual while minimizing the risk of serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

208.1.1 PHILOSOPHY

The use of a TASER Device upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, has an objectively reasonable belief that it is necessary to gain control of the subject.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force to protect the public welfare requires a careful balancing of all human interests.

208.2 POLICY

Personnel who have completed department approved training may be issued a TASER Device for use during their current assignment. Personnel leaving a particular assignment may be required to return their issued device to the Department's inventory.

Officers shall only use the TASER Device and cartridges that have been issued by the Department. If an officer is issued a TASER®, the device must be carried as a part of a uniformed officer's equipment in an approved holster.

(a) When the TASER Device is carried as a part of a uniformed officer's equipment, the TASER Device shall be carried on the side opposite from the duty weapon.

(b) All TASER Devices shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.

(c) Whenever practicable, officers should carry a total of two or more TASER Device cartridges on their person while carrying a TASER Device.

208.3 VERBAL WARNINGS

A verbal announcement of the intended use of the TASER Device should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

(a) The purpose of the warning is for the following:

1. Provide the individual with a reasonable opportunity to voluntarily comply.
2. Provide other officers and individuals with warning that a TASER Device may be deployed.

(b) The aiming laser should never be intentionally directed into the eyes of another.

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(c) The fact that a verbal and/or other warning was given, or the reasons it was not given, shall be documented in any related reports, as well as any responses by the subject.

(d) When given, the verbal warning should be "TASER, TASER, TASER" to prevent any confusion as to which weapon system is being deployed.

208.4 USE OF THE TASER DEVICE

As with any law enforcement equipment, the TASER Device has limitations and restrictions requiring consideration before its use. The TASER Device should only be used when its operator can safely approach the subject within the operational range of the TASER Device. Although the TASER Device is generally effective in controlling most individuals, officers should be alert to the potential for failure and be prepared with other options.

Generally, an assisting officer should be present with lethal cover in the event the TASER Device is ineffective or defective and the subject initiates a potentially life threatening confrontation.

Officers should never hold both a firearm and the TASER device at the same time.

208.4.1 APPLICATION OF THE TASER DEVICE

Authorized personnel may use the TASER Device when circumstances known to the officer at the time indicate that such application is objectively reasonable to control a subject in any of the following circumstances:

(a) Apprehend a subject fleeing lawful arrest or detention.

(b) A violent or physically resisting subject.

(c) There is reasonable expectation that it will be unsafe for officers to approach within contact range of the subject.

(d) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, himself, or others.

1. Officers should give a verbal warning of the intended use of the TASER Device followed by a reasonable opportunity for the subject to voluntarily comply, when practicable.
2. Officers must be able to articulate their use of the TASER Device in an incident report.

208.4.2 PROHIBITED USES

The following are prohibited uses of the TASER Device:

(a) The TASER Device shall not be used to torture, psychologically torment, elicit statements or to punish any individual.

(b) Horseplay or practical jokes.

(c) Demonstrations, without the permission of a supervisor.

(d) Against passively resisting subjects.

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(e) Individuals who are covered in, or in close proximity to, any combustible material.

208.4.3 SPECIAL DEPLOYMENT CONSIDERATIONS

(a) The use of the TASER Device should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the TASER Device.

1. Obviously pregnant females.
2. Elderly individuals or obvious juveniles.
3. Individuals who are handcuffed or otherwise restrained.
4. Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

(b) Individuals suspected of being under the influence of drugs/alcohol or exhibiting extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain, or requires a protracted physical encounter with multiple officers to be brought under control may be more susceptible to serious medical problems and shall be closely monitored following the application of the TASER Device until they can be examined by paramedics or other medical personnel.

(c) Because the application of the TASER Device in the drive-stun mode (i.e. direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised. The application in drive-stun mode should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control.

208.4.4 TARGETING CONSIDERATIONS

While manufacturers generally recommend that reasonable efforts should be made to target lower center mass and to avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the TASER Device darts to a precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin until he is released to the care of paramedics or other medical personnel.

208.4.5 MULTIPLE APPLICATIONS OF THE TASER DEVICE

Only one officer shall deploy his TASER Device on an individual unless it is obvious the deployment was not effective.

(a) If the first application of the TASER Device appears to be ineffective in gaining control of an individual and if circumstances allow, the officer should consider the following before additional application of the TASER Device:

1. Whether the probes or darts are making proper contact.

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2. Whether the application of the TASER Device is interfering with the ability of the individual to comply.
3. Whether other options or tactics may be more effective.

(b) This does not preclude an officer from multiple, reasonable applications of the TASER Device on an individual.

208.4.6 REPORT OF USE
All TASER Device discharges shall be documented in the related incident report/supplements and notification made to a supervisor in compliance with General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(a) Specific information on the use of a TASER Device should include, but is not limited to, the following:
1. Articulable reasons for the use of the TASER Device.
2. Information on the type of individual who was subject to the TASER Device (e.g., age, sex, health conditions).
3. Any special circumstances surrounding the use of the TASER Device (e.g., handcuffed prisoner).
4. Whether one or both of the TASER Device darts penetrated a subject's clothing and/or skin.
5. How many applications/cycles of the TASER Device were used.
6. Whether the TASER Device application was successful.
7. How many cartridges were used.
8. Serial numbers of any used cartridge(s).
9. Whether multiple officers used the TASER Device.
10. Any pain compliance use of the TASER Device (e.g., drive stun).

(b) The on-board TASER Device memory will be downloaded through the data port by a supervisor and saved with the related incident reports.

(c) Photographs of probe sites should be taken, Anti-Felon Identification (AFID) tags should be collected and the expended cartridge along with both probes shall be submitted into evidence for future reference. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

208.5 MEDICAL TREATMENT
Officers will remove TASER Device darts as trained once the subject is in custody. Used TASER Device darts shall be considered a sharp biohazard, similar to a used hypodermic needle. Universal precautions should be taken accordingly.

All subjects who have been struck by TASER Device darts or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, an

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individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

(a) The subject is suspected of being under the influence of controlled substances and/or alcohol.

(b) The subject may be pregnant.

(c) The subject reasonably appears to be in need of medical attention.

(d) The TASER Device darts are lodged in a sensitive area (e.g., groin, female breast, near the eyes).

(e) The subject requests medical attention.

Subjects who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and impervious to pain or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel. Officers shall call EMS to diagnose and treat any individual exhibiting these signs as soon as the signs are recognized. Any such individual shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or the interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person receiving custody or any person placed in a position of providing care that the individual has been subjected to the application of the TASER Device. All subjects shall be evaluated by the jail nurse prior to booking.

208.6 TRAINING

In addition to the initial department-approved training required to carry and use a TASER Device, all employees carrying a TASER Device shall demonstrate proficiency annually.

(a) Employees who have not carried a TASER Device as a part of their assignment for a period of six months or more shall be recertified by a department approved TASER Device instructor prior to again carrying or using the device.

(b) A reassessment of an officer's knowledge and/or practical skill may be required at any time if deemed appropriate by the Training commander.

208.7 FUNCTIONALITY CHECK

After a Response to Resistance incident, supervisors shall download the firing data from an employees' TASER Device and comply with the reporting procedures outlined in General Order 211 (Response to Resistance Inquiry, Reporting and Review).

Officers shall download data from their assigned TASER Device when it is reassigned to another officer or retired from active police inventory:

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(a) One copy of the data report shall be filed with the officer's property inventory retained by Police Equipment.

(b) One copy of the data report shall be retained by the officer.

208.7.1 PROPER MAINTENANCE

Officers shall be responsible for ensuring that their issued TASER device is properly maintained and in good working order.

(a) The supervisor or designee will perform functionality checks. This check shall occur monthly for probationary police officers and quarterly for all other officers.

(b) The results of the check will be documented on form PD0128 and will include whether or not the internal clock was "reset" and if a Taser was found defective. If defective, the supervisor shall notate corrective action. Examples are:

1. Turned into Police Equipment for repair or replacement
2. Taser cartridge trap doors replaced
3. Low battery replaced

208.8 DEPLOYMENT RECORD RETENTION

All TASER Device deployment information shall be maintained by the Department for a minimum of three (3) years.

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GO
211

Austin Police Department
General Orders

Response to Resistance Inquiry, Reporting, and Review

211.1 PURPOSE AND SCOPE

This directive sets forth Department policy and procedures for inquiring, reporting, and reviewing force incidents in response to resistance involving Department personnel. The specific required inquiry, reporting, and review of these incidents is determined by the force level, as defined in this order.

Personnel may delay compliance with the provisions of this order if the scene is unstable, there is unrest, or other conditions make immediate compliance impracticable. The protection of the public, Department personnel, and maintenance of public safety shall remain a top priority. Compliance with this order shall occur as soon as practicable. The approving supervisor shall ensure the reason for the delay is documented in the supervisor's supplement or SharePoint IRP.

211.1.1 DEFINITIONS

Inquiry: The preliminary review of the events surrounding a response to resistance incident, including the initial response to the scene and follow-up investigations.

Reporting: The process of documenting the information gathered in the inquiry of a response to resistance incident through written, oral and visual means and compiling that information into the appropriate packet for review.

Review: The process of evaluating all the given information obtained in the force incident inquiry and reporting stages to determine if the response to resistance complies with law and General Orders.

Primary Review Commander: The Commander responsible for conducting the initial review of the response to resistance incident.

Secondary Review Commander: A Commander independent of the involved officer's chain-of-command assigned to complete a secondary review of the response to resistance incident. The Secondary Review Commanders are assigned as follows:

Patrol Assignment are reciprocal

- Commander of Adam Sector will review Frank Sector
- Commander of Baker Sector will review Henry Sector
- Commander of Edward Sector will review David Sector
- Commander of Ida Sector will review Charlie Sector
- Commander of Charlie will review Ida Sector
- Commander of Henry will review Baker Sector
- Commander of David Sector will review Edward Sector

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- Commander of Frank Sector will review Adam Sector

Support Assignments

- Commander of Organized Crimes will review DTAC Day and Evening I Lieutenant Shifts
- Commander of Highway Enforcement will review DTAC Evening 2 and Night Lieutenant Shifts
- Commander of Investigations II/Property Crimes will review Special Operations
- Commander of Special Operations will review Investigations I and II/Property Crimes
- Commander of Intelligence will review Special Events, Professional Standards, Recruiting/Training, and Organized Crimes
- Commander of Special Events will review Intelligence
- Commander of Recruiting/Training will review Highway Enforcement

211.1.2 IDENTIFYING RESPONSE TO RESISTANCE DOCUMENTATION
The following Response to Resistance reports and forms are required as determined by the force level of the incident:

Response to Resistance Incident Report: The initial incident report written by the primary reporting employee for all force level incidents. Title Code 8400 shall be added to the incident report by the primary reporting employee to identify the incident as a response to resistance incident. The Use of Force section of the "Details" page shall also be completed.

Response to Resistance Supplement: A supplement written to the primary reporting employee's incident report.

Response to Resistance SIU Inquiry Report: A separate incident report written by the Special Investigations Unit (SIU) for all Level 1 incidents and in-custody deaths.

Incident Review Folder: An electronic folder labeled with the case number, created in the G: \Digital Incident Review Folder which contains all applicable response to resistance supporting documentation.

Incident Review Packet (IRP): An administrative review of the incident to include response to resistance. The IRP is completed on SharePoint by the appropriate person, unit, or chain-of-command.

- Level 1 incident review packets are completed by SIU. A chain-of-command inquiry is also required at the completion of the SIU report to identify department or individual equipment, training, and tactical issues.
- Level 2, Level 3, and Level 4 incident review packets are completed by the supervisor conducting the inquiry.

Group Reporting: The act of sharing, providing, or acquiring information with or from other officers or employees about an incident for the purpose of ensuring that officers or employees make similar

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reports about the incident that include information not consistent with the reporting officer's or employee's own perception or recollection of the incident. The act of reading another officer's or employee's report prior to completing a required report is considered group reporting.

211.2 DETERMINING THE CORRECT FORCE LEVEL

Force levels are broken up into four types: Level 1, Level 2, Level 3, and Level 4. Each level is defined below by the response to resistance used in the incident. These levels are established for inquiry, reporting, and review purposes only. If there is uncertainty about which level to designate a particular incident then the higher level shall be used.

211.2.1 LEVEL 1 FORCE INCIDENTS AND IN-CUSTODY DEATHS

(a) Any force resulting in death.

(b) Any force that resulted in a substantial risk of death.

(c) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.

(d) Any intentional firearm discharge at an animal that results in injury to another person.

(e) Any unintentional firearms discharge resulting in another person's injury or death.

(f) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g., serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).

(g) Use of any impact weapon, including kinetic energy projectiles, and improvised weapons, that strikes the head of a subject.

(h) **In-Custody Deaths**: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as Level 1 incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.

(i) The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.

211.2.2 LEVEL 2 FORCE INCIDENTS

(a) Any strike to the head by an employee with any weaponless technique.

(b) Use of any impact weapons, including kinetic energy projectiles (other than a Taser), and improvised weapons, to strike a subject and contact is made, regardless of injury. (A strike to the head is a Level 1).

(c) Any deployment of a police canine resulting in a bite to a subject's skin, or which results in any injury to a subject.

(d) The utilization of the Precision Immobilization Technique, unless serious bodily injury or death occurs.

211.2.3 LEVEL 3 FORCE INCIDENTS

(a) Use of Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent on a subject.

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(b) Any Taser application.

(c) Use of any impact weapon, including kinetic energy projectiles or any other similar object, in an attempt to strike a subject but no contact is made.

(d) Use of a baton for a non-striking purpose (e.g., prying limbs, moving, or controlling a subject).

(e) Any force resulting in injury or a continued complaint of pain, but not rising to a Level 1 or 2 incident.

(f) Any weaponless technique that causes an impact to the body with or without a complaint of injury or pain. (A weaponless strike to the head is a Level 2). Examples of weaponless techniques include:

1. Hand/palm/elbow strikes.
2. Kicks or leg sweeps.
3. Take-downs.

(g) Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.

211.2.4 LEVEL 4 FORCE INCIDENTS

(a) A level of force utilizing empty hand control techniques that does not result in injury or continued complaint of pain and does not rise to a Level 3 response to resistance. Examples include, but are not limited to:

1. Restricting a subject's movement by strength or body weight (to include resisted escorting or handcuffing of a subject who is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of a person's arm(s) that officers commonly encounter during handcuffing).
2. Using leverage or strength to bring a subjects arms or legs together for the purposes of controlling, handcuffing, or hobbling the subject (to include resisted control, handcuffing, hobbling when the subject is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of the subject's arm(s) or leg(s) that officers commonly encounter during efforts to control, handcuff, or hobble a subject).
3. Pressure point control tactics.

211.2.5 ELEVATION OF A FORCE LEVEL INCIDENT

If information is uncovered during a response to resistance inquiry to indicate that the original force level falls into a higher category, the force level should be elevated to conduct the appropriate inquiry.

(a) Supervisors have the discretion to elevate any Level 3 and Level 4 force incident to a Level 2 in order to conduct a more extensive inquiry and review of the incident.

(b) Any supervisor, with the approval of the commander or Duty Commander, may elevate any response to resistance incident to a Level 1 force incident.

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211.3 VIOLATIONS OF LAW OR GENERAL ORDERS

Supervisors receiving a complaint regarding a response to resistance incident will review the available information regarding the incident to determine if any credible evidence of a violation of General Orders or law may have occurred.

(a) Supervisors making a determination based on objective evidence (e.g., MAV shows an allegation is false) that there is **no credible evidence** a violation of General Orders or law has occurred by the officer shall complete a *Complainant Contact Form* and forward it to IA.

1. The incident shall be closed as information and tracked in the IA database for information purposes only.
2. The force incident shall be handled based on the normal criteria as outlined in this order and the initiation of an IA investigation is not required.

(b) Supervisors discovering, during the normal course of their review or in response to a complaint, **any credible evidence** a violation of law or General Orders may have occurred concerning the officer's response to resistance shall follow the guidelines outlined below.

211.3.1 CRIMINAL MISCONDUCT

Regardless of the original force level of the incident, if there is **any credible evidence** that criminal misconduct may have occurred by the officer then the incident shall be treated as a Level 1 force incident.

(a) The supervisor shall immediately notify SIU and IA. The supervisor shall document the time and date SIU and IA were notified in the supervisor's supplement.

(b) The Chief of Police shall be notified on all credible allegations of criminal conduct.

(c) SIU and IA shall handle the concurrent investigation of criminal allegations as outlined in the Criminal Investigations and Administrative Investigations General Orders.

211.3.2 GENERAL ORDERS VIOLATION

(a) If there is **any credible evidence** a General Orders violation may have occurred by the officer relating to his/her response to resistance then the incident shall be handled as follows:

1. Level 1 force incidents - If the original incident would have been handled as a Level 1 force incident, supervisors shall notify SIU and IA of the possible General Orders violation and handle the response to resistance inquiry as a Level 1 force incident. Supervisors shall document the date and time SIU and IA were notified in the supervisor's supplement.
2. Level 2, Level 3, and Level 4 force incidents - If the original incident would have been handled as a Level 2, Level 3 or a Level 4 force incident, supervisors shall notify IA of the possible General Orders violation and handle the response to resistance inquiry as a Level 2 force incident. Supervisors shall document the date and time IA was notified in the supervisor's supplement.

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(b) Internal investigations of General Orders violations shall be handled as outlined in General Order 902 (Administrative Investigations).

211.4 EMPLOYEE RESPONSIBILITIES FOR ALL FORCE LEVEL INCIDENTS

The following outlines the required responsibilities of involved employees, employees that witness an incident, and employees designated to assist at the scene of any response to resistance incident. If a juvenile is in custody related to the incident, the juvenile should not be interviewed unless the juvenile has been brought before a magistrate.

(a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.

(b) Involved employees shall request EMS as soon as practicable when a subject complains of injury, has visible injuries, or the circumstances indicate that an injury may have occurred. For purposes of this section "Injury" does not include TASER probe marks that are not in a sensitive area of the body. Officers will comply with section 208.5 in regards to post-TASER deployment medical treatment.

(c) If a person not under arrest is transported for medical treatment as a direct result of an officer's response to resistance, an officer will accompany that person to the medical facility for monitoring unless or until a supervisor believes such monitoring is no longer necessary.

(d) Employees not involved in the force incident may be directed by a supervisor to assist at a force incident scene. This may include locating and identifying witnesses to the incident.

1. Employees shall notify a supervisor in the event a witness refuses to give a statement or provide identifying information.
2. Employees shall not detain or delay a witness who refuses to remain at the scene.
    (a) The witness' physical description, license plate, comments, or other identifiers shall be documented in the employee's supplemental report.
    (b) Any photographs or videotape containing images of a witness who refused to remain at the scene shall be saved in the incident review folder.

211.4.1 EMPLOYEE REPORTING GUIDELINES FOR ALL FORCE LEVEL INCIDENTS

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

(a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.

(b) Supplements shall be completed by:

1. All other employees who are involved in a force incident.
2. Employees who witness a force incident.
3. Employees assisting at the scene of a force incident.

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4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.

(c) The following information shall be included in each report and supplement:

1. The original reason for police presence on the scene.
2. The name and employee number of the supervisor notified of the incident.
3. A detailed description of the circumstances and subject actions that resulted in the response to resistance.
4. A detailed description of the force used.
   (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
5. Subject and witness information.
6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.

(d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

211.5 DESIGNATION OF SUPERVISOR TO CONDUCT INQUIRY

The supervisor of the employee involved in the force incident shall typically be the primary supervisor conducting the force inquiry. The following exceptions apply:

(a) If an incident involves multiple employees with different supervisors, those supervisors should work together to determine who will be the primary reporting supervisor. If an agreement cannot be reached, a Lieutenant from the area where the incident occurred or the Watch Commander shall assign one supervisor to be the primary reporting supervisor. The responding supervisor will conduct the force inquiry. Additionally, the responding supervisor will notify the other involved employees' supervisor(s) of the force incident and their employee's involvement. This notification will be made by e-mail and will include the incident report number.

(b) A supervisor involved in a force incident shall not review the incident. A supervisor who is at the scene and witnesses the incident, but is not directly involved in the force incident, may conduct the inquiry.

(c) If an employee the rank of sergeant or lieutenant is involved in a Level 2, Level 3, or Level 4 force incident, another supervisor the rank of the involved employee or higher shall conduct the inquiry.

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(d) If an employee the rank of commander or higher is involved in a Level 2, Level 3, or Level 4 force incident, the employee will notify their immediate supervisor and the Duty Commander. At the direction of the Duty Commander, an on duty lieutenant may be designated to complete the inquiry.

(e) Corporals may be designated as the inquiry supervisor as follows:

1. Level 1 Incidents - Corporals may not act as the designated supervisor to conduct inquiries for Level 1 Force Incidents.

2. Level 2 Incidents - As long as an employee is in their chain-of-command, or when responding as the acting sergeant to an incident occurring in their sector involving a Department officer working an off-duty LERE position, corporals may conduct the initial on-scene inquiry of a Level 2 incident when serving as acting sergeant or when the sergeant is not immediately available. The corporal should notify the corporal's supervisor, lieutenant, or other designated supervisor of the Level 2 incident by the end of the shift and the initial Level 2 SharePoint IRP should be forwarded within eight (8) working days for final approval or further inquiry.

3. Level 3 and Level 4 Incidents: Corporals may function as the designated supervisor to conduct inquiries for Level 3 and Level 4 force incidents.

211.6 LEVEL 1 AND IN-CUSTODY DEATH INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 1 force incidents require an inquiry be conducted by SIU and may also concurrently be investigated by IA. In-custody deaths occurring prior to or within 24 hours after booking require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject. The following sections explain the responsibilities in Level 1 force incidents and in-custody deaths for:

(a) Supervisors,

(b) Special Investigations Unit (SIU),

(c) Lieutenants,

(d) Chain-of-command, and

(e) Internal Affairs (IA).

211.6.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

Supervisors shall respond to the scene of all Level 1 force incidents and in-custody deaths unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

(a) Supervisors are responsible for managing the scene until a higher ranking supervisor or the ranking SIU supervisor arrives.

(b) Supervisors should secure and manage the scene upon arrival and:

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1. Take all reasonable steps to obtain emergency medical attention for all injured individuals.
2. Ensure involved personnel, subjects, and witnesses are separated, identified and advised that communication regarding the incident with other people is prohibited.
3. Obtain a brief overview of the situation from available sources.
4. Following an officer involved shooting, the supervisor shall administer the public safety questions to the involved officers(s). If necessary, the supervisor shall administratively order any officer from this department to immediately provide public safety information to secure the scene, pursue subjects, and located any possible injured persons requiring medical attention.
    (a) The public safety questions can be found on form PD0297 located in the APD Approved Forms Folder. The information shall be limited to such things as outstanding subject information, number and direction of shots fired, perimeters of the incident scene, identity of known witnesses, and similar information.
    (b) The public safety questions shall be captured using the BWC system. When the BWC system is unavailable, the DMAV system shall be used.
5. With the exception of answering the public safety questions, involved personnel subject to a potential criminal investigation shall be able to speak with an APA union representative and/or their attorneys prior to speaking with a supervisor.
6. Ensure a crime scene is established:
    (a) Ensure a *Crime Scene Security Log* (PD0175) is maintained to record the time and identifying information of all persons entering and exiting the scene.
    (b) Ensure the *Crime Scene Security Log* is delivered to the SIU investigator.
7. Ensure an appropriate sized perimeter is established, if needed.
8. Assess the need for additional resources and notify the Watch Lieutenant and appropriate lieutenant.
9. Identify the number of subjects involved and coordinate the apprehension of subject(s)who are unaccounted for.
10. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene investigators as soon as practicable and shall be documented in the employee's supplement.
11. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any information regarding sources

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of pertinent video should be provided to on-scene investigators as soon as practicable and shall be documented in the employee's supplement.

12. Coordinate the preliminary inquiry with the SIU and IA investigators to include, but not limited to:
    (a) Identifying employees either involved in or witness to the incident.
    (b) Designating the primary reporting officer for the response to resistance incident report.
    (c) Ensuring the preservation of evidence.
    (d) Assisting investigators to ensure statements are taken.

(c) Once the scene has been cleared, supervisors shall be responsible for the following:
1. Completing a supplement to the response to resistance incident report detailing their actions. SIU may direct a supervisor to complete a supplement to the SIU inquiry report as well.
2. Reviewing the primary reporting employees' response to resistance incident report and change the 8400 title code to 8401 to indicate a Level 1 force incident.
3. Identifying Department or individual equipment, training, and tactical issues, if applicable.
4. Making recommendations for corrective action when appropriate. Recommendations shall be documented in the SharePoint IRP.

211.6.2 SPECIAL INVESTIGATIONS UNIT (SIU) RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The ranking SIU supervisor on-scene of a Level 1 incident shall assume command of the scene. SIU shall conduct a response to resistance inquiry and forward the incident review packet to the involved employee's chain-of-command within forty-five (45) calendar days, unless extended by an assistant chief. A referral to IA may be initiated if SIU or the chain-of-command discovers credible evidence of a General Orders violation during their review of a Level 1 force incident. All in-custody death incidents will have a concurrent investigation with IA.

211.6.3 LIEUTENANT RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

On-duty lieutenants responsible for the area in which the response to resistance incident has occurred will respond to the scene to assume scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary inquiry. When appropriate, lieutenants may place the involved employees on restricted duty with the approval of the employee's commander or the Duty Commander.

211.6.4 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The chain-of-command, up to and including the appropriate assistant chief, shall review the response to resistance incident review packet for Level 1 force incidents. All reviewers shall:

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(a) Document their review following IA administrative procedures relating to the IA investigation of the incident.

(b) Review the incident review packet and evaluate the report and supplements for compliance with law and General Orders. Any reports that are incomplete or inadequate shall be returned to ensure corrections are made.

(c) Order further inquiry or additional resources when necessary.

(d) Evaluate and comment on any training, tactical, or equipment issues.

(e) Document any extension approvals for report deadlines. The employee's commander shall ensure SIU and IA are notified of any deadline extensions.

(f) Forward the response to resistance incident review packet to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within eight (8) working days from the time it was received for review.

(g) Upon completion of the review, and the final disposition of any Administrative Investigation, if applicable, the commander shall:

1. Forward all approved incident review packet links via email to APD Training.
2. Document any identified individual, command or Department-wide training issues:
    (a) If an individual or command training issue is identified, the commander shall ensure training is conducted and a training memorandum is completed and forwarded to the commander of the Training Division for review and appropriate additional action, if any; and/or
    (b) Request Department-wide training from the Training Division.
    (c) Scan the final signed memorandum into the electronic folder.

211.6.5 INTERNAL AFFAIRS RESPONSIBILITIES IN LEVEL 1

(a) If an Administrative Investigation is initiated due to alleged misconduct by an APD employee, at any stage of the inquiry or review process, the process established by General Order 902 (Administrative Investigations) will be followed.

(b) Upon final disposition of the Administrative Investigation, IA will notify the involved employee’s commander.

(c) For in custody deaths and officer involved shootings, IA will forward the electronic link to the Force Review Board.

211.7 LEVEL 2 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

The following sections explain the responsibilities in Level 2 force incidents for:

(a) Supervisors, and

(b) Chain-of-Command.

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211.7.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

Level 2 force incident inquiries are conducted by the designated inquiry supervisor. A supervisor shall respond to the scene of all Level 2 force incidents unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

(a) Supervisors should secure and manage the scene upon arrival and:

1. Ensure involved personnel, subjects, and witnesses are identified, separated, and advised that communication regarding the incident with other people is prohibited.
2. Verbally review the general circumstances of the incident individually with the involved personnel, subjects, and witnesses. All employee statements shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used.
3. Ensure the reporting level is consistent with the facts and assess whether injuries, if present, are consistent with the force applied.
4. Ensure a perimeter is established if needed.
5. Locate injured subjects and ensure medical services have been requested as needed.
6. Assess the need for additional resources and make appropriate notifications.
7. Identify the number of subjects involved. Coordinate the apprehension of subject(s)outstanding.
8. Personally interview witnesses and the subjects upon whom the force was used, or alleged to have been used, and obtain a statement. The statement should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their SharePoint IRP and explain the circumstances that prevented the recording.
9. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to the on-scene supervisor as soon as practicable and shall be documented in the employee's supplement. Witness information shall also be documented in the supervisor SharePoint IRP.
10. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any sources of pertinent video should be provided to on scene supervisor as soon as practicable and shall be documented in the employee's supplement.
11. Ensure digital images or photographs are taken of:
    (a) The physical condition of the subject and involved personnel to record the presence or lack of injuries.
    (b) The scene where the response to resistance incident occurred.

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(c) Other relevant evidence.

12. If a kinetic energy projectile is used in the force incident, all spent projectiles shall be submitted to evidence for retention.

13. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.

(b) Once the scene has been cleared, supervisors shall be responsible for the following:

1. Send email notifications with the incident report number prior to the end of the tour of duty to the:

(a) Involved employee's chain-of-command up to the commander.

(b) Reviewing supervisor's chain-of-command up to the commander, if not already included.

(c) Commander of the area where the incident took place, if not already included.

2. Supervisors shall review the primary reporting employee's response to resistance incident report and change the 8400 title code to 8402 for Level 2 force incidents.

3. Complete an Incident Review Packet on SharePoint filling in all applicable fields to include:

(a) All pertinent information relating to the resistance and the officer(s) response to resistance.

(b) The findings of the supervisor investigation, including whether the response to resistance complies with law and General Orders.

1. Utilization of the Precision Immobilization Technique (PIT) will be handled in both the pursuit review and Level 2 response to resistance sections of the SharePoint IRP and reviewed through the rank of Commander.

(c) Any training issues or General Orders violations on the part of the involved officer(s), if applicable.

4. Create an electronic folder with the case number in the folder G:\Incident Review Folder containing all supporting documentation which is not already located in a different location on the APD Network. Supporting documentation includes but is not limited to:

(a) Copies of private surveillance video, cell phone video, etc.

5. Forward the electronic link(s) to the SharePoint IRP and the digital incident review folder to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within eight (8) working days from the time the incident occurred.

6. Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure

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completeness, accuracy, and quality and send it to the next level in the chain-of-command within eight (8) working days of the date of incident.

211.7.2 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

The chain-of-command, up to and including the commander, shall review Level 2 force incidents.

(a) All reviewers shall:

1. Review the SharePoint IRP and evaluate the report and supplements for compliance with law and General Orders.
2. Document in the SharePoint IRP whether the response to resistance was within General Orders:
    (a) Each level of the chain-of-command should comment in the applicable review fields in the SharePoint IRP.
3. Evaluate and comment on any training, tactical, or equipment issues.
4. Order further inquiry or additional resources when necessary.
5. Ensure any reports that are incomplete or inadequate are returned and corrections made.
6. Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to and including the Primary Commander, shall review the incident according to the following timeline:
    (a) Sergeants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days of the date of the incident.
    (b) Lieutenants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days from the time the incident was received for review.
    (c) The Commander shall complete their review of the SharePoint IRP within eight (8) working days from the time the incident was received for review. A case note shall be added to the SharePoint IRP to document their review.
    (d) The Commander may grant an extension to any deadline for completing a review listed above in subsection (a)(6)(a) or (a)(6)(b). Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
    (e) An assistant chief may grant an extension to any of the deadlines for completing a review listed in subsections (a)(6)(a)-(d). Requests for extensions must be based upon delays in the review process including, but not limited to: delays in gathering evidence, staffing or scheduling

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issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.

(b) Upon completion of the review, the commander shall:

1. Forward link(s) to all approved SharePoint IRP via email to APD Training and appropriate review board(s).
2. Document any identified individual, command or Department-wide training issues:
   (a) If an individual training issue is identified an Employee Success Plan may be implemented. If a command training issue is identified, the commander shall ensure training is conducted; and/or
   (b) Request Department-wide training from the Training Division.

211.8 LEVEL 3 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review. Any Level 3 that is upgraded to a Level 2 shall be investigated and documented in the same manner as a Level 2.

(a) Supervisors shall respond to the scene of any Level 3 incident involving:

1. Use of OC spray or other chemical agent on a subject.
2. Any Taser application. See the "Report of Use" section of General Order 208 (TASER® Guidelines) for specific information to be included in the report.
3. Use of an impact weapon.
4. Any incident resulting in injury or continued complaint of pain.
5. Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.

(b) Supervisors shall review the primary reporting employees' response to resistance incident report:

1. When required to respond, supervisors shall review the general circumstances of the incident with the involved personnel, subjects, and witnesses. If the interview is conducted by phone, the officer and supervisor will activate the speakerphone. All employee statements shall be captured using a BWC recording system. When the BWC system is unavailable, the DMAV system shall be used.
2. Ensure the reporting level is correct based on all of the facts gathered during the response to resistance review.
3. Incomplete or inadequate reports shall be returned for additional details or clarification.

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4. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8403 for Level 3 force incidents.
5. Supervisors shall complete an Incident Review Packet on SharePoint filling in all applicable fields to include:
   (a) All pertinent information related to the resistance and the officer(s) response to resistance.
   (b) The findings of the supervisor investigation, including whether the response to resistance complies with law and General Orders.
   (c) Any training issues or General Orders violations on the part of the involved officer(s), if applicable.
6. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.

(c) If a TASER Device is used in the force incident, the data report shall be downloaded and a copy scanned into the image section of the Versadex incident report or submitted into evidence with the spent cartridge for retention.

(d) Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to and including the Primary and Secondary Review Commanders, shall review the incident according to the following timeline:

1. Sergeants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days of the date of the incident.
2. Lieutenants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days from the time the incident was received for review.
3. The Primary Review Commander shall complete their review of the SharePoint IRP and send it to the designated Secondary Review Commander for final review within eight (8) working days from the time the incident was received for review. A case note shall be added to the SharePoint IRP to document their review.
4. The Primary Review Commander may grant an extension to any deadline for completing a review listed above in subsection (d)(1) or (d)(2). Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
5. An assistant chief may grant an extension to any of the deadlines for completing a review listed in subsections (d)(1)-(4). Requests for extensions must be based upon delays in the review process including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review

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process, or other unforeseen emergency situations that may interfere with the completion of the review.

6. The Secondary Review Commander shall complete the final review of the SharePoint IRP and notify the Primary Review Commander within eight (8) working days from the date the Secondary Review Commander received the review from the Primary Review Commander.

(e) Level 3 incidents that involve the use of OC, Taser (where contact is made), or weaponless strikes on a restrained subject will be forwarded to the Force Review Board by the Primary Review Commander for their review.

211.9 LEVEL 4 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 4 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 4 force incidents as outlined below, but may upgrade any Level 4 force incident to a Level 3 or Level 2 force incident in order to conduct a more extensive review.

(a) Supervisors shall be briefed by the primary reporting officer to determine whether or not the Level 4 force incident should be upgraded. If the determination is made to upgrade the incident then it will be investigated in accordance with the appropriate level as determined by this General Order.

(b) Supervisors shall review the primary reporting employees' response to resistance incident report:

1. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on all of the facts gathered during the response to resistance review.

2. Incomplete or inadequate reports shall be returned for additional details or clarification.

3. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8404 for Level 4 force incidents.

4. Supervisors shall complete an Incident Review Packet on SharePoint filling in all applicable fields to include:

(a) All pertinent information related to the resistance and the officer(s) response to resistance.

(b) The findings of the supervisor investigation, including whether the response to resistance complies with law and General Orders.

(c) Any training issues or General Orders violations on the part of the involved officer(s), if applicable.

5. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.

6. Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure

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completeness, accuracy, and quality. Each level of the chain-of-command, up to and including the Primary Commander, shall review the incident according to the following timeline:

(a) Sergeants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days of the date of the incident.

(b) Lieutenants shall complete their review of the SharePoint IRP and send it to the next level in the chain-of-command within eight (8) working days from the time the incident was received for review.

(c) The Commander shall complete their review of the SharePoint IRP within eight (8) working days from the time the incident was received for review. A case note shall be added to the SharePoint IRP to document their review.

(d) The Commander may grant an extension to any deadline for completing a review listed above in subsection (b)(6)(a) or (b)(6)(b). Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.

(e) An assistant chief may grant an extension to any of the deadlines for completing a review listed in subsections (b)(6)(a)-(d). Requests for extensions must be based upon delays in the review process including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.

211.10 INCIDENTS DURING SECONDARY LAW ENFORCEMENT RELATED EMPLOYMENT (LERE)

Officers involved in a force incident while working secondary law enforcement related employment (LERE) shall be required to comply with this order. Supervisors in the area where the force incident occurred shall conduct the inquiry. However, for Level 3 and Level 4 force incidents, should the LERE assignment employ two or more officers and one of the officers is a supervisor not involved in the force incident, the LERE supervisor may conduct the review.

211.11 INCIDENTS OCCURRING OUTSIDE THE CITY OF AUSTIN

Employees involved in a Level 1, Level 2, Level 3, or Level 4 force incident while taking police action outside of the City of Austin shall notify the proper law enforcement authority having jurisdiction, contact their supervisor, and follow the reporting procedures outlined in this order.

211.12 SPECIAL CIRCUMSTANCES

Any deviation from the above reporting requirements must be approved by an assistant chief and only for special circumstances (e.g., mass arrest situations, emergency crowd control).

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Austin Police Department
General Orders

Force Review Board

212.1 PURPOSE AND SCOPE

The Austin Police Department is charged with the important responsibility of objectively evaluating an Officers Response to Resistance. The Force Review Board (FRB) shall identify any policy, training, tactical, equipment, or other improvements related to the force incident that may be needed. The Board shall also review the quality and timeliness of the response to resistance reporting, investigation, and chain-of-command review, and take appropriate action. The Chief may direct the Board to review any Response to Resistance incident.

The FRB is empowered to conduct an administrative review of the following types of incidents:

(a) Level 1 and Level 2 force incident.

(b) In-custody death.

(c) Vehicle pursuits resulting in the serious bodily injury or death to any person.

(d) Any incident causing serious injury or death as a result of an employee's actions.

(e) Any firearms discharge other than those in the course of authorized training, practice, legal recreational activities, during an organized competitive event, or the authorized discharge against an animal.

(f) Any incident where an officer uses OC Spray, Taser, or weaponless strikes on a restrained subject.

(g) Any commander may request that an incident occurring within their area of responsibility be reviewed.

212.1.1 AUTHORITY OF FORCE REVIEW BOARD

When a FRB is convened, the Board may:

(a) Direct Department personnel to appear before the Board.

(b) Request any private person to appear as a witness.

(c) Access all relevant documents, records, recordings, including any video, audio, text messages, and transcripts of interviews of all involved personnel, including non-departmental witnesses, as provided by law.

The Board shall make recommendations concerning any policy, training, tactical, equipment, or other improvements but does not have the authority to recommend discipline. Recommendations shall be determined by a majority vote of the Board. Any approved recommendations shall be referred to the Chief of Police or designee.

212.1.2 CONFIDENTIALITY OF INFORMATION

Documentation provided to the FRB necessary to perform its function has the same legal character as documentation in the possession of Internal Affairs. No member of the FRB may release any information regarding its review of a specific incident to anyone not authorized to review the information without the authorization of the Chief or designee.

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212.2 FORCE REVIEW BOARD COMPOSITION

The FRB consists of Voting Members, Non-Voting Members and Presenters. Current Board membership shall be outlined and updated in General Order 111 (APD Standing Committees and Boards).

212.2.1 BOARD MEMBER TRAINING

The Training Division Commander shall ensure all FRB members receive continuing professional training in the following subjects:

(a) Departmental force policies, force application, and practices including demonstrations of training techniques.

(b) Departmental force investigation procedures.

(c) Criminal and administrative investigation techniques, practices, and standards presented and/or coordinated by the Training Academy.

(d) Legal updates on force case law presented by representatives from the City Law Department and/or the District Attorney's Office.

(e) Officer-involved shootings, vehicle pursuit-related matters, and in-custody death investigations.

212.3 FORCE REVIEW BOARD INQUIRY PACKETS

212.3.1 INQUIRY PACKET PREPARATION

A FRB shall not be convened if any Response to Resistance, In-Custody Death or Vehicle Pursuit incident is being investigated by IA until the internal investigation is completed. IA shall provide the completed investigative report packets to the FRB Chairperson. The FRB Chairperson shall convene a FRB within 30 days of receipt of the investigative files from IA.

For all in custody deaths and officer involved shootings, IA shall present a detailed summary of the investigation to the FRB.

The FRB Chairperson may request additional information from Internal Affairs and/or the Vehicular Homicide Unit (if the incident is a pursuit resulting in serious bodily injury or death), as needed.

Inquiry Packets that are not subject to an IA investigation are forwarded to APD Training by the chain-of-command. APD Training shall prepare the Packets for presentation to the FRB.

212.3.2 INQUIRY PACKET DISTRIBUTION

The Chairperson shall ensure FRB participants are provided a list of all cases that will be reviewed, as well as the Response to Resistance Inquiry Packet Control Sheet and any supervisor memoranda, at least (7) calendar days prior to the FRB. The FRB participants may review the incident report and any case notes via Versadex.

All other ancillary documents, reports and recordings shall be made available at the FRB, including:

(a) Ancillary documents such as supplement reports and written statements.

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(b) Communications Division audiotapes, if necessary.

(c) MAV media, if available.

(d) CAD records.

(e) Medical reports or summary of injuries, if available.

(f) Digital Images or photographs.

(g) Training and force incident records of involved personnel.

(h) Applicable Department policies and procedures.

212.4 FORCE REVIEW BOARD PROCEDURES AND RESPONSIBILITIES

The Chair of the Force Review Board shall track the status of all FRB's to include:

(a) Date of the Board.

(b) Date the FRB Report is submitted to the affected commanders for corrections..

(c) Findings and recommendations of the Board.

(d) Implementation of the approved recommendations in accordance with this order.

(e) Date Final FRB Report submitted to Chief or his designee.

212.4.1 CONVENING A FORCE REVIEW BOARD

The FRB Chairperson shall contact IA within twenty-four (24) hours of the scheduled Board to ascertain whether a force complaint is pending. If a complaint is pending relating to the incident, the FRB Chairperson shall notify the Chief of Police or designee and reschedule the Board after the completion of the internal investigation.

If no investigation is pending, the FRB Chairperson shall preside over the review of the incident to include, but not limited to, the following:

(a) A presentation and review of the Inquiry Packet and all relevant documents and materials.

(b) A discussion regarding:

1. The quality and timeliness of the reporting, investigation, and chain-of-command review.
2. Applicable general orders.
3. Relevant tactics.
4. Current practices and training.
5. Any equipment issues.
6. Additional follow-up by the supervisor conducting the inquiry, IA, and/or SIU.
7. Questions from Board members.

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(c) If additional inquiry or other follow-up is recommended, the FRB Chairperson shall advise the appropriate Commander that should address the specific issue and assign a due date not to exceed thirty (30) calendar days.

(d) Deliberate on the possible need for:

1. General Orders revision or the promulgation of new directives.
2. Changes in equipment.
3. Changes in tactics.
4. Changes in practices and training.
5. Additional training:
   (a) Individual.
   (b) Specialized, including training for Response to Resistance investigators.
   (c) Department-wide.
6. Improvements in the quality and timeliness of the reporting, investigation, and chain-of-command review of the force incident.

212.4.2 ATTENDANCE BY THE OFFICER(S) INVOLVED
For incidents involving the discharge of a firearm, the involved officer and their chain-of-command may be requested to appear before the Board.

For all other incidents reviewed by the Board, the involved officer(s) and supervisor(s) may appear, or the Chairperson may order their appearance.

212.4.3 FORCE REVIEW BOARD REPORT
The Chairperson shall ensure a FRB Report is prepared. The original shall be sent electronically to the affected Commanders within five (5) calendar days after the Board adjourns. The FRB Report shall contain the following, as appropriate:

(a) A summary of the Board's deliberations.

(b) A draft Departmental publication identifying training or equipment issues (e.g, Officer Safety or Information Bulletin).

(c) Recommendations concerning equipment shall be sent to the Training Commander.

(d) Recommendations concerning tactics shall be sent to the Training Commander.

(e) Recommendations to develop or revise Departmental policy and procedures shall be sent to the Professional Standards Commander.

(f) Recommendations on the quality and timeliness of the reporting, investigation, and chain-of-command review shall be sent to the Commander who was involved in the Review of the Response to Resistance.

212.5 FORCE REVIEW BOARD RECOMMENDATIONS AND FOLLOW-UP

(a) Corrective Actions:

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1. If the FRB Report contains approved recommendations for corrective actions for specific personnel (e.g., training), the FRB Chairperson shall assign it to the appropriate Commander.
2. The assigned Commander shall ensure the approved recommendations are implemented.
    (a) Upon completion of the recommended corrective action(s), the assigned Commander shall prepare and forward a written response documenting the corrective action to the Force Review Board within twenty (20) calendar days of receipt, unless extended by an Assistant Chief.

(b) Department-Related Recommendations:

1. If the FRB report contains Department-related recommendations (e.g., general order revision, equipment evaluation, tactical changes, Training Bulletins, or improvements in the quality and timeliness of the reporting, investigation, and chain-of-command review), the Chair of the FRB shall assign the required tasks to the appropriate Commander.
2. The assigned Commander shall review the proposed recommendations/planned corrective action with their Assistant Chief and present a status update to Executive Staff.
3. The Chair of the FRB shall monitor and document the implementation of Board recommendations and advise the Chief or his designee when:
    (a) Implementation is completed.
    (b) An extension has been requested and the reason for the extension request.
    (c) Implementation has not been completed within thirty (30) calendar days and no extension has been requested.
4. The chair of the FRB shall prepare a final FRB report which indicates how each issue or concern that was identified was handled. That report shall be sent to the Chief or his designee electronically within thirty (30) calendar days of the initial FRB meeting.
    (a) After the completion of the final FRB memo, the FRB chair will update Command Staff on any changes that were identified.
5. The chair of the FRB will meet with Executive Staff to give an overview of the previous months FRB findings as they relate to general order revisions, equipment evaluations, tactical changes, or findings that result in an IAD/SIU investigation.

212.6 RECORDS RETENTION AND REPORTING

212.6.1 RECORDS RETENTION

The FRB Chairperson shall add the original FRB reports and any additional documents/material into the Inquiry Packet and forward it to IA.

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IA shall serve as the custodian of records for Force Review Board Reports, Response to Resistance Inquiry Packets, In-Custody Death Inquiry Packets, and Vehicle Pursuit Report Packets if the pursuit resulted in serious bodily injury or death to any person. Records shall be retained consistent with IA's records retention general order.

212.6.2 ANNUAL REPORTING

The following annual reports shall be prepared and distributed by the end of the third quarter of the following year to the Chief.

(a) The commander over Internal Affairs shall prepare an annual Response to Resistance analysis report.

(b) The chairperson of the FRB shall prepare an annual analysis of all incidents examined by the FRB in the prior year to identify any patterns and practices that have policy, training, tactical, equipment, quality control, or other implications.

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Austin Police Department
General Orders

Vehicle Pursuits

214.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers, and fleeing violators to the risk of serious injury or death. The primary purpose of this order is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this order is to minimize the potential for pursuit-related crashes. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a subject is generally not more important than the safety of the public and pursuing officers.

214.1.1 PHILOSOPHY

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the risk to public safety created by vehicle pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicle pursuit due to the risk involved. This includes circumstances where department general orders would permit the initiation or continuation of the pursuit. It is recognized that vehicle pursuits are not always predictable and decisions made pursuant to this order shall be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are self-discipline and sound professional judgment. Officers' conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the same circumstances. An unreasonable desire to apprehend a fleeing subject at all costs has no place in professional law enforcement.

214.2 DEFINITIONS

Channel - A tactic designed to cause a violator's vehicle to follow a particular path by blocking side streets and/or exit ramps with a patrol unit that has its emergency lights on.

Terminate - Deactivate lights and siren, and cease pursuit.

Tire Deflation Device (TDD) - A device that extends across the roadway designed to puncture the tires of the pursued vehicle. These are also known as Spikes or Tack Strips.

Vehicle Pursuit - An active attempt by a law enforcement officer in a motor vehicle to apprehend the occupant(s) of another moving motor vehicle when the driver is not merely failing to stop at the direction of an officer using emergency lights and siren, but is actively attempting to evade apprehension or is continuing to commit further violation(s) of the law.

Precision Immobilization Technique - A technique used to terminate a hazardous vehicle pursuit situation.

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214.3 PURSUIT CONSIDERATIONS AND RESTRICTIONS

The following section is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway (as required by Tex. Transp. Code § 546.005).

214.3.1 RESTRICTIONS ON VEHICLE PURSUITS

Officers will not engage in a pursuit under any of the following circumstances:

(a) The subject evades after having committed only:

1. Any Class C Offense, including traffic; or
2. A non-hazardous traffic violation, regardless of the class of offense.

(b) The subject is committing, or has committed, only a misdemeanor other than suspected DWI/DUI, and his identity is known to the officer.

(c) The officer has a prisoner, subject, or other non-police passenger who has not signed a liability release.

(d) The road surface is wet or otherwise slippery, unless the violator has committed a felony involving violence, and then only when all considerations for safety have been taken into account and the pursuit is still deemed reasonable.

214.3.2 FACTORS TO CONSIDER BEFORE INITIATING A PURSUIT

With the exception of the specified restrictions on vehicle pursuits listed in this order, officers are authorized to initiate a pursuit when it is reasonable to believe that a subject is attempting to evade arrest or detention by fleeing in a vehicle.

(a) The following factors will be considered both individually and collectively when deciding whether to initiate or continue a pursuit:

1. Seriousness of the known or reasonably suspected crime and its relationship to community safety.
2. The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists, and others.
3. Apparent nature of the fleeing subject (e.g., whether the subject represents a serious threat to public safety).
4. Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
5. The identity of the subject has been verified and there is comparatively minimal risk in allowing the subject to be apprehended at a later time.
6. Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones) and the speed of the pursuit relative to these factors.

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7. Pursuing officer's familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.
8. Weather, traffic, and road conditions that unreasonably increase the danger of the pursuit when weighed against the risks resulting from the subject's escape.
9. Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
10. Vehicle speeds.
11. Other subjects in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
12. Availability of other resources such as aircraft assistance.

214.3.3 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known, or which reasonably ought to be known, to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the subject's escape. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to motorists, themselves, and the public when electing to continue a pursuit. This section shall not be construed to authorize a pursuit that is expressly prohibited as outlined in the Restrictions on Vehicle Pursuits section of this order.

(a) The factors listed in this order on when to initiate a pursuit are expressly included herein and shall also apply to the decision to discontinue a pursuit. In addition to those factors listed, the following should also be considered in deciding whether to terminate a pursuit:
    1. Distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
    2. Pursued vehicle's location is no longer definitely known.
    3. Officers shall discontinue the pursuit when they become aware their vehicle has developed a mechanical malfunction. This includes, but is not limited to:
        (a) Any engine warning light activates on the dash (e.g., brake, ABS, or check engine lights).
        (b) Audible warning tones.
        (c) Physical damage that affects the performance, maneuverability, or functioning of the vehicle.
    4. Hazards to uninvolved bystanders or motorists.
    5. If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time.

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6. Directed by a supervisor.
7. Pursuit speeds:
   (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
   (b) Pursuit speeds have exceeded the driving ability of the officer.
   (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

214.3.4 PURSUIT DRIVING CONSIDERATIONS AND RESTRICTIONS

The decision to use specific driving tactics requires the same assessment of factors to be considered concerning pursuit initiation and termination. The following driving tactics apply to units involved in a pursuit:

(a) Officers will space themselves from other involved vehicles, in consideration of their driving skills and vehicle performance capabilities, so they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle and other police units.

(b) Officers should not attempt to pass other units in a pursuit unless the situation indicates otherwise or requested to do so by the primary unit or control supervisor.

(c) In the event that the pursued vehicle drives the wrong way on a roadway, the following tactics should be used:
   1. Request Air Support assistance.
   2. If a divided roadway, maintain visual contact with the pursued vehicle by paralleling on the correct side.
   3. Request other units to watch for exits available to the vehicle.

(d) Officers will not pursue a vehicle driving the wrong way on a:
   1. Highway or Freeway,
   2. Highway or Freeway frontage / service roads, or
   3. any roadways that are:
      (a) directly connected to highway/freeway entry or exit ramps, or
      (b) adjacent to or running parallel to a highway or freeway.

(e) Officers have an obligation to drive with a due regard for the safety of lives and property. Driving the wrong way on a roadway does not necessarily protect the officer from the consequences of a disregard for traffic and/or legal restrictions.

214.4 PURSUIT GUIDELINES

Pursuit units shall be limited to four vehicles (three units and a control supervisor); however, a control supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely stop

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the pursuit and/or arrest the subject(s). All other officers will stay out of the pursuit but should remain alert to its progress and location.

(a) All officers involved in a pursuit shall:

1. Operate their police unit with emergency lights and siren activated (Code 3).
2. Ensure their Mobile Audio Video (MAV) recording system has been activated if their vehicle is equipped with one.

(b) Any officer who drops out of a pursuit may, with permission of a control supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance in the arrest of the subject(s).

1. The term "trail" means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of participation in the pursuit.

(c) Pursuit communications shall be handled as follows:

1. If a pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher.
2. If a pursuit contains multiple agencies and/or leaves APD jurisdiction, Communications will determine the appropriate radio channel to use.

214.4.1 POLICE MOTORCYCLES AND UNMARKED UNITS

Police motorcycles and unmarked units equipped with emergency lights and siren may initiate a pursuit; however, those officers should terminate their involvement in the pursuit immediately upon arrival of a sufficient number of distinctively marked law enforcement vehicles equipped with emergency lights and siren, or any law enforcement aircraft.

214.4.2 POLICE UNITS WITHOUT EMERGENCY EQUIPMENT

Police units not equipped with emergency lights and siren are generally prohibited from initiating or joining in a pursuit. Officer(s) in such vehicles may become involved in emergency activities involving serious crimes or life-threatening situations; however, those officers should terminate their involvement in the pursuit immediately upon arrival of a sufficient number of distinctively marked law enforcement vehicles equipped with emergency lights and siren, or any law enforcement aircraft.

214.4.3 UNITS NOT INVOLVED IN A PURSUIT

(a) There shall be no paralleling of a pursuit route by officers not authorized to be in a pursuit.

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(b) Officers not directly involved in the pursuit are authorized to proceed safely to controlled intersections ahead of the pursuit and use emergency equipment to warn vehicular and pedestrian traffic in an effort to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

(c) Non-pursuing personnel needed at the termination of a pursuit should respond in the appropriate manner based on the totality of the circumstances and type of assistance needed.

214.4.4 SUPERVISORS INITIATING A PURSUIT

(a) When a supervisor initiates a pursuit, another supervisor working in the same area should acknowledge the pursuit over the radio and assume responsibility as the control supervisor.

1. If a supervisor in the same area is unavailable, and no supervisor volunteers as control supervisor, Communications shall notify the nearest available field supervisor that a control supervisor is needed. Corporals serving as acting sergeants may not assume responsibility as the control supervisor in this situation.

2. Acknowledgment by the appointed control supervisor must be made by radio.

(b) The supervisor who initiates the pursuit may continue pursuing the subject vehicle until such time as patrol units are able to assist, or the pursuit is terminated.

1. As authorized patrol units engage the pursuit, the initiating supervisor will allow those units to take up the first and subsequent positions behind the subject vehicle and call the pursuit.

2. The initiating supervisor shall move to the last position behind the authorized units and assume the role of control supervisor.

(c) Once the initiating supervisor is in a position to assume the role of control supervisor, they shall advise Communications by radio that they are now control supervisor and the previous control supervisor shall be relieved.

(d) The supervisor acting as control supervisor at the conclusion of the pursuit shall complete all appropriate paperwork.

1. Any other supervisor who acted as control supervisor, or became involved in a supervisory capacity at any time during the pursuit, shall write a supplement documenting his involvement.

214.4.5 PURSUITS INITIATED BY OTHER LAW ENFORCEMENT AGENCIES

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not participate in, join, or assume control of a pursuit initiated by another agency unless approved by a supervisor or the Watch Lieutenant. As soon as practicable, a supervisor or the Watch Lieutenant should review a request for assistance from another agency to determine if assistance will be provided.

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(a) At no time should a request to join or take over a pursuit from another agency that has entered this jurisdiction be granted if it violates the considerations and restrictions on vehicle pursuits outlined in this order, with the following exceptions:

1. Authorization to participate in the pursuit may be granted for the sole purpose of ending the pursuit using TDD's, PIT or other approved devices and methods as outlined in this order, regardless of the reason for the pursuit.

2. In the event that a pursuit from another agency terminates within this jurisdiction, approval may be given to provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, containment, subject search, completion of supplemental reports, and any other assistance requested or needed.

(b) Pursuit assistance to an allied agency by officers of this department should terminate at the City limits. Ongoing participation from this department may only continue with the approval of a supervisor.

214.4.6 APD PURSUITS ENTERING OTHER JURISDICTIONS

(a) Officers should request communications to notify the appropriate law enforcement agency when it appears that the pursuit may enter another jurisdiction.

(b) When a pursuit enters another agency's jurisdiction, the primary officer or supervisor should determine whether to request the other agency to assume the pursuit by taking into consideration distance traveled, unfamiliarity with the area, and other pertinent factors.

214.4.7 LOSS OF PURSUED VEHICLE AND SUBJECT BAILING

(a) When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating the vehicle. The control supervisor will determine if the pursuit should be terminated and whether Air Support should continue searching the area.

(b) When subjects abandon the vehicle and flee on foot, the primary unit will be responsible for coordinating any further search with the permission of the control supervisor.

214.5 PURSUIT UNIT ROLES AND RESPONSIBILITIES

This section outlines the roles and responsibilities of police units involved in a pursuit.

214.5.1 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing officer will be the primary pursuit unit and is responsible for the conduct of the pursuit unless unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the subject(s) without unreasonable danger to themselves or other persons.

(a) The primary unit should notify Communications on the appropriate primary channel corresponding to the area the vehicle pursuit was initiated in and, as soon as practicable, provide the following information:

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1. Reason for the pursuit.
2. Location and direction of travel.
3. Speed of the fleeing vehicle.
4. Description of the fleeing vehicle and license number, if known.
5. Number of occupants.
6. The identity or description of the known occupants.
7. Evasive actions being taken by the fleeing vehicle (e.g., disregard of traffic control devices, intentional collisions, driving on the wrong side of the roadway).
8. Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

(b) Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary unit should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit to minimize distractions and allow the primary unit to concentrate foremost on safe pursuit tactics.

214.5.2 SECONDARY UNIT(S) RESPONSIBILITIES

(a) The second officer in the pursuit is responsible for the following:

1. Immediately notify the dispatcher of entry into the pursuit.
2. Broadcast the progress of the pursuit unless the situation indicates otherwise.

(b) The secondary unit should remain a safe distance behind the primary unit unless directed to assume the role of primary unit (e.g., the primary unit is unable to continue the pursuit).

214.5.3 CONTROL SUPERVISOR RESPONSIBILITIES

It is the policy of this department that supervisor control shall be exercised over all vehicle pursuits involving officers from this department.

(a) The immediate supervisor (sergeant or corporal) of the officer initiating the pursuit, or if unavailable, the nearest available field supervisor (sergeant or corporal) shall assume the responsibility as the control supervisor.

(b) The control supervisor is responsible for the following:

1. Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
2. Engage in the pursuit when appropriate and provide on scene supervision.
3. Exercise management and control of the pursuit even if not engaged in it.

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4. Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this order.
5. Direct that the pursuit be terminated if, in his judgment, it is unjustified to continue the pursuit under the guidelines of this order.
6. Ensure that aircraft assistance is requested.
7. Ensure that the proper radio channel is being used.
8. Ensure the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
9. Control and manage APD units when a pursuit enters another jurisdiction.
10. Prepare a post pursuit critique and analysis of the pursuit for training purposes.

214.5.4 COMMUNICATIONS RESPONSIBILITIES

Upon notification that a pursuit has been initiated, Communications shall:

(a) Broadcast an alert tone citywide to inform officers that a pursuit is in progress.

(b) Assign an incident number and log all pursuit activities.

(c) Coordinate communications of the involved units and personnel.

(d) Notify and coordinate with other involved or affected agencies, as needed.

(e) Broadcast updates and other pertinent information, as necessary.

(f) Ensure that the Communications supervisor and appropriate lieutenant are notified of the pursuit.

1. If the lieutenant over the area where the pursuit initiated is unavailable or does not respond in a timely manner, the nearest available lieutenant shall be contacted.

(g) Notify the Watch Lieutenant as soon as practicable.

(h) Dispatchers shall keep other areas of the city advised if the pursuit is likely to enter or cross into multiple areas.

(i) Upon verbal confirmation that a pursuit has been terminated, Communications shall again broadcast the designated citywide alert tone signifying the pursuit has been terminated.

214.5.5 AIR SUPPORT RESPONSIBILITIES

Once the Air Unit has established visual contact with the pursued vehicle and is capable, it should start calling the actions of the pursuit to allow ground units to focus on driving. The primary and secondary ground units should consider the participation of aircraft assistance when determining whether to continue the pursuit.

(a) The Air Unit should coordinate the activities of resources on the ground, report progress of the pursuit and provide officers and supervisors with details of upcoming traffic congestion, road hazards or other pertinent information to evaluate whether to continue the pursuit. If ground units are not within visual contact and the Air Unit

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determines that it is unsafe to continue the pursuit, the Air Unit should recommend terminating the pursuit.

(b) Once a vehicle pursuit has been terminated, the Tactical Flight Officer may request permission from the control supervisor to allow the Air Unit to track the subject. If permission is granted to track, the Air Unit will advise location and any pertinent information relative to the safety of the public. If the Air Unit indicates that the subject vehicle has stopped, the control supervisor may authorize ground units to proceed to the vehicle location. The control supervisor shall determine the manner in which units respond.

1. If the control supervisor denies permission to track, the Air Unit will break off all contact with the subject.
2. If the Air Unit determines, in the interest of safety, that it can no longer assist or continue tracking the subject, the Air Unit shall notify the control supervisor.

214.5.6 WATCH LIEUTENANT RESPONSIBILITIES

Upon becoming aware that a pursuit has been initiated, the Watch Lieutenant should monitor and continually assess the situation.

214.6 APPROVED PURSUIT INTERVENTION AND TERMINATION TACTICS

Any approved tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public, or anyone in the vehicle being pursued. It is imperative that officers act within the bounds of legality, good judgment, accepted practices, and orders.

(a) Certain applications of intervention and termination tactics may be construed to be a use of force, including deadly force, and are subject to Department orders guiding such use and reporting.

(b) In deciding whether to use an approved tactic, officers and supervisors should balance the risks of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers, and subjects in or on the pursued vehicle. With these risks in mind, the decision to use any tactic should be reasonable in light of the circumstances apparent to the officer at the time of the decision.

(c) Unless exigency exists, the use of intervention tactics should be employed only after approval of a supervisor.

214.6.1 USE OF FIREARMS

Officers should exercise good judgment and not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

(a) Unless it reasonably appears that it would endanger officers or the public, officers are expected to move out of the path of any approaching vehicle.

(b) Officers shall adhere to the guidelines set forth in General Order 202 (Firearm Discharge Situations) in regards to the discharge of a firearm at or from a moving vehicle.

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214.6.2 TIRE DEFLATION DEVICE (TDD)

The use of a Tire Deflation Device (TDD) should be approved in advance by the control supervisor and deployed only when it is reasonably apparent that only the pursued vehicle will be affected by their use. Officers should carefully consider the limitations of such devices as well as the potential risks to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is transporting hazardous materials, or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle.

(a) TDD's shall not be used when a motorcycle is involved in the pursuit.

(b) TDD Deployment

1. Only officers who have received and successfully completed Department approved training in the application and use of an approved TDD shall use this intervention tactic.
2. The following scenarios require supervisor approval prior to TDD deployment:
   (a) The fleeing vehicle has made overt attempts to strike any other vehicles, persons, or structure during the pursuit, or
   (b) There is a reasonable belief that the suspect is armed (independent witness claims, self-admittance, multiple victim statements, etc.)
3. Officers who are driving units equipped with a TDD and are authorized to deploy the TDD may proceed Code 3 to a location likely to be in path of the pursuit.
4. TDD units shall advise Communications when they have reached the deployment site and give their location.
5. Prior to deploying TDD officers shall consider the following:
   (a) The need to continue pursuit versus terminating the pursuit in the event the deployment of TDDs are ineffective;
   (b) The risk to the public or pursuing law enforcement vehicles caused by the deployment of the TDD; and,
   (c) The hazard to the occupants of the pursued vehicle.
6. After a deployment site has been established, the control supervisor may authorize other units to operate Code 3 in order to channel the fleeing vehicle to this location.
   (a) Channeling may include blocking freeway exits and/or major side streets.
   (b) Police units shall not attempt to make a fleeing vehicle take any action other than continuing straight on the road upon which it is already traveling.
   (c) Police units shall activate all emergency lighting while blocking exits or streets.
7. The officer calling the pursuit shall broadcast the identity of the target vehicle to the TDD unit when the pursuit approaches the deployment site. The information should include details of the vehicle such as license plate, color, make and model.

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(a) The target vehicle should be visually confirmed by the TDD unit to reduce errors in deployment.

(b) All pursuing units should maintain at least a three to five second gap behind the target vehicle to allow sufficient time for the setup and retrieval of the TDD.

(c) Pursuing vehicles should proceed cautiously upon approaching and crossing the TDD site.

214.6.3 PRECISION IMMOBILIZATION TECHNIQUE

The use of the PIT should be approved in advance by the control supervisor. Officers and supervisors should weigh the need to immediately stop the vehicle based on the driving behavior and risk to the public. versus apprehension of the suspect, or termination of the pursuit.

(a) PIT shall not be performed on the following vehicles:

1. Motorcycle.
2. All-Terrain Vehicle.
3. Vehicles pulling trailers.
4. Tractor trailers.
5. Large Motor homes.
6. Vehicle's carrying known hazardous materials.

(b) Special PIT Considerations

1. If known, the use of PIT should generally be avoided in the following situations:
    1. Pickup truck with passengers in the bed.
2. StarChase equipped vehicles should not normally be used to perform PIT.

(c) PIT Application

1. The primary unit involved in a pursuit may attempt to utilize the PIT to end a pursuit provided the risks to the public outweigh the risks of continuing the pursuit.
    (a) The primary unit will be certified to perform the PIT. If the primary unit is not certified, the control supervisor will authorize a PIT certified officer to move to the front of the other police vehicles to perform the PIT.
2. Other units involved in the pursuit will assist with the Tactical Vehicle Containment once the PIT is performed.
    (a) If additional units are utilized in the pursuit, they are responsible for immediately notifying the dispatcher of their entry into the pursuit.
3. Prior to deploying PIT officers shall:
    (a) Give the operator of the suspect vehicle a reasonable opportunity to stop and comply with police authority.

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(b) Ensure that there are at least two additional units in the pursuit.

(c) Consider the risk to the public and suspect from utilizing the PIT, versus terminating the pursuit.

(d) Advise communications and the officers involved in the pursuit that he/she is going to attempt the PIT by using the phrase "PIT, PIT, PIT" and identify whether or not the Tactical Vehicle Containment (TVC) is a "two" or "three" vehicle containment.

(e) Under normal circumstances, a PIT maneuver at speeds above 40 mph should not be applied. However, if exigent circumstances exist, higher speeds may be authorized with supervisor approval.

(f) At the conclusion of a successful PIT application. tactical vehicle containment procedures shall be used by all officers when practical.

(d) Reporting PIT

1. Any attempt or use of PIT against another vehicle shall be documented in the related incident report/supplements.

2. For the purposes of reporting and review:

(a) PIT is a Level 2 force incident, unless the PIT results in serious bodily injury or death.

(b) PIT is a Level 1 force incident if the PIT results in serious bodily injury or death.

(e) Post PIT Requirements

1. The Special Investigations Unit shall be called to all crashes resulting in serious bodily injury or death as a result of PIT.

2. A CR-3 is not required after the utilization of the PIT unless there is damage to third-party property. In the event of third-party property damage as a result of a PIT, an incident title code "crash/city vehicle" (3651) will be included in the report with the following documentation included in the SharePoint Incident Review Packet (IRP):

(a) A CR-3,

(b) A large, not to scale, diagram, and

(c) Digital photographs of the scene/including damage to vehicle(s)/person(s).

214.6.4 LOW SPEED INTERVENTION

Other than an approved usage of PIT, police vehicles shall not be used to physically force a pursued vehicle off the roadway or to a stop, or to otherwise change its direction of travel or alter its speed unless:

(a) The pursued vehicle is at a *stop or near stop*; and

(b) The police vehicle is maneuvering at low speed; and

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(c) Doing so would reduce or eliminate the risk associated with the pursuit continuing.

Before engaging in such actions, officers must consider the unintended consequences of the low speed intervention and recognize that a better course of action may be to terminate the pursuit altogether.

214.6.5 STARCHASE PURSUIT MANAGEMENT SYSTEM

The StarChase® system allows an officer to remotely affix a GPS tracking device to a pursued (or about to be pursued) vehicle using an air pressure system to discharge the tracker from the front of the StarChase® equipped patrol car to the vehicle in front of it. Once the tracker is affixed, its location can be tracked by an employee (StarChase® Monitor) using a computer with an internet connection. This concept is similar to a RAT/GPS.

(a) For the purpose of clarity of communications, radio traffic should identify the device as "StarChase®".

(b) StarChase® equipment in the patrol vehicle will only be operated by officers who have been trained in its use. StarChase® equipped vehicles will not be assigned to officers who are not trained on its use unless required by exigent circumstances.

(c) Vehicles equipped with StarChase® equipment will not be used to push vehicles.

(d) Except as specified below, officers shall use their own judgment regarding affixing a StarChase® tag upon a vehicle and do not need prior approval from a supervisor:

1. All safety decisions related to the discharge of a StarChase® tag rest with the operating officer. While supervisors may direct or approve the deployment of a StarChase® equipped patrol car that is involved in the discharge of a tag, safety decisions related to passing other involved vehicles and the actual discharge of the device rest solely upon the operating officer whose decisions must take into account the guidelines contained in General Orders. In accordance with general orders, the safety of officers, uninvolved persons and persons inside the targeted vehicle shall be considered. The following decisions are specifically included:

   (a) Whether the officer can safely maneuver close enough to the suspect vehicle to come within targeting range.

   (b) Whether the officer can safely pass any other vehicle involved in the pursuit.

   (c) Whether any circumstance would indicate the device would not work (e.g. weather conditions, suspect vehicle weaving, etc.)

(e) StarChase® equipped patrol cars, with approval from a supervisor, are authorized to respond Code 3 to join a pursuit for potential use of the device.

1. Unless directed otherwise, the StarChase® equipped vehicle will join the pursuit at the rear of authorized pursuing vehicles until cleared to pass.

2. Once a StarChase® equipped vehicle joins a pursuit, it becomes an authorized unit as it relates to the number of authorized pursuing vehicle.

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3. StarChase® equipped vehicles may pass other pursuing vehicles only when deemed safe and only with specific permission from the unit to be passed. Permission is to be sought and acknowledged one passing at a time. Officers driving the StarChase® equipped vehicle will identify which side of the overtaken vehicle they will pass.

(f) StarChase® tags will be deployed in accordance with training.

1. Once the StarChase® tag has been successfully deployed, pursuing vehicles should normally drop back significantly from the suspect vehicle.
2. Officers will maintain constant communication with the StarChase® Monitor for speed/direction/location updates of the suspect vehicle.
3. The Control Supervisor will coordinate with the StarChase® Monitor to direct resources and officers to appropriate locations to apprehend the suspect.
4. No officer who is driving a moving patrol car will access the StarChase® Monitor data as this creates an unnecessary hazard.

(g) Tactical Considerations

1. The StarChase® tag will not normally be deployed in the following situations unless the suspect poses a substantial risk to the public:
   (a) During heavy rain.
   (b) While driving on exceptionally rough terrain.
   (c) On a motorcycle.
   (d) When pedestrians are between or very near the suspect vehicle and the StarChase® equipped vehicle.

(h) In addition to the normal pursuit reporting procedures required by general orders, Officers who use the StarChase® system will report all tag deployments to the Police Technology Unit by sending an email to APDPoliceTechnology@austintexas.gov

214.7 REPORTING AND REVIEW REQUIREMENTS

214.7.1 INVOLVED OFFICER(S) RESPONSIBILITY

All officers involved in the pursuit will write a detailed incident report or supplement and ensure their MAV media is correctly classified. This includes the primary officer initiating the pursuit, any secondary officer(s), and any additional officer(s) who assisted with the pursuit (e.g., Officers using a TDD, Air Support).

214.7.2 CONTROL SUPERVISOR RESPONSIBILITIES

The control supervisor shall review the involved officers' incident report for accuracy and completeness, and:

(a) Complete an Incident Review Packet on SharePoint filling in all applicable fields to include:

1. All pertinent information relating to the vehicle pursuit,

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2. The findings of the supervisor investigation, and
3. Any training issues or general order violations on the part of the involved officer(s), if applicable.

(b) Create an electronic folder with the case number in the folder G:\Digital Incident Review Folder containing all supporting documentation which is not already located in a different location on the APD network. Supporting documentation includes but is not limited to:

1. Copies of private surveillance video, cell phone video, etc.

(c) Forward the electronic link(s) to the SharePoint IRP and the digital incident review folder to the involved employee's chain-of-command, up to the lieutenant, for review.

214.7.3 LIEUTENANT RESPONSIBILITIES

After receiving notification and link(s) to the SharePoint IRP and digital incident review folder the lieutenant or designee shall:

(a) Review the SharePoint IRP, MAV media and supporting documentation in the digital incident review folder for completeness and accuracy.

(b) Complete the appropriate Lieutenant fields in the SharePoint IRP as follows:

1. Provide a critique of the vehicle pursuit in the Lieutenant Review field.
2. Provide a preliminary determination whether the vehicle pursuit appears to be in compliance with this order or if additional review and/or follow-up are warranted.

(c) Forward the link(s) to the SharePoint IRP and digital incident review folder to the commander(s) of all involved officers.

214.7.4 COMMANDER RESPONSIBILITIES

(a) If the initiating officer's commander determines that the pursuit falls within general orders guidelines, he shall enter comments reflecting that determination in the Commander Review field in the SharePoint IRP.

(b) If the initiating officer's commander determines that the pursuit violates general orders guidelines, he shall ensure that appropriate corrective actions are taken. Notification of the corrective action taken shall be made to their Assistant Chief.

(c) If the pursuit resulted in death or serious bodily injury the pursuit packet link shall be forwarded via email to the chairperson of the Force Review Board.

214.8 DEATH OR SERIOUS BODILY INJURY DURING PURSUITS

The Vehicular Homicide Unit shall forward pursuit packet link via email to the chairperson of the Force Review Board when the pursuit resulted in death or serious bodily injury.

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GO
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Austin Police Department
General Orders

Foot Pursuits

215.1 PURPOSE AND SCOPE

Foot pursuits are inherently dangerous and require common sense, sound tactics, and heightened officer safety awareness. This order sets forth guidelines to assist officers in making the decision to initiate or continue the pursuit of subjects on foot.

215.1.1 POLICY

It is the policy of this department when deciding to initiate or continue a foot pursuit that officers must continuously balance the objective of apprehending the subject with the risk and potential for injury to department personnel, the public, or the subject.

Officers are expected to act reasonably based on the totality of the circumstances. Absent exigent circumstances, the safety of department personnel and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a subject is rarely more important than the safety of the public and Department personnel.

215.2 DECISION TO PURSUE

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in, or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a subject who is not suspected of criminal activity shall not serve as the sole justification for engaging in a foot pursuit without the development of reasonable suspicion regarding the individual's involvement in criminal activity.

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits potentially place department personnel and the public at significant risk. Therefore, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing subjects. In deciding whether to initiate or continue a foot pursuit, an officer should continuously consider reasonable alternatives to pursuit based upon the circumstances and resources available, such as the following:

(a) Containment of the area.

(b) Canine search.

(c) Saturation of the area with patrol personnel.

(d) Air support.

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(e) Apprehension at another time when the identity of the subject is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the subject does not reasonably appear to outweigh the risk of continuing the pursuit.

215.3 FOOT PURSUIT CONSIDERATIONS

An order by a supervisor to terminate a foot pursuit shall be promptly obeyed. Officers should consider alternatives to engaging in or continuing a foot pursuit under the following conditions:

(a) When the officer is acting alone.

(b) When two or more officers become separated, lose visual contact with one another or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the subject in sight from a safe distance and coordinate the containment effort.

(c) The officer is unsure of his location and direction of travel.

(d) When pursuing multiple subjects and the pursuing officers do not reasonably believe that they would be able to control the subjects should a confrontation occur.

(e) When the physical condition of the officers renders them incapable of controlling the subject if apprehended.

(f) When the officer loses radio contact with Communications or with backup officers.

(g) When the subject enters a building, structure, confined space, or a wooded or otherwise isolated area and there are insufficient officers to provide backup and containment. The primary officer should consider discontinuing the pursuit and coordinating containment pending the arrival of sufficient officers.

(h) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.

(i) The officer reasonably believes that the danger to the pursuing officers or to the public outweighs the objective of immediate apprehension.

(j) The officer loses possession of his firearm or other essential equipment.

(k) The officer or a third party is injured during the pursuit, requiring immediate assistance and there are no other emergency personnel available to render aid.

(l) The subject's location is no longer definitely known.

(m) The identity of the subject is established or other information exists that will allow for the subject's apprehension at a later time, and it reasonably appears that there is no immediate threat to department personnel or the public if the subject is not immediately apprehended.

(n) The officer's ability to safely continue the pursuit is impaired by inclement weather, darkness, or other conditions.

215.4 RESPONSIBILITIES IN FOOT PURSUITS

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215.4.1 INITIATING OFFICER RESPONSIBILITIES
Unless relieved by another officer or a supervisor, the initiating officer shall be responsible for coordinating the progress of the pursuit.

(a) Early communication of available information from the involved officers is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Officers initiating a foot pursuit should broadcast the following information as soon as it becomes practicable and available:

1. Unit identifier.
2. Location and direction of travel.
3. Reason for the foot pursuit.
4. Number of subjects and description.
5. Whether the subject is known or believed to be armed.

(b) Officers are reminded that radio transmissions made while running may be difficult to understand and may need to be repeated.

(c) Absent extenuating circumstances, any officer unable to promptly and effectively broadcast this information should terminate the pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment should be established and alternatives considered based upon the circumstances and available resources.

(d) When a foot pursuit terminates, the officer shall notify Communications of his location and the status of the pursuit termination (e.g., subject in custody, lost sight of subject), and shall direct further actions as reasonably appear necessary.

215.4.2 ASSISTING OFFICER RESPONSIBILITIES
Whenever any officer announces that he is engaged in a foot pursuit, all other officers should minimize non-essential radio traffic to permit the involved officers maximum access to the radio frequency.

Officers in a position to intercept a fleeing subject, or who can assist the primary officer with the containment or apprehension of the subject, shall act reasonably and in accordance with Department General orders based upon available information and their own observations.

215.4.3 CONTROL SUPERVISOR RESPONSIBILITY
It is the policy of this department that supervisor control shall be exercised over all foot pursuits involving officers from this department.

(a) The immediate supervisor of the officer initiating the foot pursuit, or if unavailable, the nearest available field supervisor shall assume the responsibility as the control supervisor.

(b) Corporals serving as acting sergeants shall assume the responsibility as the control supervisor during a foot pursuit initiated in their area if no other sergeant is on-duty or immediately available in that area; however, corporals may not be the control supervisor when a sergeant initiates a foot pursuit.

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(c) The control supervisor is responsible for the following:

1. Upon becoming aware of a foot pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the foot pursuit in order to ensure that the foot pursuit is conducted within established department guidelines.
2. Proceed to the area of the foot pursuit and provide on scene supervision.
3. Exercise management and control of the foot pursuit even if not on scene.
4. Ensure that a perimeter is established by responding officers to ensure containment of the suspect.
5. Direct that the foot pursuit be terminated if, in his judgment, it is unjustified to continue the foot pursuit under the guidelines of this order.
6. Ensure that aircraft and K-9 assistance is requested.
7. Prepare a post foot pursuit critique and analysis of the foot pursuit for training purposes.

215.4.4 WATCH LIEUTENANT RESPONSIBILITIES
Upon becoming aware that a foot pursuit has been initiated, the Watch Lieutenant should monitor and continually assess the situation.

215.4.5 COMMUNICATIONS RESPONSIBILITIES
Upon notification that a foot pursuit has been initiated, Communications shall:

(a) Assign an incident number and log all foot pursuit activities.

(b) Coordinate communications of the involved units and personnel.

(c) Notify and coordinate with other involved or affected agencies, as needed.

(d) Broadcast updates and other pertinent information, as necessary.

(e) Ensure that the Communications supervisor and appropriate lieutenant are notified of the foot pursuit.

1. If the lieutenant over the area where the foot pursuit initiated is unavailable or does not respond in a timely manner, the nearest available lieutenant shall be contacted.

(f) Notify the Watch Lieutenant as soon as practicable.

(g) Dispatchers shall keep other areas of the city advised if the foot pursuit is likely to enter or cross into multiple areas.

(h) Upon verbal confirmation that a foot pursuit has been terminated, Communications shall again broadcast the foot pursuit has been terminated.

215.5 REPORTING

(a) The initiating officer shall complete an incident report documenting, at minimum, the following:

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1. The reason for initiating the foot pursuit.
2. The identity of involved personnel.
3. The course and approximate distance of the pursuit.
4. Whether a subject was apprehended as well as the means and methods used.
5. Any injuries or property damage.

(b) Any response to resistance shall be reported and documented in compliance with the Department Response to Resistance Order.

(c) Assisting officers taking an active role in the apprehension of the subject shall complete supplemental reports as necessary or as directed.

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Chapter 3 - Field Operations and Custody

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Patrol Function

300.1 PURPOSE AND SCOPE

The purpose of this order is to define the functions of the patrol unit of the Department to ensure intra-department cooperation and information sharing.

300.1.1 FUNCTION

Officers will generally patrol in clearly marked vehicles, patrol assigned jurisdictional areas of Austin, respond to calls for assistance, act as a deterrent to crime, enforce state and local laws and respond to emergencies 24 hours per day seven days per week.

Patrol will generally provide the following services within the limits of available resources:

(a) Patrol that is directed at the prevention of criminal acts, traffic violations and collisions, the maintenance of public order and the discovery of hazardous situations or conditions.

(b) Crime prevention activities such as residential inspections, business inspections and community presentations.

(c) Calls for service, both routine and emergency in nature.

(d) Investigation of both criminal and non-criminal acts.

(e) The apprehension of criminal offenders.

(f) Community oriented policing and problem solving activities such as citizen assists and individual citizen contacts of a positive nature.

(g) The sharing of information between the Patrol and other bureau within the Department, as well as other outside governmental agencies.

(h) The application of resources to specific problems or situations within the community, which may be improved or resolved by community oriented policing and problem solving strategies.

(i) Traffic direction and control.

300.1.2 TERRORISM

It is the goal of the Austin Police Department to make every reasonable effort to accurately and appropriately gather and report any information that may relate to either foreign or domestic terrorism. Officers should advise a supervisor as soon as practicable of any activity believed to be terrorism related and should document such incidents with a written report or Field Interview (FI). The supervisor should ensure that all terrorism-related reports and FIs are forwarded to Strategic Intelligence Unit in a timely fashion.

300.2 PATROL INFORMATION SHARING PROCEDURES

The following guidelines are intended to develop and maintain intra-department cooperation and information flow between the various bureaus of the Austin Police Department.

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300.2.1 CRIME ANALYSIS UNIT
The Crime Analysis Unit (CAU) will be the central unit for information exchange. Criminal information and intelligence reports can be submitted to the Central Records for distribution to all bureaus within the Department through daily and special bulletins.

300.2.2 CRIME REPORTS
A crime report may be completed by any patrol officer who receives criminal information. The report will be processed and forwarded to the appropriate bureau for retention or follow-up investigation.

300.2.3 PATROL BRIEFINGS
Patrol supervisors, detective sergeants and special unit sergeants are encouraged to share information as much as possible. All supervisors and/or officers will be provided an opportunity to share information at the daily patrol briefings as time permits.

300.2.4 INFORMATION CLIPBOARDS
Several information clipboards will be maintained in the briefing room and will be available for review by officers from all bureaus within the Department. These will include, but not be limited to, the patrol check clipboard, the wanted persons clipboard and the written directive clipboard.

300.2.5 BULLETIN BOARDS
A bulletin board will be kept in the briefing room and the Investigation Unit for display of suspect information, intelligence reports and photographs. New Special Orders will be made available for patrol supervisors and will be discussed at briefings and shift meetings. A copy of the Special Order will be placed on the briefing room clipboard.

300.3 CROWDS, EVENTS AND GATHERINGS

Officers may encounter gatherings of people, including but not limited to, civil demonstrations, civic, social and business events, public displays, parades and sporting events. Officers should monitor such events as time permits in an effort to keep the peace and protect the safety and rights of those present. A patrol supervisor should be notified when it becomes reasonably foreseeable that such an event may require increased monitoring, contact or intervention.

Officers responding to an event or gathering that warrants law enforcement involvement should carefully balance the speech and association rights of those present with applicable public safety concerns before taking enforcement action. Officers are encouraged to contact organizers or responsible persons to seek voluntary compliance that may address relevant public safety/order concerns.

Officers should consider enforcement of applicable state and local laws, such as Tex. Penal Code § 42.03 (Obstructing Highway or Other Passageway), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.

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Austin Police Department
General Orders

Responsibility to the Community

301.1 PURPOSE AND SCOPE

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

301.2 IMPARTIAL ATTITUDE AND COURTESY

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

(a) Employees will not express or otherwise manifest any prejudice concerning race, religion, national origin, age, political affiliation, sex, or other personal characteristics in the performance of their duties.

1. Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.
2. The use of racial or ethnic remarks, slurs, epithets, words or gestures, which are derogatory or inflammatory in nature to or about any person or group of persons is strictly prohibited.

(b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.

(c) Employees will make every effort to be courteous and respectful toward all persons.

301.3 CUSTOMER SERVICE AND COMMUNITY RELATIONS

APD constantly works to establish direct contacts with the community we serve. Without grassroots community support, successful enforcement of many laws may be difficult, if not impossible. Community involvement can be an effective means of eliciting public support, can serve to identify problems in the making, and may foster cooperative efforts in resolving community issues. Input from the community can also help ensure that agency general orders accurately reflect the needs of the community.

(a) The conduct of each employee reflects on the agency as a whole and the burden of achieving the agency's community relations objectives is shared. A unified, coordinated effort requires the participation, enthusiasm, and skills of all agency personnel.

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(b) Employees will extend reasonable assistance to the public when called upon. Employees must not neglect community services in the belief that the police function is restricted to crime control.

301.3.1 COMMUNITY INVOLVEMENT AND RECRUITMENT PROGRAMS

(a) Police-Community cooperation can be obtained through open channels of communications, thus allowing for the discussion of concerns and problem areas within the community. All avenues must be utilized in promoting the respect and cooperating of the public with the police including, but not limited to:

1. Establishing liaisons with existing community organizations or establishing community groups where they are needed.
2. Assisting in the development of community involvement general orders for the agency.
3. Publicizing agency objectives, community problems, and successes.
4. Conveying information transmitted from citizens' organizations to the agency.
5. Improving agency practices bearing on police community interaction.
6. Developing problem oriented or community policing strategies.

(b) Employees should actively conduct or participate in APD's recruitment program. Employees should encourage all qualified individuals to seek a career with the Department and direct them to contact APD's Recruiting or HR Division.

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Austin Police Department
General Orders

Public Recording of Official Acts

302.1 PURPOSE AND SCOPE

The Austin Police Department recognizes that members of the general public have a First Amendment right to video record. photograph, and/or audio record APD officers while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

302.2 INTERACTION WITH COMMUNITY

(a) Officers are reminded that photography, including videotaping, of places, buildings, structures and events are common and normally lawful activities.

1. If a person is taking photographs or recording from a place where he or she has a right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.

(b) In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news. Officers shall be aware that:

1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.

2. A bystander has the right under the First Amendment to observe and record officers in the public discharge of their duties.

3. Public settings include parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.

4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

(c) As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with an officer's safety or lawful duties, officer's shall not inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) is not allowed; requires a permit; or requires the officer's consent. Additionally, officers shall not:

1. Order that person to cease such activity;

2. Demand that person's identification;

3. Demand that the person state a reason why he or she is taking photographs or recording;

4. Detain that person;

5. Intentionally block or obstruct cameras or recording devices; or

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6. In any way threaten, intimidate or otherwise discourage an individual from recording officer's enforcement activities.

(d) Nothing in this order prohibits officers from questioning or detaining individuals they reasonably suspect have committed, are committing, or are about to commit any crime.

(e) Officers are reminded that a person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law.

1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop photographing or recording.

2. If a person is photographing or recording police activity from a position that impedes or threatens the safety of members of the public, the officer shall direct the person to move to a safe position. However, officers shall not order the person to stop photographing or recording.

3. A person's recording of officer's activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the officers, does not constitute interference.

4. A person has the right to express criticism of the police activity being observed. As long as that expression does not jeopardize the safety of any officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

(f) Evidence on a Camera or Recording Device

1. If an officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either:

(a) allow the officer to listen to or view the recording

(b) Voluntarily provide the device or recording medium (e.g., the memory chip) to the officer; or

(c) Where possible and practicable, and in the presence of the officer, voluntarily transmit the images or sound via electronic mail to the officer's official government electronic mail account.

(d) Consent to view or take possession of a recording device or medium must be given voluntarily and in accordance with APDGeneral Order 306.4 Consent to Search.

2. If the person provides the device or recording medium to the officer, the officer shall:

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(a) Exercise due care and caution with any of the individual's property or electronic device(s);

(b) Enter the item into evidence

(c) Document the officer's request and the individual's response in the narrative of the report

(d) Contact the on-call Detective responsible for the highest charge and notify them of the media evidence. Officers shall not attempt to view, download, or otherwise access any material contained on the device.

3. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the officer believes that exigent circumstances exist insofar as the evidence of criminal activity will be lost absent an immediate seizure of the device, the officer shall take control of the device and contact a supervisor

(a) The Supervisor shall, in consultation with the officer, determine whether exigent circumstances permit the seizure of the device without a warrant. Warrantless seizure is permissible only when:

1. There is probable cause to believe that the property holds contraband or evidence of a crime; and

2. The exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.

(g) Viewing/Listening to Evidence on a Camera or Recording Device

1. Absent exigent circumstances, officers shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.

2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or injury, officers shall contact a supervisor for authorization to review photographs or recordings without a warrant.

3. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.

(h) Officers shall not, under any circumstances, erase, delete, instruct, or require any other person to erase or delete any recorded images or sounds from any camera or other recording.

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303

Austin Police Department
General Orders

Body Worn Camera Systems

303.1 PURPOSE AND SCOPE

In this order, the word “employees”, or variant of, refers to sworn and civilian employees trained and authorized to wear the Body Worn Camera system (BWC). The BWC system provides an unbiased audio/video recording of events that employees encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. BWC systems can improve community relations and deter inappropriate conduct by both the members of the public and the police department.

This order covers the use of the Department issued and personally owned BWC systems. This order does not cover the use of surreptitious recording devices used in undercover operations.

303.2 DEFINITIONS

MAV Recording: Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

Metadata: Data that provides detailed information unique to each entry in Evidence.com, such as, ID, Category, and Title.

303.3 DEPARTMENT ISSUED BODY WORN CAMERA

BWC equipment is to be used primarily by uniformed personnel as authorized per assignment by the Department and must be used unless otherwise authorized by a Commander or above.

(a) The Chief of Police, Assistant Chiefs, and Commanders are exempt from wearing the BWC except when law enforcement action is foreseen or likely to occur, (e.g. working patrol duties, actively participating in a tactical operation or deployment).

(b) Employees equipped with a Department issued BWC system must be trained in the operation of the equipment prior to its use. BWC equipment will be used in accordance with Department training and the BWC operations manual.

(c) Unless otherwise authorized by the Chief of Police or his/her designee, BWC’s will be worn consistent with the training and manufacturer’s recommendations, in regards to fields of view and employee safety. Employees will adhere to the following dimensions for placement of the BWC:

1. From the center of the sternum, no more than four inches to the right or left on the outermost layer of clothing such that the camera has an unobstructed view.
2. No higher than four inches below the top button of the uniform shirt and no lower than six inches below the top button of the uniform shirt.
3. Exemptions to the placement of the BWC in accordance with this order will be authorized by a Commander or above. Examples for exemptions may include, but are not limited to, SWAT, OCD, Executive Protection, and Mounted Patrol.

(d) Employees shall ensure that their BWC equipment has adequate battery charge and storage space to complete their regular tour of duty.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0134

1. Employees assigned to the units below are required to power on the device at the beginning of their tour of duty and not power the device off until the end of that tour of duty.
   (a) Patrol,
   (b) DTAC Patrol,
   (c) George District Representatives,
   (d) Mounted Patrol,
   (e) Court Services,
   (f) Park Patrol,
   (g) Lake Patrol,
   (h) Commercial Vehicles,
   (i) DWI,
   (j) Motors,
   (k) Metro Tac,
   (l) Patrol K9,
   (m) Gangs,
   (n) Criminal Interdiction.
2. Employees not assigned to the units above are not considered to be “first responders” and are therefore not required to power on their assigned Body Worn Camera at the beginning of their tour of duty. However, if at any time their duties and responsibilities require any type of field work where they could be called upon to take enforcement action, their device will be properly attached and powered on for the entirety of the time they are in that role.
3. Employees not engaged in a law enforcement action shall power the device off or remove it from their body when using a restroom, locker room, changing room, or any other location where the employee has an expectation of privacy. Immediately upon exiting such a facility or room, the employee shall ensure the BWC equipment is powered back on and appropriately placed according to this order.

(e) Employees shall test the BWC equipment at the commencement of their tour of duty and shall categorize the video as '10-41’.

(f) The BWC equipment test shall consist of employees recording the following:
1. Employee name;
2. Employee number; and
3. The current date and time.

(g) Employees shall review the recording to verify the BWC microphone is operational, and the date and time is accurate.

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(h) Employees who discover an operational defect with the BWC system shall attempt to correct the system following the received training on the device (i.e., Reseating cables, Cycling the power, etc.). If the BWC is found to have a physical defect or malfunction:

1. Employees shall notify an on-duty supervisor, and write up the device for service describing the events leading up to the failure.
2. Employees shall notify their dispatcher to have a note added to their activity log that their BWC system has failed.
3. Employees shall notate on the device repair form if there is existing video which was unable to be uploaded because of the device's failure.
4. Employees shall complete a supplement to any report in which there is video on the defective camera that was unable to be uploaded to Evidence.com.

(i) Employees shall not:

1. Bypass or attempt to override the equipment;
2. Erase, alter, or delete any recording produced by the BWC; or
3. Use any non-issued chargers, adapters, or cables with the BWC system.

303.3.1 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

(a) All units responding to a scene shall activate their department issued BWC equipment when they:

1. Arrive on-scene to any call for service;
2. Have detained or arrested a person;
3. Are attempting to detain or arrest a person;
4. By the nature of the call for service, are likely to detain or arrest a person; or
5. Any consensual contact in which the employee or a citizen believes activation of the BWC would be in the best interest of the community.

(b) Examples of when the department issued BWC system must be activated include, but are not limited to:

1. Traffic stops;
2. Foot pursuits, until completion of enforcement action;
3. DWI investigations including field sobriety tests;
4. Warrant service;
5. Investigatory stops; or

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6. Any contact that becomes adversarial in an incident that would not otherwise require recording.

7. While interviewing an employee during a Response to Resistance review.

(c) Employees that are issued a BWC shall utilize the BWC when engaging in Off-Duty LERE Overtime.

(d) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

(e) There may be instances in which an employee is required to take immediate action in response to an event which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record the remainder of the incident. Employees shall articulate the reasoning for the delayed activation of their BWC in an offense report, supplement, or other form of Department approved documentation.

303.3.2 ADVISEMENT AND CONSENT
Employees should inform individuals they are being recorded unless doing so would be unsafe, impractical or impact the investigation of criminal activity.

303.3.3 WHEN DEPARTMENT ISSUED BWC SYSTEM DEACTIVATION IS AUTHORIZED
Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

(a) For purposes of this section, conclusion of an incident has occurred when:

1. All arrests have been made and arrestees have been transported; and

2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)

(b) Employees may choose to discontinue a recording currently in progress for any non-confrontational encounter with a person, including an interview of a witness or victim.

(c) Employees shall adhere to posted policies of any Law Enforcement, Court, or Corrections entity that prohibit the use of BWC systems therein (i.e. TCSO, Courts, Juvenile Detention Centers).

(d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:

1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and

2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.

(e) For purposes of this section, an “administrative reason” refers to:

1. Personal conversations unrelated to the incident being recorded;

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2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

303.3.4 VICTIM AND WITNESS STATEMENTS

When conducting an investigation, the employee shall attempt to record the crime victim or witness' statement with the body worn camera. The recording may be valuable evidence that contributes to or compliments an investigation. While evidence collection is important, the Department also recognizes it is important for employees to maintain credibility with people wanting to share information with law enforcement.

On occasion, an employee may encounter a reluctant crime victim or witness who does not wish to make a statement on camera. In these situations, the employee should continue to develop rapport with the individual while balancing the need for evidence collection with the individual's request for privacy.

Should the employee use discretion and not record the crime victim or witness statement with the body worn camera, the employee shall document the reason for not fully recording the statement with the body worn camera. In these instances, employees may still record with an audio recorder. Employees should work with victim services when possible in determining what type of statement will be taken.

(a) If a citizen, other than a victim or witness as described in this section requests that an employee turn off the BWC, the employee will explain that APD General Orders requires the camera to be activated and recording until the conclusion of the incident or until there is no further law enforcement action necessary.

303.3.5 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS NOT REQUIRED

Activation of the BWC system is not required:

(a) During break and lunch periods
(b) When not in service and not on a call
(c) When in service, but not on a call.
(d) Employees shall not utilize the body worn camera in the following circumstances:
    1. A potential witness who requests to speak to an employee confidentially or desires anonymity;
    2. A victim or witness who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation;
    3. During tactical briefings, or the discussion of safety and security procedures unless approved by the commander;

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4. Public or private locker rooms, changing rooms, restrooms, unless taking police action;
5. Doctor's or lawyer's offices, unless taking police action;
6. Medical or hospital facilities, unless taking police action;
7. At a school, where minor children are present, unless taking police action;
8. To monitor persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition, and assembly under the United States Constitution, or because of the content or viewpoint of the person's protected speech;
9. While in any magistrate's or judge's office or in any courtroom, except under exigent circumstances; i.e. police action being taken;
10. During departmental or supervisory meetings.

303.4 REQUIRED ENTRY OF METADATA FOR BWC RECORDINGS

All BWC recordings shall be assigned a category. Doing so determines the length of time the recording is retained in the Evidence.com storage system.

(a) Employees shall ensure that all BWC recordings are uploaded from the camera to the storage system prior to the completion of their scheduled tour of duty unless approved by a supervisor.

(b) Employees shall ensure that within two weeks from the recording date all videos are assigned the proper category and the ID field contains the 9-digit incident number (YYJJJ####), if applicable.

(c) When possible, all employees "on-scene" or "10-23" should assign the same category to their video as the primary employee (e.g. arresting officer or employee writing initial report).

(d) Unless involved in a response to resistance, an arrest or directed by a supervisor, employees utilizing a BWC during LERE overtime are permitted to download and categorize their recordings during their next regularly scheduled work day.

(e) For purposes of this section, a "Non-Event" video generally refers to a recording that meets all of the following criteria:

1. Video where no investigatory stop is made;
2. Video that does not include any call for service;
3. Video where no person has been detained or arrested; and
4. Video where no enforcement action is documented.

(f) Detectives are responsible for verifying the category assigned to recordings for assigned incidents within 30 days of the recording. Detectives are also responsible for updating the category for recordings when necessary to ensure proper retention.

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303.4.1 SUPERVISOR RESPONSIBILITIES

(a) In conjunction with personnel inspections, General Order 801.8, supervisors of units listed in 303.3(d) of this order shall conduct inspections of BWC recordings to ensure they are complying with APD General Orders. Supervisors shall ensure all assigned employees are reviewed in a fair and equitable manner. Additionally, supervisors shall ensure employees:

1. Act professionally, treating persons fairly and impartially;
2. Demonstrate the appropriate knowledge, skills, and abilities to manage the interaction; and
3. Comply with laws, ordinances, and APD written directives.

(b) These inspections will be electronically documented on form PD0128 and sent to the lieutenant within the chain-of-command. Each inspection will include:

1. One randomly selected recording to ensure compliance with “10-41” video check;
2. Two randomly selected recordings to ensure compliance with the “eventful video” compliance check; and
3. Two randomly selected recordings from employee-initiated calls to ensure compliance with the Racial or Bias-Based Profiling general order.

(c) In addition to the above inspections, supervisors shall ensure all assigned employees have categorized all videos in accordance with APD General Order 303.4.

(d) Supervisors shall ensure all employees assigned to them are allotted time during their regularly scheduled work week to properly categorize all BWC recordings in Evidence.com.

(e) Investigative unit supervisors shall ensure their assigned Detectives have properly categorized all videos in accordance with APD General Order 303.4.

303.4.2 DOCUMENTING BWC SYSTEM USE

Any incident recorded with a BWC system shall be documented in the employee's report. If a citation was issued, a notation of "BWC" shall be placed in the notes section of the citation.

303.4.3 COPIES OF BWC SYSTEM RECORDINGS

BWC media recordings shall be used for official APD business only. This may include public information requests after the recording has been reviewed by the Department Legal Advisor and approved for release by the Department. Copies of BWC System Recordings will not be provided unless the person requesting the copy is authorized to view the recording and does not otherwise have access to view the recording using the BWC system. When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in General Orders.

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303.4.4 BWC RECORDING RETENTION SCHEDULE
Videos shall be retained for the longest period of time consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules. At a minimum all BWC recordings shall be retained for 181 days.

303.4.5 STORAGE AND SECURITY OF BWC SYSTEM RECORDINGS
Employees will upload the media and data contained on their BWC into the Department's official system of record for the storage of BWC information utilizing the approved upload procedures (wireless, docking station, etc.).

(a) The Department’s official system of record for BWC media and data will be stored utilizing a secure storage server and backed up for redundancy purposes.

(b) The Department’s official system of record will store all BWC media and data utilizing nationally recognized and approved security methods and will be in compliance with State of Texas Occupations Code 1701.655(b)(3).

(c) A maintenance agreement and/or contract for the BWC program shall be in place to ensure the security of all BWC media and data stored in the Department’s system of record. This contract will include, but will not be limited to:

1. A service level agreement (SLA);
2. Data protection;
3. Data ownership;
4. Data location;
5. Import and export of data;
6. Right to audit;
7. Security, to include compliance with Chapter 521 of the Texas and Business Commerce Code;
8. Security incident or data breach notification;
9. Change control and advance notice; and
10. Notification of legal requests.

303.4.6 REQUESTS FOR BWC RECORDINGS
The Department shall comply with all applicable laws pertaining to the release of BWC recordings. News or other media outlet requests for video will be processed through the Public Information Office (PIO). All other open records requests will be processed through the department coordinator in Central Records.

303.5 PERSONALLY OWNED BWC SYSTEMS
Personally owned BWC’s are not permitted for use by employees.

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303.6 REVIEW OF ALL BWC SYSTEM RECORDINGS

(a) If available, the recording that best captured the incident should be reviewed by the involved officers in the following situations prior to writing a report, supplement, memorandum, or prior to making a required statement:

1. Critical incidents, as defined by General Order 902.1.2;
2. Response to resistance incidents; and
3. Foot and vehicle pursuits.

(b) Recordings may be reviewed:

1. By an employee to make sure the BWC system is operational;
2. By an employee to assist with the writing of a report, supplement, memorandum, or prior to making a required statement about the incident;
3. By authorized persons for the purpose of reviewing evidence;
4. Upon approval by the Chief of Police, by a person, or the person's authorized representative, who is depicted in a recording of an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer, but who is not a witness to the incident (Tex. Occ. Code § 1701.660);
5. By a supervisor investigating a specific act of employee conduct; or
6. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation.

(c) Recordings may be shown for the purpose of training. Employees wishing to view another employee's video for training purposes will submit a request via email through their chain-of-command, up to their lieutenant, for approval. The receiving lieutenant will review the video to ensure a training purpose exists and that the video is appropriate for viewing. If the lieutenant questions whether the video should be viewed for training, the lieutenant will contact the involved employee's lieutenant for approval. If the two lieutenants disagree, the involved employee's commander shall make the final determination. Factors for determining whether a video is appropriate for viewing for training include:

1. The likelihood of an internal/external investigation;
2. Whether the video portrays actions that are likely to be embarrassing for any involved employee, and whether the embarrassment suffered by the employee would be outweighed by the training benefits; and
3. Whether permitting uninvolved officers to view the video for training purposes may have a negative impact on any future or current prosecution or civil proceeding (lawsuit).

(d) In no event shall any recording be used or shown to ridicule or embarrass any employee.

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(e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.

(f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

303.7 REVIEW OF BODY WORN CAMERA ORDER

This order will be reviewed for continuous effectiveness and adherence to local, state, and federal laws by the Department.

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Austin Police Department
General Orders

Digital Mobile Audio Video Recording

304.1 PURPOSE AND SCOPE

The Austin Police Department has equipped designated police units with a Digital Mobile Audio Video Recording (DMAV) system. This DMAV system is designed to assist and complement employees in the performance of their duties. The DMAV is used to record certain activities by providing a visual and/or audio record. Recordings are intended to provide an unbiased record of the incident and to supplement the employee's report.

This order covers the use of the DMAV system. The VHS MAV system guidelines are outlined in General Order 303 (Body Worn Camera Systems).

304.2 DEFINITIONS

MAV Recording: Mobile Audio Video media obtained from Body Worn Camera and/or Digital Mobile Audio Video systems.

304.3 DIGITAL MOBILE AUDIO VIDEO RECORDER OPERATION

(a) The DMAV system is designed to turn on automatically when any of the following are detected:

1. Emergency lights.
2. Siren.
3. Driver's door opening.
4. Crash sensor.
5. Speed in excess of 90 MPH.
6. Activation of a wireless body microphone.
7. Manual activation by pressing the record button on the camera, the mobile data computer, or the Video Processing Unit.

(b) Employees shall turn off the vehicle's AM/FM radio and/or personal music devices while the DMAV is recording and there is a subject sitting in the backseat of the unit.

(c) Employees shall not:

1. Bypass or override the automatic activation of the equipment.
2. Erase, alter, or delete any recording produced by the DMAV.

(d) Absent legal cause or lawful order, no member of the Department may surreptitiously record any other member of the Department without the expressed knowledge and consent of all parties.

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304.3.1 REQUIRED DMAV TESTING

Employees driving DMAV equipped vehicles during field duty assignments where the required use of the DMAV is likely (e.g., patrol, metro-tactical shifts, traffic enforcement) must be trained in the operation of the equipment prior to its use.

(a) Employees will test the vehicles DMAV equipment:

1. At the commencement of their tour of duty.
2. Anytime they switch cars during a shift.
3. When the DMAV media has been replaced for an approved reason.

(b) Employees will classify the video as '10-41'.

(c) The DMAV equipment test will consist of employees recording the following:

1. Employee name; and
2. Employee number; and
3. The current date and time.

(d) Employees will review the recording to verify the in-car and body microphone is operational, and the date and time is accurate.

(e) Employees discovering a defect with the DMAV will remove that police unit from service and complete a *Vehicle and Equipment Repair Form*. Vehicles with non-operable DMAV systems will not be used unless an emergency situation exists and a lieutenant approves its use. If this occurs, the unit will be removed from service as soon as the emergency subsides.

304.3.2 WHEN DMAV USE IS REQUIRED

This order is not intended to describe every possible situation where the system may be used. In some circumstances it is not possible to capture images of the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements.

(a) All units responding to a scene shall activate their DMAV equipment when they:

1. Arrive on-scene to any call for service; or
2. Are attempting to detain or arrest a person; or
3. Have detained or arrested a person; or
4. By nature of the incident, are likely to detain or arrest a person.

(b) Examples of when the DMAV system must be activated include, but are not limited to:

1. Traffic stops.
2. Pursuits, until completion of enforcement action.
3. DWI investigations including field sobriety tests.
4. Warrant service.

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5. Investigatory stops when the subject is on foot or in a vehicle.
6. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their DMAV system before taking police action. It is expected that once the immediacy of the situation is over, officers will activate their DMAV system to record the remainder of the incident.
7. While interviewing an employee during a Response to Resistance review when the BWC recording system is unavailable.

(c) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

304.3.3 WHEN DMAV DEACTIVATION IS AUTHORIZED

(a) Once the DMAV system is activated it shall remain on until the incident has concluded.
   1. For purposes of this section, conclusion of an incident has occurred when:
      (a) All arrests have been made and arrestees have been transported; and
      (b) All witnesses and victims have been interviewed.
   2. Recording may cease if an employee is simply waiting for a tow truck or a family member to arrive, or in other similar situations where no further law enforcement action is likely to occur.

(b) Employees may deactivate the audio portion by engaging the mute button on the wireless microphone, for administrative reasons only, as follows:
   1. The reason for the audio deactivation must be recorded verbally prior to audio deactivation; and
   2. After the purpose for audio deactivation has concluded, employees will reactivate the audio track.

(c) For purposes of this section, an "administrative reason" refers to:
   1. Personal conversations unrelated to the incident being recorded.
   2. Officer to Officer training (e.g., when a Field Training Officer or Field Training Supervisor wishes to speak to an officer enrolled in the Field Training Program about a training issue).
   3. The conclusion of an incident.
   4. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall also be stated prior to the audio deactivation.

304.3.4 WHEN DMAV USE IS NOT REQUIRED

Activation of the DMAV system is not required unless otherwise specified by this order. Examples of when DMAV use is not required may include:

(a) During breaks and lunch periods.

(b) When not in-service and not on a call.

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(c) When in-service but not on a call.

304.4 REQUIRED CLASSIFICATION OF DMAV RECORDINGS

(a) Employees should ensure that all DMAV recordings are accurately classified upon stopping the recording. All recordings, except those classified as "Non-Event," must also include the 9-digit incident number when available using the following format: YYJJJ#### (e.g., 100711267).

(b) Employees shall ensure that all incident recordings have the required information assigned prior to the completion of their next scheduled tour of duty.

(c) For purposes of this section, a "Non-Event" video generally refers to a recording that meets all of the following criteria:

1. Video where no investigatory stop is made;
2. Video that does not include any call for service;
3. Video where no person has been detained or arrested; and
4. Video where no enforcement action is documented.

(d) Employees who do not have the ability to add incident numbers to recordings (e.g. Motors Officers) or who share a common case number across multiple videos (e.g. Officers working STEP) shall ensure that reports and citations reflect the time of recording exactly as shown in the DMAV system.

(e) Detectives are responsible for verifying the classification of recordings for assigned incidents within 30 days of the recording. Detectives are also responsible for reclassifying recordings when necessary to ensure proper retention.

(f) Supervisors, including corporals, are responsible for verifying the classification of recordings made by their officers for all direct filed charges that are a 3rd degree felony or higher.

304.5 REVIEW OF DMAV SYSTEM RECORDINGS

(a) If available, the recording that best captured the incident should be reviewed by the involved officers in the following situations prior to writing a report, supplement, memorandum, or prior to making a required statement:

1. Critical incidents, as defined by General Order 902.1.2;
2. Response to resistance incidents; and
3. Foot and vehicle pursuits.

(b) Recordings may be reviewed:

1. By an employee to make sure the DMAV system is operational;
2. By an employee to assist with the writing of a report, supplement, memorandum, or prior to making a required statement about the incident;
3. By authorized persons for the purpose of reviewing evidence;

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4. By a supervisor investigating a specific act of employee conduct; or\
5. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation.

(c) Recordings may be shown for the purpose of training. Employees wishing to view another employee's video for training purposes will submit a request via email through their chain-of-command, up to their lieutenant, for approval. The receiving lieutenant will review the video to ensure a training purpose exists and that the video is appropriate for viewing. If the lieutenant questions whether the video should be viewed for training, the lieutenant will contact the involved employee's lieutenant for approval. If the two lieutenants disagree, the involved employee's commander shall make the final determination.Factors for determining whether a video is appropriate for viewing for training include:

1. The likelihood of an internal/external investigation;
2. Whether the video portrays actions that are likely to be embarrassing for any involved employee, and whether the embarrassment suffered by the employee would be outweighed by the training benefits; and
3. Whether permitting uninvolved officers to view the video for training purposes may have a negative impact on any future or current prosecution or civil proceeding (lawsuit).

(d) In no event shall any recording be used or shown to ridicule or embarrass any employee.

(e) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information from Department video files or the confidential files of any other agency.

(f) Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., YouTube, Facebook).

304.6 DOCUMENTING DMAV SYSTEM USE

Any incident that was recorded with either the video or audio system shall be documented in the employee's report. If a citation was issued, a notation shall be placed on the back of the records copy of the citation that the incident was recorded.

304.7 COPIES OF DMAV SYSTEM RECORDINGS

Copies of a DMAV media recording will be used for official APD business only. This may include public information requests after the recording has been reviewed by the Department Legal Advisor. Copies of DMAV System Recordings will not normally be made unless the person requesting the copy is authorized to view the recording and does not otherwise have access to view the recording using the DMAV system. When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in general orders.

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304.8 DMAV RECORDING RETENTION SCHEDULE

All DMAV recordings shall be retained for a period of time that is consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules.

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Austin Police Department
General Orders

Radio and Mobile Data Computer Use

305.1 PURPOSE AND SCOPE

Digital radio and data communications are extremely vital elements of effective law enforcement. These communications will be conducted in a professional, concise, and effective manner.

Employees are reminded that all digital radio and data transmissions are recorded and subject to public information requests.

305.2 MOBILE DATA COMPUTER USE GUIDELINES

(a) The mobile data computer (MDC) shall be used for official police communications only.

(b) There is no expectation of privacy concerning sending or receiving messages via the MDC system. Messages may be reviewed by supervisors at any time without prior notification.

(c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.

(d) Employees will not intentionally disrupt the GPS signal.

(e) Employees driving vehicles equipped with an MDC shall:

1. Accept all updates to the MDC prior to logging on and while at a hot-spot; however, employees reporting to duty from a location that is not a hot-spot shall ensure the updates are downloaded as soon as practicable.
2. Log on at the start of a shift with complete and accurate information.
3. Log off at the end of the shift.

(f) Employees granted access to the Watch List should limit the number of additional sectors they are watching to two (2) unless needed for an official reason (e.g., monitoring a significant event that could impact all sectors).

(g) When an MDC is utilized in an area where the public might be able to view the screen, the user will take reasonable measures to ensure any information is not viewable by unauthorized persons (e.g., lower the screen, lock the computer).

(h) Unless Officers are utilizing dual factor authentication, Mobile Data Computers may only be removed from the vehicle for remote operation if they are used in a secure facility (substation, arrest review, etc).

305.2.1 MDC USE WHILE DRIVING

Use of the MDC by the operator should be limited to times when the vehicle is stopped. When the vehicle is in motion, the operator should only attempt to read messages that are likely to contain information that is required for immediate enforcement, investigative, or safety needs.

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Short transmissions, such as a license plate check, are permitted if it reasonably appears they can be done safely.

305.3 RADIO USE GUIDELINES

305.3.1 COMPLIANCE

(a) Employees shall comply with FCC regulations relating to the use of radio communications systems, as well as the established guidelines outlined below:

1. Communications involving the protection of life and property shall be afforded priority.
2. False calls, false or fraudulent distress signals, unnecessary and unidentified Communications and the transmission of unassigned call signals are specifically prohibited.
3. Employees shall monitor the talk-group on which they intend to transmit for a sufficient period to ensure their transmissions will not interfere with others.
4. Duration of radio transmissions must be restricted to the minimum practical transmission time.

(b) Employees shall comply with the Greater Austin/Travis County, Texas, Regional Radio System (GATRRS), Interoperability Plan when necessary, to communicate on interoperability channels that are part of the GATRRS and is related to the use of radio interoperability.

305.3.2 RADIO TRANSMISSION PROTOCOL

(a) Only English shall be spoken.

(b) Employees calling or responding to dispatch shall identify themselves by their assigned unit number. They should not continue the transmission until acknowledged by the dispatcher.

(c) The employee's primary talk-group dispatcher shall be notified before an employee changes to another talk-group (e.g., a Central West officer switching to the North West talk-group).

(d) Employees shall not call for another employee by name unless their radio or unit number is unknown (e.g., "Baker 101 to Sgt. Doe").

(e) Long transmissions should only be done over a secondary talk-group, as an MDC message, or via a cell phone if available.

(f) Employees shall refrain from seeking advice from a dispatcher regarding a point of law, enforcement action, or Department General Orders. Employees should consult their immediate supervisor on these matters or obtain the information from their laptop computers.

(g) Under normal circumstances, employees will not turn off or lower their in-car police radios to a volume that cannot be captured by the vehicle's DMAV equipment regardless if the employee is wearing an ear-bud listening device on their portable

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radio. An exception would be under circumstances when it is deemed necessary to safeguard transmissions from a prisoner seated in the patrol car during and incident.

305.3.3 REQUESTING RECORDED TRANSMISSIONS
Employees with a legitimate need to hear or copy a radio or telephone recording may do so by making a request to the Communication supervisor on duty.

305.4 ADDITIONAL GUIDELINES

305.4.1 DOCUMENTATION OF ACTIVITY
Radio and MDC transmissions are used to record an employee's daily activity. To ensure the most accurate recording of these activities, the following are required:

(a) All contacts or activity shall be documented at the time of the contact.

(b) Whenever the activity or contact is initiated by voice, it shall be entered into the Computer Aided Dispatch (CAD) system by a dispatcher.

(c) Whenever the activity or contact is not initiated by voice, the employee shall record it on the MDC.

305.4.2 STATUS CHANGES

(a) Employees shall make changes in status (e.g., arrival at scene, meal periods, in-service) through the MDC system when safe and practicable.

1. If MDC use is not safe or practical, employees shall advise the dispatcher of status changes using proper radio codes.

2. Employees responding to in-progress calls shall advise changes in status over the radio to assist other employees responding to the same incident.

(b) An employee's status shall be made Code 4 when it is determined that no other units are needed. Any additional units still responding to the incident shall change their status to available.

305.4.3 HIGH PRIORITY INCIDENTS
Transmissions regarding emergencies (e.g., high-speed pursuits, serious crimes in progress) shall be given priority over all other transmissions. Units not involved in the emergency shall stay off the air until the situation has been resolved.

Units coming in-service during an emergency shall change their status on the MDC. If unable to do so, the unit will switch to an adjoining sector talk-group, advise that dispatcher they are in-service and then switch back to their primary talk-group.

305.4.4 EMERGENCY BUTTON ACTIVATION
If the emergency button is depressed on the MDC or Radio, the dispatcher will call the unit and ask if the unit is Code 4.

(a) If there is no emergency the employee should respond "Code 4" and all units shall resume their normal activity.

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(b) If there is no response or the employee answers in some other way, the dispatcher shall send available units to assist in locating the unit that is transmitting the emergency. Available units may self-assign the call via the MDC and respond as appropriate.

1. Units shall refrain from transmitting on the radio until there is a Code 4, unless they are themselves handling an emergency.
2. When the situation is considered Code 4, all units not on-scene shall go back in service.

305.4.5 BOMB THREATS

Bombs and other explosive devices can be detonated by radio waves (e.g., mobile phones, radio, MDC) transmitted in close proximity to the device.

(a) When responding to bomb threats, employees should be conscious of the location of any suspected devices (e.g., parking lot, inside a building, open field) and park their patrol unit accordingly.

(b) When investigating reports of a bomb threat, employees shall follow General Order 414 (Bomb Threat and Explosive Device Response).

305.4.6 CLOSING THE CHANNEL

Closing a radio channel ("holding the air") is done for the safety of officers involved in a call or event that requires the radio remain silent. Events that require a channel be closed will follow these guidelines:

(a) Any supervisor (including a dispatch supervisor) may close a channel to ensure officer safety. If the dispatcher does not apply the channel marker, units involved in the event may request that it be applied.

(b) The dispatcher will broadcast the channel is closed and should enable the channel marker on that channel so that a low audible "beep" will occur every 8-10 seconds. The "beep" is a clear indication that the channel is closed to all non-emergency radio traffic.

(c) When safe and practical, the dispatcher will then broadcast the channel is open and will remove the channel marker.

305.5 RESPONSIBILITY OF SUPERVISORS

Supervisors shall:

(a) Be responsible for entering complete and accurate roster information into the current electronic system, including capability codes for all qualified personnel.

(b) Use the MDC to monitor incidents and the activity of employees when practicable.

(c) Carefully monitor and supervise the use of the radio to assist employees as needed. Supervisors may monitor additional talk-groups; however, supervisors shall remain available to their primary talk-group. Supervisors are responsible for the radio conduct of their subordinates and should immediately correct improper radio procedures.

(d) Self-assign calls when practical and other units are not available.

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(e) Respond to any scene when requested to the location by a subordinate.

(f) Inform and update the Watch Lieutenant of any significant call or critical issue.

305.6 MOBILE DATA INSPECTION

APD Risk Management will select random CAD audit dates and notify lieutenants and sergeants/ civilian supervisors via Departmental email quarterly. Any supervisor of sworn or non-sworn employees (to include Communications, Victim Services, and Crime Scene units) who use CAD messaging shall audit their employees' messages and submit an electronic report using APD Approved Form PD0128A to their next level manager for review within 10 days from the date of the notification from Risk Management. If a sergeant is unavailable during the entire 10 day time frame, the audit shall be conducted by the corporal of that shift or a sergeant from another shift.

(a) If an employee did not work on the dates to be audited, they will be audited on the next available working day. The date will be noted on the report.

(b) If the employee is on extended leave (FMLA, Light Duty, etc.) the reason of absence will be documented on the report.

The report shall be retained by the sergeant/civilian supervisor for at least 3 years in an APD group drive.

If an inappropriate CAD message is found that involves dialogue with an employee from another shift/unit, the sergeant/civilian supervisor conducting the CAD audit shall notify the other employee's sergeant/civilian supervisor via Departmental email for follow-up.

If a subordinate's message results in counseling a copy of the message and memo will be placed in the supervisor's file for the employee. If no further counseling is needed in the three years following the counseling, the CAD messages may be discarded.

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GO
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Austin Police Department
General Orders

Search and Seizure

306.1 PURPOSE AND SCOPE
Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This order provides general guidelines for Austin Police Department personnel to consider when dealing with search and seizure issues.

306.2 SEARCH AND SEIZURE
This order outlines the following types of searches and seizures:

(a) Exigent circumstances
(b) Consent
(c) Search incident to a lawful arrest
(d) Vehicle inventory
(e) Probable cause
(f) Protective frisk based on reasonable suspicion
(g) Plain view
(h) Strip/Body cavity search
(i) Residences, open fields, and abandoned property

306.3 SEARCH AND SEIZURE
Transgender- An umbrella term that describes individuals whose gender identity is different from their assigned sex at birth.

Female-to-Male (FTM)- A person who transitions from "female-to-male", meaning a person who was assigned female at birth, but identifies and lives as a male. A "female-to-male" individual should be addressed using masculine pronouns (e.g.- he, him, his), regardless of surgical status.

Male-to-Female (MTF)- A person who transitions from "male-to-female", meaning a person who was assigned male at birth, but identifies and lives as a female. A "male-to-female" individual should be addressed using feminine pronouns (e.g.- she, her, hers), regardless of surgical status.

Intersex- Intersex individuals are born with chromosomes, external genitalia, and/or an internal reproductive system that varies from what is considered "standard" for either males or females.

Gender- The state of being male or female.

Gender Non-Conforming (Individuals)- Display gender expression or behavior that does not conform to dominant gender norms of male or female. Gender non-conforming individuals may not identify as male, female, or transgender. Gender non-conforming is also known as gender variant, gender atypical, or androgynous.

TIGN- Transgender, Intersex, and/or Gender Non-Conforming Individual.

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Gender Identity- An individual's internal sense of being male or female, or something not defined by traditional definitions of male or female.

Gender Expression- An individual's external and social characteristics and behaviors (such as appearance, dress, mannerisms, speech, and social interactions) that may be perceived as masculine or feminine.

306.3.1 SEARCH PROTOCOL
Nothing in this order supersedes officer safety tactics.

(a) Officers will conduct person searches with dignity and courtesy.

(b) Officers will conduct property searches in a manner that returns the condition of the property to its pre-search status as nearly as reasonably practicable.

(c) Officers should attempt to acquire keys to locked property when a search is anticipated and the time and effort required to gain the keys makes it a practicable option.

(d) It is the responsibility of each individual officer to search a prisoner for weapons or contraband anytime he gains custody of that prisoner, regardless of whether the prisoner was previously searched by another officer.

(e) When safety permits:

1. Officers should explain to the person being searched the reason for the search and how the search will be conducted.

2. When practical, an officer of the same gender should be called to the scene when officers believe the subject is concealing items in a sensitive area, such as, evidence or narcotics in the groin, buttocks, or breast areas. This does not apply to items that pose an immediate threat to officer safety.

3. If a subject requests a search by an officer of the same gender, an attempt should be made to have a same gender officer conduct the search.

4. If a same gender officer is unavailable, the search should be conducted in front of a Mobile Audio Video (MAV) recording system, if available, or a second officer should be present.

5. If the gender of the individual needing to be searched comes into question, officers should respectfully inquire as to whether the individual identifies as transgender. When an individual self-identifies as transgender, officers will not question this identity absent articulable, compelling reasons, nor will an officer inquire about intimate details of an individual's anatomy to determine gender. Officers needing to search a person who has disclosed that, or the officer recognizes by prior knowledge, the individual is Transgender, Intersex, and/or Gender Non-Binary/Gender Non-Conforming (TIGN), should, when practicable, conduct the search based on the gender with which the individual identifies. (For example, a Female-to-Male individual should, when practicable, be searched by a male officer, or by a female officer who conducts an opposite gender search. A Male-to Female individual should, when practicable, be searched by a female officer, or by a male officer who conducts an opposite gender search).

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6. Officers will use the backside of their hands and fingers to frisk/search sensitive areas of the opposite gender to include the breast, crotch, and buttocks.

306.4 EXIGENT CIRCUMSTANCES

Exigent circumstances permitting entry into premises without a warrant or valid consent generally include any of the following:

(a) The reasonable belief that a person within is in need of immediate aid.

(b) The need to protect or preserve life or avoid injury.

(c) Imminent escape of a suspect.

(d) The reasonable belief that contraband is about to be removed or destroyed.

(e) Public safety.

An exigency created by the officer's own conduct as an excuse for a warrantless entry is not permitted.

306.5 CONSENT

(a) Entry into a location or vehicle for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation. A search by consent is only allowed if the following criteria are met:

1. The officer has explained the reason for the consent search request to their supervisor (or their Corporal/Detective if their supervisor is unavailable) and received their approval prior to requesting consent. If the officer is:

   (a) Assigned to a specialized unit that has received specific training on consent searches; or

   (b) The officer has completed the department's Interdiction for the Protection of Children (IPC) training and is actively conducting an IPC investigation; then the officer would not need supervisor approval prior to requesting consent.

2. Consent is voluntary (e.g., clear, specific and unequivocal).

3. Consent is obtained from a person who has the authority to give the consent (e.g., care, custody and control of the location or vehicle).

4. The search does not exceed the scope of the consent given.

(b) Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.

(c) Although officers are not required to conduct searches within the plain view of suspects, those who have the authority to grant or revoke consent should be in a

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position to communicate a withdrawal of consent should they so desire. If consent was obtained by telephone from a person who has authority to grant the consent, the person should be provided with contact information to revoke the consent.

(d) Absent other legal justification, any related search should be discontinued at any point that consent is withdrawn, even if the withdrawal is made by a different party who is at the scene and who also has authority over the area being searched.

306.5.1 RECORDING CONSENT

(a) Consent requests and authorization for all vehicles, locations where there is a reasonable expectation of privacy, and subject stops shall be recorded by the Body Worn Camera (BWC). When the BWC system is unavailable, the DMAV system shall be used.

1. Prior to the search, the officer shall read the Consent to Search Card to the subject.

2. After the subject consents to the search, the officer can proceed with the search. If at any time after the search has begun the person revokes their consent, the officer will immediately stop and search no further unless sufficient probable cause has already been developed to warrant continuing with the search or a warrant has been obtained.

(b) Employees will document in their report, supplement, or street-check anytime a consent search is used and that the consent was successfully recorded. If the recording is not successful the reason will be documented in the report, supplement, or street-check as well as in CAD history.

(c) Employees will notify their immediate supervisor of the consent search as soon as practicable, but prior to the end of the tour of duty.

306.5.2 CHAIN-OF-COMMAND REVIEW OF CONSENT SEARCHES

The immediate supervisor shall send an email notification with the incident report number to the involved employee's chain-of-command up to the lieutenant. Each level in the chain, up to the lieutenant, will review the search and complete a case note to document their review. In the event the chain-of-command identifies concerns with the search, the reviewing lieutenant will notify the commander.

306.6 SEARCH INCIDENT TO ARREST

The general authority to search incident to a lawful custodial arrest is not qualified or limited by the type of arrest. Objects of the search are weapons, evidence, and/or means of escape.

(a) Persons:

1. When officers make a lawful arrest, they are permitted to conduct a contemporaneous search of the arrestee. Such a search safeguards the arresting officer and others nearby from harm while ensuring that the arrestee will not discard or destroy evidence.

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2. It is entirely reasonable for arresting officers to search the area where the defendant might reach in order to grab a weapon or evidence.

(b) Vehicles:

1. A search of a vehicle interior may be made when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.
2. A search of a vehicle interior may be made when it is reasonable to believe that the vehicle contains evidence of the offense of arrest.
3. If officers do not have a valid reason to search a vehicle after making an arrest (e.g. probable cause, inventory), a search warrant will need to be obtained.
4. Officers may examine the contents of any opened or closed container within the passenger compartment, provided the container is within reaching distance of the arrestee and the arrestee is unsecured at the time of the search.
5. Locked containers found within the vehicle passenger compartment may be seized and a search warrant obtained in a timely manner.

306.7 VEHICLE INVENTORY

An inventory is a legitimate law enforcement activity that is not a search and that sometimes, incidentally, results in the discovery of evidence. Vehicle inventories will be conducted in accordance with General Order 350 (Vehicle Towing and Impound).

306.8 PROBABLE CAUSE

(a) Person:

1. When officers have probable cause to believe that evidence or contraband is located on a person they are permitted to conduct a search of the person.

(b) Vehicles:

1. Officers may conduct a warrantless search of a readily movable vehicle (e.g., automobile, mobile home, boat or airplane) if there is probable cause to believe that evidence or contraband is inside and the search cannot safely be delayed in order to obtain a warrant.
    (a) Officers must have probable cause that contraband is in the vehicle.
    (b) A search of an automobile based on probable cause lawfully extends to all parts of the vehicle in which evidence or contraband could be concealed, including closed compartments, containers, and trunks.
    (c) The scope of a warrantless search of a lawfully stopped vehicle based on probable cause is no narrower and no broader than the scope of a search under the authority of a warrant.

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306.9 FRISK (PAT-DOWN) FOR WEAPONS

A frisk is a mere pat-down of the outer clothing, area, vehicle or container to which a detained person may have immediate access. The purpose of a limited weapons frisk after an investigatory stop is not to discover crime, but to allow the officer to pursue the investigation without fear of violence. An officer does not need to be absolutely certain that an individual is armed; the issue is whether a reasonably prudent person would justifiably believe that he or others were in danger.

(a) Persons:

1. A frisk is a limited patting of the outer surfaces of a person's clothing in an attempt to find weapons. A frisk can only be used by officers when they justifiably stop someone and have a reasonable fear for their safety, the safety of the public, or when a cautious and prudent officer under the same or similar circumstances would conduct a pat-down.
2. Normally, officers cannot put their hands under the suspect's outer clothing until they feel something they reasonably believe is a weapon. If the outer clothing is too bulky to allow officers to decide if a weapon is concealed underneath, outer clothing such as overcoats and jackets may be opened to allow a pat down of the inner clothing, such as shirts and trousers.
3. Packages, purses, briefcases and other containers may be frisked during the stop.
4. The scope of a protective frisk is limited to persons and places within arm's reach of a concealed weapon or toward which the subject might lunge.

(b) Vehicles:

1. A protective frisk may include the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, if the officer possesses reasonable belief that the suspect is dangerous and may gain control of a weapon at any time during the encounter.

306.10 PLAIN VIEW

Because an individual does not have an expectation of privacy as to items that are in plain view, no search has taken place in a constitutional sense when an object is viewed from a location where the officer has a right to be.

(a) An item in plain view may generally be seized when all of the following conditions exist:

1. The object must be in plain view; and
2. Officers conducting the seizure must lawfully arrive at the position from which the object is plainly seen; and
3. Officers must have a lawful right of access to the object itself, apart from lawfully viewing the object; and
4. The object's incriminating character must be so immediately and sufficiently apparent that officers have probable cause to believe the object is contraband or evidence of a crime.

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306.11 STRIP/BODY CAVITY SEARCHES

Strip and body cavity searches are sometimes necessary for the safety of persons and/or to secure evidence of criminal activity. However, such searches are highly intrusive and must be conducted only when the justification can be clearly articulated, and then done only with proper regard for human dignity and privacy.

(a) All cases of strip or body cavity searches will be documented in an incident report or supplement and include (at a minimum):

1. Facts known to the officer that justify a strip/body cavity search; and
2. Name and employee number of supervisor authorizing the search; and
3. Place that the search was conducted (e.g., bathroom of suspect's residence, jail, doctor's office); and
4. Name and employee number of all persons involved in the search; and
5. The areas searched and results of the search.

306.11.1 STRIP SEARCHES

Strip searches:

(a) Will be conducted only with the approval of a supervisor.

(b) Will be conducted in privacy, including only the number of officers necessary to maintain a safe situation.

(c) Will be conducted ONLY by members of the same gender as the person to be searched. Should an officer of the same gender not be immediately available, the prisoner will either be secured until one can arrive, or the prisoner will be secured and transported to the jail where a jailer of the same gender will conduct the search.

(d) If the individual to be strip searched is Transgender, Intersex, or Gender Non-Conforming, officers should ask that individual whether they prefer a male or female officer to conduct the strip search.

306.11.2 BODY CAVITY SEARCHES

Other than for checking the mouth area, these searches will not be conducted by officers of this department. Should the need arise for this type of search, the prisoner will be transported to the jail where proper hygienic/medical resources are available. Only jail personnel will conduct the cavity search.

306.12 RESIDENCES, OPEN FIELDS, AND ABANDONED PROPERTY

306.12.1 RESIDENCES

Every person has a reasonable expectation of privacy inside his home and a search of a residence will not be conducted without a valid search warrant, exigent circumstances, or valid consent. Individuals do not, however, generally have a reasonable expectation of privacy in areas around

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the home where the general public (e.g., mail carriers and solicitors) would reasonably be permitted to go.

Once lawfully inside a residence, officers may conduct a protective frisk of a subject if the officer has a reasonable belief that the person is armed and dangerous. In addition, the Fourth Amendment permits a limited protective sweep of a residence when the searching officer possesses a reasonable belief that the area to be swept harbors an individual posing a danger to those on scene. The sweep should not last longer than is necessary to dispel the reasonable suspicion of danger.

306.12.2 OPEN FIELDS

Open fields do not provide the privacy expectation that is unique to the Fourth Amendment's safeguards of a "person's, houses, papers and effects." Officers must be mindful of the requisites of curtilage. The following are the factors the officers need to assess:

(a) The proximity of the area to the home.

(b) Whether the area is included within an enclosure surrounding the home.

(c) The nature of the uses to which the area is put.

(d) Steps taken by the resident to protect the area from observation by people passing by.

306.12.3 ABANDONED PROPERTY

Abandonment occurs when a person discards or denies ownership of property in a public right of way or public spaces. To ensure admissibility of evidence, the following factors should be considered:

(a) When making a trash run officers need to consider curtilage factors that fall within open fields.

(b) Officers need to have an affirmative link to create probable cause between the discarded property and the target of the investigation.

(c) The abandonment must be voluntary and not a result of police misconduct.

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GO
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Austin Police Department
General Orders

Mobile Fingerprinting Device

307.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for the appropriate use of the Mobile Fingerprinting Device (e.g., Blue Check).

307.2 MOBILE FINGERPRINTING DEVICE USE GUIDELINES

Only officers that have been trained in the use of a Mobile Fingerprinting Device may use the device.

(a) The device may be used in an attempt to positively identify a person in the field when an officer has:

1. Lawfully detained a person based on reasonable suspicion that the person may be involved in past, present, or future criminal activity; or
2. Probable cause to arrest the person; or
3. Arrested the person (e.g., custody arrest, field release); or
4. Obtained a person's consent at any time. Consent must be documented as outlined in General Order 306 (Search and Seizure).

(b) The device shall not be used on a juvenile or a person that is suspected to be a juvenile.

307.2.1 IMPLIED CONSENT

Consent to submitting to the taking of a subject's fingerprints is implied when the subject is deceased or unconscious. Under implied consent circumstances, officers must receive supervisor approval prior to taking fingerprints.

307.3 USE OF FORCE

Officers shall not physically force a person to be fingerprinted.

307.4 INVENTORY

The Mobile Fingerprinting Device will be allocated to a specific shift or Unit and assigned to an officer that has been trained in the device.

(a) The device will be part of the trained officer's inventory and the officer is responsible for the device.

(b) If the trained officer leaves the shift or Unit, or promotes, the device shall be reassigned by the supervisor to another trained officer.

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Austin Police Department
General Orders

Misdemeanor Citations

308.1 PURPOSE AND SCOPE

Tex. Code of Crim. Pro. art. 14.06 permits law enforcement agencies to use citation release procedures in lieu of arrest for specified Class A or B misdemeanor offenses, and all Class C misdemeanor offenses with certain exceptions.

This order does not apply to juveniles under the age of 17, publicly intoxicated persons, or traffic citations. Officers shall refer to the following orders regarding these topics:

(a) General Order 317 (Handling Juveniles).

(b) General Order 342 (Traffic Enforcement).

(c) General Order 309 (Handling Publicly Intoxicated Person).

308.2 STATUTORY REQUIREMENTS

A citation, or field release, is when the violator is released in the field without being transported to a jail facility for booking and magistration. The citation must contain notice of the time and place the subject must appear before a magistrate, the name and address of the subject, and the offense charged.

308.3 MISDEMEANOR CITATION USE

Officers shall issue misdemeanor citations as permitted by this order.

(a) On-duty officers who decide to take enforcement action on a subject who commits a citation eligible misdemeanor offense shall, except as otherwise permitted by this Order, issue a citation when all considerations outlined in this order have been met, and no disqualifying circumstances exist.

(b) Officers shall select the least intrusive or severe method when considering issuing a citation in lieu of arrest, which will:

1. Stop existing criminal conduct; a subject's criminal history should not be a determining factor.
2. Remove the imminent threat of violence or criminal conduct.
3. Prevent persons from endangering themselves or others.

(c) Supervisor approval is required to make a custody arrest in lieu of a citation for eligible offenses.

(d) If an arrest is made in lieu of a citation for an eligible offense, the following must be documented in the offense report:

1. Approving supervisor’s name and employee number.
2. Reason for the arrest in lieu of citation

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0164

308.3.1 GENERAL MISDEMEANOR CITATION CONSIDERATIONS
The following shall be considered when making the determination whether to issue a misdemeanor citation in lieu of custodial arrest and booking:

(a) The subject has sufficient identification; and

(b) The officer has reason to believe that release by citation will result in termination of the violation; and

(c) The subject did not resist detention, assault anyone during the offense, or appear to be combative or violent.

(d) For a misdemeanor offense that can be enhanced due to prior convictions, a criminal history check should be performed to determine if a subject is no longer eligible for a citation and would require a custody arrest.

308.3.2 DISQUALIFYING CIRCUMSTANCES
A citation shall not be issued if the following situations are present:

(a) The subject could not provide satisfactory evidence of personal identification. Some form of government photo identification is preferable. If a government photo identification is not available, officers shall use all reasonably available means to confirm the validity of the personal information provided by the person in custody. Officers shall document in their offense report what identification was used to establish the identity of the person in custody. If the person in custody cannot be positively identified and after all reasonable efforts to ascertain an identity have been made, officers will make a custody arrest and book the subject into jail. Officers shall document in their officer report what attempts were taken to establish the identify of the person in custody.

(b) The officer has reason to believe that the safety of persons (including the subject) or property would be imminently endangered by the release of the subject.

(c) The subject demands to be taken before a magistrate or refuses to sign the citation.

(d) The offense is DOC 10 (Exposure) and the exposure appears to have been committed with sexual motivation.

308.3.3 SUPERVISORY ORDERS
Supervisors will not order any subordinate to cite a person suspected of a misdemeanor violation of law witnessed by the supervisor but not witnessed by the subordinate unless:

(a) The supervisor articulates the probable cause upon which the citation is based as soon as practicable; and

(b) The supervisor is listed on the citation.

308.3.4 INSTRUCTIONS TO CITED PERSON
The citing officer shall, at the time he asks the defendant to sign the notice to appear, call attention to the time and place for appearance and take any other steps he deems necessary to ensure that the defendant understands his written promise to appear (Tex. Code of Crim. Pro. art. 14.06).

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308.3.5 INDIVIDUALS WITH ACTIVE WARRANTS
Persons with one or more outstanding arrest warrants shall be handled according to General Order 405 (Fugitive and Search Warrants). Secondary offenses which are eligible for a citation shall be handled according to this order.

308.4 CLASS A AND CLASS B MISDEMEANOR CITATIONS
In addition to the above considerations, officers must verify all of the following requirements in order to issue a Class A or B misdemeanor citation. If all the following requirements are not met, the subject is not eligible for citation and the officer is not required to contact a supervisor to make an arrest. The officer will document in their offense report why the subject was not eligible for a citation.

(a) The offense is eligible for release by citation; and

(b) The violator is not a juvenile; and

(c) The violator committed the offense in:

1. Travis County and the violator resides in Travis County; or
2. Hays County and the violator resides in Hays County.

308.4.1 ELIGIBLE OFFENSES
The following Class A and B misdemeanors are eligible for a release by citation:

(a) Possession of Marijuana less than two (2) ounces - (Class B).

(b) Possession of Marijuana of two (2) ounces but less than four (4) ounces - (Class A).

(c) Criminal mischief where the value of the damage inflicted is $100 or more, but less than $750 - (Class B).

(d) Graffiti where the value of the damage inflicted is $100 or more, but less than $750 - (Class B).

(e) Graffiti where the value of the damage inflicted is $750 or more, but less than $2500 – (Class A).

(f) Theft where the value of the property stolen is $100 or more, but less than $750 - (Class B).

(g) Theft of Service where the value of the property and/or service stolen was $100 or more, but less than $750 - (Class B).

(h) Driving While License Invalid - (Class A or B).

308.4.2 DOCUMENTATION AND FILING PROCEDURES
The following documentation and required procedures shall be used when issuing a Class A or B Misdemeanor citation:

(a) Officers shall complete a(n):

1. Incident report with the appropriate title code(s); and
2. PC affidavit that shall be notarized by a second officer.

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(b) Write the incident number on any photos, documents, or receipts.

(c) Attach a copy of the citation, PC affidavit, and any photos, documents, or receipts together to be turned in to the Class A or B Misdemeanor drop box by the end of the officer's tour of duty.

(d) Follow the guidelines of General Order 618 (Property and Evidence Collection Procedures) when submitting narcotic or other evidence in relation to a Class A or Class B Misdemeanor Citation.

308.5 CLASS C MISDEMEANOR CITATIONS

Incident reports are generated by Central Records from the information on Class C Misdemeanor citations issued by officers. Having accurate and sufficient information (e.g. witness/victim information, property involved, brief narrative) on the front and back of a citation is critical for Central Records to complete these reports.

Class C Misdemeanor citation may only be used when the offense is a Class C Misdemeanor other than a traffic violation. Guidelines for issuing traffic citations are outlined in General Order 342 (Traffic Enforcement). Just as outlined in General Order 342.2 (Traffic Enforcement), Officers shall use the Department’s electronic ticketing system instead of using paper field release citations. If a paper citation is issued, it shall be turned in to the officer’s supervisor and General Order 342.2(d) shall be followed by the officer and the supervisor.

308.6 MISDEMEANOR POSSESSION OF DRUG PARAPHERNALIA

(a) Class C misdemeanor citations may be issued to subjects found in possession of drug residue. The citation shall be titled Possession of Drug Paraphernalia.

(b) An incident report with the appropriate title code(s) shall be completed.

(c) The drug residue (non-usable amount), or object with drug residue, shall be seized and submitted according to General Order 618.4.2 (Submitting Narcotics and Narcotic Paraphernalia).

(d) The misdemeanor citation(s) shall be turned in by the end of the officer's tour of duty.

(e) This citation shall not be used in lieu of a Possession of Marijuana charge.

308.7 THEFTS AND SHOPLIFTING

(a) Class C misdemeanor citations may be issued for theft or shoplifting if the property value is under $100.

(b) An incident report with the appropriate title code(s) shall be completed.

(c) The stolen property (evidence) shall be properly photographed and returned to the business.

(d) A sales receipt from the business shall be obtained clearly showing the value of the stolen property without sales tax.

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(e) The misdemeanor citation(s), photograph and sales receipt(s) shall be turned in by the end of the officer's tour of duty.

(f) A Class C - Attempted Theft citation shall not be used in lieu of a Class B theft.

308.8 DRIVING WHILE LICENSE INVALID (DWLI)

For all DWLI offenses, officers shall issue a Class C citation except under the circumstances listed below. If one or more of the following circumstances are present, officers may make an arrest or issue a citation as otherwise permitted by section 308.3 and 308.4 of this general order.

(a) The subject's license is suspended for an offense involving the operation of a motor vehicle while intoxicated (e.g., Driving While under the Influence (DWI)).

(b) The subject was involved in a collision where a CR3 is required to be completed, an officer finds the subject to be at fault for the collision, and the subject's DWLI offense is a Class A or B misdemeanor.

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Austin Police Department
General Orders

Handling Publicly Intoxicated Persons

309.1 POLICY

When encountering persons who are in violation of Texas Penal Code 49.02, and who meet the criteria outlined in this order, officers shall divert publicly intoxicated individuals to the custody of a responsible adult or the Sobering Center (herein referred to as the "Center") as an alternative to arrest (Tex. Code of Crim. Pro. Art. 14.031).

309.2 DEFINITIONS

Active Aggression - A threat or overt act of an assault (through physical or verbal means) coupled with the present ability to carry out the threat or assault that reasonably indicates that an assault or injury to any person is imminent.

Intoxicated - Not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body.

Public Intoxication - A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger themselves or another person.

Sobering Center - The sobering Center provides a safe environment for publicly intoxicated individuals to sober up and, when appropriate, initiate recovery. The Center is located at 1213 Sabine Street., Austin, Texas.

309.3 AUTHORITY

In lieu of arresting an individual who is not a child as defined by Texas Family Code, Section 51.02 and who commits an offense under Texas Penal Code, Section 49.02, a peace officer may release the individual if:

(a) The officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and

1. The individual:

(a) is released to the care of an adult who agrees to assume responsibility for the individual;

(b) verbally consents to voluntary treatment for substance use in a program at a treatment facility licensed and approved by the Health and Human Services Commission, and the program admits the individual for treatment; or

(c) verbally consents to voluntary admission to a facility that provides a place for individuals to become sober under supervision, and the facility admits the individual for supervision.

2. The Center is able to serve as the responsible adult under the state law referenced in item "a (1)" above.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0169

309.4 PERSONS NOT ELIGIBLE FOR THE CENTER

The following persons are not eligible to be transported to the Center:

(a) Intoxicated individuals less than 18 years of age. State law does not allow the Center to accept anyone less than 18 years of age. These individuals shall be handled in the following manner:

1. Persons seventeen years of age and charged with public intoxication may be released to a parent or legal guardian or arrested and transported to jail.
2. For juveniles (less than 17 years of age) investigated for public intoxication, refer to General Order 317 (Handling Juveniles).

(b) Intoxicated individuals who are unconscious or experiencing any medical condition that requires attention from medical personnel.

(c) Intoxicated individuals displaying signs of active aggression.

(d) Intoxicated individuals who meet the criteria for a Peace Officer's Emergency Detention (POED).

(e) Intoxicated individuals who cannot be positively identified.

(f) Intoxicated individuals with a confirmed warrant.

(g) Intoxicated individuals who are being charged with any additional offense other than those eligible for cite and release.

(h) Intoxicated individuals who are suspected of driving under the influence of alcohol or other drugs.

(i) Intoxicated individuals who are suspected of committing a sexual offense (e.g. Indecent Exposure, DOC Exposure, Lewd Conduct) at the time of their encounter with the officers, but officers are unable to file that charge at that time.

309.5 PROCEDURES

As set forth above, when circumstances meet the criteria outlined in this order, officers shall divert publicly intoxicated individuals to the custody of a responsible adult or the Center as the alternative to arrest.

Officers deciding to make a custody arrest for Public Intoxication of a person who is eligible for the Center shall consult with an on-duty supervisor. The arresting officer shall explain to the responding supervisor why the individual requires custodial arrest. The arresting officer shall document the approving supervisor's name, employee number, and reason for the arrest in the narrative of the offense report. In addition, the arresting officer shall document the reason for the arrest on the arrest report (AB) by choosing one of the applicable arrest reasons from the "Reason" drop down menu.

If an individual is intoxicated on a substance other than alcohol, the individual shall be handled in the same manner as if they were under the influence of alcohol.

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For individuals accepted by the Center, officers shall not issue a Class C citation for the offense of public intoxication.

309.5.1 OTHER CLASS C CHARGES

If an individual arrested for public intoxication is to be charged with another Class A, B, or C misdemeanor offense eligible for a citation in lieu of arrest, the officer shall issue a citation when the person is taken to the Center or is released to the custody of a responsible adult.

309.5.2 MEDICAL CONDITIONS

Officers observing persons whom they believe to be intoxicated are reminded that certain medical conditions can be mistaken for intoxication. Officers should ask the individual about any current medical conditions as well as check for a medical identification bracelet or other similar item that may indicate the person has a medical issue.

Any detainee who exhibits signs of possible acute alcohol intoxication (alcohol poisoning) or other serious medical condition shall be evaluated by Emergency Medical Services. If responding medical personnel determine that the individual requires transportation to a hospital for further treatment, officers may assist, but shall not transport the intoxicated person themselves. If the person is not being charged with a crime and does not pose an immediate threat to medical personnel, there is no need for officers to follow medical personnel to the medical facility.

Identifiable symptoms of acute alcohol intoxication may include:

(a) Unconsciousness or semi consciousness

(b) Repeated episodes of vomiting

(c) Vomiting while sleeping or passed out and not waking after vomiting

(d) Inability to walk or stand

309.5.3 IDENTIFICATION

If an officer believes it is necessary to take an intoxicated individual into custody for his or her own safety or for the public's safety, the officer shall check the person's identification and check for outstanding warrants. Prior to an individual being taken to the Center, officers shall verify the person's identity. Some form of government issued photo identification is preferable. If this or other photo identification is not available, officers shall use all available means to confirm the validity of the personal information provided by the person in custody.

If the subject cannot be positively identified, officers will make a custody arrest.

309.5.4 SEARCH AND TRANSPORT

When transporting publicly intoxicated individuals, officers shall handcuff, search, and transport them in accordance with General Order 321 (Care and Transport of Prisoners).

If an intoxicated individual is found to be in possession of illegal weapons or narcotics that are not eligible for the cite and release program, then a custody arrest will be made.

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309.6 PROCESSING AT THE CENTER

309.6.1 PROPERTY
Center personnel are responsible for the inventory, safekeeping, and return of all property to individuals processed through the Center.

309.6.2 MEDICAL SCREENING
All individuals transported to the Center will be subject to a medical evaluation by personnel at the Center. If medical issues are present that are beyond the scope of the services at the Center, personnel at the Center will assume custody of the intoxicated individual and arrange for medical transportation. Officers are not required to wait while medical transportation is arranged.

309.6.3 DOCUMENTATION
Officers utilizing the Center shall complete the Center's public intoxication intake form available in the officer work area at the Center. Officers shall leave a copy of the form with the Center staff. Officers shall document the arrest and release to the Center with a Street Check by choosing the Street Check Type as "S – Sobriety Center-Public Intox" and the Street Check Reason as "S – Sobriety Center-Public Intox". The individual's personal information shall be entered into the "Entity" portion of the Street Check ensuring race and ethnicity are included. The Entity Role shall be entered as 20 – Arrested-Sobering Center. Multiple entities may be entered on the same Street check if arrested during the same incident. A text narrative detailing the arrest should be entered and any other pertinent information should be documented in the text portion of the Street Check.

An offense report shall not be utilized to document a Public Intoxication arrest that is released to the Sobriety Center if that is the only involvement.

In addition to a street check, an offense report will be completed in the following circumstances:

(a) To document any other offenses for which the individual(s) received a citation in lieu of arrest.

(b) If a Use of Force details page is necessary.

309.7 REMOVING INDIVIDUALS FROM THE CENTER

During the Center's intake procedure the staff may reject the admission of a person for reasons discovered during this process. When this occurs, the officer will transport the person to central booking and document why this occurred in their offense report, including the name of the Center staff who rejected the admission.

Intoxicated individuals who remain within the Center may not be charged with public intoxication because the Center is not considered a public place.

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Austin Police Department
General Orders

Handling Juveniles

317.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidance and direction for processing and handling juvenile offenders within APD's jurisdiction. Juveniles are afforded equal protection under the law; however, there are differences in the manner in which juveniles are handled under Texas law.

Employees are responsible for participating with and supporting the ideals set forth in Title 3 of the Texas Family Code. These provisions are:

(a) To provide for the protection of the public, and public safety.

(b) Consistent with the protection of the public and public safety:

1. To promote the concept of punishment for criminal acts; and
2. To remove, when appropriate, the taint of criminality from children committing certain unlawful acts; and
3. To provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct.

(c) To provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions.

(d) To achieve these purposes in a family environment whenever possible, separating the child from the child's parent only when necessary for the child's welfare or in the interest of public safety and, when the child is removed from the child's family, to give the child the care that should be provided by parents.

(e) To provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

317.1.1 DEFINITIONS

Child/Juvenile: a person who is (Tex. Fam. Code § 51.02(2)):

(a) 10 years of age or older and under 17 years of age, or

(b) 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

- *The ages of children who come within various classifications of offenses may vary in each instance. Note carefully the age limitations in each situation as set forth by law.*

Conduct Indicating a Need For Supervision: Conduct, other than a traffic offense, that is punishable by a fine only or would not be a criminal offense if committed by an adult (e.g., runaway, curfew violation). (Tex. Fam. Code § 51.03 (b))

Custody: A child is considered "in custody" when they would be considered "under arrest" if the child was an adult.

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Delinquent Conduct: Conduct, other than a traffic offense, that if committed by an adult is punishable by imprisonment or confinement in jail. (Tex. Fam. Code § 51.03 (a))

Detention: A detention situation exists when an officer detains a child for a short period for investigative purposes.

Status Offender: Generally, a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult. (Tex. Fam. Code § 51.02(15))

317.1.2 CONFIDENTIALITY

The confidentiality of names of juveniles and their records is mandated by state law. The following guidelines will be strictly followed:

(a) The names of juvenile offenders will not be released to the news media or any other person not involved in the judicial or diversion process.

(b) A juvenile defendant or juvenile suspect shall not be named in any public document, including an affidavit for an arrest warrant involving an adult co-defendant or in an affidavit for a search warrant. However, there may be times when an investigator believes that naming a juvenile in the affidavit is essential. In those cases, an assistant district attorney assigned to juvenile court should be contacted in order that alternatives (other than naming the juvenile) can be explored.

(c) Information on juveniles collected during the course of business may be released/ disseminated under the following circumstances:

1. Information required to be collected for the "juvenile justice information system" will be forwarded to the Department of Public Safety (DPS);
2. Information compiled during investigation of a criminal combination may be released to other criminal justice agencies or any court having jurisdiction over a child;
3. Information concerning missing children may be entered into NCIC; and
4. Information concerning children adjudicated of sexual offenses and required to register with the Department as sex offenders will be forwarded to DPS.

(d) Physical files and records concerning juveniles shall not be open to public inspection, and shall be open to inspection only by a juvenile justice agency or criminal justice agency.

(e) If an investigator believes obtaining a warrant for the arrest of a juvenile offender is necessary the investigator will present the probable cause affidavit and arrest warrant to a magistrate for approval and signature.

1. The municipal court clerk currently issues the warrant a "J" number but will not retain the affidavit or warrant on file.
2. The investigator will provide the original arrest affidavit and warrant to the Warrant Office to be entered. The original warrant and affidavit will be retained by the Warrant Office until the juvenile is taken into custody.

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3. Upon apprehension of the juvenile the original affidavit and warrant will be forwarded to Gardner-Betts. Copies of the affidavit and warrant will be retained in the investigative file.

(f) An affidavit for a search warrant on a juvenile offender should be submitted to a juvenile court judge to obtain the search warrant. Record of the search warrant will be retained by the juvenile court.

(g) All juvenile arrest files and records, when not in use, shall be secured. Under no circumstances will juvenile arrest records be mingled with adult records.

317.2 CUSTODY OF JUVENILES

317.2.1 TAKING A JUVENILE INTO CUSTODY

(a) Section 52.01 of the Texas Family Code states that a child may be taken into custody:

1. Pursuant to an order of the Juvenile Court.
2. Pursuant to the laws of arrest.
3. By a law enforcement officer, if there is probable cause to believe that the child was engaged in:
   (a) Conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state; or
   (b) Delinquent conduct or conduct indicating a need for supervision.
4. By a probation officer if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court.
5. Pursuant to a directive to apprehend.

(b) In place of taking a child into custody, state law allows a peace officer to issue a field release citation for a traffic offense or an offense, other than public intoxication or possession of marijuana, punishable by fine only.

(c) State law does not require that a warrant be issued to take a child into custody for a past offense, as long as there is probable cause to believe that the child committed the offense. In making warrantless arrests, patrol officers will follow the direction of an investigative unit and/or their supervisor.

(d) Officers will apply the same probable cause standard for juveniles as that used for adult offenders.

(e) Officers are encouraged to contact their Sector Detective Unit for advice regarding the probable cause for arrest, the type of charge, disposition of the juvenile, or to provide any other assistance needed.

317.2.2 EMERGENCY MEDICAL TREATMENT

Children taken into custody that are believed to suffer from a serious physical condition or illness and requires prompt treatment should be seen by EMS and/or transported to a medical facility.

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317.2.3 REQUIRED PARENT NOTIFICATION

In contrast to detention situations, the law requires that a child's parent/guardian be promptly notified when the child is in police custody.

(a) If a child is taken to a Juvenile Detention Facility, intake personnel will typically make the parent notification. However, at times, they may need assistance from APD when a parent/guardian cannot be contacted by phone. In that case, intake personnel may request that APD attempt to contact the parents in person by calling Communications.

(b) In the event that a child taken into custody is brought directly to an APD facility to be interviewed, it is the responsibility of the arresting officer to make parent/guardian notification or coordinate that notification with the appropriate investigator.

(c) Officers shall indicate on the juvenile facility booking form and in an incident report information regarding contact with the juvenile's parent/guardian.

317.2.4 SEPARATION REQUIREMENTS

Juveniles shall not be transported in the same vehicle with adults who are suspected of or charged with criminal acts. Juveniles shall be separated at any and all times by sight and sound from adults detained in the same building. Separation requires that adults and juveniles in detention are unable to see each other or to converse (Tex. Fam. Code § 51.12).

317.2.5 RELEASING A JUVENILE FROM CUSTODY

(a) When releasing a juvenile from custody, officers should take reasonable steps to release him to his custodial parent or guardian.

(b) If a custodial parent or guardian is not available and officers need to release the juvenile to someone else, the following guidelines shall be followed:

1. Run a check for any protective order regarding the adult with whom placement of the juvenile is being considered.

2. Complete warrant and criminal history checks to ensure the juvenile is not being placed with a wanted or dangerous felon.

3. Contact Child Protective Services' Law Enforcement Number (the number is available through APD Communications) and request a CAPS (Child/Adult Protective Services) check be done to ensure the juvenile is being placed in a safe environment with no abuse history through CPS. The CPS worker answering the phone will need the following information on the person with whom you want to place the child:

   (a) Name, address, and any other pertinent identifying information.

   (b) The CPS worker will ask you for a phone number to call in order to verify your identity and provide any history on the subject. Officers shall provide the phone number for the Communications supervisor. (This process should take approximately 10 minutes).

4. Fully identify the person with whom the juvenile is being placed and any CPS related information in the incident report.

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317.3 JUVENILE DISPOSITIONS AND REQUIRED DOCUMENTATION

An officer who has detained or arrested a child for conduct indicating a need for supervision, delinquent conduct, or a traffic offense will use the following guidelines for disposition of the child.

The paperwork and procedures for taking custody of a juvenile varies depending on the type of conduct.

317.3.1 CONDUCT INDICATING A NEED FOR SUPERVISION

(a) **Class C Misdemeanors:** are punishable by fine only and fall under the jurisdiction of Municipal Court. Juveniles who commit Class C Misdemeanors shall be issued citations.

(b) **Child in need of supervision**: Officers encountering juveniles who are not violating any criminal law, but who are in potentially hazardous situations, should be familiar with Family Code section 262.110. This law permits a law enforcement officer to take temporary custody of a child without a court order if the officer finds the child in a situation that poses a danger to the child's physical health or safety. The officer may take custody of the child under the law when the sole purpose is to deliver the child without unnecessary delay to the child's parent, guardian, caretaker, or custodian who is entitled to possession of the child.

1. Officers who take temporary custody of a child under this provision will write a report (Child in Need of Supervision) specifically identifying the conditions that placed the child's physical health or safety at risk.

(c) **Runaways:** When an officer establishes that a juvenile is a runaway, every attempt should be made to transport the runaway home for release to a custodial parent or guardian, or have the custodial parent or guardian meet the officer at the scene for release. If the officer is not able to contact a custodial parent or guardian, the officer shall follow the guidelines for "Releasing A Juvenile From Custody" as outlined in this order. If a juvenile cannot be released to an appropriate adult, the following guidelines shall be followed:

1. Transporting

   (a) If the initial runaway report was generated by any agency within Travis County, the juvenile shall be taken to Life Works. Any forms required by the facility shall be completed.

   (b) If the runaway report was generated by an agency outside of Travis County, the juvenile shall be taken to Gardner-Betts. A booking sheet shall be completed.

2. Reporting

   (a) If the original report was generated by APD, a supplement shall be written to the original report.

   (b) If the original report was generated by any agency other than APD, an incident report shall be initiated and titled "Recovered Runaway."

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(d) **Possible Custody Situations**: The following situations are typically considered conduct indicating a need for supervision though sometimes circumstances dictate that transport to a detention facility may be required. If a juvenile is transported to a detention facility for any of the following offenses, the officer is required to complete a booking sheet.

1. **Driving Under Influence (DUI)**: Officers shall adhere to the guidelines outlined in General Order 355 (DWI Enforcement) for how to handle Juvenile DUI/DWI arrests.
2. **Family Violence Assault By Contact/Threat**: If necessary to preserve the peace and eliminate the possibility of further violence, a juvenile may be taken into custody and transported to the appropriate juvenile detention facility if they are involved in a family violence situation and commit a Class C misdemeanor offense such as "assault by contact" or "assault by threat" in the presence or view of a peace officer.

317.3.2 DELINQUENT CONDUCT

(a) Juveniles taken into custody for delinquent conduct (Class B misdemeanors or above) shall be processed and booked as follows:

1. **Travis County**: The juvenile shall be transported to Gardner-Betts where the officer will fingerprint the juvenile and complete all necessary booking paperwork for intake into the facility. Any accompanying paperwork shall be submitted to the Gardner-Betts intake officer. The officer will also complete an APD Arrest Booking (AB) report and General Offense (GO) report via MRE and upload both reports to Versadex.
   (a) If the identification of the juvenile is in question, officers may transport the juvenile to the APD ID Section to attempt positive identification prior to taking the juvenile to Gardner-Betts.
2. **Williamson County**: The juvenile shall be transported to the Williamson County Juvenile Justice Center for processing and booking. Any accompanying paperwork (e.g., booking sheet, receipts, pictures) shall be forwarded to the appropriate Area Command Investigative Unit for disposition.
3. **Hays County**: Upon taking a juvenile into custody in Hays County, officers shall call the 24 hour intake number for the Hays County Juvenile Detention Center at (512)393-5220, ext 11201 for approval prior to transport. If the officer is denied approval for intake, the officer shall notify his immediate supervisor and follow the guidelines for "Releasing A Juvenile From Custody" as outlined in general orders. The juvenile shall be transported to the APD ID Section for processing, followed by booking at the Hays County Juvenile Detention Center. Any accompanying paperwork shall be turned in to the Hays County Juvenile Detention Center intake officer.

(b) In certain instances, processing of a Juvenile is not required. Juveniles may be transported directly to the appropriate Juvenile Detention Facility and booked when:

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1. Any warrant or directive to apprehend issued by TYC or Juvenile Court (e.g., probation violation warrants, escape from TYC warrants).
2. Any warrant or directive to apprehend a child where the child was already processed for the original charge.
3. Any offense that occurred prior to Jan. 1, 1996.

(c) If a juvenile is taken into custody for DWI, the juvenile shall be transported directly to an Intoxilyzer room and requested to perform any tests prior to processing and booking.

(d) If an officer is booking a juvenile for delinquent conduct and also chooses to file a Class C charge, the officer shall issue the juvenile a misdemeanor citation for the Class C violation(s). Class C charges shall NOT be placed on the booking sheet.

(e) A juvenile taken into custody for delinquent conduct shall not be released to a parent/ guardian until the child has been processed and booked at the appropriate Juvenile Detention Facility.

317.3.3 TRAFFIC OFFENSES

Juvenile traffic violators should be handled in the same manner as adult violators.

317.4 INFORMATION NEEDED BY A JUVENILE DETENTION FACILITY

Under the provisions of the Family Code, pending a hearing, a child taken into custody will be released immediately by the Juvenile Court to a parent unless certain designated circumstances exist. Officers should inform intake personnel the following facts, when known:

(a) The child is likely to abscond or be removed from the jurisdiction of the court.

(b) Suitable supervision, care or protection is not being provided to the child by a parent, guardian or other person.

(c) The child has no parent, guardian or other person able to return them to the court when required.

(d) The child may be a danger to themselves or may threaten the safety of the public if released.

(e) The child has previously been found to be a delinquent child or has been previously convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

317.5 JUVENILE INTERVIEWS, INTERROGATIONS AND STATEMENTS

317.5.1 TYPES OF STATEMENTS

(a) The following types of statements made by juvenile suspects are admissible as evidence under the Family Code:

1. **Res Gestae** - spontaneous statements made by children may be used as if they were made by an adult.

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2. **Statements leading to the discovery of evidence** - defined as oral statements of fact or circumstances that are true, which tend to establish the child's guilt, such as finding secreted or stolen property or the instrument with which the child states the offense was committed.

3. **Custodial Statements** - An oral or written statement by a child in custody, detention or confinement is admissible if, before giving the statement, the child has been given the Miranda warning by a magistrate. This warning must be given out of the presence of police officers or prosecutors. An exception would be under circumstances when it is deemed necessary to have an officer present for the magistrate's protection.

   (a) **Oral Statements**: The statement must be recorded by an electronic recording device (video camera or digital video camera) and, before making the statement, the child receives the Miranda warning by a magistrate as described above and the warning is made part of the recording.

   (b) **Written Statements**: The written statement must be reviewed with the juvenile, and signed, in front of the magistrate and out of the presence of police officers or prosecutors unless necessary for the magistrate's protection.

(b) The Family Code does not preclude the admissibility of other types of statements, including those that "do not stem from custodial interrogation." The admissibility of such statements will depend upon the circumstances surrounding the taking of the statement and the facts of the case.

317.5.2 WORKING WITH PARENTS

A child's parent or guardian has personal legal responsibility for the child's welfare and behavior. The Department recognizes this responsibility and police officers will work with parents as closely as possible in interviewing children. Examples of procedures that help parents are:

(a) Explaining a child's illegal or suspicious behavior as soon as possible.

(b) Responding with patience and understanding to questions that are defensive or reflect a parent's fears about police procedures and the court system.

(c) When reasonable, giving parents advance notice that their child will be interviewed or interrogated.

317.5.3 GENERAL GUIDELINES FOR INTERVIEWING JUVENILES

(a) The Department encourages officers to adjust their interviewing style to be sensitive to each person's age and experience, remaining consistent with the Department's commitment to treat all people with respect. The more approaches an officer can use, the more cooperation they can achieve with each child.

(b) **Interviews**: An interview takes place when a juvenile witness or victim of a crime is questioned. It is not necessary to administer rights or to have the parents or guardians

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present. If a child implicates themselves during the interview, the interview shall be stopped and the procedures for interrogation followed.

(c) **Age Considerations:**

1. If the child is too young or mentally incompetent to render a decision, the parents or guardians should be present.

2. Interviewing children under the age of 13 should be done at the Center for Child Protection, especially when the child is the victim of a violent offense.

317.5.4 GENERAL GUIDELINES FOR INTERROGATING JUVENILES

(a) **Interrogations**: An interrogation is the questioning of a juvenile who is suspected of a status or criminal offense.

1. **On-scene Interrogation**: Street interrogations should be avoided until after the juvenile can be processed unless it is absolutely necessary for the preliminary investigation. However, street interviews often present exigent circumstances that demand immediate action from the responding officer. Suspects, weapons and evidence may be lost if information is not immediately obtained. Officer safety, safety of the public, and the need to obtain basic information are considerations that patrol officers must deal with in making decisions regarding the street interrogation of a juvenile. The general rules of interrogation and admissibility of evidence apply to juveniles, with additional requirements existing for custodial interrogations.

2. **Non-Custodial Interrogations:**

(a) Juveniles are not in custody when they are voluntarily brought in by a parent or guardian. Therefore, no magistrates' warning is required prior to taking a confession under these circumstances.

(b) Officers should be aware of any factor that might negate the non-custodial status of the interrogation and affect the admissibility of the statements obtained. For example, giving a child a ride to the station, even if the child accompanied the officer voluntarily and with the consent of their parents, could be interpreted by the courts as an indication that the juvenile was "in custody."

(c) Juveniles who have given voluntary non-custodial confessions will not be immediately taken into custody. They will be released to a parent/ guardian. If probable cause for arrest is developed through the confession or otherwise, a juvenile warrant may be obtained. Failure to follow this procedure could taint the voluntariness of the confession.

3. **Custodial Interrogations**: The Miranda warning administered by a magistrate must precede all custodial confessions. Prior to conducting a custodial interrogation of a juveniles, employees will confer with the juvenile and parents or guardians to explain agency and juvenile justice system procedures. The custodial interrogation of a juvenile may take place in two types of situations; the exact procedures to be followed vary depending on the situation.

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(a) **At a Juvenile Processing Office**: The interrogation of a juvenile may take place at a juvenile processing office if the juvenile is transported there immediately after the juvenile is taken into custody. While at the juvenile processing office the guidelines of Family Code Section 52.025 must be strictly adhered to:

1. The child may not be left unattended.
2. The child is entitled to be accompanied by a parent, guardian, or attorney.
3. The child may not be detained in the juvenile processing office for longer than six (6) hours.
4. Under normal circumstances, no more than 2 detectives should be actively engaged in the interrogation of the child.

(b) **At a Juvenile Detention Facility**: To interview a juvenile who has been booked into Gardner-Betts or the Williamson County Juvenile Justice Center, APD must request the juvenile be returned to APD custody for an interrogation or other follow-up. Gardner-Betts or Williamson County Juvenile Justice Center personnel will rule whether the request will be granted.

1. The investigator will call Gardner-Betts or the Williamson County Juvenile Justice Center in advance to arrange for a custody transfer.
2. Unless the interview occurs at the detention facility, the interview will only take place in a designated Juvenile Processing Office that is in accordance with CCP Sec. 52.025.
3. Upon completion of the interview/statement the juvenile must be returned to the custody of Gardner-Betts or the Williamson County Juvenile Justice Center.

317.6 FINGERPRINTS AND PHOTOGRAPHS

(a) Except as listed in section (d) below, juveniles may be photographed or fingerprinted only under the following circumstances consistent with provisions of the Family Code:

1. With consent of the Juvenile Court (e.g., via a court order).
2. If the child is taken into custody for conduct that is a felony, or a misdemeanor punishable by confinement in jail.
3. If the child is not in custody and the child's parent or guardian voluntarily consents in writing to the photographing or fingerprinting of the child.

(b) The fingerprints of a juvenile suspect in a criminal case where latent prints were obtained may be used for comparison purposes only if the prints were obtained in a manner allowed by the Family Code.

(c) The photograph of a juvenile suspected in connection with a criminal case where it is believed the photograph will help in the identification of the offender (e.g., a photo

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lineup) may be used only if it was obtained in a manner allowed by the Family Code unless it is publicly available (such as in a school yearbook).

(d) **Exceptions**: Restrictions on fingerprinting/photographing juveniles do not apply in the following situations:

1. If the photographs/fingerprints are obtained as part of the registration process for a juvenile required to register as a sex offender under CCP Section 62.
2. If the child is a victim or witness, and photographs are needed for evidentiary or documentary purposes (e.g., photographs of injuries, or videotaped statement of a child victim/witness).
3. If a child has had access to a crime scene but is not a suspect, and their prints are needed for comparison to latents for elimination purposes.

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GO
318

Austin Police Department
General Orders

Detentions, Field Interviews & Field Photographs

318.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for conducting and documenting detentions, interviews, and taking and retaining photographs of subjects in the field.

318.1.1 DEFINITIONS

Consensual Encounter - Occurs when an officer contacts an individual but does not create a detention through words, actions or other means. In other words, a reasonable individual would believe that his contact with the officer is voluntary.

Custody - A person is in "custody" only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest. Custody can be construed as actual or constructive; therefore it is incumbent upon the officer to be conscious of the subject's belief about whether or not he is free to leave.

Detention - The brief stopping of an individual based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions.

Field Observation (FO) Card - The documentation of a subject stop when there is not a corresponding incident report, supplement or citation for the stop.

Field Photographs - Posed photographs taken of a person during a contact, detention or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video system when persons are not posed for the purpose of photographing are not considered field photographs.

Reasonable Suspicion - Occurs when, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

318.2 GENERAL POLICY

(a) Officers will identify themselves when they initiate a duty-related contact with a person, when practicable, unless their identity is obvious.

(b) Officers will explain the reason for the contact and the purpose of anticipated police action, when practicable.

(c) Officers will act with as much restraint and courtesy toward persons interviewed, detained or arrested as is possible under the circumstances.

(d) Nothing in this order is intended to discourage consensual encounters. Frequent and random casual contacts with consenting individuals are encouraged by the Austin Police Department to strengthen our community involvement, community awareness and problem identification.

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318.3 DETENTIONS

Detentions are "seizures" under the Fourth Amendment. Officers may stop and question individuals when reasonable suspicion that the person may be involved in past, present or future criminal activity exists.

(a) In justifying the stop, officers should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:

1. The actions, appearance or demeanor of an individual suggests that he is part of a criminal enterprise or is engaged in a criminal act. Some factors include:
   (a) The subject is carrying a suspicious object.
   (b) The subject's clothing bulges in a manner that suggests he is carrying a weapon.
   (c) The hour of day or night is inappropriate for the subject's presence in the area.
   (d) The subject's presence in the particular area is suspicious.
2. The subject is located in proximity to the time and place of an alleged crime.
3. The officer has knowledge of the subject's prior criminal record or involvement in criminal activity.

(b) Officers may detain persons they lawfully stop for a reasonable length of time in an attempt to:

1. Verify their identity. (Officers should be familiar with Penal Code Section 38.02. Persons are not required to identify themselves unless they are under arrest; however, if they are legally detained and choose to identify themselves, they must do so accurately.)
2. Account for their conduct and/or their presence.
3. Discover whether a crime occurred.
4. Determine person's involvement.

(c) Officers shall release a person from an investigative stop if:

1. The person eliminates the officer's reasonable suspicion of criminal involvement; or
2. The officer fails to develop the probable cause necessary to arrest within a reasonable time.

318.3.1 HANDCUFFING DETAINEES

(a) As a practice, officers should not handcuff lawfully detained individuals. However, situations may arise where it may be reasonable to handcuff a lawfully detained individual.

(b) Some factors reasonably causing an officer to handcuff a detained individual include, but are not limited to:

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1. physical resistance;
2. verbal threats against the officer or others nearby;
3. investigation of a violent crime or a crime involving weapons; or
4. reliable information that the person is armed (without appropriate license), the person is violent, or is a flight risk.

(c) Officers should weigh the safety interests of all involved individuals against unreasonable intrusion upon a detainee when deciding to place handcuffs on a detainee.

(d) Unless arrested, handcuffing detainees at the scene of a search warrant should continue for only as long as is reasonably necessary to ensure the safety of officers and others.

(e) If not documented in a report, officers will document their justification for handcuffing a detainee for a limited investigation, with a Street Check/Field Interview report.

1. Officers will check “detained” in the Reason field dropdown list.
2. Officers will justify handcuffing the detainee in the Remarks field.

318.3.2 DETAINING FOREIGN NATIONALS

Refer to General Order 330 (Interactions with Foreign Nationals).

318.3.3 REQUESTS FOR ASSISTANCE FROM FEDERAL IMMIGRATION OFFICIALS

(a) Upon request, officers may provide reasonable or necessary assistance to ICE (or other federal immigration officials), including with enforcement operations if those operations will be directed and supervised by federal officials. Except in emergencies involving the possibility of imminent death, serious injury, or loss of property, officers must receive approval from supervisors holding the rank of Lieutenant or higher prior to providing any such assistance. The supervisor will determine whether the request is reasonable or necessary based on factors including:

1. the availability of Department resources and personnel that are appropriate for and trained to perform the requested task;
2. whether providing the requested assistance would pose an unreasonable risk to public safety or to Department personnel or property;
3. whether providing the assistance would assist with stopping criminal activity; and
4. whether providing the requested assistance would cause the Department to incur unreasonable overtime costs.
5. The urgency of the request.

(b) Officers (including officers working secondary employment) shall not provide assistance to ICE for operations at a place of worship unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

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(c) Officers working secondary employment for a hospital, religious organization, school district, or open enrollment charter school shall not provide assistance to ICE for operations unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

(d) Officers providing immediate or planned assistance to ICE shall create a GO using title code 3499-1 – Assist Other Agency – ICE. A CAD call will be generated for each report, and every officer on scene will log into that call. Direct entry Versadex reports will not be permitted. The following items shall be documented in the GO:

1. The name of the outside agency and the personnel who requested the assistance;
2. The number of APD officers who assisted and the amount of time expended by each officer;
3. The number of persons arrested, if known;
4. The number of persons charged and the specific charges that were applied, if known;
5. Any Department information or intelligence shared with ICE (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs);
6. Any additional resources used (e.g. canine units, helicopter, SWAT, etc.); and
7. Any information provided by APD that is shared with a federal immigration enforcement agency at the request of a federal immigration agency (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs).

(e) Only the Chief of Police has the authority to enter into any formal, written agreement with ICE for ongoing operations, such as a 287G agreement.

318.3.4 ICE DETAINER REQUESTS

The purpose of this order is to establish guidelines for handling ICE detainers. All officers are expected to comply with, honor, and fulfill formal immigration detainer requests issued by ICE.

(a) An officer who receives information that a detainee or arrestee in his/her custody is the subject of an ICE detainer request, will take the following actions:

1. Notify a supervisor.
2. Notify ICE to determine the validity of the detainer.
3. Comply with the detainer request if its validity is confirmed.
4. Inform the person he/she is being held subject to a detainer (in addition to any applicable criminal charges).
5. Take the person to the Central Booking Facility or other suitable detention facility.

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(b) If the person subject to the detainer provides proof, including a Texas Driver's License or other government issued identification, that he/she is a United States citizen or has lawful immigration status, the officer will do the following:

1. Notify a supervisor.
2. Notify ICE and provide an update.
3. Cease from complying with the detainer request.
4. Unless impracticable to do so, officers will make and retain a copy of the proof that was offered by the subject. The retained copy may be scanned into the Versadex report or submitted as evidence.
5. If the officer is unsure whether the proof provided is adequate proof of U.S. citizenship or lawful immigration status, the officer should continue honoring the detainer request until definitive proof is provided.

318.3.5 MAINTENANCE AND SHARING OF IMMIGRATION RECORDS

From time to time, the Department may have records with information, or need information, concerning a detainee's or arrestee's immigration status, including information concerning that person's place of birth (Immigration Status Information). Employees are permitted to:

(a) Send, request, or receive Immigration Status Information to or from federal agencies involved in immigration enforcement;

(b) Maintain Immigration Status Information pursuant to applicable records retention schedules; and

(c) Exchange Immigration Status Information with other law enforcement agencies, or with federal or state governmental entities.

318.3.6 DETAINING FEDERAL AND STATE LEGISLATORS

General Order 319 (Arrests) outlines procedures for arresting Federal and State Legislators.

318.4 CONSENSUAL ENCOUNTERS

Officers are encouraged to initiate interviews with people of the community in order to gain a thorough knowledge and become an integral part of the community.

(a) Except as specifically prohibited by general orders, officers may talk to a person at any time, for any reason, in performance of their duties.

(b) An interview should be conversational and not confrontational.

(c) A consensual encounter is not a stop or arrest and there is no intent to inhibit any rights or freedoms of a person. The person has the right to:

1. Fail to respond to the officer.
2. Refuse to identify himself.
3. Walk away from the officer.

(d) Negative inferences will not be made based on a person's refusal to cooperate in the interview.

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(e) Still photographs of persons interviewed during a consensual encounter shall not be taken without the person's permission. Verbal consent shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used. The officer shall document the consent in the appropriate incident report, supplement, or FO card. Officers should refer to General Order 303 (Body Worn Camera Systems) for further guidelines.

(f) Officers will not inquire into a person's immigration status during a consensual encounter.

318.5 FIELD INTERVIEWS, STATEMENTS AND CONFESSIONS

The basis of a statement or confession is to corroborate the elements of an incident. Written and oral statements or confessions should not be utilized as the sole basis for filing charges; any statement or confession should be corroborated by other legally obtained evidence or verified in an appropriate manner. Officers should keep in mind the following things when interviewing/ interrogating a subject:

(a) During a non-custodial interview, an officer will usually allow a subject to leave after taking the statement or confession. A warrant can be obtained at a later time to take the subject into custody.

(b) There may be occasions when information is disclosed that changes the focus of the investigation toward the subject, where the facts and circumstances of the case dictate that he is no longer free to leave changing the non-custodial interview to a custodial interrogation.

(c) When an officer begins accusatory questioning of a subject who is not free to leave, the subject would generally be considered under "arrest" and the interview/interrogation would be "custodial."

(d) Once a subject requests to speak with an attorney or indicates a desire for legal representation, the interview/interrogation will cease.

318.5.1 MIRANDA WARNING

(a) Officers will administer the Miranda Warning to a subject during a custodial interview/ interrogation when questioning begins to focus on the person stopped, becoming accusatory regarding a specific offense.

(b) The Miranda Warning will be recorded by audio/video recording (e.g., in-car Mobile Audio Video Recording system, Body-Worn Cameras) using the following process:

1. Read the Miranda card to the subject in its entirety; and
2. Ensure the subject acknowledges, understands, and voluntarily waives his rights by:
    (a) Write the officer's name and the date, time, and incident number on the face of the card; and
    (b) If practical, request the subject to initial next to each Miranda right and sign the card. If the subject has verbally acknowledged understanding and

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waiving his rights but does not sign the card, the interview/interrogation may still continue.

3. Officer safety should not be compromised during a field interview/interrogation in order to record acknowledgment of rights.

318.6 FIELD PHOTOGRAPHS

(a) Field photos should only be used for:

1. Identification of a subject or a subject's automobile.
2. Identification of a subject's condition (e.g., injuries, tattoos, evidence stains on clothing, jewelry, distinctive clothing/shoe patterns).
3. Documenting evidence.

(b) Access to field photographs shall be strictly limited to law enforcement purposes.

(c) Force shall not be used to obtain photos in a detention situation.

318.6.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Still photographs may be taken when the subject of the photograph knowingly and voluntarily gives consent. Verbal consent shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used. The officer shall document the consent in the appropriate incident report, supplement or FO card. Officers should refer to General Order 303 (Body Worn Camera Systems) for further guidelines.

318.6.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Field photographs may be taken without consent only if taken during a detention that is based on reasonable suspicion of criminal activity and the photograph serves a legitimate law enforcement purpose related to the detention.

(a) The officer must be able to articulate facts that reasonably indicate that the subject was involved in, or was about to become involved in, criminal conduct.

(b) Mere knowledge or suspicion of gang membership or affiliation is not a sufficient justification for taking a photograph without consent.

(c) If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

318.6.3 JUVENILE PHOTOGRAPHS

Refer to General Order 317 (Handling Juveniles).

318.6.4 PROHIBITED RECORD KEEPING

All field photographs must be processed according to General Order 618.5 (Digital Evidence Collection and Storage).

(a) Officers shall not:

1. Keep a personal or shift-level copy of any photograph taken during a field stop for non-law enforcement purposes.

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2. Post a field photograph of any person not currently wanted by a law enforcement agency.

318.6.5 SUPERVISOR RESPONSIBILITY
While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices for compliance with Department General Orders. This is not to imply that supervisor approval is required before each photograph.

318.7 FIELD EYEWITNESS IDENTIFICATION

Proper procedures for handling field identifications are outlined in the Field Identifications section of General Order 403, Follow-up Investigations.

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GO
319

Austin Police Department
General Orders

Arrests

319.1 PURPOSE AND SCOPE

This order outlines the guidelines for warrant and warrantless arrests. The following order cannot address every situation that an officer might encounter; however, in exercising arrest authority, officers should be guided by what is contained in this document. Nothing in this order should be interpreted as authorizing or restricting an officer's arrest authority as defined by the Code of Criminal Procedure.

319.1.1 ARRESTS REQUIRING SUPERVISOR APPROVAL

Officers shall obtain supervisor approval on the following types of arrests prior to booking the subject into jail:

(a) Any arrest where an officer is the victim (e.g., assault on a police officer, resisting arrest or search).

(b) Evading arrest.

(c) Arrests for citation-eligible traffic offenses.

(d) Refusal to sign a citation.

(e) Failure to identify.

(f) Any full custody arrest for an offense meeting the criteria for a Class A or Class B Misdemeanor Citation as outlined in General Order 308 (Misdemeanor Citations).

(g) Any Class C warrant arrest inside a private residence.

(h) Any arrest where a foreign official is claiming immunity as outlined in General Order 330 (Foreign Officials Claiming Immunity).

319.1.2 SUPERVISORY ORDERS

Supervisors will not order any subordinate to arrest a person suspected of a misdemeanor violation of law witnessed by the supervisor but not witnessed by the subordinate unless:

(a) The supervisor articulates the probable cause upon which the arrest is based as soon as practicable; and

(b) The supervisor completes a supplement to the incident report.

319.2 WARRANT ARREST GUIDELINES

(a) Officers will arrest any person found to have an outstanding warrant, provided the arrest can be made in compliance with Department General Orders.

(b) Officers legally inside a residence that finds any resident found to have an outstanding:

1. Felony, Class A or Class B warrant will arrest the person.
2. Class C warrant will not arrest the person unless authorized by a supervisor.

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319.2.1 WARRANT SERVICE GUIDELINES

Officers attempting to conduct a warrant service shall adhere to the following guidelines:

(a) Before any warrant service is attempted at a private residence or place of employment (as listed in the PICKUP supplement) officers shall:

1. Review the incident report in its entirety to determine if and when a previous warrant service has been attempted.

(a) Officers shall not normally return to a location to serve a warrant where an attempt has been previously made unless additional information has been developed suggesting the offender has returned.

2. Verify the warrant status by contacting the Central Records/Warrant Unit or Teletype, either directly or through Communications.

3. Supervisors shall be notified and a "Threat Assessment Form" (APD Form 11) shall be completed prior to any warrant service where a forced entry is planned or anticipated.

(b) Officers receiving information that a person with an arrest warrant is inside a third party private residence may NOT enter and search for the violator. Courts have held that this includes, but is not limited to a home, apartment, or hotel/motel room. The exception to this rule is when:

1. The officer is in possession of a valid search warrant for that specific residence/ location. (There is no requirement for a search warrant of PUBLIC areas of a commercial establishment); or

2. The officer has received consent from the person/s in care, custody and control of the location. Consent procedures are outlined in General Order 306 (Search and Seizure); or

3. The officer can clearly articulate exigent circumstances that delaying entry would expose a person to serious injury or death or allow the violator to escape.

(c) Warrant service attempts that did not result in the arrest of a subject shall be documented immediately by DIRECT ENTRY of a supplement to the original incident report in Versadex. The following information is required in the supplement:

1. Date/time of each attempt; and

2. Address(s) and/or location(s) of attempt(s); and

3. Identity of person(s) contacted; and

4. Information relating to the search of a location (e.g., was permission granted or refused, vacant); and

5. Useful information relating to a subject (e.g., new location, vehicles, employment, acquaintances); and

6. Identification of all officers involved in warrant service.

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(d) Warrant service resulting in an arrest of the wanted subject shall be documented immediately by DIRECT ENTRY of a supplement to the original incident report into Versadex. The following information is required:

1. "CANCEL CANCEL CANCEL" in the subject line and at the top of the supplement; and
2. Date/time of service; and
3. Address(s) and/or location(s) of service; and
4. Information relating to search of location (e.g., was permission granted or refused, vacant); and
5. Identification of all officers involved in warrant service.

319.2.2 WARRANT HIT AND CONFIRMATION

During the course of a lawful detention or arrest, an officer may run a subject for warrants.

(a) When a "hit" is received on a local, TCIC or NCIC warrant inquiry, confirmation from APD or the originating agency must be obtained prior to taking official action. Confirmation shall be the authorization for placing the person in jail for the warrant.

1. The person may be detained until confirmation is made by APD or the originating agency.
2. Should circumstances make a custody arrest impractical, a person detained solely for a Class C warrant may be released with the approval of a supervisor.
3. If a warrant confirmation is not received within 10 minutes, the arresting officer may either release the subject or continue to await a response.

(b) If a subject is arrested for an APD warrant, officers shall:

1. Obtain the original APD warrant from the Central Records/Warrant Unit during normal business hours; or
2. Have Communications/Teletype fax or email the warrant to the jail after confirmation.
3. Warrants from other agencies should be faxed or emailed to the jail by the originating agency after confirmation.

319.2.3 WARRANT ARRESTS AT PRIVATE RESIDENCES

(a) Officers legally inside a residence shall arrest any resident found to have an outstanding Felony, Class A or Class B misdemeanor warrant.

(b) Officers shall not normally arrest a resident for a Class C warrant unless authorized by a supervisor.

319.3 WARRANTLESS ARREST GUIDELINES

These guidelines are based upon the idea that the use of an arrest, followed by prosecution, is not the primary or exclusive method available to officers and the Department.

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(a) Minor infractions of the law may not be sufficient to justify an arrest. Officers should be concerned with what the law says and what the law was designed to accomplish. Laws generally serve as the tools officers use to protect residents' rights and to maintain peace in the community. If enforcement of the law does not serve these purposes, arrests can rarely be justified.

(b) One of our concerns is the maintenance of public order, looking toward a preventive rather than a punitive approach to crime.

(c) Officers are not required to exhaust all alternatives, or go through the alternatives in succession before making an arrest, but may resort to that method that will most quickly and safely bring the situation under control.

(d) Officers may consider any factors that are reasonably believed to be relevant, based upon observations and in light of personal knowledge, training and experience.

(e) Officers are expected to be able to state and describe the reason(s) for a particular course of action upon the request of a reviewing supervisor or the Arrest Review Unit.

(f) Arrests will not generally be made outside the jurisdiction of this department except in cases of hot and/or fresh pursuit, while following up on crimes committed within the City, or while assisting another agency. On-duty officers who discover criminal activity outside the jurisdiction of the City should, when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

319.3.1 IN-CUSTODY ARREST SITUATIONS

(a) **Felony, Class A and Class B Misdemeanors**

1. Violators who commit a Class A or Class B offense and meet all the requirements for a Misdemeanor Citation as outlined in General Order 308 (Misdemeanor Citations) shall be issued a citation in lieu of arrest unless otherwise authorized by a supervisor.
2. Custody arrests shall be made for all other offenses greater than a Class C where there is a lawful arrest authority.

(b) **Class C Misdemeanors**

1. Class C misdemeanors should *generally* be enforced by a field release citation. Officers shall select the least intrusive or severe course of enforcement action but should initiate a custody arrest if the issuance of a citation will not:
   (a) Stop existing criminal conduct; or
   (b) Remove the imminent threat of violence or criminal conduct; or
   (c) Prevent persons from endangering themselves or others.
2. A custody arrest for minor offenses should be made when there is reason to believe the actor is, or has been, involved in a more serious offense and the arrest will serve to gather evidence of that additional offense.

319.3.2 WARRANTLESS ARRESTS AT A PRIVATE RESIDENCE

(a) **Misdemeanors**

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1. Officers shall not forcibly enter a private home to arrest a person for a misdemeanor violation. This includes officers in hot pursuit of a subject, and cases in which the subject has escaped from custody and fled into a private home.
2. Custody arrests shall not normally be made for a misdemeanor offense inside a home unless authorized by a supervisor. However, the following misdemeanor custody arrests inside a home shall be made and do not require a supervisor's approval:
   (a) The offense is committed in the officer's presence.
   (b) Family Violence incidents. Officers shall comply with current Department general orders regarding Family Violence.
   (c) The offense is a violation of a valid protective order.
3. Except as noted above, when a violation occurs in a private home or the person flees into a private home, it is preferable for the officer or a citizen to file a complaint and have warrants issued for the person's arrest.
4. Persons should not be arrested and charged with being intoxicated if they are on their own property. Subjects may be arrested if they are creating a disturbance on their own property and can be viewed by other persons, and the disturbance cannot be ended in any other manner. However, if they are not creating a disturbance and no other violation exists, no arrest shall be made.

(b) **Felonies**

1. Officers who are legally inside a private residence and observe a felony being committed, or develop probable cause to believe a felony has been committed and there is no time to get a warrant, may make an arrest.
2. Before officers forcibly enter a private home to arrest for a felony, they should, whenever possible, obtain the approval of a supervisor and act only when the supervisor is present.
3. When officers develop probable cause to believe a felony is being committed inside a private home and a bona fide emergency exists (exigent circumstances), they may enter to arrest the violator.
4. Officers in hot pursuit of a felony violator who flees into a private home may enter to effect the arrest.
5. Officers receiving information that a felony violator is inside a private residence (courts have held that this includes but is not limited to a home, apartment, or hotel/motel room) may only enter and search for the violator when:
   (a) They are in possession of a valid search warrant for the location; or
   (b) They have received consent from the person(s) in care, custody and control of the location. Consent can be written or recorded electronically with audio and/or video; or

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(c) They can clearly articulate that delaying entry would expose a person(s) to serious injury or death, or allow the violator to escape; or

(d) They have personally observed the felony violator enter the residence at that time.

319.3.3 ADDITIONAL FELONY ARREST PROCEDURES

(a) Most felony arrests require direct notification to the appropriate Investigative Unit.

(b) Officers can make the notification by phoning the Investigative Unit during normal business hours, the on-call detective after business hours, or the Unit's voice mail line designated for such notification or the city email designated for that investigative unit (e.g. apdburglaryunit@austintexas.gov). Investigative Units will have a detective available on-duty or on-call 24 hours a day if guidance is needed or they have specific questions that need to be answered at that time (i.e. validity of arrest).

1. The arresting officer is responsible for consulting with their supervisor prior to notifying any *on-call* detective after business hours.

2. Supervisors are responsible for ensuring the appropriate Investigative Unit is contacted when necessary.

(c) The Investigative Unit will:

1. Help ensure the validity of the arrest; and

2. Provide assistance with the appropriate wording of probable cause affidavit(s); and

3. Respond to the crime scene, if necessary, to provide additional expertise.

(d) For charges that will be direct filed, consultation with an on-call detective does not replace the required review of arrest paperwork by Arrest Review.

319.4 SPECIAL CIRCUMSTANCES SURROUNDING ARRESTED PERSONS

319.4.1 IMPOUNDING VEHICLES

(a) If the owner/operator of a vehicle has been arrested, the vehicle shall be impounded and preserved for evidence processing if it:

1. Is the instrument, fruit, or evidence of a crime; or

2. Contains an instrument, fruit or evidence of a crime.

(b) If the owner/operator of a vehicle has been arrested but the vehicle is not needed for evidentiary purposes, the arresting officer may impound the vehicle.

1. At the officers discretion, the vehicle may be released to a responsible person present at the scene if the owner/operator requests it.

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(a) The person taking custody of the vehicle must be in possession of a valid driver's license and be capable of providing care, custody and control of the vehicle.

(b) The identity of the person (name, DOB, driver's license, address) who takes custody of the vehicle shall be noted in the officer's incident report.

(c) When a subject's vehicle has been impounded due to an arrest and it is determined that the subject will be released rather than booked into jail, a supervisor may authorize the waiving of any applicable impound fee.

1. The supervisor will contact the authorized impound company and advise to release the vehicle without charge.

2. The fact that the fee was waived, and the name and employee of the supervisor authorizing the waiver, shall be documented in the officer's incident report.

319.4.2 CHILDREN IN CUSTODY OF ARRESTED PERSONS

When arrested persons have a child less than 17 years of age in their care, custody and control at the time they are arrested, it is the responsibility of the arresting officer or a designated officer on-scene to ensure the safe placement of the child.

(a) Whenever possible, officers should take reasonable steps to accomplish the arrest of a parent or guardian out of the presence of a child.

(b) Officers shall first attempt to locate a competent adult, at the request of the arrested party, to come and take custody of any children. Should a competent adult be located, the officer shall:

1. Run a check for any protective order regarding the adult with whom placement of the child/children is being considered.

2. Complete warrant and criminal history checks to ensure the child/children is not being placed with a wanted or dangerous felon.

3. Contact Child Protective Services' Law Enforcement Number (the number is available through APD Communications) and request a CAPS (Child/Adult Protective Services) check be done to ensure the child/children is being placed in a safe environment with no abuse history through CPS. The CPS worker answering the phone will need the following information on the person with whom you want to place the child:

(a) Name, address, and any other pertinent identifying information.

(b) The CPS worker will ask you for a phone number to call in order to verify your identity and provide any history on the subject. Officers shall provide the phone number for the Communications supervisor. (This process should take approximately 10 minutes).

4. Fully identify the person with whom the child/children is being placed and any CPS related information in the incident report.

(c) If a competent adult is not located after a reasonable amount of time, the arresting officer shall contact Victim Services to take custody of any children and assist with their

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placement with Child Protective Services. Victim Services shall assume responsibility for assistance in placing children as per agreements with Child Protective Services.

(d) Law enforcement officers in the State of Texas under the Family Code, Chapter B, are given the same powers as Child Protective Services in the following situations:

1. Section 262.104: Taking possession of a child in an emergency without a court order.
2. Section 262.110: Taking possession of child in an emergency with intent to return home.

319.4.3 ANIMALS IN CUSTODY OF ARRESTED PERSONS
When prisoners have an animal with them at the time of their arrest and no responsible person is available to take custody of the animal, it shall be taken to the City Animal Shelter for safekeeping until the prisoner's release. Officers shall note in the incident report who took custody of the animal.

319.5 SPECIAL ARREST SITUATIONS

319.5.1 FOREIGN NATIONALS
Refer to General Order 330 (Interactions with Foreign Nationals).

319.5.2 FEDERAL AND STATE LEGISLATORS
Numerous federal and state legislators have offices within the City of Austin. During official legislative sessions, including travel to and from sessions, senators and representatives are immune from citations and arrest except for felonies and breaches of the peace.

(a) Officers shall notify their supervisor when enforcement action (e.g., arrest, citation) is taken against a senator or representative.

(b) Supervisors shall ensure the Watch Lieutenant is notified.

319.5.3 TEXAS MILITARY PERSONNEL
A member of the Texas military forces enroute to or from active state military duty may not be arrested except for treason, a felony or an offense involving a breach of the peace (Tex. Gov't. Code § 437.223). For all other offenses, these persons may be issued a citation that does not conflict with the member's duty hours as specified within this order.

319.6 CITIZEN'S ARREST
The purpose of this section is to provide guidance for handling arrests made by citizens pursuant to state law.

319.6.1 CITIZEN ARREST AUTHORITY
A citizen may arrest another under the following circumstances:

(a) When the offense is committed in the citizen's presence or view and the offense is one classified as a felony or a breach of the peace (Tex. Code of Crim. Pro. art. 14.01).

(b) When there are reasonable grounds to believe property is stolen, a citizen may seize the stolen property and the person suspected of committing the theft and bring the

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person and the property before a magistrate or to a peace officer for that purpose (Tex. Code of Crim. Pro. art. 18.16).

319.6.2 OFFICER RESPONSIBILITIES

Officers approached by a citizen making an arrest must determine whether there is probable cause to believe that such an arrest would be lawful. Officers should not detain or restrain a subject beyond that which reasonably appears necessary to safely investigate the matter and determine the lawfulness of the arrest.

(a) When officers determine there is probable cause to believe the arrest is lawful, they may exercise one of the following options as outlined by Department General Orders:

1. Take the individual into physical custody for booking; or
2. Release the individual pursuant to a field release citation.

(b) When officers determine there is insufficient arrest authority or that there does not appear to be probable cause for a lawful arrest, they will promptly release the arrested individual.

1. Officers should advise the parties that no arrest will be made at that time and that the circumstances will be documented in an incident report. Officers will document the basis of the release in the incident report.
2. If the citizen is the victim of a crime that does not have a warrantless arrest authority and the person wants to file charges, officers should give the citizen the incident number and the phone number for the Investigative Unit that will perform any follow-up review.

319.7 ASSISTING OTHER AGENCIES

319.7.1 ASSISTING WITH OTHER AGENCIES WARRANT SERVICE

(a) Officers encountering or dispatched to assist out of city law enforcement agency personnel or bail/bond apprehension agents with a warrant service shall contact a supervisor and consult with them prior to ANY warrant service attempts.

(b) If granted permission to assist in the warrant service, officers shall follow all warrant service guidelines outlined in this order including:

1. Contacting the Fugitive Apprehension Unit during business hours and/or Communications to verify warrant status. Confirmation from the originating agency that the warrant is valid must be obtained prior to taking official action.
2. Checking involvement on the address for prior warrant service attempts. Officers shall not return to a location to serve a warrant where an attempt has been previously made, unless additional information has been developed suggesting the offender has/will return.

(c) If an arrest of the wanted subject is made:

1. Officers shall transport the subject to jail for booking and/or magistration in accordance with CCP 15.16 and 15.17.

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2. Warrant confirmation and any other warrant paperwork should be submitted with the booking sheet.

3. Officers will not turn an arrested subject over to a bail/bond apprehension agent under any circumstances.

(d) All warrant service attempts and arrests for out of city agency personnel or bail/bond apprehension agents shall be documented as outlined in the warrant service section of this order.

319.7.2 ARRESTS BY OTHER AGENCIES

When an arrest is made by another law enforcement agency within the confines of its geographical jurisdiction and the Department is asked for assistance, necessary assistance will be provided in compliance with Department General Orders governing relations with other law enforcement agencies. All follow-up investigations, booking, and filing of complaints shall remain the responsibility of the arresting agency.

(a) Under CCP Article 14.03(d) and (g), peace officers have statewide arrest authority in many situations, even when outside the peace officer's jurisdiction. APD may be called upon to take custody of a subject for any arrest made in the City of Austin by a peace officer whose jurisdiction does not include the City of Austin:

1. APD officers shall handle the case complying with CCP 14.03(d) or (g).

2. The outside agency arresting officer is required to complete the necessary supplemental reports.

3. Any arrest made by an off-duty officer from another jurisdiction that does not meet the requirements of CCP 14.03 (d) or (g) shall be handled as a citizen's arrest.

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Austin Police Department
General Orders

Care and Transport of Prisoners

321.1 PURPOSE AND SCOPE

Department values mandate that persons taken into custody will not be abused, and the individual rights of prisoners must be protected at all times. Until arrested persons are accepted at the booking facility, their care and custody shall be the responsibility of the arresting/transporting officers.

321.2 HANDLING PRISONERS

321.2.1 RESTRAINT GUIDELINES

(a) Suspects being arrested and transported in police vehicles shall be handcuffed or otherwise restrained as described below:

1. Prisoners will generally be restrained with hands behind the back. If handcuffs are used, they shall be double locked.
2. In case of advanced age, injury, physical disability, or other circumstances where arrested persons are incapable of placing their hands behind their back, but circumstances warrant restraint, the officer may:
   (a) Use flex cuffs.
   (b) Apply handcuffs with the hands to the front.
   (c) Choose not to use a restraining device. If the prisoner is not restrained, two officers should be used to transport the prisoner as safely as possible.
3. Unless it would pose a safety risk to officers, the arrested person, or the public, officers should apply handcuffs to the front for arrested persons who are deaf or hard of hearing and who request to use their hands to communicate. Such communication may occur through sign language or written communication.
4. The use of an authorized waist chain, waist belt, or travel belt is authorized:
   (a) At a prisoner processing center, which includes transport from the center to the booking facility;
   (b) By officers in a specialized unit, if the use is authorized by Standard Operating Procedures;
   (c) When the use is specifically authorized as part of an operations plan, or
   (d) When authorized by a supervisor in cases where an officer feels an arrested subject may:
      1. attempt to escape,
      2. resist transport to any location,
      3. or the transport involves an unusual length of time or distance.

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4. The supervisor's name shall be noted in the offense report or supplement. For this section, Corporals may grant approval.

5. Officers shall adhere to General Order 204 (Leg Restraint Device) for guidelines on using an authorized waist chain, waist belt, or travel belt.

6. Officers may purchase, at their own cost, a waist chain, waist belt, or travel belt that has been approved by the Equipment Committee.

7. Restraints should be drawn to a secure fit but not so tight as to cause a restriction in blood flow.

(b) Officers shall not:

1. Use restraints to punish, display authority, or as a show of force.

2. Secure a person to any part of a vehicle.

321.2.2 SEARCHING PRISONERS
Officers shall adhere to General Order 306 (Search and Seizure) when conducting searches.

321.2.3 WARNING ABOUT POSITIONAL ASPHYXIA
Positional asphyxia occurs when the physical position of the body interferes with normal respiration. Such a position can be induced by the use of one or more restraints. Officers in control of a restrained person must be alert to the physical position of the person in order to minimize the possibility of positional asphyxia.

321.3 TRANSPORTING ARRESTED PERSONS
The law imposes a duty of care on the transporting officer to protect prisoners from injury.

321.3.1 GENERAL GUIDELINES

(a) Any vehicle used to transport prisoners shall be searched for weapons and contraband at the beginning of a tour of duty, before and after each prisoner transport, and at the end of a tour of duty.

(b) All prisoners shall be seatbelted and placed in an upright position while in a police vehicle.

(c) The prisoner must be under observation at all times to reduce opportunities for escape, disposal or destruction of contraband, and/or attack on the transporting officer.

(d) Safety Barrier:

1. When a vehicle is equipped with a safety barrier, the prisoner shall always be transported within the confines of the safety barrier. Officers shall position prisoners in the passenger side rear seat so they can be observed through the rear view mirror.

2. If the vehicle is not equipped with a safety barrier, a single prisoner shall be placed in the front seat where the transporting officer can maintain observation and control of the prisoner.

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(e) Once secured in the vehicle, prisoners should not be allowed to talk with anyone other than police or medical personnel.

(f) While transporting a prisoner in a vehicle equipped with an MAV device, officers shall have the rear seat camera activated, or the front camera activated and faced toward the prisoner.

(g) Prisoners will be transported without unnecessary delay. Officers shall use the MDC to change their status when transporting prisoners to a jail/detention facility or police station, and again upon arrival.

(h) While transporting prisoners, officers shall not respond to any calls for service or initiate any enforcement action unless it is a situation where risk of serious bodily injury or death to a third party is imminent and the risk to the prisoner is minimal. Officers shall notify the dispatcher of any incident that may require a police response.

321.3.2 SPECIAL SITUATIONS

(a) **Officer/Prisoner of Opposite Gender, or Juveniles**

1. When transporting prisoners of the opposite gender, prisoners known to the officer to be transgender or whose gender is undetermined, or juveniles, the transporting officer shall notify the dispatcher of the:

   (a) Intended destination and beginning odometer reading to the nearest tenth of a mile; and

   (b) Ending location and odometer reading to the nearest tenth of a mile upon arrival at the intended destination.

(b) **Violent or Mentally Disturbed Persons**

(a) To reduce the risk of injury to transporting officers and other prisoners, only one violent or mentally disturbed prisoner will be transported per vehicle at a time. No other prisoner will ride in the same vehicle with a violent or disturbed person.

(c) **Ill, Injured or Disabled Prisoners**

1. Transporting of the ill, the injured, or prisoners with a disability should be done with the officer's safety and the physical comfort of the prisoner in mind. Circumstances may require that the arresting officer transport the prisoner by EMS, prisoner transport van, or by a specially designed vehicle that can be requested through City or commercial entities. At least one officer will ride with the prisoner in the EMS unit or other designated transport unit. A second officer will follow the prisoner transport vehicle in a police vehicle.

   (a) Under extraordinary circumstance and with supervisory approval the officer may follow in a police vehicle in lieu of an officer riding in the ambulance. The supervisor will document the justification in a supplement to the report.

2. Each circumstance should be considered on an individual basis; prisoners shall not be allowed to retain any instrument that could be used as a weapon against the transporting officer.

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3. Ill or injured prisoners in custody of an officer should be restrained, if possible, to prevent escape or to prevent injury to officers or medical personnel.
    (a) The officer will consider the prisoner's special circumstances before applying any restraining device.
    (b) The prisoner should not be restrained in such a way that proper medical attention is prevented.
4. If medical personnel request removal of restraining devices to treat an injured prisoner, the restraints will be removed.
    (a) The custodial officer shall always remain with the prisoner unless directed to depart from a treatment area by medical personnel for treatment purposes.
    (b) The officer shall remain nearby to prevent violent acts or escape.
    (c) This applies to transporting a prisoner who has been refused intake by the jail nurse. Only use EMS to transport from the jail to the hospital or other type of facility when it is medically necessary (e.g. high blood pressure, chest pains, etc.). Do not utilize EMS if the refusal to the jail is for reasons that do not require EMS.

(d) Spit Hoods
1. Spit hoods are safety hoods used to prevent contaminants from being transmitted by a prisoner or detainee.
2. Spit hoods should be used when dealing with prisoners or detainees that have attempted or threatened to bite or spit.
3. Officers shall ensure that the spit hood is properly fitted and secured.
4. Medical personnel may remove the spit hood as needed.

321.3.3 ESCAPE

(a) In the event an escape occurs while transporting a prisoner, the officer shall immediately notify the dispatcher and request assistance. The officer should provide, at a minimum, the following information:
1. Complete physical description;
2. Direction and method of travel;
3. If any weapons and/or accomplices were used to effect the escape; and
4. The nature of the offense which resulted in the original arrest.

(b) A supervisor shall be notified.

(c) A complete search of the area will be conducted. This search may include the following measures:
1. Establishing a perimeter.
2. Requesting canine.

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3. Requesting air support.
4. Notifying surrounding agencies, if appropriate.

(d) The officer shall complete all necessary incident reports to ensure the preparation of an arrest warrant if the prisoner is not located.

321.4 PRISONERS REQUIRING MEDICAL ATTENTION

The intent of the Department is to quickly provide each ill or injured prisoner with medical attention. Prisoners shall be treated for injuries before being booked into jail. This includes subjects who have been subjected to Response to Resistance techniques. (Refer to Chapter 2 on Response to Resistance General Orders).

321.4.1 MEDICAL ATTENTION PRIOR TO BOOKING

(a) Officers shall either request EMS or transport a person to an appropriate medical facility when any of the following criteria are present:

1. Large lacerations (greater than one inch in length), which are less than 12 hours old.
2. Actively bleeding lacerations (greater than 3/4 inch).
3. Obvious deformity of bones of the extremities, or open fractures.
4. Swelling to the face to the extent vision/breathing is difficult or impaired.
5. Possible heart attacks. Symptoms of heart attacks would include the chest pains, pain extending down the left arm, and/or difficulty breathing.
6. Alcohol or drug intoxication to the extent that the prisoner is unconscious.
7. Any condition in which the prisoner cannot move his extremities.
8. Neck pain following an auto collision.
9. Overdoses.

(b) Unconscious persons:

1. Unconscious persons will not be transported to a jail facility. Officers shall request EMS to respond to the scene for examination, treatment and/or transport.
2. Prisoners who become unconscious during regular transport will be taken to the nearest medical facility, or officers will request EMS to respond to their current location (whichever is the most expeditious).

(c) Prisoners who are examined by EMS at the scene, but refuse treatment/transport, will be transported to the booking facility.

1. If an individual refuses medical treatment/transport, the refusal should be witnessed by another officer and/or medical personnel and fully documented in the incident report. Whenever practicable, such refusal should be captured by audio/video recording.

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2. Officers will provide the intake jail nurse with EMS attendants' names and numbers for future reference.

(d) Prisoners transported by EMS will be accompanied by an officer inside the ambulance. At least one officer will ride with the prisoner in the EMS unit or other designated transport unit. A second officer will follow the prisoner transport vehicle in a police vehicle.

(a) Under extraordinary circumstance and with supervisory approval the officer may follow in a police vehicle in lieu of an officer riding in the ambulance. The supervisor will document the justification in a supplement to the report.

321.4.2 HOSPITAL GUIDELINES

Once at a hospital, prisoners will be guarded by the transporting officer until treated and released by a physician or admitted for medical attention. Under NO circumstances will officers release and/or leave unguarded prisoners who are violent or who officers have reason to believe may become violent.

(a) Medial Release from Hospital

1. Once released from the hospital, prisoners will be transported to the jail along with the proper discharge documentation.

2. The jail will require documentation to show that prisoners have received/refused medical attention from the hospital.

3. The jail nurse/medical officer should be briefed on prisoners' injuries and subsequent treatment/refusal.

(b) Admittance to Hospital

1. In circumstances where prisoners are arrested on for non-violent offenses and there is no reason to believe the prisoner will become violent, a supervisor may authorize the prisoner's release if the prisoner is being admitted into the hospital. Prisoners will not be released from custody if they are under arrest for an offense involving violence or have outstanding warrants higher than a Class C Misdemeanor.

2. Prisoners may be released from custody provided there is sufficient identifying information available to obtain a warrant and meet the following criteria:

(a) Felony Offense

1. All Charges, other than direct file narcotic related charges, require authorization to release from the:

(a) Investigative unit responsible for the highest charge, and

(b) on duty Patrol Lieutenant over the area where the subject was arrested; or, if unavailable, any on duty Patrol Lieutenant.

2. Narcotic related charges, that can be direct filed, only requires authorization from the on duty area Patrol Lieutenant; or, if unavailable, any on duty Patrol Lieutenant.

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(b) Class A and B misdemeanors arrests require authorization from a sergeant or above. Corporals, only when in the capacity of acting sergeant, may grant authorization for release and only for their immediate subordinates.

(c) Class C misdemeanor arrests except for public intoxication, prisoners may be issued a misdemeanor citation. If the prisoner refuses to sign the citation, a notation will be made on the signature line that the person was admitted to the hospital and refused to sign. Municipal Court can file the case based upon the citation.

(d) On public intoxication arrests where prisoners are under arrest solely for public intoxication and have been taken to the hospital, officers may request a supervisor after four hours from the time of arrest to determine if continued custody is required.

1. If the supervisor determines that the prisoner is no longer intoxicated to the extent that he is a danger to himself or to others, release may be authorized.

2. If the prisoner is released, supervisors will complete a supplement to the incident report detailing their assessment and authorization for release.

3. When a prisoner is authorized for release under this order, the arresting officer is responsible for completing all necessary paperwork as if the charge was being direct filed and forwarding that paperwork to the investigative unit responsible for the charge.

4. Prisoners not authorized or approved for release and admitted to the hospital shall be guarded until they are magistrated as follows:

(a) 10 PM until 7 AM (Monday-Friday)- By an officer from the patrol area in which the arrest was made. The on-duty lieutenant or designee for that area is responsible for scheduling patrol officers to guard the prisoner during these hours.

(b) 7 AM until 10 PM (Monday-Friday)- By the Investigative Unit responsible for the highest arrest charge of the case.

1. The Investigative Unit supervisor is responsible for scheduling detectives to guard the prisoner during these hours.

2. The responsible Investigative Unit will have the prisoner magistrated as soon as possible and notify the appropriate jail facility so they can begin guarding the prisoner.

(c) Weekends (10PM, Friday- 7AM, Monday)- By an officer from the patrol region in which the arrest was made, unless the investigative unit responsible for the highest arrest charge of the case has detectives assigned to an on-call status that can be called in to relieve the patrol officer and have the prisoner magistrated.

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1. The on-duty lieutenant or designee for that region is responsible for scheduling patrol officers to guard the prisoner during these hours, and to contact the unit responsible for the highest arrest charge for assistance.
2. If the investigative unit responsible for the highest arrest charge has detectives assigned to an on-call status, then the investigative unit supervisor is responsible for scheduling detectives to guard the prisoner during these hours.

(d) No visitors shall be admitted while the prisoner is being guarded.

(e) Officers guarding a prisoner shall always keep him in sight unless a medical procedure requires otherwise.

(f) Supervisors shall rotate guard assignments at least every four hours.

321.4.3 PRISONERS EXHIBITING SYMPTOMS OF CONTAGIOUS DISEASE

(a) Officers arresting persons with outward signs of contagious disease, or who complain of known infections or disease, will isolate the prisoner from others.

1. EMS shall be called to determine the prisoner's condition.
2. Prisoners requiring medical attention as a result of the disease shall be transported by EMS.
3. After taking appropriate health safety precautions, officers shall follow the Hospital Guidelines outlined in this order.

(b) Officers taking prisoners to the Travis, Hays, or Williamson County jail facility who are known to have a contagious disease or who are exhibiting symptoms of a contagious disease will notify the jail supervisor immediately upon entering the facility.

321.5 HANDLING OF PRISONERS AWAY FROM JAIL AREA

(a) When signing out prisoners from any jail or correctional facility for any purpose, Department personnel shall:

1. Ensure the prisoner they are taking into custody is positively identified; and
2. Determine if there are any security or safety issues associated with the prisoner (e.g., escape risk, history of violence, medical problems).

(b) Department personnel removing a prisoner from the jail or correctional facility for any purpose shall sign the prisoner out and will be responsible for the return of the prisoner.

1. Department personnel will ensure the prisoner is thoroughly searched for weapons, contraband, or items that might be used as implements of escape prior to returning them to the custody of jail or correctional facility personnel.

(c) Department personnel who sign out prisoners to transport them back to the scene of the crime or any other location to continue their investigations are responsible for the safe transport of that prisoner.

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(d) Wherever the prisoner is taken, the officer having custody will be responsible for ensuring that no weapon, and/or instrument that could be used as a weapon or implement of escape is accessible to the prisoner.

(e) Department personnel shall, whenever possible, avoid walking a prisoner who is not handcuffed through crowded hallways or other public areas.

(f) Prisoners may be taken to public bathrooms only after the area has been checked for weapons and cleared of other persons. Employees shall accompany prisoners and keep them under visual observation at all times.

(g) Anytime Department personnel accompany a prisoner to court and that prisoner is considered a security hazard, the judge shall be notified.

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GO
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Austin Police Department
General Orders

Booking and Arrest Review

323.1 PURPOSE AND SCOPE

This order outlines the booking and arrest review guidelines.

323.2 BOOKING GUIDELINES

323.2.1 SECURING WEAPONS

Officers shall abide by all orders, procedures and any required security safeguards regarding weapons or implements of escape when conducting any type of business (e.g., booking, prisoner transport, interview) at any correctional/detention facility.

(a) Firearms, ammunition, TASER Devices, batons, flashlights, knives, OC spray and any other personal equipment that could be used as a weapon shall be secured in the police vehicle or the provided lock boxes prior to entering the booking facility.

(b) Officers shall ensure the shotgun in the police vehicle is securely locked in the rack or trunk of their police vehicle.

323.2.2 BOOKING PRISONERS

(a) Officers shall ensure that jail personnel are advised of any security or safety risk presented by the prisoner (e.g., escape risk, history of violence, medical problems).

(b) Prisoners shall remain handcuffed until the booking process begins. After receiving approval by a jail intake officer, APD officers will relinquish custody to jail personnel.

(c) Unless directed or approved to do so by the jail supervisor on duty, officers shall NOT enter the confinement area of the jail.

(d) Officers shall complete all required County Sheriff's Office booking and arrest documentation.

(e) Once the booking process is complete, all completed booking paperwork shall be submitted to the booking desk personnel.

(f) On all APD warrants containing a Detective Notification Form, the arresting officer shall notify the detective in the manner indicated on the form.

(g) Officers will write a supplement if they transport a subject to jail or if otherwise required by general orders (i.e. Response to Resistance) unless the Officer is operating a prisoner transport vehicle in which they are expected to conduct multiple transports

1. When the Officer is operating a transport vehicle, in lieu of a supplement the officer shall enter a note in their CAD history noting the name and DOB of the person being transported, their starting point, and their destination.

323.3 DIRECT FILING CHARGES AND ARREST REVIEW APPROVAL

Officers shall not circumvent this process when booking a subject into jail.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0211

323.3.1 DIRECT FILING CHARGES

All required arrest paperwork (e.g., direct file probable cause affidavits/complaints, EPO) shall be reviewed by Arrest Review. Except when at Travis County Central Booking, this review may be made by phone, email or fax from the jail facility where booking occurs.

(a) **Travis County**

1. Officers shall prepare the required arrest paperwork and direct file each misdemeanor and felony charge unless directed not to by a Detective. In those instances, the Detective shall follow-up and file appropriate charges within 24 hours (misdemeanors) and 48 hours (felonies). The arresting officer shall note the Detective's name in the incident report and advise Arrest Review of the Detective who has taken responsibility for filing charges.

(b) **Williamson or Hays County**

1. Charges must be filed when the prisoner is booked.

323.3.2 ARREST REVIEW

(a) The Arrest Review Unit will work with the officer to make certain the affidavit/complaint articulates the required probable cause for the charges filed.

(b) If Arrest Review does not agree with an arrest as originally made, the officer shall work with the Arrest Review Unit to determine the appropriate charge(s).

1. In cases of dispute over the probable cause of an arrest or charge(s) filed, the arresting officer's supervisor shall be contacted and is responsible for resolving the dispute.

2. The arresting officer's supervisor shall make the final decision on the charges or whether to release the arrested person.

(c) On arrests that require Investigative Unit approval, Arrest Review shall verify with the officer that a detective from the appropriate Unit was notified. If required, the arresting officer will place a copy of the incident report and probable cause affidavit/complaint in the Investigative Unit's tray at Arrest Review or at the appropriate substation.

(d) Arrest Review shall ensure probable cause affidavits/complaints that are rejected by the reviewing magistrate are corrected to the extent possible to avoid the release of a prisoner before charges can be filed.

323.3.3 MAKING MODIFICATIONS TO AN ARREST

When an officer discovers that charges need to be changed or dropped, or that additional charges need to be added after a prisoner has been booked into jail, the following procedures shall be followed prior to a probable cause affidavit being signed by a judge:

(a) **Travis County**

1. If officers are still at Arrest Review, they shall fill out the "Charge Status Report" and/or "Additional Charges" form and submit the form(s) to the Arrest Review detective. Officers shall make the appropriate changes to their reports.

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2. When a detective who has been assigned a felony discovers a modification is in order, they shall use the electronic mail system to order the change.

(b) **Williamson or Hays County**

1. Officers shall go to the jail booking desk and correct/change the charges on the arrest report (booking sheet). They shall make the appropriate changes to their probable cause affidavit and reports.

2. When a detective who has been assigned a case discovers a modification is necessary, the detective shall call the appropriate office for the County Attorney or District Attorney for specific instructions. For documentation purposes, an updated report shall be faxed to the appropriate County or District Attorney's Office and to the jail's booking desk.

   (a) In Williamson County, the county attorney prosecutors handle all juvenile crimes (felony and misdemeanor), all protective orders, CPS and Department of Family and Protective Services cases.

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Austin Police Department
General Orders

Police Observer Program

324.1 PURPOSE AND SCOPE

This order provides guidelines for the Police Observer Program. The Police Observer Program provides an opportunity for eligible citizens to experience how the Department works first hand.

324.1.1 CITIZEN OBSERVERS

The Austin Police Department Police Observation Program is offered to eligible citizens who desire to ride as observers in an APD police vehicle during an officer's patrol shift or duty hours. An applicant may be declined or disqualified from participating for a number of reasons, including but not limited to the following reasons:

(a) Outstanding warrants of any type.

(b) Having a conviction for being under indictment for, or currently charged with any felony offense.

(c) Having a conviction for any sexual related offense.

(d) Having a history of or conviction for Family Violence.

(e) Having been convicted for a class A Misdemeanor with the last ten (10) years.

(f) Having been convicted for a class B Misdemeanor within the last five (5) years.

(g) Having a driver's license or ID card suspension for any reason that indicates poor driving behavior or responsibility to comply with State laws; up to five (5) years from the time of suspension to application. This does not include suspensions resulting from MIP violations.

(h) Having a driver's license or ID card that is currently classified as a habitual violator.

(i) Applicant is a suspect of a crime while such case is being investigated by this Department or prosecuted as a result of such an investigation.

(j) Applicant is a known associate of a convicted felon.

(k) Applicant is a known member of or associated with any person or organization which advocates hatred, prejudice, or oppression of any person or group or which disseminates such material.

(l) Applicant is a known member of or associated with any organization, association, movement, or group which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means.

(m) Any other indications of criminal history or criminal involvement will be evaluated on a case by case basis and must receive approval of an on duty lieutenant or appropriate commander.

(n) Persons under the age of eighteen (18) shall not be permitted to ride as an observer in a police unit unless prior approval has been granted by the Chief or designee; or

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they are participating in the APD Explorer Program and have met the requirements of the APD Explorer Unit SOPs as outlined in (s) below.

(o) Citizens may only ride once per calendar quarter unless otherwise approved by the appropriate commander; however, City Council members and personnel from the City Manager's Office may ride more than once per calendar quarter provided they comply with the rest of this order.

(p) Persons who have a pending lawsuit against the Department shall not be allowed to ride as an observer while the lawsuit is active.

(q) For staffing and operational issues, supervisors may decline to have an observer ride on a particular shift; if the observer is otherwise approved to participate, supervisors will make every effort to assign the observer to another shift or to reschedule the observer for a future time.

(r) Participation may be terminated by an officer at any time because of the unacceptable behavior of the observer. In such a case, the officer shall immediately notify a supervisor about the situation.

(s) Members of the APD Explorer Program may ride at the age of 16 if they meet the requirements of the APD Explorer Unit SOP's.

1. If for any reason the assigned officer feels it is in the best interest of the APD Explorer or the department, they can terminate the observation period at any time. Any early release of an APD Explorer should be reported as soon as practical to the post officer or advisor.

324.1.2 DEPARTMENT EMPLOYEE OBSERVERS

(a) On-duty civilian employees may ride as an observer with the approval of their supervisor and the appropriate lieutenant or designee. The *Police Observer Information Form* is not required.

(b) Off-duty civilian employees riding as an observer will comply with this order except they are not required to list their address on the *Police Observer Information Form*. Off-duty employees are not allowed to ride more than once per calendar quarter without the approval of the appropriate commander.

(c) No APD employee shall ride as an observer while on restricted duty, limited duty, injury leave, during a suspension, or while under administrative or criminal investigation.

324.1.3 OBSERVERS FROM OTHER LAW ENFORCEMENT AGENCIES

Sworn and civilian employees from other law enforcement agencies may ride with on-duty APD employees only if they are engaged in active operations with our department (e.g., training, familiarization) and the request has been approved by an assistant chief or designee. If such officers desire to ride merely as off-duty police observers, they must comply with regulations set out in this order as a citizen observer.

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324.1.4 MEDIA OBSERVERS

(a) Media observers must be coordinated through the APD Public Information Office (PIO).

(b) Media observers will abide by all rules and regulations for police observers.

(c) Media observers encountering crime scenes or police incidents will be considered working members of the media concerning access to restricted areas.

324.2 POLICE OBSERVER REQUESTS

Unless otherwise exempted by this order, all participants of the Police Observer Program shall complete the Request for Approval to Ride in an APD Unit section of the *Police Observer Information Form* [PD0094] in its entirety. This form also includes the guidelines all observers are required to follow.

(a) Generally, police observer requests shall be scheduled by the administrative staff of the Region in which the person wishes to ride.

(b) Employees contacted by a member of the public wishing to ride as an observer should provide the person with the administrative phone number of the appropriate Region.

(c) If the observer request is denied, an administrative staff member will contact the applicant and advise them of the denial.

(d) Persons participating in this program as the guest of an officer must comply with this order and the guidelines established on the *Police Observer Information Form.*

1. Officers shall have the guest observer complete the *Police Observer Information Form* and forward it to their supervisor for approval.

2. Supervisors shall forward the form to the appropriate administrative staff for filing.

324.2.1 PROCESSING POLICE OBSERVER REQUESTS

(a) **Approving Police Observer Request Forms**

1. Administrative staff or supervisors receiving a completed *Police Observer Information Form* shall:

(a) Review the form for completeness, including signature and date.

(b) Conduct all required checks and document the results on the *Police Observer Information Form*:

1. Does not have any active warrants (NCIC, TCIC and local); and

2. Does not have a criminal history, Versadex or CopLink involvement that meets the disqualifying criteria outlined in Section 324.1.1; and

3. Is not banned from being an observer:

(a) Banned observers are identified in the Police Explorer database located in SharePoint at APD Main SharePoint/ Patrol Ops/Police Observer Log.

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(b) Banned observers requesting more information concerning their ban should be referred to the appropriate commander.

(c) Sign and date the form, indicating approval.

2. Administrative staff who process the Police Observer Information Forms shall forward the completed packet to the appropriate supervisor after scheduling the observation date and time with the observer.

3. Administrative staff will send the assigned Sergeant and Corporal an email with the name of the observer and the observation date and time to ensure the Supervisor has knowledge of the scheduled rider.

(b) **Day of Police Observation**

1. Supervisors are additionally responsible for:

(a) Assigning the observer to an officer if the assignment has not been made; and

(b) Ensuring the observer is in compliance with the guidelines outlined in the *Police Observer Information Form .*

(c) If an observer is assigned to an officer of the opposite gender, the supervisor must have the Police Observer Information Form signed by an on-duty lieutenant.

2. Upon completion of the observation, the *Police Observer Information Form* shall be forwarded to the appropriate administrative staff for entry into the Rider Database.

324.2.2 RULES AND REGULATIONS FOR POLICE OBSERVERS

(a) If observers violate any of the guidelines outlined in the *Police Observer Information Form*, or their behavior prevents officers with whom they are riding from doing their job effectively, the following will occur:

1. Prior to the riding period - The observer shall be advised by the assigned supervisor or officer that they are not permitted to ride until they are in compliance. Supervisors may require the observer to reschedule if he cannot comply with the guidelines.

2. During the riding period - The observer shall be returned to the APD facility where the supervisor may either immediately terminate the riding session or allow the rider to finish that session if the problem can be readily corrected.

(b) If the problem cannot be corrected:

1. The officer to whom the observer was assigned shall complete a memorandum detailing the actions of the observer. The memorandum shall be forwarded through the chain-of-command to the appropriate commander.

2. If a supervisor finds cause that an observer should be banned, the supervisor shall complete a memorandum detailing their findings. The memorandum shall be forwarded through the chain-of-command to the appropriate commander.

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3. Commanders or their designee shall make the determination as to whether or not the observer should be banned from further rides with the Department and the duration of the ban, if imposed. If the determination is made that a ban should be imposed, commanders or their designee shall advise the administrative staff to update the Rider Database with the duration of the imposed ban. The memorandum and rider forms shall be maintained for a minimum of three (3) years or the duration of the ban, whichever is longer.

324.3 OFFICER RESPONSIBILITIES

(a) Officers shall advise the dispatcher that a participant in the Police Observer Program is present in the vehicle before going into service. Officers shall consider the safety of the observer at all times.

(b) Officers should use sound discretion when encountering a potentially dangerous situation. The dispatcher shall be advised of the situation and, if necessary, may have another police unit respond to pick up the observer. Participation may continue with another officer or the ride may be terminated and the observer returned to the APD facility where the ride initiated.

324.4 CONTROL OF POLICE OBSERVER

Officers shall maintain control over observers and instruct them in the conditions that will limit the observers' activity. This includes, but is not limited to, the following:

(a) Observers shall follow the officer's directions. Officers may return observers to the original APD facility if observers interfere with the performance of any duties.

(b) Observers shall not become involved in any investigation, handling of evidence, or discussions with victims or subjects.

(c) Observers shall not handle any police equipment unless instructed to do so by an officer.

(d) Observers may be allowed to continue riding during the transportation and booking process provided this does not jeopardize their safety. Officers and observers shall follow all booking facility (e.g., TCSO, WILCO) guidelines.

(e) Officers shall not allow any observer into a private residence without consent of the individual in control of the property unless there is an emergency or exigent circumstances exist.

(f) Officers shall not allow observers to be present in any situation that would jeopardize their safety or cause undue stress or embarrassment to a victim or any other citizen.

324.5 RESTRICTIONS

(a) Department Tactical Alert

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1. The Police Observer Program will be suspended when a Department-wide Tactical Alert has been implemented.
2. Administrative Staff will notify the scheduled observer of the cancelation as soon as practical. The observer will be rescheduled at the earliest convenience of the Department and the observer.

(b) Special Event

1. At the discretion of the Region Commander the Police Observer Program may be suspended during Special Events.
2. Administrative Staff will notify the scheduled observer of the cancelation as soon as practical. The observer will be rescheduled at the earliest convenience of the Department and the observer.
3. The following events, although not comprehensive, may be considered under this section.
   (a) New Year's Eve
   (b) Mardi Gras
   (c) SXSW
   (d) Texas Relays
   (e) X-Games
   (f) Republic of Texas Motorcycle Rally
   (g) Independence Day
   (h) Austin City Limits Music Festival
   (i) Formula 1
   (j) Halloween

(c) DTAC Walking Beat

1. Observers should not be scheduled with a DTAC Officer assigned to walking beat without approval of the DTAC Commander.

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Austin Police Department
General Orders

News and Media Relations

326.1 PURPOSE AND SCOPE

The purpose of this order is to seek a balance between permitting the free flow of information to the public and the media while protecting both the prosecution's case and the rights of the accused from possible prejudicial publicity. Public information and positive media relations are an integral part of the operation of any public service agency and APD is no exception. Most citizens have little contact with law enforcement and their opinions of the police are often formed by our Department's portrayal in the media. The release of public information and maintenance of good media relations is a crucial element of APD's mission. Employees must maintain a good rapport with the public and the media and deal with them in a courteous manner. The media has a legitimate function in our society and the public trust of the police can be enhanced through media relations.

APD is committed to informing the community and members of the news media of events that are handled by, or involve, the Department. Employees will cooperate fully in meeting the relevant information needs of the public and the news media. Every reasonable effort should be made to obtain requested information, so long as the release of that information conforms to federal and state laws, and follows established Department guidelines.

326.2 RELEASE OF PUBLIC INFORMATION

APD's Public Information Office (PIO) is responsible for collecting police information and then fairly, equitably and efficiently disseminating it to the public and media. PIO's primary function is to act as a liaison between the public, the news media and the Department and to coordinate all of the Department's release of public information.

During regular weekday business hours, PIO personnel will respond to the scene as determined by PIO. After office hours the on-call PIO will coordinate with the ranking on-scene officer and make the determination if PIO needs to respond. If the on-call PIO does not respond to the scene, they will send pager notification to the media with information about the incident. The ranking on-scene officer will be responsible for media interviews at the scene.

326.2.1 MEDIA REQUEST GUIDELINES

Any media request for information or access to a law enforcement situation shall be referred to the designated PIO representative, or if unavailable, to the ranking on-scene officer. Prior to releasing any information to the media, employees shall consider the following:

(a) Employees releasing information will ensure that the information is releasable and sheds a positive light on the City, APD and the law enforcement community. Information of a controversial nature will be directed to the PIO.

(b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.

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(c) Under no circumstance should any member of this department make any comment(s) to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

Media personnel are not exempt from any federal or state law, or any local ordinance and will be treated in the same manner as any other person violating the law.

Employees who encounter issues with the media should initiate a memorandum through their chain-of-command to the PIO Commander clearly outlining the situation and identifying, if possible, those involved.

326.2.2 OTHER METHODS OF PUBLIC INFORMATION RELEASE

(a) Austin Warning and Communications System (AWACS)

1. A City alphanumeric pager system designed to provide a rapid method of getting emergency information to the public through the media. It also can be used to provide the media with information about other newsworthy events.

(b) News Releases and News Conferences

1. Written information released by the Department for the media will be coordinated by PIO. News releases will be emailed to news organizations. In addition, press conferences will be coordinated by PIO. Notification of news conferences will be done through news releases, "ring downs", or by AWACS.

(c) Employee Interviews

1. Media interviews with an employee may be arranged through PIO or directly with the employee.

(a) Employees contacted directly by the media and who have questions or do not want to provide an interview can refer the media representative back to PIO; or

(b) Employees contacted directly by the media and who want to provide an interview will:

1. Notify their supervisor if the interview is regarding an open or ongoing investigation and request approval before conducting the interview; and

2. Notify PIO either before or shortly after the interview.

(d) Police Records

1. Copies of police and crash reports must be purchased from APD's report sales.

326.3 MEDIA ACCESS

Authorized members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions:

(a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.

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(b) Media representatives will not be allowed to interfere with emergency operations and criminal investigations. Media personnel may not resist, obstruct or otherwise interfere with an officer in the lawful execution of his duty. However, the mere presence of a member of the media, the taking of pictures or the asking of questions does not, in itself, constitute unlawful interference.

1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should be coordinated through PIO or other designated spokesperson.

2. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Lieutenant. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR § 91.137).

(c) No member of this department shall be subjected to media visits or interviews without the consent of the involved employee.

(d) Media interviews with individuals who are in custody shall not be permitted without the approval of the PIO Manager, Investigative Unit supervisor and the expressed consent of the person in custody.

(e) Media access to working areas of the Department shall be coordinated through PIO and should extend only for the length of time necessary to achieve a specifically approved objective of the media.

A tactical operation should be handled in the same manner as a crime scene, except the news media should be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. During the tactical operation, all comments to the media shall be coordinated through a supervisor or PIO.

326.4 SCOPE OF INFORMATION SUBJECT TO RELEASE

Requests for information shall be handled as follows:

(a) **Open Records Requests** - General Order 116 (Security and Release of Records and Information) deals with the release of information in the form of an Open Records request. Employees receiving an open records request should contact the Open Records Coordinator in Central Records. Public and/or media requesting information not contained in the public portion of police reports may file an open records request with the Department.

(b) **Juvenile Information** - At no time shall identifying information pertaining to a juvenile arrestee, victim or witness be publicly released without prior approval of a competent court.

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(c) **Police Photograph (Mug Shot)**

1. Mug shots of adult arrestees are subject to public release unless the release would interfere with law enforcement interests or hinder investigative efforts. All mug shots of adult arrestees are publicly released automatically through the online APD Booking Photo Database Search 13 days after date of arrest.
2. Mug shots and photos of juvenile arrestees are confidential and will not be released without a court's approval.

(d) **9-1-1 Tapes or In-Car Video Tapes** - Requests for APD 9-1-1 recordings need to be submitted in writing. Media requests for these recordings should be sent through the open records coordinator assigned to PIO.

(e) **Identities of Deceased Persons** - In death investigations, the name of the deceased shall not be released by an employee until Victim Services or the Medical Examiner's Office has had a reasonable time to notify the next-of-kin. What constitutes a "reasonable time" will vary depending upon the circumstances of each case. Public release of the name of the deceased will be made through PIO or the Medical Examiner's Office.

(f) **Arrest Information** - By law, the public and/or media has access to the following arrest information:

1. Arrestee's name, age, race, sex, occupation, alias, department identification number, and physical condition;
2. Location of arrest;
3. Names of the arresting officers;
4. Charges filed and the court in which it is filed (if known); and
5. The date and time of the arrest.

(g) **Internal Affairs (IA) Investigations** - Information regarding an internal investigation is confidential and will be released through PIO only after authorization by the Office of the Chief. Premature and/or unauthorized statements made concerning confidential information is a violation of Department General Orders and may have an adverse effect on, or seriously jeopardize, an investigation. Only the IA Commander, and/or PIO personnel may confirm:

1. An internal investigation is being conducted;
2. The name of the employee involved; and
3. The nature of the allegation or incident.

(h) **Statistical Information** - Media requests for statistical data should be coordinated and released through PIO.

(i) **Media Riders** - Media riders must be coordinated as outlined in General Order 324 (Police Observer Program).

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326.4.1 RESTRICTED INFORMATION - GENERAL
It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

Examples of such restricted information include, but are not limited to:

(a) Confidential peace officer personnel information.

(b) Copies of traffic crash reports (except to those authorized pursuant to Tex. Transp. Code § 550.065).

(c) Criminal history information.

(d) Information that would tend to endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation.

(e) Information pertaining to pending litigation involving this department.

(f) Information obtained in confidence.

(g) Any information that is otherwise privileged or restricted under state or federal law.

326.4.2 RESTRICTED INFORMATION - WARRANTS
To protect the safety and rights of officers and other persons, advance information should not be provided to the news media regarding search warrant or arrest warrant actions planned by law enforcement personnel, nor should media representatives be solicited or invited to be present. Any exceptions require prior approval of the Chief of Police.

At no time shall the media be brought into a private residence during the execution of a search or arrest warrant.

326.5 DEPARTMENT WEBSITE
PIO is responsible for the APD website (http://www.austintexas.gov/department/police). PIO will coordinate requests for information to be included on the website and develop and/or assist in the development of page layout for any additions to the APD website.

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Austin Police Department
General Orders

Racial or Bias-Based Profiling

328.1 PURPOSE AND SCOPE

This order provides guidance to department members and establishes appropriate controls to ensure that members of the Austin Police Department do not engage in racial or bias-based profiling or violate any related laws while serving the community.

328.1.1 DEFINITIONS

Definitions related to this order include:

Racial or Bias-Based Profiling - Any instance of disparate treatment by law enforcement based on race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group, rather than on behavior or information identifying the individual as having engaged in criminal activity. Racial or bias-based profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

Race or Ethnicity - Individuals of a particular descent. This includes, White, Black, Hispanic or Latino, Asian or Pacific Islander, Middle Eastern, or Alaska native or Native American.

Acts Constituting Racial or Bias-Based Profiling - Initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.

328.2 POLICY

The Department strives to provide law enforcement services to our diverse community while respecting the racial, cultural, or other differences of those we serve. It is the policy and practice of the Department to provide law enforcement services and to enforce the law equally, fairly, and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

While the practice of racial or bias-based profiling is strictly prohibited, it is recognized that race or cultural differences may be legitimately considered by an officer in combination with other legitimate factors; to establish reasonable suspicion or probable cause (e.g., subject description is limited to a specific race or group), to establish relevant elements of a crime (e.g. exploitation of an elderly or disabled individual), or to gather evidence relevant to enhanced punishment due to offenses committed because of bias or prejudice.

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328.3 MEMBER RESPONSIBILITIES

Every member of this Department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial or bias-based profiling to a supervisor.

328.3.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reason for a lawful detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, field observation (FO) card), the involved officer should include those facts giving rise to the authority for the detention, as applicable.

Nothing in this order shall require any officer to document a contact that would not otherwise require reporting.

328.3.2 REQUIRED DOCUMENTATION

Every member of the Department is required to document and report to the Department any detention, frisk, search, nonconsensual stop and/or arrest of a person. Officers shall document the following information in the appropriate fields of an incident report, field release citation, warning, field observation card or electronic street check:

(a) a physical description of any person who is detained or arrested, including (if applicable) passengers in a motor vehicle, including:

1. the person's gender; and
2. the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability.

(b) whether the officer knew the race or ethnicity of the individual detained before detaining that individual;

(c) the initial reason for the stop;

(d) whether the officer conducted a search during the stop and, if so, whether the person detained consented to the search;

(e) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

(f) the reason for the search, including whether:

1. any contraband or other evidence was in plain view;
2. any probable cause or reasonable suspicion existed to perform the search;
3. the search was performed as to inventory a motor vehicle or other package being impounded or seized; or
4. the search was performed incident to arrest.

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(g) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(h) the street address or approximate location of the stop; and

(i) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(j) whether the officer used physical force that resulted in bodily injury during the stop.

328.4 SUPERVISOR RESPONSIBILITIES

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this order and shall handle any alleged or observed violation of this order in accordance with the Administrative Investigations general order.

(a) Supervisors will discuss any issues with the involved officer and his/her supervisor in a timely manner.

(b) In conjunction with the personnel inspections required by General Order 801.8, supervisors will conduct inspections to review Body Worn Camera (BWC) recordings, MDC data, and any other available resource used to document contact between officers and the public to ensure compliance with this order.

1. Supervisors will document these periodic reviews using form PD0128.

2. Recordings or data that capture a potential instance of racial or bias-based profiling should be appropriately retained for administrative investigation purposes.

(c) Supervisors will initiate investigations of any actual or alleged violations of this order.

(d) Supervisors will ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial or bias-based profiling.

328.5 REPORTING

(a) Pursuant to applicable law, the Chief of Police shall submit an annual report, which includes complaints of disparate treatment based on race or ethnicity, as well as analysis of information required by law, to TCOLE and each governing body served by this agency. The report will be based on motor vehicle stops that resulted in a citation and/or an arrest and will include information based on the requirements of Tex. Code of Crim. Pro. § 2.132.

1. The report may not include identifying information about any officer who made the stop or any individual who was stopped or arrested.

328.6 COMPLAINTS

The Department will provide access to the complaint process for the public on the Austin Police Department and Austin Police Monitor websites, as well as brochures in every police facility.

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The Department will investigate all complaints involving racial or bias-based profiling by any employee as outlined in the Administrative Investigations general order. The officer should be given a copy of any related recording as soon as practicable upon written request (Tex. Code of Crim. Pro. art. 2.132).

328.7 TRAINING

All sworn members of this department will complete all Texas Commission on Law Enforcement (TCOLE) mandated training on the subject of racial or bias-based profiling.

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Austin Police Department
General Orders

Interactions with Foreign Nationals

330.1 PURPOSE AND SCOPE

This order controls employee interactions with foreign nationals, including those who claim immunity, and with immigration authorities, including Immigration and Customs Enforcement (ICE).

330.2 POLICY

It is the policy of the Department that all employees make personal and professional commitments to impartial enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

330.3 DEFINITIONS

Foreign National - Anyone who is not a citizen of the United States. A person with dual U.S. and foreign citizenship is not a foreign national.

Foreign Official - A foreign national serving in the capacity of ambassador, United Nations representative, consular officer, or other diplomatic agent who may be entitled to certain immunity. In certain cases, immediate family members of a foreign official are also entitled to certain immunity.

Immunity - Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official "missions" (i.e., embassies and consulates) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad.

Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's Office of Foreign Missions (OFM) that illegal acts by foreign service personnel should always be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

Immigration Status Inquiry - Questioning a person about the person’s immigration status and/or contacting immigration authorities to confirm a person’s identification and/or immigration status.

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330.4 IMMIGRATION STATUS INQUIRIES

Officers who have lawfully detained a person to conduct a criminal investigation into an alleged criminal offense, or who have arrested a person for a criminal offense, may make an inquiry into the person's immigration status, except as prohibited in this order.

Before officers inquire into immigration status, they must instruct the detainee or arrestee that the detainee or arrestee is not compelled to respond to the inquiry and that the detainee or arrestee will not be subjected to additional law enforcement action because of their refusal to respond.

(a) All immigration status inquiries shall be documented in a Versadex offense report by adding Title Code 4201 "Immigration Status Inquiry," regardless of whether an arrest was made or not, and regardless of whether the individual answered the question or not. A CAD call will be generated for each report, and every officer on scene will log into that call. Direct entry Versadex reports will not be permitted.

1. The report will include the reasons why the officer asked about the person's immigration status and the specific questions asked.
2. This order does not apply to citizenship inquiries made as part of the jail booking process; therefore, officers do not need to add Title Code 4201 for citizenship inquires made as part of the jail booking process.

(b) Officers will not consider race, color, religion, language or national origin when deciding whether to inquire into a detainee's or arrestee's immigration status.

(c) Officers will not inquire into the immigration status of a person who is the victim of a crime or a witness to a crime, except under the following conditions, or for the following reasons:

1. The officer is investigating a criminal offense and the officer reasonably believes that the inquiry will provide evidence or information pertinent to the investigation;
2. The inquiry will allow the officer to provide a victim or witness, who is assisting law enforcement, information about federal visas designed to protect victims (refer to GO 607 (U-Visa Nonimmigrant Status Certifications); or
3. The officer has probable cause to believe a victim or witness has engaged in specific conduct constituting a separate criminal offense.

(d) Officers will not inquire into the immigration status of a person while the officer is engaged in a secondary employment contract with:

1. A hospital or hospital district;
2. A school district or open-enrollment charter school; or
3. A place of worship or religious organization.

330.4.1 REPORTING IMMIGRATION STATUS INQUIRIES DURING FOLLOW-UP INVESTIGATIONS

(a) All immigration status inquiries during follow-up investigations shall be documented in a Versadex offense report by adding Title Code 4201 "Immigration Status Inquiry."

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1. The report will include the reasons why the officer asked about the person's immigration status and the specific questions asked.
2. This order does not apply to citizenship inquiries made as part of the jail booking process; therefore, officers do not need to add Title Code 4201 for citizenship inquires made as part of the jail booking process.

330.5 FOREIGN NATIONALS CLAIMING IMMUNITY

The Vienna Convention on Consular Relations sets forth certain rights of foreign officials from member countries when they are arrested, detained, or imprisoned by U.S. law enforcement officials in this country.

As noted herein, the United States is a party to several bilateral agreements that obligate authorities to notify the consulate upon the person's detention, regardless of whether the detained person requests his consulate to be notified.

A list of specific countries that the United States is obligated to notify is maintained by the U.S. Department of State(DOS). CTECC will maintain contact information for the U. S. Department of State, a current telephone list of foreign embassies and consulates, and a list of mandatory notice countries.

330.5.1 IDENTIFICATION OF THOSE CLAIMING IMMUNITY

(a) Diplomatic agents and consular officers are immune from arrest or detention unless they have no identification and the detention is to verify their diplomatic status. Proper identification of subjects claiming immunity is imperative in potential custody situations.

1. Subjects who are placed under arrest and claim diplomatic or consular immunity shall not be physically restrained before verification of the claim unless restraint is necessary for the protection of the officer or others.

(b) All diplomatic and consular personnel who are entitled to immunity are registered with the DOS and are issued distinctive identification cards by the DOS Protocol Office. These cards are the best means of identifying foreign service personnel. They include a photograph, identifying information, and, on the reverse side, a brief description of the bearer's immunity status. These identification cards are not always promptly issued by DOS. In addition to theDOS identification card, Foreign Service personnel should also have a driver license issued by theDOS Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued by the state. DOS identification cards are 3-3/4 inches by 1-1/2 inches and contain a photograph of the bearer. The following types of identification cards are issued:

1. Diplomatic (blue bordered),
2. Consular (red bordered), and
3. Official (green bordered).

(c) Field verification of the subjects identity is to be attempted as follows:

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1. Identification cards issued by DOS are the only valid evidence of diplomatic or consular immunity.
2. Verify immunity by phone with DOS any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Officers can contact CTECC for the appropriate contact phone numbers.
3. Members of diplomatic or consular missions may also have other forms of identification. These include identification cards issued by the Office of Emergency Services, local law enforcement agencies, the foreign embassy, or consulate; driver licenses issued by DOS; and, DOS license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

330.5.2 FOREIGN DIPLOMAT VEHICLE REGISTRATION

Vehicles that are owned by foreign missions or foreign service personnel and their dependents are registered with OFM and display distinctive red, white and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plate labels with the words "diplomat" or "consul." Vehicles owned by honorary consuls are not issued OFM license plates; but may have Texas license plates with an "honorary consul" label. A driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "U.S." as the state, if the officer has reason to question the legitimate possession of the license plate.

330.5.3 DIPLOMATIC IMMUNITY TABLE

Notes for the diplomatic immunity table:

(a) This table represents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.

(b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.

(c) A small number of senior officers are entitled to be treated identically to diplomatic agents.

(d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

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Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts Yes otherwise (note (a))	No immunity or inviolability (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul	Yes	Yes	Yes	No for official acts Yes otherwise	No for official acts Yes otherwise (note (a))	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise	No for official acts Yes otherwise (note (a))	No immunity or inviolability (note (a))

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Int'l Org Staff **(Note (b))**	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts Yes otherwise (note (c))	No immunity or inviolability
Diplomatic Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

330.6 ENFORCEMENT PROCEDURES FOR FOREIGN NATIONALS ENTITLED TO IMMUNITY

The following procedures provide a guideline for handling incidents involving foreign officials who claim some form of immunity. Supervisors shall be promptly notified and should respond to the scene when possible. Supervisors shall ensure the Watch Lieutenant is notified of the incident.

(a) The U.S. is obligated under the Vienna Convention on Consular Relations, international treaties, and customary international law to notify consular officials when foreign nationals make such a request, are arrested, or are detained for more than two hours.

1. Officers detaining a foreign national shall notify the appropriate consular official upon request or when a detention exceeds two hours.

2. Upon arrest, the officer shall inform the intake officer at the booking facility to notify the appropriate consular.

(b) Officers shall document in the narrative of the appropriate incident report the date and time Communications was notified of the foreign national's arrest or detention and his/her claimed nationality.

330.6.1 CITABLE OFFENSES

A citation shall be issued at the scene for all violations warranting such action pursuant to state law and departmental policy regardless of the violator's immunity status. The issuance of a citation is not considered an arrest or detention under current DOS guidelines. Whenever a citation is issued to a subject claiming immunity, these additional procedures shall be followed:

(a) Identification documents are to be requested of the subject.

(b) The title and country represented by the subject are to be recorded in the notes section of the e-citation for later reference.

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(c) The subject shall be requested to sign the citation. If the subject refuses, the identity and immunity status of the individual shall be conclusively established.

1. Verified diplomatic agents and consular officers, including staff and family members from countries with which the U.S. has special agreements, are not required to sign the citation. The word "refused" shall be entered in the signature section of the e-citation and the violator shall be released.

2. Verified consular staff members, excluding those from countries with which the U.S. has special agreements, are generally obligated to sign the citation but a signature shall not be required if their immunity status is uncertain.

(d) The violator shall be provided with the appropriate copy of the citation.

330.6.2 DETENTION AND CUSTODY ARREST GUIDELINES

Subjects entitled to immunity may not be subject to a custody arrest; the procedures below shall be followed instead. These procedures should also be used in the event immunity cannot be verified but another form of identification indicates that immunity is probable. Supervisor approval is required for all custody arrests and releases when a claim of immunity is involved.

(a) If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained then the official shall be released. The necessary release documents (e.g., citation) should only be issued under the proper conditions.

(b) If the violator appears to have been driving while under the influence, field sobriety tests should be offered. The subject shall not be permitted to drive and alternative transportation should be arranged:

1. All facts of the incident shall be documented in accordance with this order in a Driving While Intoxicated (DWI) Incident Report and/or any other relevant report form. Prosecution is still appropriate and should be pursued.

2. The DWI Unit shall contact the Department of State, as soon as practicable, to verify the violator's status and immunity. Within five working days of the stop, the DWI Unit shall send to the Bureau of Diplomatic Security Office of Foreign Missions of the Department of State a copy of the citation and/or any accident or other written report documenting the incident (Tex. Transp. Code § 543.011 et seq.). The Department of State will take appropriate sanctions against errant foreign service personnel, even where prosecution is not undertaken by the agency.

(c) Foreign consular officials have the right to visit their arrested or detained nationals as soon as practicable unless the person objects to the visit.

330.6.3 TRAFFIC CRASHES

Persons involved in a traffic crash who possess an OFM Diplomatic Driver License issued by the DMVO, shall have "D" coded in the license "class" box of the Traffic Crash Report. The actual driver license class (e.g., 1, 2, 3, or A, B, C, M) shall be entered on the traffic report. If subsequent prosecution of the subject is anticipated, the subject's title, country, and type of identification presented should be recorded for future reference.

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(a) Issuance of a citation or arresting a subject claiming immunity at a crash scene shall be handled as outlined in the previous section of this order.

330.6.4 VEHICLES

Vehicles which are owned by subjects with full immunity may not be searched, stored or impounded without the owner's permission. Such permission may be assumed if the vehicle has been stolen. These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

330.6.5 REPORTING PROCEDURES

(a) A copy of all reports and documents (e.g., citations, incident reports, crash reports) related to the incident which involves an identified diplomat and/or immunity subject shall be immediately forwarded to the office of the Chief of Police through the officer's chain-of-command, regardless of whether the claim of immunity is verified. The words "Immunity Claim" shall be marked on the top copy, together with a notation of the subject's title, country and type of identification presented, if applicable.

(b) In addition to the reports and documents, a follow-up cover memorandum should be submitted for incidents where the investigation indicates the violation was flagrant, the subject was uncooperative, or involved any other unusual aspects of the enforcement contact where further action by the Department of State may be necessary.

(c) The supervisor apprised of the incident shall ensure that all related documents, including any supervisor's notes, materials and/or logs are forwarded to the office of the Chief of Police without delay. The Chief of Police's office will verify that notification to the Department of State and all necessary follow-up occur.

330.7 ENFORCEMENT PROCEDURES FOR FOREIGN NATIONALS NOT ENTITLED TO IMMUNITY

It is the policy of this Department is to protect the public safety through enforcement of the criminal laws and other laws authorizing action by local police. Officers will adhere to the following with respect to detentions and arrests involving foreign nationals who are not claiming immunity.

330.7.1 DETENTION AND CUSTODY ARREST GUIDELINES

(a) Officers shall not detain or arrest a person solely because the officer suspects or knows that a person may be an undocumented immigrant or for the purpose of determining or investigating a person’s immigration status.

(b) Officers shall immediately inform any foreign nationals of their right to have their consular official notified concerning a detention or arrest.

(c) Unless complying with a formal detainer request issued by Immigration and Customs Enforcement (ICE) or another federal immigration authority, or providing authorized assistance to ICE under the supervision of ICE, an officer may not prolong a detention of a person suspected to be an undocumented immigrant beyond a reasonable time needed for the officer to complete an investigation or an enforcement activity (e.g., issue a written warning, issue a citation, complete an F.O. card, etc.).

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330.7.2 REPORTING PROCEDURES

(a) The U.S. is obligated under the Vienna Convention on Consular Relations, international treaties, and customary international law to notify consular officials when foreign nationals make such a request, are arrested, or are detained for more than 2 hours.

1. Officers detaining a foreign national shall notify the appropriate consular official upon request or when a detention exceeds two hours.

2. Upon arrest, the officer shall inform the intake officer at the booking facility to notify the appropriate consular.

(b) Officers shall document in the narrative of the appropriate incident report the date and time Communications was notified of the foreign national's arrest or detention and his/her claimed nationality.

(c) Foreign consular officials have the right to visit their arrested or detained nationals as soon as practicable unless the person objects to the visit.

330.8 REQUESTS FOR ASSISTANCE FROM FEDERAL IMMIGRATION OFFICIALS

(a) Upon request, officers may provide reasonable or necessary assistance to ICE (or other federal immigration officials), including with enforcement operations if those operations will be directed and supervised by federal officials. Except in emergencies involving the possibility of imminent death, serious injury, or loss of property, officers must receive approval from supervisors holding the rank of Lieutenant or higher prior to providing any such assistance. The supervisor will determine whether the request is reasonable or necessary based on factors including:

1. the availability of Department resources and personnel that are appropriate for and trained to perform the requested task;

2. whether providing the requested assistance would pose an unreasonable risk to public safety or to Department personnel or property;

3. whether providing the assistance would assist with stopping criminal activity; and

4. whether providing the requested assistance would cause the Department to incur unreasonable overtime costs.

5. The urgency of the request.

(b) Officers (including officers working secondary employment) shall not provide assistance to ICE for operations at a place of worship unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

(c) Officers working secondary employment for a hospital, religious organization, school district, or open enrollment charter school shall not provide assistance to ICE for operations unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

(d) Officers providing immediate or planned assistance to ICE shall create a GO using title code 3499-1 – Assist Other Agency – ICE. A CAD call will be generated for each

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report, and every officer on scene will log into that call. Direct entry Versadex reports will not be permitted. The following items shall be documented in the GO:

1. The name of the outside agency and the personnel who requested the assistance;
2. The number of APD officers who assisted and the amount of time expended by each officer;
3. The number of persons arrested, if known;
4. The number of persons charged and the specific charges that were applied, if known;
5. Any Department information or intelligence shared with ICE (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs);
6. Any additional resources used (e.g. canine units, helicopter, SWAT, etc.); and
7. Any information provided by APD that is shared with a federal immigration enforcement agency at the request of a federal immigration agency (no report is required for this item if the information or intelligence shared is otherwise documented pursuant to unit SOPs).

(e) Only the Chief of Police has the authority to enter into any formal, written agreement with ICE for ongoing operations, such as a 287G agreement.

330.9 ICE DETAINER REQUESTS

The purpose of this order is to establish guidelines for handling ICE detainers. All officers are expected to comply with, honor, and fulfill formal immigration detainer requests issued by ICE.

(a) An officer who receives information that a detainee or arrestee in his/her custody is the subject of an ICE detainer request, will take the following actions:

1. Notify a supervisor.
2. Notify ICE to determine the validity of the detainer.
3. Comply with the detainer request if its validity is confirmed.
4. Inform the person he/she is being held subject to a detainer (in addition to any applicable criminal charges).
5. Take the person to the Central Booking Facility or other suitable detention facility.

(b) If the person subject to the detainer provides proof, including a Texas Driver's License or other government issued identification, that he/she is a United States citizen or has lawful immigration status, the officer will do the following:

1. Notify a supervisor.
2. Notify ICE and provide an update.
3. Cease from complying with the detainer request.

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4. Unless impracticable to do so, officers will make and retain a copy of the proof that was offered by the subject. The retained copy may be scanned into the Versadex report or submitted as evidence.
5. If the officer is unsure whether the proof provided is adequate proof of U.S. citizenship or lawful immigration status, the officer should continue honoring the detainer request until definitive proof is provided.

330.10 MAINTENANCE AND SHARING OF IMMIGRATION RECORDS

From time to time, the Department may have records with information, or need information, concerning a detainee's or arrestee's immigration status, including information concerning that person's place of birth (Immigration Status Information). Employees are permitted to:

(a) Send, request, or receive Immigration Status Information to or from federal agencies involved in immigration enforcement (employees must appropriately document when the employee sends, requests, or receives Immigration Status Information);

(b) Maintain Immigration Status Information pursuant to applicable records retention schedules; and

(c) Exchange Immigration Status Information with other law enforcement agencies, or with federal or state governmental entities.

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GO
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Austin Police Department
General Orders

Traffic Enforcement

342.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for improving public safety through education and enforcement of traffic-related laws.

342.2 POLICY

Officers shall enforce traffic regulations in a uniform, impartial manner. It is imperative that individuals committing identical offenses under similar conditions/circumstances be accorded the same treatment by an officer. To cite one person for an offense and warn another for the same offense committed to the same degree, under similar conditions and circumstances, is improper.

The guidelines established in this order are applicable to both adults and juveniles.

342.3 ENFORCEMENT GUIDELINES

(a) On-duty officers in uniform should stop the operator of any vehicle committing a traffic violation when practical to do so.

(b) On-duty officers not in uniform may make traffic stops only if the vehicle used in making the traffic stop is equipped with emergency lights and a siren.

(c) After stopping the violator, officers shall exercise good judgment in deciding what enforcement action should be taken (e.g., warning, citation, arrest).

(d) Whenever practicable, officers shall use the Department's electronic ticketing system. If officers are unable to use the electronic ticketing system, then paper citations, warnings, and/or field observations will be made available at the Property Control Office (PCO).

342.3.1 CLASS C CUSTODY ARRESTS IN LIEU OF CITATION

(a) Officers shall select the least intrusive or severe method when considering enforcement actions. However, a custody arrest can be made in the following situations:

1. The violator refused to sign the citation.
2. The violator cannot be sufficiently identified.
3. The violator resisted detention, assaulted someone during the offense, or was combative or violent.

(b) Supervisor approval is required to make a custody arrest in lieu of a traffic citation for eligible offenses.

(c) If an arrest is made in lieu of a traffic citation for an eligible offense, the following must be documented in the offense report:

1. Approving supervisor's name and employee number.
2. Reason for the arrest in lieu of a traffic citation.

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342.3.2 SUFFICIENT SUBJECT IDENTIFICATION

(a) Officers should make every effort to sufficiently identify a driver or passenger prior to issuing a citation. If it is not possible to sufficiently identify a subject and the officer has an arrest authority, a custody arrest may be made in accordance with this order.

(b) Some form of government photo identification is preferred. If a government photo identification is not available, officers shall use all reasonably available means to confirm the validity of the personal information provided by the person who is in custody. Officers shall document in their offense report what identification was used to establish the identity of the person in custody. If the person in custody cannot be positively identified, and after all reasonable efforts to ascertain identity have been made, officers will make a custody arrest and book the subject into jail. Officers shall document in their offense report what attempts were taken to establish the identity of the person in custody.

(c) Subjects whose identity is in question and who are being issued a citation or whose identity needs confirmed as part of an investigation shall be transported to the APD ID section to verify identity prior to issuing the citation. While at the Main and ID Section, the officer is solely responsible for the detained/arrested individual and at no time will leave the individual unattended.

(d) Subjects whose identity is in question and who are being booked into jail shall be transported to the appropriate booking facility where they will be fingerprinted by booking staff and identification confirmed.

342.3.3 SPEEDING

In situations where officers stop a driver for speeding only, officers may not arrest the driver solely for this violation unless (Tex. Transp. Code § 543.004):

(a) The driver does not have sufficient identification; or

(b) The driver refuses to sign a citation, or

(c) The violation is a component of a more serious violation (e.g., reckless driving, DWI, racing). When an arrest is made for the more serious violation, officers shall not issue a citation or charge the violator with speeding.

342.3.4 OPEN CONTAINER

Possession of Alcoholic Beverage in a Motor Vehicle is a Class C Misdemeanor (Tex. Penal Code § 49.031) and must be observed by the officer before a citation can be issued.

(a) Officers may not arrest solely for this violation unless (Tex. Transp. Code § 543.004):

1. The violator does not have sufficient identification; or

2. The violator refuses to sign a citation.

342.3.5 FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY

When drivers who do not have current proof of insurance, officers shall make an inquiry through the Texas Sure Database to confirm if the driver has insurance on file.

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(a) The inquiry shall be performed on the MDC or through Communications by running a license plate check.

(b) If the Texas Sure Database is not accessible during the stop, officers shall note on the back of the citation "SURE was down".

342.3.6 MULTIPLE HAZARDOUS TRAFFIC VIOLATIONS
When an officer observes a driver that has committed multiple hazardous traffic violations, a custody arrest may be made with supervisor approval.

(a) The intent is to remove an obviously dangerous driver from the roadway.

(b) Generally, three or more hazardous violations should be observed by an officer.

342.4 REFUSAL TO SIGN A CITATION

Officers shall explain the consequences when a violator refuses to sign a citation. If the violator continues to refuse, the officer shall request a supervisor at the scene.

The supervisor shall confirm that the violator understands the consequences of refusing to sign the citation and may order the violator taken into custody if the violator continues to refuse to sign the citation.

342.5 SUBMISSION OF TRAFFIC CITATIONS

Officers shall submit all court copies of issued paper traffic citations to a Municipal Court drop box by the end of their tour of duty. Drop boxes are located at the various substations.

342.6 CORRECTION AND DISMISSAL OF TRAFFIC CITATIONS

(a) **Correction of Citations**

1. When a traffic citation is issued and in need of correction, officers issuing the citation shall submit the citation and a Motion for Correction Form requesting a specific correction to their immediate supervisor. The citation and Motion for Correction Form shall then be emailed to prosecutor@austintexas.gov or court.liaison@austintexas.gov. The correction will then be handled by Municipal Court.

(b) **Dismissal of Citations**

1. APD employees do not have the authority to dismiss a citation once it has been issued; only the court has the authority to dismiss a citation that has been issued. Any request from a recipient to dismiss a citation shall be referred to the court.

2. Should an officer determine that a traffic citation should be dismissed in the interest of justice or where prosecution is deemed inappropriate, the officer will:

   (a) Complete a Motion for Dismissal form where the officer will explain the reason for dismissal.

   (b) The officer will present the completed form to their supervisor for approval.

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(c) The form will be emailed to APD Court Liaison (court.liaison@austintexas.gov)

(d) The officer should also discuss the citation with the Municipal Court prosecutor when submitting the required form requesting the dismissal.

342.7 CITATION ACCOUNTABILITY

Citation books are stored and secured in PCO. Officers shall:

(a) Sign for all issued citation books by legibly printing their name, employee number and signing on the designated form or log book.

(b) Be accountable for all citations issued.

(c) Return all outdated citation books to PCO.

342.7.1 LOST, STOLEN, MISPLACED OR DAMAGED TRAFFIC CITATIONS

(a) Officers will notify their supervisor if an issued citation book or individual citation is lost, stolen, misplaced or damaged.

(b) Supervisors will review the incident and email Municipal Court at Municipal.Court@austintexas.gov with the citation number(s) and notification that the citation was lost, stolen, misplaced or damaged.

342.8 SPECIAL TRAFFIC ENFORCEMENT SITUATIONS

342.8.1 CONSULAR AND DIPLOMATIC PERSONNEL

Foreign consular officials enjoy varying degrees of immunity from arrest, which may include traffic violations/citations. See General Order 330 (Foreign Officials Claiming Immunity) for more information.

342.8.2 FEDERAL AND STATE LEGISLATORS

Numerous federal and state legislators have offices within the City of Austin. During official legislative sessions, including travel to and from sessions, senators and representatives are immune from citations and arrest except for felonies and breaches of the peace.

(a) Officers shall notify their supervisor when enforcement action (e.g., arrest, citation) is taken against a senator or representative.

(b) Supervisors shall ensure the Watch Lieutenant is notified.

342.8.3 MILITARY PERSONNEL

Personnel of the Armed Forces of the United States (including National Guard) are exempt from state driver's licensing requirements while operating an official motor vehicle in the scope of that service. While operating a private vehicle, active duty non-resident military personnel are not required to hold a Texas driver's license; however, they must possess a current driver's license issued by another state.

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342.9 UNIFORM TRAFFIC ENFORCEMENT CHART

The following charts cannot cover each situation or violation; this is only a guide for commonly used citation titles.

Hazardous Violations

Violation Type	Citation Title	Guide
Speed Tolerances	Speeding	Over Limit -- Posted Speed Zone (Radar) – may allow at least nine (9) mph in excess of the specified speed. Cite at ten (10) mph or greater over the limit
	Speeding - School Zone	School Zones – should allow four (4) mph in excess of the specified speed. Cite at five (5) mph or greater.
	Speeding	Officers may cite at any speed if the facts, circumstances or conditions would justify enforcement at a lower speed. Examples can be, but are not limited to: Wet, icy, or slick road conditions, residential area, construction zones, and special events involving pedestrian and/or bicycle traffic. Officers must be able to articulate why the speed was not reasonable or prudent for the circumstances.
Speed over limit – "posted area" (radar & non-radar)	Speeding	Lower to at least 1 mile per hour less than speed (i.e. 49 in 35 zone – lower to at least 48)
Speed over limit – "school zone"	Speeding "SCHOOL ZONE"	Same as above (i.e. 27 in 20 – lower to at least 26)
Speed over limit – "Construction Area" (radar & non-radar)	Speeding "Construction Zone, Workers Present"	Same as speed "posted area" Construction workers must be present w/signage indicating "Const. Zone, Fines Double when Workers Present."
Speed over limit – "construction area" (radar & non-radar)	Speeding "Construction Zone"	Same as speed "posted area" Construction workers not present but signage indicates "Const. Zone"
Imprudent speed (collision)	Imprudent Speed	Any vehicle at any speed when existing conditions are such as to make the speed unreasonable or imprudent.
Impeding traffic	Impeding Traffic	An operator drives at a speed that impedes the normal and reasonable movement of traffic for a distance of 3 blocks or more
Right-of-way	Fail to Yield ROW (Left turn, right turn, no left turn, no right on Red, etc.)	If involved in collision or causes serious interference to another vehicle, pedestrian or bicyclist.
Signs, signals & markings (see below)	(see below)	Warning citations will be issued for a 3-day period after installation of new signs, signals & devices. Exceptions would be where an accident occurs or in aggravated situations.

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Hazardous Violations, Cont.

Violation Type	Citation Title	Guide
Impeding traffic	Speed Under Minimum, Unsafe	If conditions above are not met – Vehicle traveling for a period of 3 or more blocks, will be removed from roadway.
Red light	Ran Red Light	When involved in collision or when vehicle had not reached nearest stop line or crosswalk when light changed red.
Flashing red light	Ran Flashing Red Light	Same as Stop Sign
Ran warning sign/disregard of flashing amber light	Disregard Posted Sign	When involved in collision or apparently deliberate and hazardous
Unsafe change of lanes	Unsafe Change of Lane (from Marked Lane)	When involved in collision or apparently deliberate and hazardous
Crossing Physical Barrier	Crossing Physical Barrier	When crossed concrete, grass or other physical object. **Does not apply to crossing solid lines.**
Drove Left of Double Yellow Line or Passing in a No Passing Zone	Drove Left of Double Yellow Line or Passing in a No Passing Zone	Do not cite if operator crossed double yellow line or passed in a no passing zone in a safe manner for the sole purpose of passing a vulnerable road user
Turned from wrong lane	Improper Right/Left Turn, Exit or Approach	Turned from wrong lane, or wide right turn **interfering with other traffic** (if no interference--warn)
Illegal U-turn	Illegal U-turn, Crest/Bottom of Hill	Involved in collision or **interfered with another vehicle** (if no interference—warn)
Wrong side of road/wrong way	Wrong Side of Road – Passing Or Drove Wrong Way on One-Way	Involved in collision or near collision, or where traffic is heavy (if no interference-warn)
Following too closely	Fail to Maintain an Assured Clear Distance.	Willful or sustained, or involved in collision (Use common sense regarding enforcement during peak traffic periods when congestion exists).
Cut through private drive	Cut Through Private Drive to Avoid Light/Sign	Cite if cut through in deliberate attempt to avoid traffic control device
Fail to yield right-of-way to pedestrian	FTYROW to Pedestrian in Marked Crosswalk	Cite if pedestrian in marked crosswalk has to move/run to avoid being hit
Seat belt violations	No Seat Belt – Driver/Passenger	Cite per Transportation Code

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Non-Hazardous Violations

Violation Type	Citation Title	Guide
Expired MV inspection or registration	Expired MVI or LP	Allow six (6) day grace period from expiration date
Defective brakes	Defective Equipment – Brakes	No emergency or weak foot brakes. Vehicle will not stop within 30 feet @ 20 mph. Or, brake on only one wheel
Defective headlights, tail-lights or other light violation	Defective Equipment – headlight, tail-light, etc.	Evidence of willful neglect or multiple warning violations
Open door to traffic	Open Vehicle Door into Traffic	Involved in collision or interferes with movement of another vehicle.
Commercial vehicle equipment violations	Do Not Cite	All suspected commercial vehicle equipment violations will be responsibility of HE/L&W Unit
Soiled or damaged license plate or no front plate	Obscured LP; No Front LP	Evidence of willful neglect or multiple warning violations
License plate bracket or mounting violations	Obscured LP	Warn on first offense of partially obscured plate.
Other lighting violations	White Light to Rear; Neon Lights	Evidence of willful neglect or multiple warning violations
Buyer, & dealer in-transit tag violations	Misuse of Dealer In-transit/Demo Tag; Buyer's Tag Expired	Evidence of willful neglect or multiple warning violations
Altered or Fictitious MVI		Fact Specific
Defective exhaust, mufflers, smoke, etc.	Defective Exhaust – Noise/Smoke	Evidence of willful neglect or multiple warning violations
Altered or fictitious vehicle registration		Fact Specific
Driver's license Violation (expired)	Expired DL	Citations may be issued upon expiration
Driver's license Violation (fail to change address)	Fail to Change Driver's License	Cite per Transportation Code
No insurance, 1st and 2nd offenses	Fail to Maintain Financial Responsibility	Cite per Transportation Code
Window tint violation – rear window	Unlawful Window Tint	Cite if light transmission is 20% or less; and vehicle does not have an exterior rear view mirror on each side.
Window tint violation – front door windows-both sides	Unlawful Window Tint	Warn if light transmission is 21% to 24%. Cite if light transmission is 20% or less.
Window tint violation – windshield	Unlawful Window Tint	Cite if light transmission more than 5" from top of windshield is 65% or less.

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Austin Police Department
General Orders

Escorts and Traffic Control

343.1 PURPOSE AND SCOPE

This order provides guidelines to Department personnel who encounter traffic situations that require the use of alternative methods of enforcement, traffic direction, utilization of personnel, and specialized equipment or assistance.

343.2 ESCORTS FOR MEDICAL PURPOSES

It is the order of this Department to provide medical aid to persons requesting, or in need of, assistance. Employees should weigh the hazards and traffic dangers involved in providing escorts against the timely response of EMS or AFD.

(a) When confronted by a person requesting medical assistance, and if the patient's condition does not appear immediately life-threatening, personnel will:

1. Make every effort to provide first aid, if needed, and notify Communications to request EMS/AFD be dispatched; or
2. Provide directions to the nearest (or requested) hospital and allow the person to proceed; or
3. Provide a Code I escort to the hospital.

(b) Due to the inherent liability of an untrained driver following an emergency vehicle and the fact that EMS/AFD can respond within minutes to virtually any location within the City, Code 2 or Code 3 escorts will NOT normally be conducted.

1. However, when in the officer's opinion the extent of injuries or illness is immediately life-threatening and awaiting EMS/AFD would cause an inordinate delay in treatment, the officer will request supervisory approval for a Code 3 escort to the closest hospital emergency room.
2. If approved, Communications will be notified before initiating the escort.
3. The officer's primary function is to clear traffic, guiding the vehicle containing the patient safely to the hospital.

343.3 DIGNITARY AND VIP ESCORTS

Coordination of escorts for local or visiting dignitaries/VIPs will be handled through the Special Events and Executive Protection Units. Normally, these type events will be pre-planned and necessary personnel assigned to provide adequate traffic assistance and personal protection.

343.4 UNUSUAL TRAFFIC INCIDENTS

Situations may occur that require numerous officers to assist with traffic direction. Each occurrence will vary and may require significantly different approaches. Resources and personnel from various sources should be utilized. Some of these incidents may be, but are not limited to:

(a) Major collisions (e.g., fatalities, serious injury, officer involved, roadway blocked).

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(b) Aircraft crashes.

(c) Hazardous Materials (e.g., spills, ruptures).

(d) Fires or power failure.

(e) Inclement weather (e.g., ice, flooding).

(f) Tactical situations (e.g., hostage, barricaded subject, civil unrest).

(g) Major planned events.

343.5 TRAFFIC CONTROL GUIDELINES

When officers must provide traffic control and direction it is important to remember the inherent dangers involved. These guidelines should be followed to make it as safe and efficient as possible.

(a) Officers will notify Communications of their location prior to directing traffic in the roadway.

(b) Officers will keep Communications informed of any lane or street closures during major situations.

(c) It should be remembered that fatigue and monotony can increase the danger of this type of assignment. Supervisors should schedule breaks for officers working traffic for extended periods of time.

343.5.1 REQUIRED EQUIPMENT

When officers are directing traffic, at the scene of a collision, or investigating any incident where officers are exposed to vehicular traffic, the following gear is required:

(a) Department issued reflective vest at all times; and

(b) Flashlight with cone during darkness or limited visibility conditions.

343.5.2 BARRIERS AND TRAFFIC CONTROL DEVICES

(a) Police units should be used as initial traffic control barriers until a traffic pattern is established through the use of arrow boards, cones and/or flares.

(b) Flares may be used to assist in traffic movement.

1. Flares used at night or in limited visibility conditions may cause disorientation rather than providing direction to drivers.

(c) Traffic cones and/or arrow boards should be utilized as additional traffic direction and spaced accordingly to give drivers ample time to react.

1. Placing the initial cone pattern and set-up of arrow boards is extremely hazardous and should only be done with multiple units to provide adequate protection.

343.5.3 PRIORITY OF TRAFFIC FLOW

(a) While engaging in traffic direction, officers will remain aware of the following:

1. Emergency vehicles.

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2. Vehicles on heaviest traveled or main thoroughfares.
3. Vehicles on lesser traveled or secondary roadways.
4. Vehicles entering the roadway from a driveway.
5. Pedestrians.

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Austin Police Department
General Orders

Automatic License Plate Reader (ALPR)

344.1 PURPOSE AND SCOPE

The ALPR (Automated License Plate Reader) system will be used as a tool to enhance patrol functions and assist with the collection and storage of data (license plates, dates, times, locations of vehicles and photographs of license plates and vehicles). The ALPR's main function will be to scan vehicle license plates and cross reference the license plate with information located on "hot lists". These "hot lists" include but are not limited to license plates that have been listed as stolen, B.O.L.O., AMBER alerts, or wanted. The ALPR will also collect and store license plate data for future investigative records, analysis and dataset linking.

344.2 PROCEDURE

344.2.1 LAW ENFORCEMENT USE

The ALPR data is law enforcement information and will be used solely for law enforcement purposes. Any non-law enforcement usage of the data is strictly prohibited. Any misuse or inappropriate application of ALPR operations, information, data, or software will be addressed through General Order 902 (Administrative Investigations).

If a possible violation of this order from an outside law enforcement agency is discovered, it will be reported to the Auto Theft Interdiction Unit Lieutenant. The Auto Theft Interdiction Lieutenant will review the possible violation and determine if the sharing of ALPR data with the outside agency will continue.

The privacy of the information obtained by the Austin Police Department is of the utmost importance. The information obtained by the use of the ALPR is the property of the Austin Police Department and will not be sold, transferred or otherwise distributed to any non-law enforcement entities.

344.2.2 MANAGEMENT OF ALPR

(a) The ALPR program will be managed by the Auto Theft Interdiction Unit.

(b) Operators who encounter problems with ALPR equipment or programs will contact CTM.

344.2.3 ASSIGNMENT, USE, AND LOCATIONS OF ALPR SYSTEMS

(a) No member of the Austin Police Department will utilize ALPR equipment without successfully completing the required training.

1. Training will include the appropriate use and collection of ALPR data and emphasize the requirement to document the reason for the inquiry.

(b) The assignment of the mobile ALPR systems will be determined by the Region or Unit supervisors to whom the ALPR system is assigned.

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(c) Portable trailer mounted ALPR locations will be determined by the Region or Unit supervisors to whom the ALPR trailer is assigned.

1. The ALPR trailer will not be placed in a location that would create a hazard to passing vehicles or pedestrians.
2. The ALPR trailer will not be left in a location that blocks any part of the roadway.

(d) Portable ALPR systems will be available to use on unmarked vehicles.

1. Unmarked vehicles will require an MDC that contains the required ALPR software.

(e) Permanently mounted "fixed" ALPR systems

1. Fixed ALPR systems will be monitored by RTCC (Real Time Crime Center).

(f) ALPR systems will not be operated or used for any type of warrant round-up operations, or any operations focused on the collection of past due fees and/or fines.

344.2.4 COLLECTION OF ALPR DATA

The ALPR system will be utilized as both an active crime enforcement tool as well as a passive data collection tool which may assist investigations across all divisions.

(a) ALPR data is typically collected in a non-directed, non-specific technique.

(b) ALPR operators will conduct active and passive ALPR patrols when available in addition to performing their regular assigned tasks.

ALPR data bases will not contain PII (Personally Identifiable Information). APD will not maintain PII data regarding the registered owner of a vehicle in the ALPR database. Collected ALPR data will only be available for law enforcement usage. This includes criminal investigations and law enforcement-related purposes (e.g. searching for a missing person). Secondary use of data by users of the ALPR system will be prohibited and enforced through formal user agreements and audits.

344.2.5 ALPR RETENTION SCHEDULE

All ALPR data collected will be stored on a designated ALPR server. Server operators will purge ALPR data 365 days after it is collected. The length of time for the retention of ALPR data will be in accordance with state law. All logins and transactions are logged within the ALPR system and will be audited to ensure proper use and whether there is a criminal predicate.

ALPR data related to ongoing criminal investigations, or criminal investigations that contain ALPR as evidence, will require the investigator to download and record the relevant ALPR data into the case file.

(a) All ALPR data related to a criminal investigation shall be retained for a period of time that is consistent with the City of Austin's Records Management Ordinance, Chapter 2-11, and any applicable City Records Control Schedules and/or the State Local Government Retention Schedules.

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344.2.6 ALERTS FROM ALPR SYSTEMS
Alerts from a fixed and trailer mounted ALPR systems

(a) Will be monitored by the RTCC personnel who will determine whether a received alert will be dispatched, a general broadcast will be delivered to patrol, or no notification will be made to patrol.

Vehicle mounted ALPR systems

(a) Every alert must be interpreted and validated by a sworn ALPR trained peace officer.

(b) An ALPR alert alone, including an alert of RTCC, does not create reasonable suspicion to justify a traffic stop or the detention of an individual. Before making a stop or detention, the officer must:

1. Make a visual confirmation that the license plate actually matches the information captured by the ALPR and reported in the last alert; and

2. Confirm the license plate information with NCIC/TCIC.

(c) Officers conducting a traffic stop based on a confirmed ALPR alert should consider the level of risk associated with the nature of the offense, and ensure that their response complies with all applicable laws and APD policies and procedures.

344.2.7 PUBLIC RELEASE OF INFORMATION CONTAINING INFORMATION FROM ALPR COLLECTION
Public requests for records of ALPR data shall be processed in accordance with Texas Government Code, Chapter 552, and General Order 116 (Security and Release of Records and Information).

344.2.8 AUDIT REQUIREMENTS
The ALPR system will be audited by the Professional Standards, Risk Management Unit. The results of the audit will be presented to the Chief of Police or his/her designee and may be public information as allowed by law. At minimum:

(a) The Risk Management Unit will perform a quarterly random audit of the system to ensure compliance to policies and procedures.

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Austin Police Department
General Orders

Crash Investigation And Reporting

346.1 PURPOSE AND SCOPE

The public safety responsibilities of law enforcement include responding to crashes in order to provide aid and assistance, document the incident, and identify possible criminal activity. Therefore, officers shall be dispatched to all reported crashes except as noted.

In the event that a city-wide emergency or inclement weather creates an inordinate volume of calls for service involving minor crashes, the Watch Lieutenant may authorize patrol to temporarily deviate from any portion of this order.

346.2 CRASH RESPONSE

346.2.1 TOWING FROM A CRASH

Upon arriving at the crash scene, an officer should give immediate consideration to:

(a) Proper placement of the emergency vehicle to provide protection for officers and the scene.

(b) Requesting medical assistance for any injured parties.

(c) Requesting additional support that may be necessary (e.g., Crime Scene Unit, traffic control, AFD, tow vehicles).

(d) Clearing the crash off of the roadway as soon as possible.

1. If it is not possible to clear the roadway in a reasonable period of time, officers may need to manually direct traffic and/or place traffic cones/flares to divert traffic around the crash scene.

346.2.2 REQUIRED SUPPORT NOTIFICATIONS

(a) **Highway Enforcement**

1. When on-duty, Highway Enforcement shall assist with traffic incident management when a freeway is blocked.
2. A Highway Enforcement supervisor should be notified anytime patrol operations will be negatively impacted by:
   (a) A collision that will block a freeway for more than 60 minutes; or
   (b) A commercial motor vehicle crash involving a hazardous material spill occurring on a roadway.
   (c) Any serious injury or fatality involving a commercial vehicle.
3. The Vehicular Homicide Unit shall be promptly notified of vehicle crashes involving:
   (a) Life threatening injury or death.
   (b) Serious bodily injury involving a Department employee.

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346.2.3 PATROL CRASH INVESTIGATOR
A Patrol Crash Investigator is an officer assigned to a patrol shift and who has been to specialized training with the Highway Enforcement Command.

(a) Patrol Crash Investigators shall be called to all vehicle crashes involving:
    1. Life threatening injury or death
    2. Serious bodily injury in which impairment of the driver due to alcohol or drugs is suspected.
    3. Serious bodily injury when APD, AFD, or EMS vehicles are involved.

(b) A Patrol Crash Investigator shall be promptly notified of, and may respond to crashes involving serious bodily injury.

(c) When responding to a crash scene, Patrol Crash Investigators shall:
    1. Determine if other resources are needed at the scene
    2. Review the completed CR-3
    3. Ensure the scene and evidence are processed as needed if the Vehicular Homicide Unit is not responding, to include:
        (a) Marking evidence positions with paint
        (b) Photographing the scene and evidence
        (c) Collecting key evidence
        (d) Confirming that witnesses are identified and interviewed

346.3 CRASH INVESTIGATION
During crash investigations, officers should:

(a) Identify and interview drivers and occupants.

(b) Identify and interview any witnesses.
    1. Request all witnesses remain at the scene to speak with the Vehicular Homicide Unit, if applicable.

(c) Provide the drivers involved with a *Driver / Insurance Information Form* (PD0023 / "Brown Form") to exchange information. Officers will ensure the forms are completely filled out with the correct information before the drivers exchange the forms.

(d) Determine if any traffic violation(s) or crime(s) have occurred and take appropriate enforcement action.

(e) Identify and protect items of apparent evidentiary value.
    1. Ensure property belonging to a crash victim is protected from theft or damage and removed to a place of safekeeping. Protection of the property may consist of securing the property in a vehicle, releasing it to a third party, or turning it into the property room for safekeeping.

(f) Notify the dispatcher of any damage to the roadway, signs, or utilities.

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(g) Document the incident as necessary (e.g., insurance information, statements, measurements, photographs, collection of evidence and reporting) on appropriate report forms.

346.3.1 TOWING FROM A CRASH

(a) Preference or Non-Preference wreckers shall be used for vehicles that require towing from the scene of a crash, including parked and unattended vehicles on a public roadway, anytime the vehicle is deemed inoperable.

1. Officers should have the driver select a towing company, if possible, and confirm with Communications that it is on the Approved Wrecker List.
2. When there is no preferred company requested, or the company is not on the Approved Wrecker List, a company shall be selected through the Auto-Return Dispatching System used by Communications.
3. AFD or EMS may request wreckers when approved by an on-duty patrol sergeant.

(b) An authorized impound wrecker shall be used in the following circumstances:

1. When the driver is arrested and the vehicle is otherwise safely operable.
2. When the vehicle has been confirmed as stolen.
3. When the vehicle is of evidentiary value and needed for further investigation in a criminal offense.
   (a) The vehicle will be loaded onto a flatbed type wrecker only;
   (b) The vehicle will be accompanied until secured in the lot to maintain proper chain of custody by APD personnel;
   (c) The Crime Scene Section will be notified if placement inside the Vehicle Processing Facility is required.
4. As outlined in General Order 350 (Vehicle Towing and Impound).

346.4 TAKING ENFORCEMENT ACTION

Officers generally cannot make an arrest for a Class C misdemeanor which did not occur in their presence. After a thorough investigation in which physical evidence or independent witness statements indicate a violation of the Transportation Code led to the crash, officers may issue the appropriate citation(s) to the offending driver (Tex. Transp. Code § 550.041).

(a) Officers shall cite for all the following violations at the scene of a crash, when applicable:

1. Failure to Maintain Financial Responsibility (FTMFR).
2. Driver's License violations.
3. Hazardous violations.

(b) Driving While Intoxicated (DWI) violations shall be enforced immediately.

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(c) Felony violations (e.g., Intoxication Assault, Aggravated Assault, Manslaughter) shall be enforced immediately. Officers shall consult with the appropriate Investigative Unit as outlined in Department General Orders.

(d) If a driver is subject to enforcement and admitted to a hospital, a supervisor shall be contacted to determine the best course of action.

346.4.1 LEAVING THE SCENE & FAILING TO STOP AND RENDER AID

When a driver leaves the scene of a crash where there is damage to a vehicle without exchanging information required by law, it is considered an Leaving The Scene (LTS) crash (Tex. Transp Code § 550.022). When there is very minor damage, officers should determine if a reasonable driver would have had knowledge of the damage caused.

Failing to Stop and Render Aid (FSRA) crashes are LTS crashes where someone suffers an injury (e.g., complaint of pain or visible injury) as a direct result of the crash (Tex. Transp Code § 550.021).

(a) **Found Suspect Vehicle and/or Driver**

1. If the suspect vehicle and/or driver is located before the original reporting officer's tour of duty ends, officers shall:
   (a) Obtain any additional information and include it in the incident report or write a supplement; and
   (b) Take enforcement action if all necessary elements can be proven and the intent to evade responsibility is shown.

(b) **Enforcement Action**

1. Enforcement of an LTS crash is determined by the following:
   (a) A citation may be issued for a class C misdemeanor if the pecuniary loss is less than two hundred dollars ($200).
   (b) A custody arrest may be made for a class B misdemeanor if the pecuniary loss is two hundred dollars ($200) or more.

(c) **Required Information For Follow-up**

1. If no enforcement action is made at the scene of an LTS crash and any of the following criteria is missing, there will not be enough evidence needed to file criminal charges. The officer shall notify the victim there will not be a follow-up investigation when there is:
   (a) Lack of a suspect driver description; or
   (b) Lack of a suspect vehicle description; or
   (c) Lack of a suspect license plate number.
2. FSRA crash follow-up shall be handled by the LTS Unit.

(d) Follow the reporting guidelines outlined in the "Crash Reports and Incident Reporting" section of this order.

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346.4.2 PRIVATE PROPERTY CRASHES
Officers may only take traffic enforcement action on the following violations when the crash occurs on private property:

(a) Driving While Intoxicated (DWI).

(b) Leaving the Scene (LTS).

(c) Fail to Stop and Render Aid (FSRA).

(d) Reckless Driving.

(e) Offenses related to financial responsibility.

346.5 CRASH REPORTS AND INCIDENT REPORTING
This section outlines the appropriate TxDOT crash report(s) to use and when an APD incident report is required.

(a) Crash report forms shall only be completed electronically.

(b) Most questions concerning how to fill out a crash report can be answered by referring to latest version of the *Instructions to Police for Reporting Crashes* (CR-100) available online through TxDOT. Officers shall comply with the instructions in this manual.

(c) A change or modification of a crash report prepared by a peace officer that alters a material fact in the report may be made only by the peace officer who prepared the report. A supplemental report may be made by any authorized employee (Tex. Transp. Code § 550.068).

(d) All CR-3 reports will be completed by the end of the officer's tour of duty or, if authorized by a supervisor, within 24 hours of the reported crash.

346.5.1 CRASH REPORTS

(a) ***Driver's Crash Report*** **(CR-2 / "Blue Form")**

1. Unless otherwise specified by this order, officers may issue the drivers a "Blue Form" if the crash meets the following criteria:
   (a) There is no report of injury; and
   (b) The vehicles involved are safely operable.
2. LTS incidents are eligible for a "Blue Form" if the crash meets the above requirements.

(b) ***Texas Peace Officer's Crash Report*** **(CR-3)**

1. The following crashes shall be investigated by APD and documented on a CR-3:
   (a) Crashes involving any injury (complaint of pain or any visible injury).
   (b) Crashes involving death.
   (c) Crashes in which impairment of the driver due to alcohol or drugs is suspected.
   (d) Crashes requiring a wrecker due to damage caused by the crash.

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(e) Crashes involving a leased, owned or rented city vehicle unless exempted by General order 346.6.1(c).

(f) FSRA crashes.

(g) When it is determined to be in the best interest of the Department or public.

2. If a crash involves a commercial motor vehicle and meets one of the above requirements for completing a CR-3, the commercial motor vehicle section of the CR-3 shall also be completed.

346.5.2 APD INCIDENT REPORTING

In addition to completing the appropriate crash report form(s), officers shall also complete a detailed incident report when crashes involve any of the following:

(a) Life threatening injury or death.

(b) Crime Scene Unit response (regardless if victim condition is upgraded).

(c) Driver impairment due to alcohol or drugs is suspected.

(d) Leaving the Scene (LTS) incident.

(e) Failing to Stop and Render Aid (FSRA) incident.

(f) An APD leased, owned or rented vehicle as outlined below.

(g) An arrest for any offense.

346.6 CRASHES AND DAMAGE TO APD CITY VEHICLES; CRASHES INVOLVING CITY OF AUSTIN VEHICLES OPERATING AS AN EMERGENCY VEHICLE (EMS, FIRE, OTHER OPERATING CODE TWO OR THREE)

(a) APD Vehicles are:

1. Any vehicle owned, leased, or rented by the department

2. Any vehicle loaned or granted to the department for use by an employee

(b) A supervisor shall be notified of all crashes involving APD vehicles and vehicles operating in an emergency capacity.

1. Supervisors will respond to the scene of APD involved crashes within the city limits or if directed by a Commander or above to conduct an investigation:

(a) The involved employee's immediate supervisor shall be contacted if he is on-duty.

(b) If the involved employee's supervisor is off-duty, another supervisor on-duty shall be notified.

(c) In the event the crash involves an APD commander or above, the next-level supervisor in the involved employee's chain-of-command shall be notified and assume responsibility for follow-up of the incident.

(d) In the event the crash occurs outside the city limits of Austin, the investigating supervisor shall determine what APD resources will be sent to the scene.

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(e) Supervisors will determine if the incident meets the criteria for a crash or "damage to city vehicle".

1. "Damage to City Vehicle" is:

   (a) Any physical contact between a city vehicle while being operated and another city vehicle, property, object, unoccupied and parked vehicle, or animal which results in visible damage to either the city vehicle(s) or another object with the following results:

      1. No injuries
      2. Damage to vehicle(s) and/or property is cosmetic
      3. Vehicle(s) can still be safely and legally operated and
      4. Damage to property is minor and there is no impairment to the property's intended function

   (b) Any incident where an approved police tactic (PIT maneuvers, Vehicle Assaults, moving disabled cars w/ push bumpers) is used that causes damage to either the police unit or the vehicle subjected to the police tactic, shall not be designated as an "Officer Involved Crash". These incidents will be handled and documented as "Damage to City Vehicle".

2. Reporting requirements for damage to city vehicle incidents:

   (a) Involved officer(s) will notify their supervisor.

   (b) Supervisors will inspect the damage and make a determination if the incident is a crash or damage to city vehicle.

   (c) The involved officer will complete the Damage to City Vehicle incident report.

   (d) Photographs of the scene, vehicle(s), and/or property will be taken and downloaded into the appropriate records management system.

   (e) Vehicle damage will be documented and repair requests will be submitted (if necessary) in PCO.

   (f) Reviewing supervisors shall:

      1. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:

         (a) Involved employee's chain of command up to the lieutenant; and

         (b) APD Risk Management

      2. Review the primary reporting employee's incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.

   (g) Lieutenants in the reporting officers' chain of command will review reports, photos, and any information related to the incident.

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1. If the reviewing lieutenant determines that the officer is not negligent, no further action is needed.
2. If the reviewing lieutenant determines that the officer is negligent in the incident; the information is forwarded to the commander for further review and action if appropriate (documented in field notes, training, IAD, etc.).

346.6.1 REQUIRED REPORTING

(a) All crashes involving APD vehicles or non-APD City Emergency Vehicles (EMS, AFD, others equipped with emergency lights and responsible for responding to emergencies) shall have:
   1. An incident report titled "Crash / City Vehicle" (3651) completed: and
   2. A large, not-to-scale diagram; and
   3. Digital photographs of the scene including damage to the vehicle(s) (downloaded into the Digital Crime Scene Management System); and
   4. A CR-3, if required, and notate:
      (a) If the unit was operating in an emergency capacity by checking the appropriate box in the Vehicle/Driver section and document the details in the Investigator's Narrative section, including the damaged vehicle unit number and city number.

(b) When the crash involves an APD Vehicle, all involved APD employees shall complete a supplement to the original report;

(c) APD supervisors will have final authority to determine when the CR-3 will be completed. Crashes involving APD vehicles and/or non-APD City Emergency Vehicles that meet all of the following criteria do not require a CR-3 if the APD employee's immediate supervisor approves the exception.
   1. All vehicles involved belong to the City, or the vehicle has struck a fixed object, or an animal only; and
   2. There are no persons injured; and
   3. The damage caused is less than $1,000

346.6.2 INVESTIGATIVE SUPERVISOR RESPONSIBILITY FOR CRASHES INVOLVING APD VEHICLES

A supervisor shall be notified of all crashes involving APD vehicles and respond to the scene if within the city limits or if directed by a Commander or above. Additionally the supervisor will:

(a) Conduct an assessment of the situation and determine the appropriate reporting parameters.

(b) Complete all required Workers' Compensation forms as outlined in General Order 956 (On Duty Injury and Illness) for each APD employee who was an occupant in the APD vehicle AND has an injury, suspected injury, or any complaint or statement of pain or

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injury, regardless of the level of complaint or statement. Supervisors will submit the completed forms to the APD Workers' Compensation Office no later than 24 hours from the crash.

1. During the supervisory investigation of the crash, if there are no reports of injury, complaint/statement of pain; but the supervisor believes the totality of the incident or the mechanism of the crash could have resulted in injury to any occupant, the supervisor should complete all necessary Workers Compensation forms.

(c) Initiate an IA investigation if they reasonably believe there is credible evidence a violation of law or general order may have occurred concerning the officer's operation of an APD vehicle.

(d) Ensure an Equipment Repair Request form is completed and turned into PCO.

(e) Send e-mail notifications with the incident report number, prior to the end of the tour of duty, to the involved employee's chain of command up to the commander.

(f) Review the primary reporting employees' incident report for accuracy and completeness.

(g) Ensure that any DMAV associated with the crash is properly categorized as Veh Hom Crash Investigation - 3 yrs.

(h) Complete an Incident Review Packet on SharePoint filling in all applicable fields to include:

1. All pertinent information relating to the crash,
2. The findings of the supervisor investigation, and
3. Any training issues or general order violations on the part of the involved officer(s), if applicable.

(i) Create an electronic folder with the case number in the folder G:\Digital Incident Review Folder containing all supporting documentation. Supporting documentation includes but is not limited to:

1. Digital photographs of any injuries suffered by any party and any property damage,
2. Copies of the incident and supplemental reports from all involved officers,
3. CAD call history if the involved officer was on a call,
4. An electronic copy of the CR-3, if required,
5. An electronic copy of a large not-to-scale diagram of the crash, and
6. Copies of all-audio and/or video media of the crash. Supervisors shall identify the applicable MAV information in Share Point IRP. Supervisors are not required to provide a digital copy of audio/video media from a DMAV in car system.

(j) Forward the electronic link(s) to the SharePoint IRP and the digital incident review folder within eight (8) working days from the date of the crash as follows:

1. APD Risk Management <Accreditation@austintexas.gov>, and

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2. The involved employee's chain-of-command, up to the lieutenant, for review. If the reviewing lieutenant believes the collision is an at-fault collision, the lieutenant will forward the link(s) to the SharePoint IRP and digital incident review folder to the commander.

346.7 CRASHES INVOLVING ALL OTHER LEASED, OWNED OR RENTED CITY VEHICLES (OTHER THAN APD)

(a) All crashes involving City vehicles shall have:

1. A CR-3, if required, or
2. Crashes involving City vehicles that meet all of the following criteria do not require a CR-3 and will be issued a CR-2 (Blue Form).
   (a) The City vehicle has struck another City vehicle, a fixed object, or an animal only; and
   (b) There are no persons injured; and
   (c) The damage caused is less than $1,000

(b) An incident report is not required solely based on the crash involving a city vehicle; however, a responding officer shall complete an incident report if the crash would otherwise require a report (e.g., LTS, DWI, death).

(c) In circumstances where a City vehicle requires a tow truck, officers shall notify Communications that it is a City owned or leased vehicle and Communications should ensure the contracted towing company for Fleet Services is contacted.

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Austin Police Department
General Orders

Disabled Vehicles and Stranded Motorists

348.1 PURPOSE AND SCOPE

This order provides guidelines to Department personnel to check on and offer to provide assistance to disabled or stranded motorist on all roadways within the City of Austin. The safety of the vehicle occupants, the officer, and other motorists is the first priority. Removal of vehicles posing a hazard or blocking traffic is essential to continuous safe and efficient traffic movement.

348.2 OFFICER RESPONSIBILITY

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practicable.

348.3 EXTENT OF ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the availability of department resources and the vulnerability of the disabled motorist.

348.3.1 MECHANICAL REPAIRS

Department personnel may provide minor mechanical assistance (e.g., change flat tires, provide electrical battery boost) to a disabled vehicle.

348.3.2 PUSH/BUDDY BUMPER USE

If exigent circumstances exist or with the permission of the vehicle operator, officers may push a disabled vehicle out of roadway to a safe location using their push/buddy bumpers. Refer to General Order 804 (Vehicle Use) on their proper use.

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Rodriguez/Talley
(Consolidated Cases)
COA 0263

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350

Austin Police Department
General Orders

Vehicle Towing and Impound

350.1 PURPOSE AND SCOPE

This order provides the procedures for towing a vehicle by or at the direction of the Austin Police Department.

350.1.1 DEFINITIONS

(a) **Impound Wrecker**: For purposes of this order, impound of a motor vehicle means the taking of a vehicle from a street, alley, highway, sidewalk or public thoroughfare, and in some instances a public place, into actual constructive police custody. It is the removal of a vehicle from where it is initially located, and may also include continued retention of the vehicle in a garage, vehicle storage facility, or other place of safekeeping. Only the authorized impound wrecker service will be used to tow and store impounded vehicles.

1. The following are situations/circumstances which do not constitute an impound.

   (a) The towing/removal of a vehicle from the scene of a crash due to damage.

   (b) The removal of an unauthorized vehicle from a private parking lot by the person who has care, custody and control of the lot.

   (c) Persons engaged in construction, street repair, etc. relocating vehicles to a nearby place of safety.

   (d) The towing of a vehicle seized by police under applicable forfeiture proceedings.

(b) **Preference Wrecker**: An APD approved wrecker that is requested by the driver or owner of a vehicle.

(c) **Non-Preference Wrecker**: An APD approved wrecker that is dispatched through the Auto-Return System used by Communications.

350.2 GENERAL TOWING GUIDELINES

350.2.1 TOWING SITUATIONS

Vehicles shall be towed using an authorized Preference or Non-Preference wrecker in the following situations:

(a) Vehicles disabled due to a traffic crash that must be removed from the scene regardless of whether the driver is arrested, as outlined in General Order 346 (Crash Investigation and Reporting).

(b) All other disabled vehicles where the driver is on-scene, officers are providing assistance and the driver is requesting the vehicle be towed.

350.2.2 DRIVING A NON-CITY VEHICLE

Non-City vehicles should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of traffic or to comply with posted signs.

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COA 0264

350.3 IMPOUND GUIDELINES

The decision to impound may be made by any officer as long as the vehicle is in violation of any City ordinance related to traffic or parking, or constitutes a traffic hazard.

350.3.1 AUTHORIZED IMPOUNDS

The following are situations/circumstances for which a vehicle may be impounded.

(a) The operator of the vehicle has been arrested and the vehicle is otherwise safely operable.

(b) It is an abandoned vehicle or junked/nuisance vehicle as defined in the Texas Transportation Code.

(c) The vehicle is listed in the BOLO file as a "Stop, ID and Impound" (e.g., UUMV).

(d) Due to any catastrophe, emergency or unusual circumstances the safety of the vehicle is imperiled and it cannot be moved to a safe place by other means.

(e) The vehicle (including non-motorized) is an immediate and substantial hazard to persons or property because of the vehicle's location and/or condition.

(f) The vehicle (including non-motorized) is unattended and parked, stopped or left standing upon any alley, highway, street, sidewalk, or other thoroughfare within the City in apparent violation of state law or City ordinance and the vehicle:

1. Has been ticketed for illegal parking at least ten (10) minutes before beginning the impound process and the vehicle is in:

   (a) A commercial delivery zone; or

   (b) Any area on a public roadway or alley marked "No Parking/Tow-Away Zone."

2. Is obviously obstructing the safe and orderly flow of vehicular and/or pedestrian traffic and it is impractical to move the vehicle to a nearby location.

(g) Municipal Court has issued an order that a specific vehicle be impounded due to outstanding parking citations.

(h) When there is articulable probable cause to believe that the vehicle:

1. Is the instrument, fruit, or evidence of a crime; or

2. Contains an instrument, fruit or evidence of a crime; or

3. Other means of effecting the gathering or security of evidence at the immediate location of the vehicle is not readily available, or appears futile.

   (a) The vehicle will be accompanied by APD personnel, until secured in the lot, to maintain proper chain of custody.

   (b) The Crime Scene Section will be notified if the vehicle is to be secured inside the Vehicle Processing Facility.

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350.3.2 IMPOUND PROCEDURES

(a) A vehicle is considered impounded once the wrecker has been called by Communications.

1. In the event that the owner/operator of the operable vehicle arrives before the arrival of the authorized impound wrecker, officers should attempt to cancel the wrecker.

2. If the authorized impound wrecker cannot be canceled, the owner/operator of the vehicle must settle with the authorized impound wrecker service by payment of a standard fee at the scene or the vehicle will be impounded by the wrecker.

(b) When a vehicle is impounded, the impounding officer will deliver the ignition key, if available, to the wrecker driver.

(c) A parking citation will be issued in all cases in which the vehicle was impounded for a parking violation.

(d) Anytime a vehicle is actually impounded or moved, officers will:

(a) Complete an *APD Impound/Wrecker Report* and provide the contacted wrecker service driver with the appropriate copy.

(b) Contact dispatch and have the towed/impounded vehicle entered into the Impound/BOLO file prior to the removal of the vehicle.

(c) Complete an incident report entitled *Impounded/Moved Vehicle* identifying the vehicle, location, time, registered owner, wrecker service, and show justification for the impound when:

(a) The operator of the vehicle has been arrested, or

(b) It is an abandoned vehicle or junked/nuisance vehicle as defined in the Texas Transportation Code, or

(c) The vehicle is listed in the BOLO file as a "Stop, ID and Impound" (e.g., UUMV), or

(d) Municipal Court has issued an order that a specific vehicle be impounded due to outstanding parking citations, or

(e) When there is articulable probable cause to believe that the vehicle:

1. Is the instrument, fruit, or evidence of a crime, or

2. Contains an instrument, fruit or evidence of a crime; or

3. Other means of effecting the gathering or security of evidence at the immediate location of the vehicle is not readily available, or appears futile.

(a) The vehicle will be accompanied by APD personnel, until secured in the lot, to maintain proper chain of custody.

(b) The Crime Scene Section will be notified if the vehicle is to be secured inside the Vehicle Processing Facility

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(d) An incident report is *not required,* however detailed notes identifying reasons for the officer's presence (officer initiated, call for service, etc.), reason for impound (special event, hazardous violation, etc.), and authority for impound (citation, city ordinance, emergency, etc.) when:

(a) Due to any catastrophe, emergency or unusual circumstances the safety of the vehicle is imperiled and it cannot be moved to a safe place by other means.

(b) The vehicle (including non-motorized) is an immediate and substantial hazard to persons or property because of the vehicle's location and/or condition.

(c) The vehicle (including non-motorized) is unattended and parked, stopped or left standing upon any alley, highway, street, sidewalk, or other thoroughfare within the City in apparent violation of state law or City ordinance and the vehicle:

1. Has been ticketed for illegal parking at least ten (10) minutes before beginning the impound process and the vehicle is in:

(a) A commercial delivery zone; or

(b) Any area on a public roadway or alley marked "No Parking/ Tow-Away Zone."

2. Is obviously obstructing the safe and orderly flow of vehicular and/or pedestrian traffic and it is impractical to move the vehicle to a nearby location.

350.3.3 HOLDS ON IMPOUNDED VEHICLES

(a) A hold may be placed on an impounded vehicle when:

1. The vehicle was involved in a criminal incident and it is necessary to establish the identity of the person who will attempt to claim the vehicle.

2. There is a need to secure the vehicle for evidentiary reasons (e.g., homicide, stolen property, a vehicular fatality, vehicle to be forfeited).

(b) A hold shall only be authorized by a supervisor or the appropriate Investigative Unit.

1. The employee number of the authorizing supervisor or investigator shall be placed on the "approved by" line on the *APD Wrecker/Impound Report*.

2. The impounding officer shall document the hold in their incident report.

(c) The initial hold placed on an impounded vehicle shall be in effect for 72 hours. A hold may be lifted by the appropriate Investigative Unit before the 72 hours expires, or extended if continued retention is necessary.

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350.4 VEHICLE INVENTORY

(a) In all incidents where a vehicle is impounded or moved, officers will make an inventory of the vehicle for damage and any items of personal property. Such an inventory is a care taking function intended to protect:

1. The owner's property while it remains in police custody.
2. The police against claims or disputes over lost or stolen property.

(b) The scope of the inventory will include:

1. The exterior for body damage.
2. Those places in a vehicle where a person ordinarily would store or leave items of personal property. Those areas can be but are not limited to:
   (a) Passenger compartment.
   (b) Trunk, console, glove box, and attached locked containers (e.g., toolbox) if the key is readily available.
   (c) Open and closed containers.
3. The inventory will include contents of locked containers (e.g., briefcase, footlockers) if the key or combination is readily available. If the key is unavailable, containers/compartments may be opened with supervisor's approval.

(c) All vehicle damage and personal property located during an inventory of a vehicle will be listed on the *APD Wrecker/Impound Report*, including its description and location.

(d) Unless placed with the prisoner's property at Central Booking, any personal items removed from the vehicle by the impounding officer will be:

1. Listed and described on the *APD Wrecker/Impound Report* and the property section of the incident report; and
2. Turned into the Evidence Room in accordance with Department General Orders.

(e) If an item of contraband, or fruit or instrument of a crime is found during a vehicle inventory, it may be seized and the person in possession of the vehicle arrested for the appropriate offense(s).

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GO
355

Austin Police Department
General Orders

DWI Enforcement

355.1 PURPOSE AND SCOPE

The responsibility to remove intoxicated drivers from the roadway extends to all sworn members of the Department. This order establishes guidelines for the detection, arrest, and processing of drivers who are suspected of operating a motor vehicle while intoxicated. It also provides guidelines for the implementation of the Texas Administrative License Revocation (ALR) Statute for intoxicated drivers who either refuse or fail a blood or breath test.

355.1.1 DEFINITIONS

Administrative License Revocation (ALR) - The administrative process to suspend the drivers license of persons who refuse or fail a breath and/or blood test.

Breath Alcohol Testing Bus (BAT Bus) - A vehicle deployed by the DWI Unit at various locations around the City of Austin to process and obtain breath and/or blood samples from drivers arrested for DWI.

Drug Recognition Expert (DRE) - An officer trained and certified by the International Association of Chiefs of Police to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol using the 12 Step Drug Evaluation and Classification process

Intoxication/Intoxicated - As defined in Chapter 49, Texas Penal Code.

Minor - For purposes of this order, any person under 21 years of age (Tex. ABC 106.01).

355.2 HANDLING SUSPECTED DWI DRIVERS

Officers shall make the appropriate DWI arrest when probable cause exists.

355.2.1 REASON FOR STOP

Officers may stop a vehicle when they:

(a) Observe a traffic violation; or

(b) Develop reasonable suspicion that a person in the vehicle has been, is currently, or is about to be engaged in criminal activity based on specific and articulable facts by the officer or from information provided by credible witness(es).

355.2.2 REQUESTING A DWI ENFORCEMENT OFFICER

Officers who encounter a driver exhibiting characteristics of intoxication may request a DWI Enforcement Officer to conduct the preliminary DWI investigation as outlined below:

(a) A request for a DWI officer requires the approval of a DWI supervisor when:

1. The requesting officer has less than 2 years APD patrol experience; or
2. The driver is physically combative; or
3. The driver is under arrest, or will be arrested, for another offense.

(b) If a DWI Officer is available to respond, the following guidelines apply:

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COA 0269

1. The requesting officer should not perform any field sobriety tests on the driver.
2. Driver's license and warrant checks should not be conducted prior to DWI officer arrival unless it is an officer safety issue. Any findings in reference to prior DWI offenses shall not be given to the DWI officer until after field sobriety tests are conducted.
3. If the incident involves a crash and/or offense where the officer did not witness the subject driving, officers should identify any witnesses on scene that can positively identify the driver(s) and request that they remain on scene until investigators can obtain their statement.
4. Any charges to be filed in addition to DWI shall be filed by the stopping officer.
5. If the DWI officer arrests a driver for DWI during an assist and that driver is subsequently transported to any hospital for a medical reason (other than to obtain a blood draw for the DWI investigation), it shall be the responsibility of an officer from the originating patrol area to guard the prisoner at the hospital and later transport him to jail.

(c) If a DWI officer is not available to respond, the officer shall conduct the preliminary DWI investigation and take appropriate enforcement action. A DWI officer should be considered unavailable if they are not en-route within 15 minutes of the assist request.

355.3 PRELIMINARY DWI INVESTIGATION

Officers must be able to articulate specific facts that lead to the development of probable cause for a DWI arrest. This can be done through observations, use of a field interview, and field sobriety tests.

(a) Units equipped with a Mobile Audio Video (MAV) recording system for which the officer has been trained shall, if possible, position the device in such a way as to record the field interview and field sobriety tests.

355.3.1 FIELD INTERVIEW

A field interview should be conducted to document the following:

(a) Any characteristics of intoxication exhibited by the driver (e.g., odor of alcoholic beverage on the breath, bloodshot or glassy eyes, impaired speech).

(b) Interview answers given by the driver (e.g., originating location, destination, alcohol consumption).

355.3.2 FIELD SOBRIETY TESTS

Officers trained and certified in the administration of the SFST (e.g., Horizontal Gaze Nystagmus (HGN), Walk and Turn, One Leg Stand) shall conduct the tests during a DWI interview.

(a) Officers not trained and certified in the SFST should request a trained and certified officer to the scene.

(b) Officers should go through the instructions for each SFST and give the driver an opportunity to complete the test, even if the driver does not wish to perform any of the requested tasks.

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(c) As a last field sobriety test, when reasonably available, officers should request the driver to submit to a preliminary alcohol screening test. This test is to be performed by an officer who has been trained in the use of the device. The officer will administer the admonishment listed in the training manual.

(d) Officers are not required to conduct the SFST when:

1. Physical limitations of the driver preclude its use; or
2. The safety of the officer and/or driver may be compromised; or
3. The tests are impractical for some other articulable reason.

(e) Other field sobriety tests (e.g., Romberg Balance Test, Finger to Nose) may be conducted to further develop probable cause but should not be used as a substitution for the SFST, unless necessary.

355.3.3 HANDLING MINORS

(a) **DWI** - Minors are subject to the same standard in developing probable cause to determine intoxication for a DWI arrest. If the field interview and SFST indicate that a minor is intoxicated, he may be arrested for DWI.

(b) **DUI** - Minor that do not exhibit signs of intoxication and/or have passed the SFST but has any detectable amount of alcohol on their breath may be arrested for Driving Under the Influence (DUI) Minor-Alcohol (Class C misdemeanor). Officers shall either arrest the minor or issue a field release citation for DUI Minor-Alcohol as follows:

1. **Arrest**

(a) Officers may request a breath specimen by reading a DIC-24, if desired. The DIC-24 does not need to be read to a minor unless a breath specimen is being requested.

1. If the minor refuses to provide a sample, or the sample shows an alcohol concentration greater than or equal to.001, issue the DIC-24, DIC-25 and seize the minor's Texas drivers license.
2. If the officer does not request a sample, do not seize the minor's Texas drivers license.

(b) Breath Samples From Minors Under 18 Years of Age

1. The Family Code, Title 3, Chapter 52, Section 52.02(d) states that a juvenile taken into custody for DUI Minor-Alcohol may submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request and the child's response to that request is videotaped.
2. In accordance with this statute, officers wishing to request a breath specimen from a juvenile arrested for DUI Minor-Alcohol must videotape the administration of the DIC-24 prior to administering the intoxilyzer test.

2. **Field Release Citation**

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(a) Along with the citation, issue a DIC-25 and turn the minor over to a responsible adult.

(b) A minor shall not be allowed to drive the vehicle from the scene if issued a citation. Disposition of the vehicle shall be made in one of the following ways:

1. Release the vehicle at the scene to a licensed, sober passenger.
2. Contact a parent or other adult to come to the scene and assume custody of the minor/vehicle.
3. If none of the above options are available (e.g., the minor is from out-of-town), the vehicle may be impounded and the minor arrested and transported to a Juvenile Detention Facility or County booking facility, as appropriate.
    (a) If the detention facility will not accept custody of the minor due to the category of offense, officers shall follow General Order 317.2.5.(b) RELEASING A JUVENILE FROM CUSTODY.

355.4 REQUESTING A SPECIMEN

After placing a driver under arrest, officers may read the DIC-24 (DIC-55) and request a specimen of the drivers' breath and/or blood.

(a) The reading of the DIC-24 (DIC-55) should be recorded using a unit equipped with an MAV recording system or a booking facility video room.

(b) If the driver agrees to provide a specimen of his breath and/or blood, follow the appropriate specimen guidelines outlined below.

(c) If a driver refuses to provide a specimen of his breath and/or blood, follow the booking guidelines outlined below.

355.4.1 FORCE TO OBTAIN SPECIMEN

(a) Officers shall not coerce a driver to submit to a breath or blood test.

(b) Officers shall not use force to compel a driver to submit to a breath or blood test except in cases authorized by mandatory blood draws or as a result of a search warrant for blood.

1. Only the least amount of force reasonable to obtain the specimen may be used when force is authorized and should generally be limited to soft restraints.

355.4.2 BOOKING FACILITY VIDEOTAPING

(a) If the field interview and field sobriety tests were videotaped by means of an MAV recording system and during that taping the driver refused to give a breath or blood specimen, it is not necessary to videotape the driver again.

(b) If the driver refuses both breath and blood tests and the SFST were not taped by a MAV recording system, the officer shall videotape the driver at the appropriate County

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booking facility. The following steps and procedures shall be followed in the video room:

1. Attorneys for drivers shall not be allowed in the video room.
2. After entering the video room, make reasonable attempts to keep the driver within the viewing area of the camera.
3. If the driver is not cooperative and refuses to stand up in the video room, do not force the driver to stand.
4. The officer shall go through all appropriate steps listed in the video room, even if the driver does not wish to perform any of the requested tasks.
5. The officer shall display the DIC-24 (DIC-55) that was already read and ask the driver if he wishes to sign it to indicate his refusal.
6. The officer shall give the driver his copies of the DIC paperwork while being recorded.
7. The driver shall be booked into jail for DWI.

355.5 BREATH SPECIMEN GUIDELINES

(a) If a driver has consented to give a specimen of his breath, take the driver to an intoxilyzer testing location at the BAT Bus or County booking facility.

1. The intoxilyzer shall only be administered by a trained and certified Intoxilyzer Operator (IO).
2. Officers transporting a driver to a County booking facility shall request dispatch to have an IO meet the officer at the facility, if needed.

(b) Upon arrival to an intoxilyzer testing location and prior to taking a breath specimen, officers shall record the reading of the DIC-24 (DIC-55) to the driver if it hasn't been done yet. If the driver is a Spanish speaker, the tape-recorded DIC-24S shall be played or a Spanish-speaking officer shall read the DIC-24S.

355.5.1 INTOXILYZER RESULTS

(a) If the intoxilyzer results indicate the driver's alcohol concentration was at or above the legal limit, he shall be charged with DWI. Officers shall follow the appropriate booking guidelines outlined in this order.

(b) If the intoxilyzer results indicate the driver's alcohol concentration was less than.05 grams of alcohol per 210 liters of breath, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

1. The arresting officer shall contact his supervisor or a DWI Enforcement Unit supervisor.
2. The responding supervisor shall review the MVR recording of the initial stop and subsequent investigation.
3. Absent confirmation of the presence of drugs through an examination by a Drug Recognition Expert, the responding supervisor shall order the release of

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the driver or direct the officer to issue a citation for the original traffic or other violation.

(c) If the intoxilyzer results are.05 but less than.08, the arresting officer shall contact his supervisor or a DWI Enforcement Unit supervisor.

1. The responding supervisor shall review the MVR recording of the initial stop and subsequent investigation. If it is determined that the level of impairment exhibited by the driver, and the totality of the circumstances surrounding the arrest still warrant the continued detention, the supervisor shall approve the arrest of the driver.

2. If the responding supervisor, after review of all the evidence including the intoxilyzer results, determines there is insufficient probable cause to support the DWI charge, he shall order the release of the driver.

(d) If the driver exhibits symptoms of intoxication but the intoxilyzer results do not indicate a level of alcohol concentration consistent with the impairment displayed, the driver may be asked for a specimen of his blood and if he would consent to a DRE evaluation. If the driver was not videotaped during the initial stop, he must be videotaped when the request is made.

1. If the driver consents to a DRE evaluation, it shall be administered by a trained and certified DRE. Based on the outcome of the evaluation, the driver will either be booked into jail or released.

2. If the driver only consents to a blood specimen, follow the blood specimen guidelines outlined in this order.

3. If the driver does not consent to a blood specimen, even after supplying a breath specimen, seize his Texas drivers license and follow the booking guidelines outlined in this order.

355.6 BLOOD SPECIMEN GUIDELINES

Officers shall adhere to the following guidelines if requesting a blood specimen from a driver after reading the DIC-24 (DIC-55) and the driver:

(a) Refuses to give a specimen but meets the conditions for a mandatory blood draw (with DWI Supervisor approval); or

(b) Refuses to give a specimen but meets the requirements for obtaining a blood search warrant; or

(c) Voluntarily consents to give a blood specimen.

355.6.1 MANDATORY BLOOD DRAWS

(a) When an officer arrests a DWI suspect who refuses to provide a voluntary breath or blood test and who falls under the following criteria, the officer will contact their corporal (or another corporal on duty) and attempt to obtain a blood search warrant.

1. A death has occurred or is likely to occur as a result of the collision; or

2. Serious bodily injury occurred to another as a result of the collision; or

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3. Bodily injury occurred to another and that person was transported to a medical facility; or
4. The driver has 2 or more prior convictions for DWI; or
5. The driver is being charged with DWI with a child passenger under 15 years of age; or
6. The driver has 1 or more prior convictions for Intoxication Manslaughter; or
7. The driver has 1 or more prior convictions for DWI with a child passenger under 15 years of age.

(b) In the unusual case that an officer feels there is an exigency or they do not have time to apply for a blood search warrant, the officer shall contact an on-duty (or on-call) DWI supervisor for approval for a warrentless blood draw. Officers should be aware that there is a magistrate at the Travis County Jail 24 hours a day for warrants. The DWI supervisor will determine if exigency articulated by the officer overrides the blood search warrant requirement.

1. For a blood search warrant in Williamson County, contact the Williamson County booking desk and determine if there is an on-duty or on-call magistrate for review of a blood search warrant. If they are not available, an Austin Municipal Magistrate may be utilized.

355.6.2 BLOOD DRAW PROCEDURES

(a) Blood draws performed at the Travis County Central Booking Facility shall be recorded by the video cameras in the phlebotomy room.

(b) The following lists the available locations for mandatory blood draws, blood search warrants, and voluntary blood draws:

1. Daily from 9:30 p.m. to 5:30 a.m. transport the driver to Travis County booking and have the medical professional perform the blood draw.
2. All other times, request dispatch to contact the on-call DWI officer. The DWI officer will contact the medical professional to respond to the jail and perform the blood draw.
3. For blood draws in Williamson County, contact the booking desk and determine if the jail nurse is available for a blood draw. If they do not have a nurse available, transport the suspect to the Georgetown Hospital to have a medical professional complete the blood draw.
4. **Hospital Setting**
   (a) If the suspect has been transported to a hospital, the evidentiary blood draw can be done by medical personnel at the hospital.
   (b) There is no need to contact the Department medical professional if the hospital is performing the blood draw.
   (c) Follow blood draw procedures that have been established by the hospital.

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(c) Blood tubes shall be handled in accordance with General Order 618 (Property and Evidence Collection Procedures) and placed in the appropriate refrigerated drop box for processing by the APD Crime Lab, along with appropriate routing and chain-of-custody paperwork.

355.7 DWI BOOKING GUIDELINES

When booking a driver into jail for DWI, the arresting officers shall:

(a) Complete a booking sheet and indicate the appropriate DWI charge.

(b) Complete the DIC-24 (DIC-54):

1. Notate what type of specimen was requested; and
2. Whether a specimen was provided; and
3. Give a copy of the document to the driver.

(c) Complete the DIC-25 (DIC-55), give a copy of the document to the driver and seize his Texas driver's license when the driver:

1. Refuses to provide a specimen; or
2. Provides a breath specimen with results at or above the legal limit.

(d) Do not seize an out-of-state license from a driver or a driver who provides a voluntary blood sample.

355.8 FILING DWI CHARGES

355.8.1 REQUIRED ADMINISTRATIVE LICENSE REVOCATION DOCUMENTATION

(a) The following Administrative License Revocation (ALR) documents are required when making an arrest for DWI:

1. Motor Vehicles
   (a) DIC-23 - Peace Officer Sworn Report.
   (b) DIC-24 - Statutory Warning.
   (c) DIC-25 - Notice of Suspension / Temporary Driving Permit.
2. Commercial Motor Vehicles
   (a) DIC-54 - Peace Officer Sworn Report / Commercial Motor Vehicles.
   (b) DIC-55 - Statutory Warning / Commercial Motor Vehicle Operators.
   (c) DIC-57 - Notice of Disqualification / Temporary Driving Permit.

(b) The following documents are required when taking a breath and/or blood specimen:

1. TLE-51A Affidavit of Person who Withdrew Blood.
2. The APD Chemistry Lab Blood Alcohol Submission Form is used when a blood specimen is taken.

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(c) The following documents have Spanish versions that can be used for Spanish speaking drivers: DIC-24S, DIC-25S, DIC-57S.

355.8.2 DIRECT FILING DWI CHARGES

(a) Officers direct filing charges for DWI shall complete the following documentation to be turned in to a DWI Enforcement supervisor if utilizing the BAT Bus or the Arrest Review detective if going directly to a County Booking facility:

1. Case disposition sheet; and
2. Original signed DWI PC Affidavit; and
3. Required ALR paperwork; and
4. Intoxilyzer results if a breath sample was given; and
5. TLE-51A if a blood sample was given; and
6. Any seized Texas drivers license, if applicable; and
7. Copy of Blood Search Warrant paperwork, if applicable.

(b) Officers who request a DWI officer that subsequently arrests the driver, shall:

1. Write a supplement to the incident report;
2. Complete any CR-3 (Crash Report), if applicable;
3. Submit into evidence any in-car recording(s) showing event's prior to arrival of the DWI officer.

355.8.3 ADDITIONAL WILLIAMSON COUNTY GUIDELINES

(a) Officers arresting and booking a driver into Williamson County Jail are required to get DWI Enforcement Unit or Arrest Review Unit review and approval on arrests.

(b) In addition to copies of the required documentation listed above, officers shall turn in the following to the Williamson County Booking Officer:

1. Williamson County Sheriff's Department Arrest Report or a copy of the incident report, if printed out and available. The Williamson County form does not replace the requirement of officers to complete an incident report

(c) All original ALR paperwork, a copy of the DWI PC Affidavit and any seized Texas drivers license shall be stapled together and forwarded to the Traffic Office.

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Austin Police Department
General Orders

Outside Agency Assistance and Joint Task Forces

362.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidance to officers when requesting assistance or answering a request for assistance from another law enforcement agency.

It is the order of this department to provide assistance whenever possible, consistent with the applicable laws of arrest and detention orders of this department, when another law enforcement agency requests assistance with an arrest or detention of any person. This department may also request an outside agency to provide assistance.

362.1.1 PUBLIC REQUESTS FOR SERVICE IN ANOTHER JURISDICTION

All incoming calls from the general public requesting police assistance at a location not within the geographical jurisdiction of the Austin Police Department shall be immediately routed or referred to the proper agency.

362.2 ASSISTING OUTSIDE AGENCIES

362.2.1 REQUESTS FOR NON-EMERGENCY ASSISTANCE

(a) Requests of Minor Nature

1. Law enforcement agencies making a minor nature request of APD (e.g., back-up on traffic, identification inquiries) shall normally be processed through APD Communications.

(b) Requests for Major or Specialized Non-Emergency Assistance

1. Law enforcement agencies making a formal request for any major or specialized non-emergency assistance shall be advised to contact the following APD supervisors:
   (a) **Uniform Personnel** - Affected commander or lieutenant.
   (b) **Specialized Investigative or Tactical Assistance** - Investigations commander, Organized Crime commander or Special Operations commander, as the situation dictates.
   (c) **Specialized Forensic or Victim Counseling Services**: Forensics manager or Victim Services manager, as the situation dictates.
2. In the absence of the above APD supervisors, the Watch Lieutenant or Duty Commander shall be contacted.
3. APD supervisors shall notify the chain-of-command up to the affected assistant chiefs if it is determined a service request will take an extended period of time and impact APD resources.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0278

362.2.2 REQUESTS FOR EMERGENCY ASSISTANCE

Law enforcement agencies may request emergency assistance from the Department at any time. Such requests are categorized and handled as follows:

(a) **Immediate Emergency Assistance**

1. These are incidents in which another agency's officers are within or immediately adjacent to our jurisdiction and have encountered a situation or incident requiring immediate assistance (e.g., officer needs assistance, major crashes).
2. Such requests are normally received by APD Communications which is responsible for:
   (a) Determining the nature of the request; and
   (b) Dispatching the appropriate APD units to assist; and
   (c) Notifying the appropriate unit sergeant and lieutenant of the request.

(b) **Formal Emergency Assistance**

1. This type of request is normally made when another agency's resources have been overwhelmed or need to be supplemented (e.g., disasters, hostage/ barricade situations, explosive devices, mass casualty incidents).
2. The affected assistant chiefs, or in their absence the Duty Commander, shall be immediately notified and will make a decision as to what extent the Department will honor such requests.

362.2.3 COMMAND AND COORDINATION OF APD PERSONNEL

(a) APD personnel shall not be placed under the command of any outside agency.

(b) Any APD Units dispatched for routine assistance to another agency shall contact the other agency's officer-in-charge to render approved assistance but shall remain under the direct control of an APD supervisor.

(c) At the scene of an incident where APD personnel are working with officers from an outside agency:

1. The ranking APD patrol supervisor shall assume command and responsibility of all assigned APD patrol officers.
2. The ranking APD support unit supervisor shall assume command and responsibility of all APD support unit personnel.
3. The responsible supervisors shall coordinate their efforts with each other and with the ranking supervisor of the outside agency.
4. If there is only one APD supervisor on-scene and several units of the Department are present, that supervisor shall assume command and responsibility of all APD personnel and shall coordinate operations with the ranking supervisor of the outside agency.

(d) The appropriate Commanders or Duty Commander shall be kept informed by the on-scene ranking APD supervisor of the progress, delays, or conclusion of any operation.

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(e) When a long-term investigation is being performed jointly with another law enforcement agency, the affected Commanders will maintain liaison with the outside agency.

362.3 JOINT INVESTIGATIVE TASK FORCE

An investigative task force may be established when normal resources are unable to cope with a problem or would aid in the investigation of certain types of offenses.

(a) To request establishment of a joint task force a written memorandum of understanding or task force agreement must be completed and agreed to by the involved agency or agencies.

(b) The decision to establish any joint task force must be approved by the Chief or designee.

(c) Planning and Analysis will track the number and type of ongoing joint task forces. This will be accomplished in accordance with any prescribed security or confidentiality clauses established in each task force agreement.

362.3.1 JOINT TASK FORCE MANAGER

Once the decision to establish an investigative task force has been approved, a joint task force manager will be appointed. Selection of the joint task force manager will be based upon work experience, management skills, the overall reputation of the candidate and the type of investigation.

(a) The joint task force manager will be of the rank of lieutenant or higher, depending on the scope of the problem or investigation, and requires final approval by the Chief or designee.

(b) The joint task force manager will be responsible for:

1. Establishing accountability for all facets of the operation.
2. Identifying all available resources required.
3. Briefing the Chief or designee periodically, or as requested, on the progress of the task force.
4. Preparing an after-action report to be presented to the Chief or designee detailing:
    (a) Expenditures (e.g., overtime, equipment, travel).
    (b) Staff-hours used.
    (c) Arrests and prosecutions.
    (d) Property and contraband recovered or seized.
    (e) Effectiveness of task force.
    (f) Recommendations.
5. Forwarding a copy of the after action report to Planning and Analysis for archiving.

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362.3.2 APD PERSONNEL IN JOINT TASK FORCES
When APD personnel are assigned to assist other agencies in either long- or short-term joint task forces:

(a) APD personnel will remain under the control of a specified APD supervisor.

(b) Reporting procedures shall be established by APD supervisors to ensure regular reports are received from APD employees regarding their activities.

(c) The involvement of APD personnel in joint task forces will undergo regular review by the involved employee's chain-of-command.

(d) Affected assistant chiefs may request periodic reports from a chain-of-command either recommending the continuation or termination of the employee's involvement.

362.4 NOTIFICATIONS AND INVESTIGATIONS INVOLVING AUSTIN INDEPENDENT SCHOOL DISTRICT (AISD) POLICE

(a) AISD Police have agreed to notify APD Communications when incidents of a serious nature (e.g., Homicide, Aggravated Assault, and Sexual Assault) occur on school property.

1. APD Communications will contact an APD patrol supervisor with details of the incident and will supply a contact number for the AISD police supervisor.

2. The APD supervisor will determine what, if any, response is needed from APD and will confer with the AISD supervisor on which agency will assume investigative responsibility.

(b) APD Communications shall notify AISD police of any AISD school related safety issues (e.g., fire around school property during school hours) or serious incident affecting AISD students (e.g., death of an AISD student, AISD bus crash).

(c) Prior to APD PIO releasing information to the media on any major incidents affecting AISD schools or students, APD PIO first shall notify AISD PIO.

362.5 REQUESTING ASSISTANCE FROM OTHER AGENCIES
An APD supervisor shall coordinate any assistance needed from outside agencies.

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Austin Police Department
General Orders

Off-Duty Law Enforcement Actions

364.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This order is intended to provide guidelines for officers of the Austin Police Department with respect taking law enforcement action while off-duty. The same standard of objective reasonableness that applies to on-duty enforcement actions shall also apply to off-duty enforcement actions.

This order does not apply to officers who are working in an undercover or approved secondary employment capacity.

364.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged, particularly when officers are outside their jurisdiction. Reporting to the appropriate law enforcement agency and safe monitoring of suspected criminal activity is favored.

(a) Officers should not attempt to initiate enforcement action when witnessing minor crimes; Officers are not expected to place themselves in unreasonable peril.

(b) Officers who becomes aware of an incident or circumstance that he reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage, should take reasonable action to minimize the threat.

(c) Officers must remember that their authority to arrest may be limited based upon their jurisdiction.

364.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal and state law and department general orders.

(a) Any officer wishing to carry a firearm while off-duty is authorized to do so as either a law enforcement officer as allowed by this order or as a civilian under the authority of the state issued license, not both.

(b) Officers shall carry their Department issued badge and identification card when carrying firearms off-duty under the authority granted to a law enforcement officer.

(c) An officer carrying off-duty under the authority of a state issued license, whether concealed or open, will not display his or her APD badge or ID, or use or carry any APD equipment, including their issued firearm.

(d) Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage, or taken any drugs, that would tend to adversely affect the officer's senses or judgment.

(e) For purposes of this section of this order, off-duty is defined and as any activity in which the employee is not receiving compensation or benefit as a result of their employment with the Department, or wearing any part of an authorized uniform.

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1. This definition does not apply to officers who are working in an undercover capacity.

364.4 DECISION TO INTERVENE

Generally, off-duty officers should consider waiting for on-duty uniformed officers to arrive and gather as much accurate intelligence as possible instead of immediately intervening.

(a) Officers should take into consideration the following factors when making a decision on whether or not to intervene:

1. The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
2. The inability to communicate with responding units.
3. The lack of equipment, such as handcuffs, OC or baton.
4. The lack of cover.
5. The potential for increased risk to bystanders if the off-duty officer were to intervene.
6. Unfamiliarity with the surroundings.
7. The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

364.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary, an officer should call or have someone else call 9-1-1 to request immediate assistance if possible.

(a) The operator should be informed that an off-duty officer is on-scene and provided a description of the officer if possible.

(b) Officers should clearly identify himself as a police officer to those involved in the situation, if practicable.

(c) Officers should fully cooperate with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

364.4.2 INCIDENTS OF PERSONAL INTEREST

Unless there is an exigent circumstance, employees shall refrain from handling police incidents of personal interest (e.g., family or neighbor disputes). When practicable, employees should report the matter to 9-1-1 so that an on-duty officer can respond.

(a) Offenses that may be committed against the employee, members of the employee's family, or a business interest of the employee will be reported to the Investigative Unit with responsibility for investigation of such offenses. Normal filing procedures will be followed to prevent any potential for abuse of authority.

(b) Employees shall not maintain continued involvement in any criminal case, nor personally file any criminal charge in a court of law, against any person for criminal

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offenses committed against the employee, any member of the employee's family, or which involves any business in which the employee has a proprietary interest.

364.4.3 CIVILIAN RESPONSIBILITIES
Civilian personnel should not become involved in any law enforcement incident while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable. This order does not prevent a civilian employee from taking action as a private citizen as authorized by State law.

364.4.4 OTHER CONSIDERATIONS
When encountering non-uniformed officers in public, uniformed officers should wait for acknowledgement by non-uniformed officers in case they need to maintain an undercover capability.

364.5 REPORTING

(a) In addition to contacting the appropriate agency, any off-duty employee who engages in any law enforcement activity shall notify, as soon as practicable:

1. The employee's immediate supervisor if the supervisor is on-duty.
2. Any on-duty supervisor when the employee's immediate supervisor is off-duty.

(b) The notified supervisor shall determine whether a report should be filed by the employee.

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Chapter 4 - Field Response, Investigations and Reporting Policies

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GO
400

Austin Police Department
General Orders

Officer Response to Calls

400.1 PURPOSE AND SCOPE

The Department has a responsibility to protect life and property and to provide service to the residents of Austin. To fulfill this obligation it must provide an appropriate response to calls. Officers should be ever mindful that they have a responsibility to ***use caution, good judgment, and due care*** when operating vehicles in an emergency capacity to ensure the safety of motorists and pedestrians. This document describes the conditions under which an APD vehicle may be operated as an emergency vehicle.

400.2 EMERGENCY RESPONSE AND VEHICLE OPERATIONS

(a) Officers responding to an emergency call shall do so without delay.

(b) Responding with emergency lights and/or siren does not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator in like circumstances (Tex. Transp. Code § 546.005).

(c) Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle (Tex. Transp. Code § 546.001).

(d) If the emergency equipment on the vehicle should fail to operate at any time during the response, the officer shall notify Communications of the equipment failure so that another unit may be assigned to the emergency response. The officer may still respond to the call without the use of emergency equipment.

(e) Operation of emergency vehicles is classified in 3 levels:

1. Code 3 (Emergency Operation).
2. Code 2 (Limited Emergency Operation).
3. Code 1 (Routine Operation).

400.2.1 CODE 3 (EMERGENCY OPERATION)

Code 3 is used to describe the operation of a vehicle while the emergency lights and siren are activated.

(a) When operating Code 3, officers may:

1. Exceed the speed limit but must regulate their speed so as not to endanger life or property.
2. Proceed with caution through traffic signals and stop signs after slowing and, if necessary, stopping to ensure the intersection is safe/clear.
3. Disregard laws governing direction of movement and turning when it can be done safely.

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(b) Unmarked vehicles equipped with a siren and emergency lights may be operated Code 3 in compliance with this order.

(c) Officers should only respond Code 3 when so dispatched or when circumstances reasonably indicate an emergency response is required.

1. Unless otherwise required by Department General Orders (e.g., pursuits), the decision to operate Code 3 in authorized situations is at the discretion of the officer

2. If, in the officer's judgment, roadway conditions or traffic congestion causes an unreasonable risk to operate Code 3, the officer may elect to respond to the call without the use of lights and siren at the legal speed limit. In such an event, the officer should immediately notify Communications.

3. Officers shall discontinue Code 3 operation when directed to do so by a supervisor.

(d) Emergency Operation Exemptions. This section does not relieve an officer from the duty to operate an authorized emergency vehicle with appropriate regard for the safety of all persons or the consequences of reckless disregard for the safety of others.

1. Officers may operate an authorized emergency vehicle for a law enforcement purpose without using the audible or visual signals if the officer is responding to an emergency call or pursuing a suspected violator of the law with probable cause to believe that:

(a) Knowledge of the presence of the officer will cause the suspect to:

1. Destroy or lose evidence of a suspected felony;

2. End a suspected continuing felony before the officer has obtained sufficient evidence to establish grounds for arrest; or

3. Evade apprehension or identification of the suspect or the suspect's vehicle; or

4. Because of traffic conditions on a multi-lane roadway, vehicles moving in response to the audible or visual signals may increase the potential for a crash.

2. In operating an authorized emergency vehicle, the officer may:

(a) Park or stand;

(b) Proceed past a red or stop signal or stop sign, after stopping or slowing as necessary for safe operation;

(c) Exceed a maximum speed limit, as long as the officer does not endanger life or property;

(d) Disregard a regulation governing the direction of movement or turning in specified direction. Officers will adhere to General Order 214.3.4 (Pursuit Driving Considerations and Restrictions).

3. This section applies when an officer is:

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(a) Responding to an emergency call;

(b) Pursuing an actual or suspected violator of the law;

(c) Directing or diverting traffic for public safety purposes; or

(d) Conducting a police escort as defined by 546.003 Transportation Code.

400.2.2 CODE 2 (LIMITED EMERGENCY OPERATION)
Code 2 is used to describe the operation of a vehicle while the emergency lights are activated, but without use of the siren.

(a) When operating Code 2, officers shall obey all traffic laws and regulations.

(b) Officers may temporarily operate Code 3 in order to pass through traffic control devices or heavy traffic congestion when normally authorized to operate Code 2, as necessary. Officers will revert back to operating Code 2 when Code 3 is no longer needed.

(c) Officers may be allowed to drive Code 2 as a patrol technique with the approval of a lieutenant or higher.

400.2.3 CODE 1 (ROUTINE OPERATION)
Code 1 is used to describe the normal operation of a vehicle without the use of emergency lights or siren.

400.3 CALLS FOR SERVICE

(a) Calls for service are classified by Communications into the following categories:

1. Hot Shot (Priority 0).
2. Urgent (Priority 1).
3. Priority 2.
4. Priority 3
5. Information Calls.

(b) Once a call for service has been dispatched, it may only be downgraded by a supervisor or Communications.

(c) Each type of call for service permits a specific type of Code response as outlined below.

(d) Once a Code 4 has been broadcast by a unit at the scene, all units still responding shall immediately terminate their response and go in-service.

400.3.1 HOT SHOT CALLS

(a) Hot shot calls are incidents:

1. Involving physical harm or injury to a person or property; and
2. That is in progress and/or all involved parties are still on scene.

(b) Officers responding to Hot Shot calls should operate Code 3.

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400.3.2 URGENT CALLS

(a) Urgent calls are incidents:

1. Involving physical harm or a perceived threat to any person or property; and
2. That just occurred and/or suspects may still be in the area; and
3. Where a quick response might aide in apprehension.

(b) Officers responding to Urgent calls may operate Code 2.

400.3.3 PRIORITY 2 CALLS

(a) Priority 2 calls are incidents:

1. That pose either a minimal or no immediate threat; and
2. That are in progress or just occurred; and
3. Warrant a rapid police response.

(b) Officers responding to Priority 2 calls shall operate Code 1.

400.3.4 PRIORITY 3 CALLS

(a) Priority 3 calls are incidents:

1. Where protection of life or property is not at risk; and
2. An immediate police response will not likely prevent further injury, loss of property, or adversely impact an investigation.

(b) Officers responding to Priority 3 calls shall operate Code 1.

400.3.5 INFORMATION CALLS

Information calls are incidents requiring information to be documented and/or disseminated to law enforcement personnel but do not require a police response.

400.4 ASSIGNMENT OF CALLS

(a) **Hot Shot and Urgent Calls**

1. Hot Shot and Urgent calls require a two-officer response and are generally dispatched by Communications to the two closest available patrol officers. Officer safety and call priority shall be the primary considerations when dispatching officers. Additional officers may self assign using the MDC, as necessary.

(b) **Priority 2 and Priority 3 Calls**

1. Officers may be dispatched by Communications or self-assign using the MDC to any Priority 2 and Priority 3 calls.

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Austin Police Department
General Orders

Preliminary Field Investigations

401.1 PURPOSE AND SCOPE

Law enforcement operations consist of many diverse activities which are directed toward the attainment of the Department's objectives. The purpose of this order is to improve coordinated efforts between Patrol and Investigative Unit personnel concerning investigative procedures.

Officers should review General Order 318 (Detentions, Field Interviews and Field Photographs) and General Order 319 (Arrests) for information on handling subjects during field investigations.

401.2 INITIAL RESPONSE AND INVESTIGATION

(a) Officers responding to an incident shall ensure that all persons are safe and anyone in need of medical attention receives assistance.

(b) Subjects exhibiting unusual agitation, aggression, or similar behaviors:

1. Officers should take special care when encountering subjects exhibiting any of the following behaviors or symptoms:
   (a) under the influence of drugs/alcohol;
   (b) extreme agitation;
   (c) violent irrational behavior accompanied by profuse sweating;
   (d) extraordinary strength beyond their physical characteristics;
   (e) apparent imperviousness to pain; or
   (f) requires a protracted physical encounter with multiple officers to be brought under control.
2. Officers encountering these subjects should gain rapid control of the subject and transfer care to emergency medical providers as soon as possible.
3. For safety, officers should only engage a subject displaying these symptoms when adequate back-up assistance is present.
4. Subjects who display these symptoms may initially violently resist detention then become suddenly calm. They may seem to be sleepy and resting. This condition is sometimes called "sudden tranquility" and usually indicates an immediate need for medical attention. “Sudden tranquility” is not an indication that the subject no longer needs medical attention.

(c) The primary officer shall make a preliminary determination if a crime has been committed.

1. If the information indicates that a crime has occurred, follow the guidelines outlined in this General Order.
2. If the information indicates that no crime occurred, determine what other action may be necessary and/or what resources may be available to the subject.

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(d) Generally, officers assigned to calls or discovering incidents requiring a report shall be responsible for the preliminary investigation and required paperwork.

1. Certain incidents (e.g., family violence, sexual assault) require a specific response and investigation as outlined in its respective General Order, Standard Operating Procedure (SOP) or Operations (Ops) Manual.

401.2.1 REQUEST ADDITIONAL RESOURCES

Officers shall request the assistance of additional resources as necessary or required.

(a) The Special Investigations Unit (SIU) shall be notified anytime an incident involves a commissioned peace officer as a suspect, regardless of that officer's agency or jurisdiction.

(b) Personnel from the appropriate Investigative Unit shall be requested during the initial investigation of all:

1. Homicides and suicides.
2. Extortions.
3. Officer-involved shootings.
4. Officer-involved serious injury incidents.
5. Certain crashes as outlined in General Order 346 (Crash Investigation and Reporting).
6. Suspected bombs and explosive devices.
7. Clandestine laboratories.
8. Exigent mobile phone requests.

(c) Personnel from the appropriate Investigative Unit shall be requested when needed in the initial investigation of all:

1. Aggravated sexual assaults.
2. Burglaries and thefts where there are major losses.
3. Robberies of businesses.
4. Robberies of individuals with serious injury.
5. Serious injury assaults.
6. Major narcotics investigations.

(d) A Crime Scene Technician shall be requested:

1. At the direction of an Investigative Unit; and
2. For major crime scenes that involve:
   (a) Evidence collection.
   (b) Photographing.
   (c) Latent fingerprinting.

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(d) Large property loss.

(e) Serious injury or death.

401.2.2 MEDIA ACCESS
Guidelines on handling Media Access at the scene of incidents is outlined in General Order 326 (News and Media Relations).

401.3 ROUTINE COMMAND AT POLICE INCIDENTS

(a) Routine command at a police incident is handled as follows:

1. Generally the highest ranking officer, or senior officer if of the same rank, should assume command of the scene and operations until relieved by a supervisor, or until the conclusion of the incident; however, the highest ranking officer will assume command whenever the situation appears to be beyond the control of the current officer in charge, when jurisdiction is concurrent over a particular duty, or for disciplinary purposes.
2. Any officer may take command of the scene and operations when the current officer in charge is unable to perform the required duties because of physical or mental inability.
3. Command at major incidents is outlined in General Order 407 (Emergency Management).

(b) Assumption of command will be done by the officer identifying himself and informing the current officer in charge of his intent to assume command.

401.3.1 SUPERVISOR ASSUMING COMMAND OF INCIDENTS
Supervisors are not normally expected to engage in law enforcement operations except in a command or supervisory capacity. Supervisors may be held accountable for failure to take command if unfavorable developments occur which could have been prevented had he assumed control of the scene.

(a) Supervisors will not assume command outside their own organizational segment during the normal completion of their responsibilities unless failure to do so would adversely affect the Department's operational capability.

(b) The ranking supervisor shall assume command of the scene and operations at the scene of police incidents involving more than one segment of the Department.

(c) In instances of multiple crimes requiring personnel from more than one Investigative Unit, the ranking on-duty supervisor of the most serious offense will assume command (e.g., if a homicide occurs in conjunction with a burglary, Homicide Unit would be in command).

401.4 CRIME SCENE MANAGEMENT

(a) Officers arriving at a crime scene are often faced with the immediate need to search for and render aid to victims as well as determine if suspects are present and continue to pose a threat.

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1. Searches are limited to "plain view" in the immediate area unless exigent circumstances exist (e.g., additional suspects, injured persons).
2. Once officers are satisfied that no additional suspects are present and/or there are no injured persons to be treated, exigent circumstances will likely no longer exist.
3. Officers should secure the scene and conduct no further search until proper authority for the search is obtained.
4. While consent to search should be obtained from authorized individuals where possible, it may be more prudent to obtain a search warrant in the case of serious crimes or major investigations.

(b) Crime scene supervision is normally conducted by the senior officer present. They have the authority to direct and oversee the processing of a scene unless relieved by a senior officer present, Investigative Unit personnel with expertise in the particular crime, or by a supervisor.

(c) The primary officer or designee has the following responsibilities when a crime scene is present which requires processing:

1. Initiate a *Crime Scene Security Log* (PD0175) to record the name and time of all persons entering, or assigned to, the crime scene. Upon completion, the form shall be given to the primary Investigative Unit.
2. Setup an initial perimeter around the crime scene with crime scene tape. The scene should be large enough to include potential evidence.
3. Determine if additional inner/outer perimeter(s) need to be setup. These may be used to create a space for media or the public, as a safety measure for officers, or to further protect the crime scene from contamination.
4. Protect items of apparent evidentiary value and ensure the scene is processed accordingly.

401.4.1 CRIME SCENE PROCESSING AND EVIDENCE COLLECTION

Employees will ensure that items identified as evidence are not tampered with in any way prior to being photographed and collected.

(a) Weapons at crime scenes will only be moved if they pose a threat to persons at the scene. If the scene has been properly secured, a weapon will not generally pose a threat and can be left where it is found.

(b) At major crime scenes:

1. Employees will only handle evidence at the direction of a supervisor, the investigator in charge, or a Crime Scene Unit member at the scene.
2. If an employee is requested to handle evidence, employees should be given explicit instructions on handling the evidence; employees will document who instructed them to handle the evidence and the instructions given.

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3. Employees will identify any possible sources of video or photos of the scene and determine if they may contain any pertinent evidence. Any information regarding sources of pertinent evidence shall be documented in the employee's supplement.

(c) At all other crime scenes:

1. If a crime scene technician responds to the scene, the technician will be responsible for processing the scene.
2. If a crime scene technician is not available or is not requested, the primary officer or designee will be responsible for:
   (a) Processing the crime scene as outlined in this order; and
   (b) Evidence collection as outlined in General Order 618 (Property and Evidence Collection Procedures).
3. Employees will identify any possible sources of video or photos of the scene and determine if they may contain any pertinent evidence. Any information regarding sources of pertinent evidence shall be documented in the employee's supplement.

(d) Scenes involving large property loss, serious injury, or death require a sketch to be completed.

1. The sketch should be clear and understandable to allow for the construction of a diagram at a later time.
2. All diagrams shall be drawn based on measurements taken at the scene.
3. All evidence will be depicted in its relative position on the diagram and described in the legend.
4. Elements of the sketch should include:
   (a) Dimensions.
   (b) Relation of the crime scene to other buildings.
   (c) Geographical features, or roads.
   (d) Address, floor, or room number, as appropriate.
   (e) Location of significant features of the scene, including the victim.
   (f) Date and time of preparation.
   (g) Names of the persons preparing the sketch.
   (h) Direction of north, and the location of items of physical evidence recovered.

(e) If a scene is not processed at the time of the initial investigation, the primary officer will document the reason(s) in the incident report.

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401.4.2 LATENT PRINT PROCESSING
The employee responsible for processing a crime scene will be responsible for ensuring latent prints are lifted when prints are necessary (e.g., primary officer, crime scene technician).

(a) Latent prints will be obtained at the crime scene; employees will not seize items of physical evidence for printing unless:

1. The item is constructed such that it cannot be printed at the scene (e.g., forgery documents); or

2. The item has evidentiary value beyond latent prints.

(b) Employees will label all latent print cards with their name, employee number, date, time, offense number, and location the print was lifted. Print cards will be placed into a collection envelope and submitted to an evidence room.

(c) Evidence which cannot be fingerprinted by employees at the scene will be recovered and wrapped securely in a paper or plastic bag in a manner which will minimize the possibility of destroying the fingerprints.

(d) Employees will not process forgery documents for latent prints at the scene. Forgery documents will be handled as outlined in General Order 618 (Property and Evidence Collection Procedures).

401.5 SECURE AND IDENTIFY WITNESSES
Officers should attempt to locate any witnesses to an offense when warranted by the seriousness of the case. Since potential witnesses to an incident may be lost or the integrity of statements compromised with the passage of time, officers should take reasonable steps to promptly coordinate the following tasks with on-scene personnel:

(a) Separate witnesses from the public, media and other subjects on-scene as the situation and personnel allow.

(b) Obtain necessary identification from witnesses and an account of what they observed.

1. Any potential witness who is unwilling or unable to remain available for a formal interview or who refuses to be identified should not be detained absent reasonable suspicion to detain or probable cause to arrest.

2. When feasible, a recorded statement should be obtained from witnesses present at the time the incident occurred, regardless of whether they actually saw something.

(c) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where an investigator may obtain a recorded statement. Such witnesses, if willing, may be transported by Department personnel.

1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a Department vehicle.

2. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.

(d) Record witness information and statements in an incident report or supplement.

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401.6 SECURING PROPERTY AFTER ENTRY

In the event APD personnel must force entry into any residence or business, the following procedures will apply.

401.6.1 WHEN A RESIDENCE OR BUSINESS CAN BE SECURED AFTER FORCED ENTRY

After making a forced entry into a residence or business and there is no further action to be taken, and the residence or business can be secured just as it was prior to the forced entry, the employee may secure the property without notifying an owner, resident, or an agent of the business.

(a) When there is no contact made and there is no further action to be taken, the supervisor who approved the forced entry will leave a note with the following information:

1. A brief message stating why the Department made entry.
2. The incident number for the call.
3. The employee's name and employee number.
4. The employee's office or other contact number.

401.6.2 WHEN A RESIDENCE OR BUSINESS CANNOT BE SECURED AFTER FORCED ENTRY

After making a forced entry into a residence or business and there is no further action to be taken, employees will ensure the security of the residence or the business by notifying the owner, resident, or an agent of the property.

(a) When the owner, resident or a responsible agent for the property can be located and can arrive on site within a reasonable amount of time, the employee will remain at the site until the owner, resident, or the agent has arrived.

(b) When the owner, resident or a responsible agent for the property cannot be located or cannot arrive at the site within a reasonable amount of time,

1. The employee will have APD Communications contact the city's on-call service company to meet with the employee at the scene so the site can be secured.
2. The employee will remain at the site until the on-call service company representative has completed all necessary steps to secure the property.

401.7 REPORTING RESPONSIBILITIES

(a) When the preliminary investigation is done, officers shall prepare an initial incident report detailing an accurate record of events as outlined in General Order 402 (Incident Reporting and Documentation). The initial incident report will not be uploaded until the IBR Check is run and all errors corrected.

(b) When Investigative or Specialized Unit personnel (e.g., crime scene technician, crash investigator) respond to the scene and conduct the preliminary investigation, unit personnel shall be responsible for the completion of the initial report. All other responding officers will be responsible for completing supplemental reports as outlined in General Order 402 (Incident Reporting and Documentation).

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Austin Police Department
General Orders

Incident Reporting and Documentation

402.1 PURPOSE AND SCOPE

Documentation is a major part of each officer's job. Reports, including CR-3s, may be used to document information to assist investigators in follow-up investigations. Field release citations, warnings, field observation (FO) cards and electronic street checks are used to document law enforcement actions and/or contacts with the public. Sufficient information should be included in any form of documentation to:

(a) Assist in prosecution.

(b) Refresh an officer's memory during testimony.

(c) Comply with legal requirements and Department General Orders.

402.1.1 GENERAL GUIDELINES

Officers will not write an offense report when they are the victim of a crime. The victim officer will write a supplement. The offense report will be written by an officer who is not a victim.

An incident number will be assigned and all required fields completed during documentation anytime an employee observes or receives any information concerning the following, but not limited to:

(a) Criminal or suspected criminal offenses, regardless of the victim's level of cooperation.

(b) Citizen complaints of non-criminal incidents requiring action by the police.

(c) Self-initiated stops

(d) When Crime Scene personnel are assigned to an incident that was first initiated or responded to by sworn personnel and no tele-serve report has been made.

(e) Crashes involving bicyclists will be will be investigated and reported as defined in Section 346.3 Crash Investigation. Non-crash events involving a bicyclist will be documented in a Versadex report using title code 4311 under the following circumstances:

1. The incident occurred on a public place
2. At least one of the involved subjects sustained bodily injury; and
3. The incident occurred as a result of a potential criminal act, violation of the Transportation Code, violation of a City Ordinance, or the actions of another party.

(f) Any other situation where documentation is required by law or another section of departmental general orders.

If in doubt as to whether an incident should be documented, employees shall confer with a supervisor. For the purpose of this order, Corporals may function as the designated supervisor.

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402.2 INCIDENT REPORTING

A well-written report can help make a case just as easily as a poorly written report can ruin a case. Employees have the responsibility to write clear, factual, and complete reports.

402.2.1 NOTE TAKING

Good reports can be achieved from accurate notes. Memory alone is not always a reliable method upon which to document detailed information.

(a) Brief notations concerning specific events and circumstances recorded while fresh on the mind will be useful when preparing an incident report.

(b) Notes used in court are subject to the scrutiny of the court; employees should ensure they are accurate and pertain to the case.

(c) Notes should contain the following:

1. **WHO -** Persons involved.
2. **WHAT -** Type of incident(s), an accurate account of what was observed, what transpired, and the property/evidence involved.
3. **WHEN** - Date(s), time/s of the incident.
4. **WHERE -** Location(s) of the incident, persons involved during the incident, property and evidence involved.
5. **WHY -** What actions taken by persons involved led to the incident(s).
6. **HOW -** What manner, way, means, reason, purpose, effect, extent, amount, or degree.

402.2.2 REPORT WRITING

(a) All reports shall accurately reflect:

1. The identity of the persons involved.
2. All pertinent information seen, heard, or assimilated by any other sense.
3. Any action(s) taken.
4. Any property which the employee takes possession of, clearly documenting the:
   (a) Events that led up to the taking possession of the property
   (b) Purpose for taking the property
   (c) Identification of the property by name and/or description
   (d) Location where the property was taken
   (e) Complete identifiers, as available, for anyone who may claim ownership of the property.

(b) Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.

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(c) Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

(d) Sentences with proper structure should express complete thoughts. When writing the narrative portion of an incident report, personnel should avoid writing:

1. Sentence fragments which do not convey or express a complete thought.
2. Run-on sentences where two or more complete ideas are joined without punctuation.

402.2.3 REPORT COMPLETION

Employees will complete and download all reports written, including CR-3s, during their shift.

(a) Prior to downloading reports, employees should:

1. Proofread reports to ensure they are sufficiently detailed for their purpose; and
2. Check initial incident reports for IBR errors and fix them.

(b) Unless authorized by a supervisor, reports and CR-3s shall be downloaded as follows:

1. Reports written from incidents that lead to an arrest shall be completed and downloaded prior to the employee going back in service.
2. If an arrest is made, officers shall complete an AB (Arrest Booking) report in addition to the General Offense (GO) report.
3. All other incident reports shall be downloaded by the end of the employee's tour of duty.
4. With supervisor approval, CR-3s may be turned in the next day, but must be completed within 24 hours.
5. Officers shall ensure that all reports, including CR-3s, are downloaded correctly.

402.2.4 REPORT CORRECTIONS, CHANGES AND ALTERATIONS

(a) Once a report has been sent and uploaded into the Versadex Data Transcription Queue, report corrections, changes and alterations shall be handled as follows:

1. Minor corrections (e.g., location, business name) shall be accomplished by notifying Central Records.
2. Corrections that need to be done to a narrative shall be accomplished by writing a supplemental report.
3. Corrections to CR-3s shall be made in the Brazos system immediately upon receiving a notice from the Highway Enforcement Command that the CR-3 has any deficiencies. This must be completed prior to the 9th day after the crash was originally reported.

402.2.5 SUPERVISOR RESPONSIBILITIES

(a) All reports routed to a supervisor's queue shall be reviewed for compliance with Department General Orders. Supervisors must ensure there are no Incident Based Reporting (IBR) errors and approve the report by completing the “Date approved” field

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and “Approved by” field on the front page of the GO. Reports that are incomplete or inadequate shall be returned for correction.

(b) If an arrest was made in connection with the GO, supervisors will ensure the “Clearance status” is set to “Cleared By Arrest.” “Internal status” should remain “open” or blank for detective’s clearance responsibility.

1. Supervisors will ensure their employees are assigned to the correct queue.
2. If an employee's report goes into the wrong queue, then supervisors will contact Central Records requesting it be re-routed to their assigned queue for review.
3. Supervisors will updated a PPO's queue when they get their SOLO assignment; prior to this they will approve the PPO's report in the Academy Cadet Training Queue (HTRAIN) and ensure any reviewed documentation to include street checks, follow-ups and supplements are removed.

(c) Supervisors shall not review reports for which they are involved in; however, supervisors that are not directly involved in an incident (e.g., witness the incident) may conduct the review. When a supervisor is involved in the incident, a supervisor one rank higher than the involved supervisor will conduct the review.

(d) Supervisors receiving notification from Central Records or an Investigative Unit of a deficient report shall:

1. Ensure that the responsible employee corrects the report.
2. Take proper steps to ensure that deficiencies do not occur again (e.g., counseling, remedial training, increased monitoring and review).

402.3 FIELD OBSERVATION CARDS AND ELECTRONIC STREET CHECKS

(a) An FO card or electronic street check is required when an officer detains an individual for more than simple, preliminary questioning to find out their level of involvement in a particular incident and no other record of the contact (other than CAD) is produced. Examples of this include, but are not limited to:

1. Detaining a suspicious person and no report is written; or
2. Initiating a traffic stop when no field release citation or warning is issued; or
3. Conducting a subject stop and the officer initiates a police action (e.g., detaining, frisking, or searching).

(b) An FO card or electronic street check is **NOT** required in the following situations:

1. When an incident report, field release citation, warning or crash report (including blue form) is completed.
2. During a non-custodial interview or casual contact where the individual is free to leave and no frisk or search has occurred.

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402.3.1 DETENTION GUIDELINES
The following examples are intended to guide officers in understanding when a person has been detained. These examples are not meant to describe all possible situations where documentation is required.

(a) Was the person free to leave?

(b) Would a reasonable person feel they were free to leave?

(c) Was force used to prevent the person from leaving?

(d) Was the person checked for warrants?

(e) Is the person being frisked or asked for a consent search?

402.3.2 MULTIPLE SUBJECTS
It is not always necessary for an officer to complete an FO card or electronic street check on every individual in a group of 2 or more persons.

(a) If the passenger(s) in a car or the cohort(s) of a subject who has been detained by police is not the primary focus of the officer, it is not necessary to complete more than one FO card or street check.

(b) If at any point during the contact an officer goes past the point of asking preliminary questions (e.g., detaining, frisking, searching) to determine a level of involvement for a passenger or cohort, those subjects shall also be documented.

402.4 FIELD RELEASE CITATIONS AND WARNINGS
Field release citations and warnings shall be completed as outlined in General Order 308 (Misdemeanor Citations) and General Order 342 (Traffic Enforcement).

402.5 REPORTING THE ACTIVE TARGETING OF A FIREARM AT A PERSON
By the nature of their duties, officers may be required by general orders and training to point their firearm, including impact munitions, and actively target at a person. This section does not create an additional requirement for officers to initiate an incident report; however, officers that actively target their firearm at a person shall properly document the incident as outlined below.

402.5.1 OFFICER RESPONSIBILITIES

(a) Employees shall immediately notify and brief their supervisor. If their supervisor is unavailable, another field supervisor shall be notified

1. When employees the rank of sergeant or above are involved in the incident, another supervisor the rank of the involved employee or higher will be notified.

2. If the incident involves multiple employees with different supervisors, the lieutenant of the area where the incident occurred, or the Watch Lieutenant, will be notified and assign one supervisor to conduct the review.

(b) Employees shall adhere to the following documentation guidelines:

1. **FO Card or Electronic Street Check**

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(a) When a report is not otherwise required for the incident, complete an FO card or electronic street check to document that a firearm was actively targeted at a person and the details of the incident.

2. **Reports and Supplements**

(a) Add a study notation to the report to document that a firearm was actively targeted at a person or notify their supervisor the notation needs to be added.

(b) Document the details of the incident in the narrative of an incident report or supplement.

402.5.2 SUPERVISOR RESPONSIBILITIES

(a) Supervisors shall review the employee's incident report, supplement, FO card or electronic street check when notified of an incident involving an officer actively targeting a firearm at a person. Incomplete or inadequate documentation shall be returned for correction.

(b) Supervisors will forward a memorandum up the chain-of-command if a safety, general order, training, equipment, tactical, or other specific issue is identified.

(c) Supervisors shall adhere to the following documentation guidelines:

1. **FO Card**

(a) Legibly sign the FO Card with the supervisors name and employee number that reviewed the incident.

2. **Electronic Street Check**

(a) Add a supplement using the electronic street check incident number to document that the employee made a supervisor notification and the incident was reviewed.

3. **Reports and Supplements**

(a) Add a study notation, if not already added, to document that an officer's firearm was actively targeted at a person.

(b) Add a case note to the incident report to document that the employee made a supervisor notification and the incident was reviewed.

402.6 REPORTING GANG AFFILIATION

Certain offenses may be enhanced when committed by subjects who are documented gang members. Only employees assigned to the Gang Suppression Unit may designate a subject as affiliated with a gang in the report writing system.

Employees who interact with a subject that may be affiliated with a gang should initiate an incident report titled "Gang Information" and include specific details that give rise to the belief the subject is affiliated with a gang. This includes, but is not limited to, subjects who:

(a) Wear known, gang-related clothing (i.e., specific colors, designs).

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(b) Have known, gang-related tattoos.

(c) Associate with documented gang members.

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General Orders

Follow-Up Investigations

403.1 PURPOSE AND SCOPE

Criminal investigations are a complex, multi-step process that require employees to be aware of, operate within and comply with federal, state, and local regulations so as not to prejudice the case or jeopardize the prosecution of the defendant. It is the policy of the Department to comply with the highest standards of legal and professional conduct when performing a criminal investigation. This order provides guidelines to ensure that criminal investigations are conducted under legal authorization using extraordinary safeguards to protect innocent persons from unauthorized invasions of privacy.

403.2 FOLLOW-UP INVESTIGATIONS

Follow-up investigations may include, but are not limited to:

(a) Reviewing and analyzing preliminary reports.

(b) Reviewing Department records and databases.

(c) Seeking additional information from complainants, witnesses, neighbors, informants, officers and Department employees.

(d) The incident may require contact with the victim(s) and witness(es) by the assigned personnel to obtain information not uncovered during the preliminary investigation.

(e) Upon request and without jeopardizing case security, the assigned personnel or designee shall advise the victim(s) of the status of the case.

(f) Conducting interviews and interrogations. Arranging for the dissemination of information, as appropriate.

(g) Soliciting assistance and/or information from other Units within the Department and/or outside law enforcement agencies.

(h) Planning, organizing and conducting searches.

(i) Collecting physical evidence.

(j) Identifying and apprehending suspects.

(k) Follow-up on emergency mobile phone request court orders and related paperwork within 48 hours of first request.

(l) Checking suspects' criminal histories.

(m) Determining the involvement of suspects in other crimes.

(n) Reviewing the results of laboratory examinations.

(o) Preparing cases for court presentation.

(p) Assisting in the prosecution.

(q) Documenting entry, modification, validation or cancelation of TCIC/NCIC records.

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403.3 CASE ASSIGNMENT AND RESPONSIBILITY

Generally, follow-up investigations shall be the responsibility of the Investigative Unit assigned to the case. Report routing to an Investigative Unit is an automated process that is controlled by the title code(s) used. Unit ownership of a title code is programmed into the current reporting system and updated as needed.

(a) With supervisor approval, first responders should conduct limited follow-up investigations when there is a reasonable chance of apprehending the suspect, a need for obtaining additional information for the preliminary investigation report, or when there are other compelling circumstances.

(b) Once a report is routed to an Investigative Unit, the supervisor or designee of that Unit will assign each case to appropriate employee. The assigned employee will be responsible and accountable for any additional investigation. When assigning cases, a supervisor or designee should:

1. Take into account the level of expertise, specialized skill, knowledge and abilities of the employee.
2. Provide direction and guidance to employees by periodically reviewing their supplements and affidavits.
3. Record and maintain the following information to ensure a timely and complete investigation:
    (a) Incident number.
    (b) Personnel assigned.
    (c) Date assigned.
    (d) Clearance type.
    (e) Date cleared.

(c) When assigned to a case for follow-up investigation, investigators shall proceed with due diligence in evaluating and preparing the case for appropriate clearance or presentation to court personnel for the filing of criminal charges.

(d) Employees will not participate in an unassigned investigation, regardless of the source, which is unusual, protracted, or not in the normal course of their duties without the express, written approval of their chain-of-command.

(e) Investigators are responsible for the NIBRS data accuracy of their cases within the Versadex Records Management System. Every change made within any case requires an IBR Check to be run insuring that no errors have been created. If NIBRS errors are found when the case is processed at the end of the month the lead investigator will be contacted to correct the errors.

403.3.1 CASE FILES/JACKETS

(a) Active cases shall be maintained by the assigned personnel. Case files/jackets shall be:

1. Kept from public view while the person assigned is working on the case.

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2. Locked up at the end of the assigned personnel's tour of duty.

(b) All original case files/jackets on investigations shall be maintained and secured by the appropriate Investigative Unit.

(c) Case files shall be maintained and purged in accordance with established record retention schedules for law enforcement and Department general orders regarding records.

403.3.2 FELONY CASE MANAGEMENT

All felonies direct filed by an arresting officer require follow-up investigation by the appropriate Investigative Unit. The assigned investigator shall be responsible for completing any further investigative steps necessary.

(a) Assigned investigators shall prepare a case jacket for the prosecutor's office with copies of all paper documents.

1. Digital evidence will be made available through the appropriate source outlined by General Order 618.5 (Digital Evidence Collection and Storage).

(b) The presence of audio/video media evidence will be documented in the report but does not need to be copied unless requested by a prosecutorial agency.

(c) The case jacket will be forwarded to the prosecutor's office within two (2) weeks of the date the individual is booked into jail and an investigator assigned the case.

1. The case jacket will contain *DA Control Sheet* [PD0050 - PD0055] specific to the type of crime being investigated to document the evidence contained in the jacket and to make notation about any evidence that is pending (e.g., DNA and Print comparison results).

2. Assigned investigators shall notify their supervisor if the case is not completed within the two-week guideline. Supervisors will monitor the progress of the case to ensure it is forwarded to the prosecuting agency in a timely manner.

403.3.3 TITLE CODE RECLASSIFICATION

Employees shall not delete or change a title code from a Part I UCR crime to a Part II UCR crime on any incident report, once the report comes out of report review, without the signed approval of the appropriate unit supervisor.

(a) This order is only intended to prevent serious Part I UCR crimes from being dropped to a less serious Part II UCR crime without proper review after a report comes out of report review.

(b) This order does not prevent title code(s) being changed:

1. From one Part I UCR crime to a different Part I UCR crime; or

2. From a Part II UCR crime to a Part I UCR crime; or

3. To any UCR classification, prior to the report coming out of report review (i.e. a dispatcher may, upon request, correct/update the title code on a dispatched call if an officer discovers the incident is different from the original call).

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(c) Nothing in this order prevents adding title codes to a report at any time if the investigation supports the need for additional title codes.

(d) Employees who discovers a Part I UCR crime that needs to be reclassified as a Part II UCR crime shall use the following procedure to request a title code change:

1. Employees wanting to reclassify a title code shall do so by submitting the request by email to the supervisor over the unit that has ownership of the title code.

   (a) Employees who originate a reclassification request shall document the reason(s) for the title code change in a supplement of the incident report and include a reference to the title code change in the 'notes' section.

2. Upon receiving notice of the title code change request, the unit supervisor will review the request and electronically document their agreement or disagreement with the request in the "notes" section. Title code change requests approved by the unit supervisor must be forwarded to the Central Records Manager for review

3. The Central Records Manager (CRM) will review all approved title code reclassification requests and make a ruling on whether the requested change is appropriate. The determination shall be based on UCR reporting guidelines for the incident reported rather than what state charge could or will be filed.

   (a) If the Central Records Manager agrees with the decision of the unit supervisor, the CRM will make the title code change in Versadex.

   (b) If the Central Records Manager does not agree with the decision of the unit supervisor, the issue may be brought to the commander/manager of the unit. The commander/manager shall indicate "Approved" or "Denied" in the "notes" section. The CRM will then make the change in accordance with the commander/manager of the unit's decision.

403.4 STATEMENTS AND CONFESSIONS

The purpose or objective of a statement or confession is to take lawful and accurate statements that corroborate the elements and details of an incident. In doing so, investigators and supervisors will be cognizant of such factors as the mental and intellectual abilities of the subject being interviewed and the duration of the interview itself. Written and oral statements or confessions should not be utilized as the sole basis for the filing of charges; any statement or confession should be corroborated by other legally obtained evidence or verified in an appropriate manner.

(a) Employees shall make a complete electronic recording of all custodial interviews and interrogations. Employees shall make a separate audio recording of all custodial interviews and interrogations as a back-up. Audio recordings will be utilized for custodial interviews and interrogations when an audiovisual recording device is unavailable.

1. An electronic recording means an audiovisual electronic recording, or an audio recording if an audiovisual electronic recording is unavailable, that is authentic, accurate, and unaltered.

2. A recording is complete when it begins at the time the subject enters the room or area where the interview or interrogation will take place, or when a

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Miranda Warning is given, whichever is sooner; and ends when the interview or interrogation ceases.

(b) Employees need not make a complete electronic recording of a custodial interrogation when good cause exists and is appropriately documented by the employee.

1. The subject refuses to respond or cooperate in a custodial interrogation at which an electronic recording is being made, and such refusal by the person is electronically recorded. If the person is unwilling to allow the refusal to be electronically recorded, the refusal is documented in writing by the employee.
2. The subject makes spontaneous statements or confessions that are not in response to questions by an employee.
3. An employee attempts in good faith to record the custodial interview or interrogation but the electronic recording equipment is operated incorrectly, malfunctions, or stops operating without the knowledge of the employee.
4. Exigent public safety concerns prevent the feasibility of making an electronic recording.
5. An employee reasonably believes that the subject being interviewed or interrogated is not in custody, and is not a suspect in an offense.

(c) Statements and confessions should be taken in the suspects own words and typed by the person taking the statement or confession.

(d) Written or recorded copies of statements or confessions will not be given to the person from whom the statement or confession was obtained.

(e) Employees shall test the recording equipment and verify that it is properly functioning prior to taking statements or confessions, or conducting a custodial interrogation.

403.4.1 MIRANDA WARNING AND ADMISSIBILITY

No statement or confession made by an adult as a result of custodial interrogation is admissible as evidence unless the person has first been administered the Miranda warning and knowingly, intelligently and voluntarily waives those rights.

(a) To evidence that the Miranda Warning was read to the person, employees will record the following by audio/video:

1. Reading of the Miranda card to the person in its entirety; and
2. Writing the name of the employee reading the rights to the person, the date and time, and the incident number on the face of the warning card; and
3. Requesting the person to initial each right and sign the card indicating that he understands the warning and freely waives his rights; and
4. The Miranda card will become part of the original case jacket.

(b) Once the person requests to speak with an attorney or indicates a desire for legal representation, the interrogation will be discontinued at that point.

1. Should the person request to continue the interrogation after requesting legal representation, the Miranda rights will be administered again.

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(c) Guidelines on admissibility of statements and confessions of a person accused of an offense as evidence is outlined in Tex. Code of Crim. Pro. art. 38.22.

403.4.2 PROCEDURES FOR LIMITED ENGLISH AND DEAF SUBJECTS

(a) If the person does not speak English, or speaks limited English:

1. The Miranda warning will be read in the person's primary language.
2. The statement or confession will be written or typed, whenever possible, in the primary language that the person understands.
    (a) If the statement or confession is not typed in the person's primary language, it will be translated aloud for them in the person's primary language prior to obtaining their signature. This will be done in the presence of two civilian witnesses.
3. The statement or confession will be witnessed by at least one person who speaks the same language as the person.

(b) If the person is deaf, a certified interpreter from the current service contractor will assist in translating during the interrogation. Sign language statements and confessions must be recorded by video.

403.4.3 JUVENILE STATEMENTS AND CONFESSIONS

(a) Oral confessions made in non-custodial interviews of juveniles are admissible if the statement is given voluntarily and not as a result of coercion, threats, promises, or an extensive interview with the oral admission being the primary objective.

1. To ensure the non-custodial statement is given voluntarily, personnel shall release the juvenile to a parent or guardian after taking the statement and then obtain a warrant to take the juvenile into custody.

(b) Statements and confessions given in custodial interrogations of juveniles require additional steps to ensure the statement or confession is given voluntarily. Personnel shall comply with State Law and General Order 317 (Handling Juveniles) when interviewing or interrogating a juvenile.

403.4.4 DOCUMENTING STATEMENTS AND CONFESSIONS

All attempts to obtain an incriminating statement/confession, whether successful or not, shall be documented fully by supplement(s) to the incident report. This shall include:

(a) Date, time and location of the attempt; and

(b) Identity of the person being interrogated/interviewed; and

(c) The identity and role of all persons involved in the attempt to obtain the statement/ confession; and

(d) Any unusual circumstances or occurrences surrounding the attempt or taking of a statement/confession; and

(e) A brief synopsis of any statement/confession obtained from the person.

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403.5 EYEWITNESS IDENTIFICATION PROCEDURES

The investigation of criminal incidents includes many diverse aspects. Eyewitness identification is only one element of a successful criminal investigation. The purpose of this order is to outline the proper protocol for eyewitness identification procedures thus maximizing the reliability of identifications, exonerate innocent persons, and establishing evidence that is reliable and conforms to established legal procedure. Regardless of the type of lineup utilized, if identification is made through the use of a lineup with no additional supporting probable cause or corroborating evidence, detectives must first staff the case with the County or District Attorney's Office before filing charges.

403.5.1 DEFINITIONS

Confidence Statement - A statement in the witness' own words, articulating their level of confidence in the identification. The officer documenting the confidence statement should record verbatim the words used by the witness to describe their level of certainty as to the identification of the suspect.

Field Identifications - An identification procedure in which a single subject is shown to an eyewitness and asked to identify or reject the subject as an actual perpetrator.

Fillers - Non-suspect photographs or persons.

Independent Administrator/Double Blind Testing Procedure - An officer administrating a line-up who did not compose the line-up and has no knowledge of the actual suspect or the location of the suspect within the lineup.

Folder Shuffle Method - This method is employed when a blind procedure is not possible. It is a method of administering a photographic line-up such that the officer cannot see or track which photograph is being presented to the witness until after the procedure is completed.

Illiterate Person - An individual who speaks and understands English but cannot read or write in English.

Interpreter - An interpreter is a person who is fluent in English and the language of the witness and who facilitates communication between two parties in two different languages. The term includes persons who facilitate communications with persons who are deaf, hard of hearing, or who may have different speaking capabilities than most.

Lineup or Field Identification Instructions - A written document that is read out loud to the witness describing the procedures of the identification process. The witness then signs the form.

Live Line-up - An identification procedure in which a group of persons are displayed to a witness (es) in a controlled environment in an effort to identify or reject the individual as the actual perpetrator.

Person with Limited English Proficiency - An individual who is unable to communicate effectively in English with a level of fluency that is typical of native English speakers. Such a

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person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to talk or write.

Sequential Line-up - An identification procedure in which line-up photos are displayed one by one (sequentially). Only sequential lineups are authorized for investigative use. with an exception for certain Child Abuse investigations that may sometimes require a simultaneous line-up.

Simultaneous Line-up - An identification procedure in which a group of photographs are displayed simultaneously and presented to one witness. This procedure will only be utilized in child abuse investigations and require the approval of a Child Abuse Unit Supervisor.

403.5.2 SIMULTANEOUS LINE-UPS
Simultaneous line-ups require the approval of a Child Abuse Unit Supervisor. The incident report will document which supervisor provided the approval. The administration of a simultaneous line-up will adhere to the Child Abuse Unit Standard Operating Procedures.

403.5.3 SEQUENTIAL LINE-UPS
An independent administrator will be used for all sequential line-ups unless an extraordinary circumstance(s) necessitates using the same officer to both compile and administer the line-up. If this occurs, the extraordinary circumstance(s) shall be documented in the incident report. No other person should be present during the lineup presentation who knows the suspect's identity.

(a) Independent administrators should avoid actions or statement that could contaminate witness perception or judgment. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as "very good."

(b) Photographic or live line-ups will only be conducted when a specific suspect is developed during an investigation, or when a suspect has been narrowed down to a specific group of individuals. Random suspect line-ups are not permitted.

(c) The Photographic or Live line-up Instructions Form (PD0163) will be used during the administration of all line-ups. These forms include a confidence statement which will be completed on each administered line-up. Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.

(d) If there are multiple witnesses:

1. Each witness shall be given an instruction form regarding the identification procedures without other witnesses present.
2. The officer will read the instructions aloud to each witness.
3. Each witness shall view the line-up separately.
4. The suspect will be placed in a different position of the line-up for each witness.
5. Witnesses shall not be allowed to confer with one another until all identification presentations have been completed and statements taken.

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6. If the witness declines to sign the instruction form for some reason, then the officer will document that the witness was appropriately instructed.

(e) The suspect's photo will be grouped with at least five other subject photos (fillers). The showing of a single photograph for identification purposes is prohibited, unless the subject is positively known by the victim and the photograph is shown only to confirm the identity.

1. Photos shall be of similar characteristics (i.e., hair color, length, facial hair, age, weight and general appearance).
2. Avoid using fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
3. Do not mix color and black and white photographs. All color or all black and white photos shall be used. Photo copies are not permitted.
4. Cover any portions of mug shots or other photographs that provide identifying information about the subject.
5. If there is more than one suspect, include only one suspect in each line-up.
6. Always place a filler in the first position of a - sequential lineup (if not using the folder shuffle method).

(f) If the witness identifies a person as the perpetrator, the witness shall not be provided any information concerning such person before the officer obtains the witness' confidence statement about the selection.

(g) When showing a new suspect, avoid reusing the same fillers in line-ups shown to the same witness.

(h) Identification procedures will be videotaped whenever possible. If this is not practical, an audio tape of the procedure will be done. If neither is possible, document why recording is not available.

(i) Document all persons present during the administration of the line-up.

(j) The line-ups should consist of at least six (6) photos - the suspect photo and a minimum of five filler photos - separated into individual envelopes.

(k) Place a filler in the lead position and the remaining five photographs in random order.

(l) Place two empty folders at the end.

(m) Witnesses should not be told how many photos will be shown.

(n) Witnesses will not be allowed to view photographs side-by-side during a sequential lineup.

(o) Witnesses will be shown all photographs, even if an identification is made on an earlier photograph. Showing all photographs greater ensures the objectivity and reliability of the identification.

(p) The witness should not view the photographs in the line-up more than two times. If a second presentation is conducted, then the lineup will be presented again in the same order as the original presentation.

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(q) The officer will document in the offense report the order in which the photographs were presented.

(r) If the same suspect needs to be shown to a different witness, then the officer will remix the lineup.

403.5.4 FOLDER SHUFFLE METHOD

There may be unavoidable situations where an independent administration is not possible. If this occurs, then the officer will attempt the folder shuffle method of presenting the lineup and attempt a blind administration. If emergency circumstances preclude an independent administrator or folder shuffle method, then the officer will document the circumstances in the offense report. The folder shuffle method is done using only sequential lineups.

(a) The officer will place the suspect photograph and a minimum of five filler photographs in separate envelopes.

(b) The officer will shuffle the envelopes until the officer does not know which envelope contains the suspect's photograph.

(c) Place two empty folders at the end.

(d) The officer will provide the witness one envelope at a time without looking at the photograph first.

(e) Each time the witness has viewed a photograph, the witness will return the folder to the officer and indicate whether or not it is the suspect's photograph.

(f) The officer will maintain the envelopes in the original order so that it can later be documented in the offense report.

(g) The witness should not view the photographs in the lineup more than two times and will not compare photographs side-by-side.

(h) As with all lineup presentations, the administration of the folder shuffle method will be videotaped if at all possible. If videotaping is not practical, then audio recording will be done. If the circumstances do not allow either form of documentation, then the officer will document these reasons in the offense report.

(i) Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.

403.5.5 LIVE LINE-UPS

An independent administrator will be the administrator for live line-ups. Only sequential live line-ups are authorized for investigative use.

(a) The investigating officer will arrange for an Assistant District Attorney to be present to assist in coordinating the live line-up.

(b) The suspect's attorney will be notified of the date and time for the line-up.

(c) If the suspect is unable to retain an attorney, the court must appoint an attorney.

(d) The suspect's attorney and assistant district attorney will view the persons in the line-up prior to the start of the line-up.

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(e) Victim(s) and witness(es) will be notified of the date and time of the line-up and where they are to wait prior to the viewing. They should remain separated prior to the viewing.

(f) The necessary personnel must also be notified of the date and time in order to document by photograph and videotape the appearance of all persons used in the line-up. The viewing of the lineup by the witness(es) will be videotaped to best document what took place.

(g) All physical line-ups can be coordinated with the supervisor of the Booking facility, if using TCSO prisoners as fillers. The booking supervisor can assist in:

1. Obtaining clothing, such as jail fatigues; and
2. Arranging for transfer of prisoners for use in the line-up; and
3. Having release forms signed by all prisoners used in the line-up.

(h) A minimum of six (6) people - the suspect and five fillers - shall be used in each physical line-up. For the line-up to be valid, each person must be:

1. Similar in physical characteristics; and
2. Approximately the same age, height, and weight; and
3. The same race and sex; and
4. Wearing similar clothing; and
5. Wearing no jewelry or other distinguishing items.

(i) Two sets of lights for the stage area of the line-up room will be turned on prior to bringing victims and witnesses into the room. (The APD line-up room is located on the 2nd floor of the Main, next to the Municipal Court waiting area).

(j) One Investigative Unit member or supervisor shall remain with the victim(s) and witness(es) during the line-up process. Victims and witnesses must not be allowed to discuss the case with each other during or immediately after the line-up process.

(k) Prior to viewing the line-up, an officer will individually administer the Live Line-up Instruction form (PD0163) to each victim or witness viewing the line-up.

(l) The person being viewed will be out of the view of the witness before the next person is brought in.

(m) After each person is viewed, the officer will ask the witness if this was the person that he or she saw commit the crime.

(n) If the witness answers "yes," then the officer will ask the witness to describe in his or her words how sure the witness is of the identification.

(o) Document in the witness's own words how sure he or she is of the identification. Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.

(p) Even if the witness makes an identification, show each person one at a time until all persons have been viewed. This greater ensures the objectivity and reliability of the lineup process.

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(q) Only upon request of the witness will the witness view the lineup again after the first full viewing. If a second viewing is requested, then all steps involved in the first viewing will be followed.

(r) A witness will not view the lineup more than twice.

(s) Identification of the suspect by those viewing the line-up will be done individually in writing, rather than spoken while in the company of other witnesses.

(t) No talking is allowed during the live line-up. If anyone viewing the line-up wishes to ask a question, request certain words or phrases be spoken or specific actions performed by those standing in the line-up, they should use an index card and submit the comment to the investigator.

(u) If a request is made for one person in the line-up to speak a certain word or phrase, then all those in the line-up will be instructed to individually repeat the same word or phrase.

(v) Victims and witnesses will be interviewed separately to determine any possible identification of a suspect.

(w) Personnel will take a written statement from each witness who identifies the suspect and a confidence statement obtained if an identification is made.

(x) Photos and/or video of the physical line-up will be added to the digital case folder or processed according to General Order 618.5 (Digital Evidence Collection and Storage).

(y) Persons administering the live line-up should avoid any unintentional overt actions that might influence the decision made by the witness.

403.5.6 SPECIAL PROCEDURES FOR ILLITERATE PERSONS OR PERSONS WHO POSSESS LIMITED ENGLISH PROFICIENCY

(a) Officers should be aware during the investigation when encountering a person who does not speak English or possess limited English proficiency that certain accommodations may be necessary to ensure the validity of the lineup process.

(b) Officers should carefully consider the ethical and legal ramifications of how to handle case where there is a language barrier.

(c) Unless the officer speaks the witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the lineup instruction form documenting that the instructions were provided in the language best understood by the witness.

(d) The officer should consider arranging for an interpreter if a person interviewed:

1. Is unable to communicate in English;
2. Has a limited understanding of English;
3. Is deaf, hard of hearing, or who may have different speaking capabilities than most; or
4. Is otherwise physically challenged to communicate in English.

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(e) If the person is unable to read, the officer, in the presence of the witness, will give the explanation, read any forms, and obtain verbal acknowledgment of the witness that he or she understands what has been explained and/or read to him or her.

403.5.7 FIELD IDENTIFICATIONS

(a) Field identifications shall only be conducted under the following exigent conditions:

1. Prior supervisor's approval; and
2. The suspect is detained within a reasonable time of the offense; and
3. A line-up cannot be promptly arranged; and
4. There is an immediate need to arrest the suspect.

(b) What constitutes "within a reasonable time" is dependent on the individual circumstances of the case, but generally the courts have held that a two-hour time lapse is acceptable.

(c) A full and detailed description of the suspect shall be provided by the witness before the witness observes the suspect.

(d) The witness shall be transported to the location where the suspect is being detained. If at all possible, avoid returning the suspect to the scene of the crime.

(e) Measures shall be taken to reduce potentially damaging or prejudicial inferences that may be drawn by the witness, including, but not limited to:

1. Removing the suspect from a squad car.
2. When practical, removing handcuffs from the suspect.
3. Public and officer safety is first priority on decisions regarding removing the suspect's handcuffs.

(f) If there are multiple witnesses to the offense:

1. The witness with the most complete information should participate in the field identification.
2. If a positive ID is made by the witness, the other individual(s) who witnessed the crime should be shown a photo line-up by the assigned Investigator.

(g) If there are multiple suspects:

1. The suspects shall be separated; and
2. Each suspect shall go through a separate field identification.

(h) Avoid requirement of any performance by the suspect during a field identification.

(i) Officers should avoid actions or statement that could contaminate witness perception or judgment. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their identification. Avoid casual conversation comments such as "very good."

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(j) The Field Identification Instructions Form will be used during the administration of all such eyewitness identifications made in the field. This form includes a confidence statement. Any confidence statement given by a victim or witness shall also be documented in any relevant PC Affidavits and reports.

(k) Officers in the field will utilize their in-car Mobile Audio Video (MAV) recording system to record field identifications.

403.6 PHYSICAL EVIDENCE COLLECTION

Property seized by personnel for processing or evidence on cases where a Crime Scene Unit is not used will be submitted to the proper agency, Department, Unit, or evidence control in accordance with Department General Orders.

403.7 FORENSIC "HITS" OR MATCHES

APD has multiple forensics capabilities that can aid in a criminal investigation, including but not limited to:

(a) AFIS (Latent Prints).

(b) CODIS (DNA).

(c) NIBIN (Ballistics).

403.7.1 NOTIFICATION OF FORENSIC "HIT" OR MATCH

(a) Forensics shall notify the assigned investigator and Unit supervisor of a forensics "hit" or match.

1. Notifications will be sent simultaneously via email to the investigator assigned in Versadex and the Unit email address.

2. The supervisor or designee shall be responsible for ensuring that the Unit email address is checked on a daily basis.

(b) The supervisor shall ensure that the currently assigned investigator is notified of the "hit" or match following one of two methods:

1. If the case is closed or suspended, the supervisor will re-open the case and assign a new follow-up with a specific completion date. Upon completion, the supervisor shall ensure that the investigator documented their follow-up actions in the reporting system.

2. If the case is still open, the supervisor shall ensure that the currently assigned investigator is aware of the "hit" or match. The supervisor shall approve the follow-up before the case is closed.

403.7.2 FOLLOW-UP OF "HIT" OR MATCH

The assigned investigator shall conduct a follow-up on all notifications of a forensics "hit" or match. The specific action(s) taken shall be documented in a supplement to the incident report. Follow-up includes but is not limited to:

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(a) Notifying the assigned Assistant District Attorney or Assistant County Attorney of a "hit" or match in a case that has already been referred for prosecution, whether the case was direct filed by uniformed patrol or an Investigative Unit. The name of the person notified will be included in the follow-up supplement along with the date the notification was made.

(b) Documenting information that identifies if the "hit" or match belongs to the victim or some other person with legitimate access to the item or scene where the evidence was recovered.

(c) Notifying the appropriate jurisdiction if the "hit" or match stems from another "Out of City" report.

(d) Documenting the link to an identified "hit" or match from evidence recovered from the exterior of a property crime scene and whether filing a criminal charge can occur.

(e) Filing the appropriate charges when the new forensic information assists in the identification or linking the offender(s) to the offense being investigated.

403.8 SURVEILLANCE

(a) Personnel will not violate the right to privacy, or other constitutional rights, of any individual while conducting a surveillance.

(b) Complex or long-term surveillance requires specialized training and equipment. These types of surveillance will be conducted only by those investigative and specialized skills units whose personnel are authorized and trained to conduct such operations.

(c) Personnel should be aware that legal authorization may be required for electronic surveillance.

403.9 POLYGRAPH EXAMINATIONS

The Polygraph Unit was established to provide a useful investigative tool to support the investigative and administrative mission of the Department. Polygraph examination support is also provided to other federal, state and local law enforcement agencies on an as-needed basis. Polygraph examination used for administrative purposes require the approval of the Chief.

403.9.1 POLYGRAPH GUIDELINES

The polygraph examiner is the only person authorized to use the polygraph equipment or administer a polygraph examination.

(a) Persons with serious physical or psychological ailments are not suitable for testing. The examiner will have the responsibility of determining the suitability of all persons submitted for polygraph examinations.

(b) The examiner will determine who is authorized to observe a polygraph examination.

(c) Polygraph examinations will not be administered to a subject on a particular offense unless requested by the assigned investigator or his supervisor. Anytime a person is under arrest for one offense and is to be tested on another, the investigator of the original offense will be contacted.

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(d) Polygraph examinations will not be administered unless:

1. a specific offense has been reported and prosecution is intended, or
2. The Chief has directed the polygraph use in an administrative case.

(e) The subject will be advised by the investigator that the examination will not cause pain. The investigator should not attempt to discuss the actual procedure of the examination with the subject. This will be done by the examiner before the test is given.

403.9.2 POLYGRAPH APPOINTMENTS

(a) Appointments for polygraph examinations must be made by the investigator assigned to the case.

1. An investigator shall not offer a polygraph test for a specific date and time unless an appointment has been made with the polygraph examiner.

(b) Appointment cancelation notices will be forwarded to the Polygraph Unit as soon as this information is known.

1. If, for any reason, the investigator and the person to be tested are 15 or more minutes late, another test may be scheduled unless the examiner has been notified.

403.9.3 POLYGRAPH REPORTING PROCEDURES

The examiner will verbally advise the assigned investigator of the results of the examination. It will be the assigned investigator's responsibility to write a supplement to the incident report concerning the polygraph examination.

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Austin Police Department
General Orders

Civil Disputes

404.1 PURPOSE AND SCOPE

This order provides officers of the Austin Police Department with guidance for addressing conflicts between persons when no criminal investigation or enforcement action is warranted (e.g., civil matters), with the goal of minimizing any potential for violence or criminal acts.

The Family Violence Order will address specific legal mandates related to domestic violence court orders. References in this order to “court orders” apply to any order of a court that does not require arrest or enforcement by the terms of the order or by Texas law.

404.2 POLICY

The Austin Police Department recognizes that a law enforcement presence at a civil dispute can play an important role in the peace and safety of the community. Subject to available resources, officers of this department will assist at the scene of civil disputes with the primary goal of safeguarding persons and property, preventing criminal activity and maintaining the peace. When handling civil disputes, officers will remain impartial, maintain a calm presence, give consideration to all sides and refrain from giving legal or inappropriate advice.

404.3 GENERAL CONSIDERATIONS

When appropriate, officers handling a civil dispute should encourage the involved parties to seek the assistance of resolution services or take the matter to the civil courts. Officers must not become personally involved in disputes and shall at all times remain impartial.

While not intended to be an exhaustive list, officers should give considerations to the following when handling civil disputes:

(a) Civil disputes tend to be confrontational and officers should be alert that they can escalate to violence very quickly. De-escalation techniques should be used when appropriate.

(b) Officers should not dismiss alleged or observed criminal violations as a civil matter and should initiate the appropriate investigation and report when criminal activity is apparent.

(c) Officers shall not provide legal advice, however, when appropriate, officers should inform the parties when they are at risk of violating criminal laws.

(d) Officers are reminded that they shall not enter a residence or other non-public location without legal authority including valid consent.

(e) Officers should not take an unreasonable amount of time assisting in these matters and generally should contact a supervisor if it appears that peacekeeping efforts longer than 30 minutes are warranted.

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404.4 COURT ORDERS

Disputes involving court orders can be complex. Where no mandate exists for an officer to make an arrest for a violation of a court order, the matter should be addressed by documenting any apparent court order violation in a report. If there appears to be a more immediate need for enforcement action, the investigating officer should consult a supervisor prior to making any arrest.

If a person appears to be violating the terms of a court order but is disputing the validity of the order or its applicability, the investigating officer should document the following:

(a) The person's knowledge of the court order or whether proof of service exists.

(b) Any specific reason or rationale the involved person offers for not complying with the terms of the order.

A copy of the court order should be attached to the report when available. The report should be forwarded to the appropriate prosecutor. The report should also be forwarded to the court issuing the order with a notice that the report was also forwarded to the prosecutor for review.

404.4.1 STANDBY REQUESTS

Officers responding to a call for standby assistance to retrieve property should meet the person requesting assistance at a neutral location to discuss the process. The person should be advised that items that are disputed will not be allowed to be removed. The officer may advise the person to seek private legal advice as to the distribution of disputed property.

Officers should accompany the person to the location of the property. Officers should ask if the other party will allow removal of the property or whether the other party would remove the property.

If the other party is uncooperative, the person requesting standby assistance should be instructed to seek private legal advice and obtain a court order to obtain the items. Officers should not order the other party to allow entry or the removal of any items. If there is a restraining or similar order against the person requesting standby assistance, that person should be asked to leave the scene or they may be subject to arrest for violation of the order.

If the other party is not present at the location, the officer will not allow entry into the location or the removal of property from the location.

404.4.2 JUSTICE COURT ORDERS

Persons issued a Writ of Retrieval from a justice court should be referred to the Sheriff's Office or Constable's Office in their respective county (Tex. Prop. Code Sec. 24A.001).

404.5 VEHICLES AND PERSONAL PROPERTY

Officers may be faced with disputes regarding possession or ownership of vehicles or other personal property. Officers may review documents provided by parties or available databases (e.g., vehicle registration), but should be aware that legal possession of vehicles or personal property can be complex. Generally, officers should not take any enforcement action unless a crime is apparent. The people and the vehicle or personal property involved should be identified and the incident documented.

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404.6 REAL PROPERTY

Disputes over possession or occupancy of real property (e.g., land, homes, apartments) should generally be handled through a court order.

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Austin Police Department
General Orders

Fugitive and Search Warrants

405.1 PURPOSE AND SCOPE

The purpose of this order is to establish the guidelines for filing arrest and search warrants.

405.2 ARREST WARRANTS

This section outlines the guidelines for employees to follow when obtaining an arrest warrant and the proper internal handling procedures to ensure the warrant is properly entered into Local, TCIC, and/or NCIC.

(a) Employees will complete the investigation of an alleged offense before obtaining an arrest warrant.

1. Exigent circumstances that supersede the completion of the investigation will be discussed with the Unit supervisor and with the appropriate County or District Attorney's office of the county where the offense occurred.

(b) The City of Austin overlaps into multiple counties. Depending on the county in which the offense occurred, personnel will prepare either a complaint or a probable cause affidavit for presentation to the appropriate Magistrate in the county where the offense occurred.

1. All felony affidavits/complaints will be reviewed by a supervisor prior to presentation to a Magistrate.
2. Affidavits/complaints for any case of a complex nature (as determined by the Unit supervisor) will be presented to an Assistant County/District Attorney from the county where charges are to be filed, if available, for review and advice on the proper wording or text of the affidavit/complaint prior to the Magistrate's review.
3. The affidavit/complaint along with the subject's criminal history, if any, will be presented to the proper Magistrate for signature. Further documentation of facts to be considered when setting bond may be presented with the affidavit/complaint and criminal history.

405.2.1 ARREST WARRANT "PICKUP" SUPPLEMENT

Any employee wishing to obtain an arrest warrant for a person will first complete a "PICKUP" supplement in Versadex using the "PICKUP" supplement template.

(a) Completely fill out the "PICKUP" supplement to include the following information:

1. Name, date of birth, race, and sex of the wanted person.
2. Any known aliases.
3. Identification numbers (e.g., Texas DL/ID, SSN, DPS SID, FBI, APD).
4. Any other state identifiers (e.g., handgun/firearm permit).
5. Residence address(es). Clearly notate in this field if a subject is currently in custody at any detention facility and advise the Central Records/Warrant Unit staff when dropping the warrant off.

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6. Employer(s).
7. Vehicle(s) information (e.g., license plate number, make, color, style, year model)
8. Any other vehicle identifiers (e.g., collision information, bumper stickers).
9. Charge being filed.
10. Clearly state if the person is violent, has a history of resisting arrest, any history of previous weapons charges or is licensed to carry a firearm.
11. Name and phone number of the District Attorney contacted for NCIC extradition purposes.

(b) After the warrant has been signed by a Magistrate, the employee will update the "PICKUP" supplement with the warrant number, bond amount, and issuing Magistrate.

405.2.2 OBTAINING AN ARREST WARRANT

(a) Depending on the County in which the offense occurred, employees will prepare the following documentation:

1. Travis County - Prepare a probable cause affidavit, a Travis County warrant, and a Municipal Court cover sheet.
2. Williamson County - Prepare a complaint, probable cause affidavit and a Williamson County warrant.
3. Hays County - Prepare a complaint, probable cause affidavit and a Hays County warrant.

(b) Employees will present the typed affidavit/complaint and warrant to a Magistrate for signatures in the County where the offense occurred.

1. A separate affidavit/complaint and warrant are required for each offense or victim.
2. The affidavit/complaint should identify the affiant, the name of the victim and suspect, the type of offense, and the elements that constitute a violation of law.
3. The contents of the affidavit/complaint must indicate that the suspect committed the crime.
4. Employees will not file any charge or complaint alleging any type of law violation in any court within Travis County except for Municipal Court without authorization from their supervisor.
5. In Williamson County, the affidavit, complaint and warrant can be presented to any Justice of the Peace and all County or District Judges currently holding office in Williamson County. Warrants, affidavits and complaints signed by a court other than a Justice of the Peace must be presented to a JP office to obtain a Cause #.

(c) Magistrate signed warrants and affidavits/complaints will be taken to the appropriate clerk's office and a cause number will be obtained for both.

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1. Travis County - Municipal Court charges office.
2. Williamson County - Williamson County Justice of Peace Courts have clerk services available.
3. Hays County - Hays County clerk's office.

(d) Employees will:

1. Make copies of the signed affidavits/complaints to be kept with the original warrant packet and submit the original affidavits/complaints to the appropriate clerk for retention.
2. If in Williamson County, deliver the original warrant to the Williamson County Sheriff's office located at 508 South Rock St. Georgetown, TX.
3. Scan and file the warrant packet as outlined below.

405.2.3 SCANNING REQUIRED ARREST WARRANT DOCUMENTATION

Warrant packet items must be scanned in the following order via a Xerox scan/copy station into the G:\Xerox\Warrants folder after the arrest affidavit/complaint is signed by a judge but prior to submitting the hard copies to the Central Records/Warrant Unit.

(a) Original signed warrant. (Copy if charges filed in Williamson County)

(b) Copy of the affidavit/complaint signed by the magistrate.

(c) Emergency Protective Order (EPO) for Family Violence offenses, if applicable.

(d) Victim Notification Form for Family Violence offenses, if applicable.

(e) Detective Warrant Served Notice form.

405.2.4 SUBMITTING DOCUMENTATION TO CENTRAL RECORDS/WARRANT UNIT

(a) Original APD arrest warrant packets will be filed with the Central Records/Warrant Unit immediately after being scanned if the warrant is obtained during the Central Records/ Warrant Unit's normal business hours.

1. If the warrant is obtained after Central Records/Warrant Unit's normal business hours, Teletype will be notified directly by phone of the arrest warrant. If the warrant meets the criteria for immediate entry, the entire arrest warrant packet will be faxed to Teletype at 974-0900.
2. An exception to this rule will be authorized when the arrest warrant is served immediately upon receipt (e.g., suspect is being interviewed, suspect is under surveillance).

(b) The arrest warrant packet will include the following documentation:

1. Original warrant.
2. Copy of the affidavit/complaint signed by the Magistrate.
3. Copy of the suspect's drivers license and/or state ID return.
4. Printout of the "PICKUP" supplement to the incident report.

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5. Printout of the subject's QH from CCH (state) and QH from NCIC (national). Do not submit the QR rap sheets.
6. Emergency Protective Order (EPO) for Family Violence offenses, if applicable.
7. Victim Notification Form for Family Violence offenses, if applicable.
8. Any other information pertinent to the wanted subject or investigation.
9. Detective Warrant Served Notice form.

(c) Employees may provide a copy of a filed arrest warrant to any officer or Investigative Unit after the warrant packet has been scanned and submitted to the Central Records/ Warrant Unit. Warrants will be clearly stamped "COPY."

405.2.5 ARREST WARRANT SERVICE

Investigative Unit personnel may serve a filed arrest warrant as outlined in General Order 319 (Arrests). Warrants may also be turned over to the APD Fugitive Apprehension Unit (Travis County) or the appropriate County Sheriff's Office for service.

405.3 SEARCH WARRANTS

In order to preserve the integrity of evidence seized in search warrants and for the protection of officers involved, the following procedures are mandated regarding obtaining and executing search warrants.

405.3.1 OBTAINING A SEARCH WARRANT

Search warrants will not be obtained by any member of the Department without prior approval of a supervisor in the employee's chain-of-command. All search warrants will be written by an officer in the rank of detective or above.

(a) Supervisors shall review and approve search warrants by placing their initials and employee number in the upper right corner on the face of the warrant application before allowing the investigator to take the warrant to a magistrate for issuance.
    1. Search Warrants authored by sergeants or above must seek review and approval from a supervisor one rank higher than the author.
    2. A blood search warrant for DWI enforcement is exempt from this order and shall adhere to General Order 355 (DWI Enforcement) and DWI Enforcement Unit SOP

(b) The case agent will place the incident number pertaining to the search warrant in the upper right corner on the face of the warrant as soon as it is obtained.

(c) When a search warrant is obtained relative to an offense ordinarily handled by another Investigative Unit, a supervisor of the Investigative Unit normally responsible for that type of offense will be notified prior to service of the warrant.

(d) When a search warrant is for computer equipment that is to be examined in the computer forensics lab the case agent should contact the DART Unit or the Child Abuse unit to obtain information on the proper wording of the computer search warrant before taking the search warrant to a magistrate for issuance. Prior to executing

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the search warrant, the seizing officer should be familiar with the document *Seizing Computers and Computer Related Evidence*.

(e) The appropriate Investigative Unit will normally be the one responsible for follow-up investigation of the case.

405.3.2 EXECUTION OF A SEARCH WARRANT

A supervisor will be present and in charge when any search warrant is executed.

(a) Narcotic based search warrants will not be executed by any personnel other than those assigned to Organized Crime unless an Organized Crime supervisor has been consulted. The Organized Crime supervisor will determine whether the search warrant would damage any on-going investigation and whether prior approval has been obtained from the appropriate commander, assistant chief, or the Chief.

(b) Prior to execution of any search warrant:

1. The supervisor in charge will ensure that a *Search/Arrest Warrant Threat Assessment Form* (APD Form #11) is completed, and:
    (a) Review the form for accuracy and sign the completed form in the space provided.
    (b) Follow the provided line on the form to determine the level of threat to personnel and refer the warrant service to SWAT if required.
    (c) Contact the on-call SWAT supervisor for consultation for assistance in completing the form or as needed.
    (d) Ensure the form is added to the case file.
2. Personnel assigned to Organized Crime will use the *Operational Briefing & Threat Assessment* forms as specified in their Operations Procedure Manual.
3. If the search warrant is for computer equipment, the seizing officers should be familiar with the document *Seizing Computers and Computer Related Evidence*.
4. A meeting will be held with all participating personnel.
    (a) A sufficient number of officers will be assigned to execute the search warrant safely and to conduct a thorough search.
    (b) One officer will be assigned as the seizing officer for all evidence seized and is responsible for properly tagging all evidence.
    (c) One officer will be assigned to draw an accurate diagram of the premises. The diagram will be used to assign officers' positions for the entry to the location.
    (d) One officer will be assigned the responsibility of seizing personal papers to show an affirmative link between the defendant(s), premises, and evidence.
    (e) The supervisor or designee shall prepare the inventory and receipt of items seized.

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(c) The supervisor of the Investigative Unit obtaining the search warrant shall be responsible for notifying the Communications supervisor of the location and approximate time of the warrant service unless it is determined that such notification would compromise the case or jeopardize officer safety.

(d) When executing a search warrant:

1. Department-approved raid jackets and body armor will be worn by all plainclothes officers involved in the execution of a search warrant.
2. Department-approved body armor will be worn by all uniformed personnel involved in the execution of a search warrant.
3. Officers will announce their agency and purpose (e.g., "Austin Police search warrant!").
4. Personnel who have not received dynamic entry training will not participate in the entry portion of the execution of any narcotics search warrant.

(e) Copies of the search warrant, the inventory of seized property, and the receipt form should be given to the person in charge of the premises at the time the search warrant is executed. If no one is home, copies should be left at the scene.

405.3.3 SEARCH WARRANT REPORTING PROCEDURES

(a) The officer obtaining the search warrant is responsible for writing the original incident report.

(b) All other involved officers will write a supplement detailing their participation and actions during the warrant service.

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Austin Police Department
General Orders

Case Clearance

406.1 PURPOSE AND SCOPE

The proper clearance of a case, regardless of whether the crime was solved, is an important part of case management and vital for accurate reporting. This order outlines how to properly clear a case and the guidelines for dismissing charges.

When an arrest is made on a case, the arresting officer shall complete the Clearance Status within the Clearance Block of the General Offense (GO) report to show Cleared by Arrest. If no arrest is made at the time of the original report, the responsibility of updating the Clearance Status will belong to the detective.

Patrol Supervisors are responsible for ensuring the external IBR Clearance Status is updated to Cleared by Arrest for cases where a patrol officer makes an arrest for one of the offenses reflected on the GO. The Supervisor will also approve the Clearance Status by completing the "Approved by" tab within the Clearance Block of the report.

Detectives assigned to cases are responsible for ensuring the external IBR Clearance Status is updated once the case reaches clearance status level. Detectives will document the clearance status update by completing the “Date cleared" and “Cleared by" tabs within the Clearance Block of the GO.

Investigative Unit Supervisors are responsible for ensuring the case clearance reflects the correct status, and will approve the external IBR Clearance Status by completing the "Approved by" tab within the Clearance Block of the GO.

406.2 CLEARANCE STATUS

Clearance Status is defined as the external clearance for FBI reporting purposes. Reports shall be given one of the following clearance statuses as outlined in this section:

(a) Cleared by Arrest

(b) Cleared Exceptionally

(c) Not Applicable

406.2.1 NOT APPLICABLE

The Clearance Status is defaulted to Not Applicable. It should remain Not Applicable until the case reaches an exceptional or arrest clearance.

406.2.2 CLEARED EXCEPTIONALLY

This status is used, when approved by the investigative supervisor, to clear incidents that meet all the following criteria:

(a) The investigation has established the identity of the offender; and

(b) There is sufficient information to support an arrest, charge, and prosecution; and

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(c) The exact location of the offender is known so that the offender could be taken into custody; and

(d) There is some reason outside law enforcement control that prevents arresting, charging, and prosecuting the offender, such as:

1. The victim will not cooperate with the investigation or does not wish to pursue the case; or
2. A prosecuting attorney has reviewed the case and declines prosecution, or
3. The suspect is a juvenile and committed a status offense; or
4. The suspect is under the age of criminal responsibility; or
5. The suspect dies; or
6. Extradition of the suspect is denied.

An investigative supplement describing how each of the above criteria is met is required on all cases that are cleared exceptionally.

If the case is Cleared Exceptionally, the IBR Cleared Exceptionally status reason must be chosen.

(a) Death of Offender

(b) Prosecution Declined

(c) Extradition Denied

(d) Victim Refused to Cooperate

(e) Juvenile, No Custody

406.2.3 CLEARED BY ARREST

This status should be used if any person involved in the report meets the following criteria, regardless of the disposition of other persons involved or the status of other offenses alleged in the same report.

(a) This status is used to clear criminal cases involving adult offenders when a suspect is arrested and charged with the commission of one of the offenses from the initial incident and the case is referred to court for prosecution, whether following an arrest or cite and release. An unrelated warrant arrest does not clear the case by arrest.

(b) This status is used to clear criminal cases involving juvenile offenders when:

1. The suspect is physically taken into custody and transported to a juvenile facility or home with pending charges from the initial incident; or
2. The suspect is processed for an offense from the initial incident and the case referred to Juvenile Court, whether or not the suspect was actually taken into custody.

406.3 INTERNAL STATUS

Defined as the department's internal status of cases for operational and tracking purposes. Reports shall be given one of the following clearance statuses as outlined in this section.

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(a) Cleared Administratively

(b) Cleared Exceptionally

(c) Cleared by Arrest

(d) Field Release Citation

(e) Suspended (Closed)

(f) Suspended (Pending Prosecutorial Review)

(g) Unfounded

(h) Warrant Issued (Suspended)

(i) Referred to Municipal Court (Suspended)

(j) Open

(k) Suspended Pending DNA

(l) Suspended Pending Follow-up

(m) Suspended Pending Victim Readiness

(n) Suspended Prosecutor Declined

(o) Suspended No Leads/Evidence

406.3.1 CLEARED ADMINISTRATIVELY
This status is used to clear non-criminal reports such as the following:

(a) Missing persons that are found or returned home.

(b) Juvenile runaways who are found or returned home without law enforcement involvement.

(c) Found property that is returned to the owner.

(d) Request to locate where the subject is found.

(e) Accidental injuries when no crime is involved.

(f) Suicides where no crime has occurred.

(g) Dependent/neglected children when there is no criminal element.

406.3.2 CLEARED EXCEPTIONALLY
This status is used, when approved by the investigative supervisor, to clear incidents that meet all the following criteria:

(a) The investigation has established the identity of the offender; and

(b) There is sufficient information to support an arrest, charge, and prosecution; and

(c) The exact location of the offender is known so that the offender could be taken into custody; and

(d) There is some reason outside law enforcement control that prevents arresting, charging, and prosecuting the offender, such as:

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1. The victim will not cooperate with the investigation or does not wish to pursue the case;
2. A prosecuting attorney has reviewed the case and declines prosecution;
3. The suspect is a juvenile and committed a status offense;
4. The suspect is under the age of criminal responsibility;
5. The suspect dies;
6. Extradition of the suspect is denied.

An investigative supplement describing how each of the above criteria is met is required on all cases that are cleared exceptionally.

If the case is Cleared Exceptionally, the IBR Cleared Exceptionally status reason must be chosen.

(a) Death of Offender

(b) Prosecution Declined

(c) Extradition Denied

(d) Victim Refused to Cooperate

(e) Juvenile, No Custody

406.3.3 CLEARED BY ARREST

This status should be used if any person involved in the report meets the following criteria, regardless of the disposition of other persons involved or the status of other offenses alleged in the same report.

(a) This status is used to clear criminal cases involving adult offenders when a suspect is arrested and charged with the commission of one of the offenses from the initial incident and the case is referred to court for prosecution, whether following an arrest or cite and release. An unrelated warrant arrest does not clear the case by arrest.

(b) This status is used to clear criminal cases involving juvenile offenders when:

1. The suspect is physically taken into custody and transported to a juvenile facility or home with pending charges from the initial incident; or
2. The suspect is processed for an offense from the initial incident and the case referred to Juvenile Court, whether or not the suspect was actually taken into custody.

406.3.4 FIELD RELEASE CITATION

This status is used in misdemeanor cases where all arrested persons are issued a field release citation instead of a custody arrest.

406.3.5 SUSPENDED (CLOSED)

This status is used when approved by the Investigative Unit supervisor and:

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(a) When the determination is made that any further investment of time would be inefficient or unproductive; or

(b) After 30 days from the date of assignment and the case has not progressed to the point that it can be cleared by any other means described in this section.

406.3.6 SUSPENDED (PENDING PROSECUTORIAL REVIEW)
This is a temporary clearance status to indicate that the case is being reviewed by the Grand Jury.

(a) Upon a Grand Jury decision, the status will be changed to reflect the correct final disposition:

1. "True bill" will use the status Cleared by Arrest.
2. "No bill" will use the status Cleared Exceptionally.

406.3.7 UNFOUNDED
This status is used with the approval of the Investigative Unit supervisor if the investigation shows that no offense occurred or was attempted.

(a) If the facts of a case indicate that an offense occurred but not the offense indicated by the title code of the report, the supervisor will change the title code.

(b) This status shall not be used when a report includes multiple title codes where at least one of the offenses listed is supported by the facts of the case.

406.3.8 WARRANT ISSUED (SUSPENDED)
This is a temporary internal status to indicate that a warrant is outstanding for the arrest of one or more suspects. When all suspects have been arrested the internal status shall be changed to Cleared by Arrest.

406.3.9 REFERRED TO MUNICIPAL COURT (SUSPENDED)
This status is used with class C offenses to reflect the victim or complainant was instructed on how to personally direct-file with the municipal court.

406.3.10 OPEN
This internal status is used to show that a case is still unsolved, leads are being worked, and the case hasn't met suspended status.

406.3.11 SUSPENDED PENDING DNA
This internal status is used to show that a case is awaiting evidence sent for DNA analysis.

406.3.12 SUSPENDED PENDING FOLLOW-UP
This internal status is used to show that a case is suspended with anticipation of additional information or leads.

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406.3.13 SUSPENDED PENDING VICTIM READINESS
This internal status is used for cases that do not meet the requirements for exceptional clearance to show that a case is suspended due to the victim being unavailable, requesting to drop the charges, or is not ready to move forward with the investigation.

406.3.14 SUSPENDED PROSECUTOR DECLINED
This internal status is used for cases that do not meet the requirements for exceptional clearance to show that a case is suspended due to the prosecuting attorney's office declining to prosecute for various reasons.

406.3.15 SUSPENDED NO LEADS/EVIDENCE
This internal status is used to show that a case is suspended due to lack of suspect information or lack of evidence to further the investigation.

406.4 DISMISSAL OF COMPLAINTS AND CHARGES
Employees are not authorized to recommend alteration or dismissal of charges to the District Attorney, City Attorney or to any other official of the court without proper authorization. Employees will not sign any form or affidavit to obtain a dismissal of a complaint without going through the following procedure:

(a) When an employee learns of facts or circumstances to suggest a case they initiated should be dismissed, the employee will discuss the case with his supervisor.

(b) If the supervisor and employee both feel the case should be dismissed, they will review the case with the appropriate commander.

(c) With approval of the appropriate commander, requests for dismissal of charges will be handled as outlined below.

406.4.1 MUNICIPAL COURT
A recommendation to dismiss a case in Municipal Court will be handled as follows:

(a) With the approval of the appropriate commander, the employee and supervisor will sign the *Request for Dismissal* form in municipal court.

1. The employee will take the form to a prosecuting attorney and explain the reasons for recommendation; and

(a) If an incident report has been written, a supplement will be prepared by the employee setting out the reasons for recommending dismissal.

(b) If there is no incident report the employee will write a memorandum or letter, as appropriate.

2. A copy of the supplement, memorandum, or letter will be forwarded to the appropriate commander.

406.4.2 COUNTY OR DISTRICT COURT
A recommendation to dismiss a case in County or District Court will be handled as follows:

(a) With the approval of the appropriate commander, the employee will:

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1. Prepare a detailed supplement or appropriate documentation (memorandum or letter) setting out the facts or circumstances that lead them to believe the case should be dismissed.
2. If the employee requesting the dismissal is not part of the Investigative Unit assigned the case, an employee from the assigned Investigative Unit will review the case with the appropriate prosecutor.
3. The final decision to dismiss a case must be made by the prosecuting attorney.
4. No case may be dismissed without the consent of the presiding judge.

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Austin Police Department
General Orders

Emergency Management

407.1 PURPOSE AND SCOPE

The Austin City Council passed resolution 20050929-008 on September 29, 2005 in response to a Homeland Security Presidential Directive (HSPD-5), as well as the State of Texas Office of Homeland Security requiring local governments to adopt the National Incident Management System (NIMS) as a pre-condition to the receipt of federal grants, contracts, and activities related to the management and preparedness for all hazards. This resolution officially adopts NIMS and endorses the Incident Command (ICS) for all City of Austin departments for the management of disasters, acts of terrorism, and other extraordinary emergencies.

This order establishes the framework from which the department directs its strategic planning (preparedness) and tactical response for all hazards and large special events. This order is applicable to all employees (sworn and non-sworn) and assigns specific responsibilities for all hazards (i.e., man-made or natural disaster or large special events).

407.2 DEFINITIONS

Alpha-Bravo Schedule– A modified work schedule broken-down into 12-hour shifts. Day shift (Alpha) begins at 0600 and ends at 1800 and Night shift (Bravo) begins at 1800 and ends at 0600 the following calendar day.

Department Operations Center (DOC)– Department Operations Centers (DOCs) are facilities from which individual departments control their internal resource mobilizations and tactical operations during periods of increased service demands beyond normal capabilities. Activities normally carried out in a DOC should not take place in the EOC. Conversely, interagency coordination and strategic planning should not take place at a DOC. Department level staffing plans should address both tactical level DOC and EOC staffing needs during significant events. Also see Emergency Operations Center (EOC) and Incident Command Post (ICP).

Department-Wide Emergency Response- When a circumstance (man-made or natural) has created an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief of Police, or designee, may order a Department-wide Emergency Response in order to decisively and immediately respond, mitigate, and recover from the emergency situation.

Director of Emergency Management (APD)- Lieutenant assigned to manage APD's Emergency Management Unit. The Director of Emergency Management is responsible for ensuring APD's emergency management planning and response efforts comply and/or coincide with applicable city ordinances, National Incident Management System, and Incident Command System protocols and best practices. In addition, the Director of Emergency Management is responsible for ensuring that APD's emergency management planning and response general strategies seamlessly integrate with the City of Austin Homeland Security and Emergency Management (HSEM) emergency operations plans, as well as plans, memoranda of understanding/agreement, and interlocal agreements with other partner entities.

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Emergency Management Coordinator (APD) – Sergeant assigned to supervise APD's Emergency Management Unit. The Emergency Management Coordinator (EMC) is responsible, under the direction of the Chief of Police or designee, for the organization of personnel, resources, and facilities in times of crisis. The EMC coordinates APD's disaster preparedness and response plan in accordance with city, state, and federal regulations and provides assistance to other organizations in the development of their preparedness, response and recovery plans. The EMC will pay close attention to city, state, and federal regulations, implementing them in a timely manner. The EMC is also responsible for conducting tests and emergency service drills and exercises with the public, local officials, and first responders, as well as coordinating and conducting training activities and programs. The EMC will serve as the APD designated single point of contact (SPOC) for all routine emergency management matters.

Emergency Operations Center (EOC)– The purpose of the Emergency Operations Center is to coordinate strategic decision-making, resource allocation, public information, and warning. The operation of the EOC does not eliminate a department's needs for tactical level coordination of staffing and resources which normally takes place in a DOC. The EOC focuses on inter-agency coordination and strategic decision-making. Agency representatives cannot effectively carry out these functions if they are preoccupied with internal department response planning and coordination which should take place within a DOC. Also see Department Operations Center (DOC) and Incident Command Post (ICP).

Emergency Operations Center Representative- Agency representatives at the EOC, usually Assistant Chiefs, who are at least senior managers, commanders, or chiefs capable of committing their department's resources. Lower ranking representatives sent to the EOC as "liaisons" cannot effectively participate in joint, strategic decision-making and may not have the necessary influence with higher-ranking officials in their own organizations.

Emergency Operations Plan (EOP)– An emergency operations plan is a course of action developed to mitigate the damage of potential events that could endanger an organization's ability to function. Such a plan should include measures that provide for the safety of personnel, property and facilities. It should also include provisions to assess the severity of an incident and implement steps to eliminate the problem -- for example, contacting firefighters in case of a fire.

Emergency Management Unit (EMU)– Managed by the APD Director of Emergency Management, this unit is responsible for ensuring APD's emergency management planning and response efforts comply and/or coincide with applicable city ordinances, National Incident Management System, and Incident Command System protocols and best practices. In addition, as directed by the Director of Emergency Management, is responsible for ensuring that APD's emergency management planning and response general strategies seamlessly integrate with the City of Austin Homeland Security and Emergency Management (HSEM) emergency operations plans, as well as plans, memoranda of understanding/agreement, and interlocal agreements with other partner entities.

Event- A planned, non-emergency activity. ICS can be used as the management system for a wide range of events (e.g., parades, concerts, and/or special and sporting events). Also see Incident.

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Event Action Plan (EAP)- A written plan containing general SMART objectives reflecting the overall strategy for managing an event. It may include the identification of operational resources and assignments. It may also include attachments that provide direction and important information for management of the event during one or more operational periods. Also see Incident Action Plan (IAP) and SMART objectives.

Finance Section- The Section responsible for all incident costs and financial considerations. This section includes the Time Unit, Procurement Unit, Compensation/Claims Unit, and Cost Unit.

FLOP– An acronym used to identify a group of incident management personnel organized according to function and reporting to the Incident Commander. The General Staff normally consists of the Finance/Administration Section Chief, Logistics Section Chief, Operations Section Chief, and Planning Section Chief.

Incident- An occurrence, natural or human-caused, that requires an emergency response to protect life or property (e.g., terrorist threats or attacks, wild land and urban fires, floods, hazardous materials spills, aircraft accidents, earthquakes, hurricanes, tornadoes, public health and medical emergencies, etc.). Also see Event.

Incident Action Plan (IAP)- A written plan containing general SMART objectives reflecting the overall strategy for managing an incident. It may include the identification of operational resources and assignments. It may also include attachments that provide direction and important information for management of the incident during one or more operational periods. Also see Event Action Plan (EAP) and SMART objectives.

Incident Command Post (ICP)- The location of the tactical-level, on-scene incident command and management organization for field response teams. The ICP typically comprises the Incident Commander and immediate staff and may include other designated incident management officials. Typically, the ICP is located at or in the immediate vicinity of the incident site and is where direct, on-scene control of field response units takes place. Incident planning and communications are also conducted at the ICP.

Incident Command System (ICS)- A standardized emergency management construct specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents. It is used for all kinds of emergencies and is applicable to small as well as large and complex incidents.

Incident Commander (IC)- The individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources. The IC has overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site. APD IC's generally operate from the DOC and delegate responsibilities at the incident site. Also see Incident Command Post (ICP).

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LIPS- Acronym used to prioritize SMART objectives.

(a) Life Safety- Objectives that deal with immediate threats to the safety of the public and responders are the first priority.

(b) Incident Stabilization- Objectives that contain the incident to keep it from expanding and objectives that control the incident to eliminate or mitigate the cause are the second priority.

(c) Property/Environmental Conservation- Objectives that deal with issues of protecting public and private property and the environment are the third priority.

(d) Societal Restoration- Objectives that identify strategies to return public and private sector functions to normal levels and are the fourth priority.

Logistics Section- The Incident Command System Section responsible for providing facilities, services, and material support for the incident.

National Incident Management System (NIMS)- A system mandated by HSPD-5 that provides a consistent nationwide approach for Federal, State, local, and tribal governments; the private sector; and nongovernmental organizations to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

Normal State of Readiness- This phase constitutes a continuous and constant state of readiness. The APD proactively ensures this state of readiness by constantly training, maintaining equipment, conducting ongoing equipment inspections, and gathering information in order to formulate an effective response plan.

Operational Period- An operational period is the period of time scheduled for executing a given set of operational actions as specified in the EAP or IAP. The length of the operational period is to be determined by the APD DOC. When operations are focused primarily on recovery programs, operational periods are typically a week or longer.

Operations Section- The Incident Command System Section responsible for all tactical incident operations and implementation of the EAP or IAP.

Planning Section- The Incident Command System Section responsible for the collection, evaluation, and dissemination of operational information related to the incident, and for the preparation and documentation of the EAP or IAP. This Section also maintains information on the current and forecasted situation and on the status of resources assigned to the incident.

SMART Objectives- Objectives reflecting the overall strategy for managing an event or incident. SMART stands for:

(a) Specific – Is the wording precise and unambiguous?

(b) Measurable – How will achievements be measured?

(c) Action-oriented – Is an action verb used to describe expected accomplishments?

(d) Realistic – Is the outcome achievable with given available resources?

(e) Time-sensitive – What is the timeframe?

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Situational Awareness- The perception of environmental elements with respect to time or space, the comprehension of their meaning, and the projection of their status after some variable has changed, such as time, or some other variable, such as a predetermined event. It is also a field of study concerned with perception of the environment critical to decision-makers in complex situations.

Tactical Alert- When the department has received or developed reliable intelligence that there is a relatively high probability that a circumstance (man-made or natural) may escalate into an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief or Police, or designee, may place the department on Tactical Alert in order to prepare for a decisive and immediate department-wide tactical response, if needed.

407.3 OPERATIONAL CONDITIONS (OPCON)

The department operates in three general states. Each state automatically triggers certain duties and responsibilities for all department personnel (sworn and non-sworn). These states are:

407.3.1 NORMAL STATE OF READINESS

In accordance with the Department's mission, and in order to effectively serve the citizens of the City of Austin, all personnel carry out their duties in a perpetual state of readiness. The Department proactively ensures this state of readiness by constantly training, maintaining equipment, conducting ongoing equipment inspections, gathering information, and distributing intelligence in order to formulate an effective response to all hazards. In this normal state of readiness all department personnel are required to maintain a constant state of situational awareness by doing certain daily activities to include, but not limited to the following:

(a) Sworn and non-sworn supervisors must be aware of the potential need to send their resources and personnel to other units or other assignments (e.g., DOC, EOC, Command Posts, etc.) with little to no notice.

(b) Sworn and non-sworn supervisors will review Emergency Operations Plans (EOPs) with their employees published by the Emergency Management Unit (EMU).

407.3.2 TACTICAL ALERT

When the department has received or developed reliable intelligence that there is a relatively high probability that a circumstance (man-made or natural) may escalate into an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief of Police, or designee, may place the department on Tactical Alert in order to prepare for a decisive and immediate department-wide tactical response, if needed.

In the event the Chief of Police places the department on Tactical Alert, the Chief's designee will notify the department via an "APD All" page and email.This page and email title will include the reason for the tactical alert (e.g., Tactical Alert-Severe Weather, Tactical Alert-Flooding, Tactical Alert-Civil Disturbance, Tactical Alert-Terror Threat, etc.), as well as, any additional directions.

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In addition to any special instructions received via pager or email, when placed on Tactical Alert all department supervisors will begin to prepare for the probable incident by doing the following:

(a) Duty Chiefs/EOC Representatives, or designee, for the potential initial operation period will complete the following:

1. Identify, schedule, and notify additional EOC Representatives for potential subsequent operational periods.
2. Identify and notify personnel needed to serve in the EOC, if it is activated.
3. Disseminate to all identified and notified potential EOC personnel and review applicable Emergency Operations Plans (EOPs).

(b) Duty Commander/DOC IC for the potential initial operation period will complete the following tasks:

1. Identify and notify personnel needed to serve in the DOC (FLOP), if it is activated.
2. Identify, schedule, and notify additional DOC ICs for potential subsequent operational periods.
3. Disseminate information to all identified and notified potential DOC personnel and review applicable Emergency Operations Plans (EOPs).
4. Task applicable potential DOC personnel with drafting preliminary SMART objectives.
5. DOC ICs for subsequent operational periods will, in turn, identify and notify personnel needed to serve in the DOC.
6. With the Duty Chief's authorization, DOC ICs may rescind or deny any leave, department wide, for all personnel (sworn or non-sworn).

(c) Sworn and non-sworn supervisors will obtain a preliminary count of personnel and equipment available for the next three calendar days, at minimum, and be prepared to report that count to the DOC on applicable APD ICS Forms (i.e., Sergeant to Lieutenant, Lieutenant to Commander, Commander to DOC, DOC to EOC).

1. Sworn and non-sworn supervisors will identify and draft a schedule personnel for potential Alpha/Bravo assignments.
2. Sworn and non-sworn supervisors will review applicable Emergency Operations Plans (EOPs) as disseminated by the DOC or APD Emergency Management.
3. Sworn and non-sworn supervisors will review and prepare to execute their applicable section of the department's Continuity of Operations (COOP) annex, if applicable.

(d) In addition to any special instructions, when placed on Tactical Alert, all department personnel (sworn and non-sworn) will prepare for the probable incident by doing the following:

1. Continue performing all activities as in a Normal State of Readiness.

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2. Keep issued pager nearby, day or night, whether on or off-duty, in accordance with APD General Orders.
3. Prepare to work modified hours (e.g. Alpha/Bravo) for a long duration of time.
4. Prepare to work or support EOC and/or DOC operations.
5. Prepare a “go bag” containing personal items needed for extended duty assignments (e.g., personal hygiene items, change of clothing, water, and food, etc.)
6. Sworn personnel will report to work in Class D (tactical uniform) with all equipment needed to work patrol and crowd control regardless of primary or ancillary assignments (See Patrol SOP for a list of equipment needed.)

407.3.3 DEPARTMENT-WIDE EMERGENCY RESPONSE

When a circumstance (man-made or natural) has created an emergency situation requiring the use of tactics and resources other than those normally used in a Normal State of Readiness, the Chief of Police, or designee, may order a Department-wide Tactical Response in order to decisively and immediately respond, mitigate, and recover from the emergency situation.

In the event the Chief of Police orders a Department-wide Emergency Response, the Chief’s designee will notify the department via an “APD All” page and email. This page and email title will include the reason for the department-wide emergency response (e.g., Emergency Response-Severe Weather, Emergency Response-Flooding, Emergency Response-Civil Disturbance, Emergency Response-Terror Incident, etc.), as well as, any additional directions.

In addition to any special instructions received via pager or email, during a department-wide emergency response all department supervisors will execute the tasks they would normally prepare for while on a Tactical Alert and follow orders given by the DOC.

407.3.4 PERSONNEL DEPLOYMENT (ALPHA/BRAVO)

In order to leverage the resources needed to decisively and immediately respond to, mitigate, and recover from an emergency situation, the Chief of Police (or designee) may establish a department-wide work schedule change. If so directed, the usual modified work schedule is broken-down into 12-hour shifts. Day shift (Alpha) begins at 0600 and ends at 1800 and Night shift (Bravo) begins at 1800 and ends at 0600 the following calendar day. Supervisors will submit personnel rosters reflecting personnel assignments to day and night shifts to the DOC, via their chain of command, on an APD ICS Form 204. The DOC IC may modify any or all portions of Alpha/Bravo. The following groups are designated to work as follows:

(a) Day Shift (Alpha):
    1. All Patrol Day shifts
    2. All District Representatives
    3. All Regional Detectives
(b) Night Shift (Bravo)

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1. All Patrol Evening shifts
2. All Patrol Night shifts
3. All Metro Tactical teams

(c) All other personnel within their respective Commands (e.g., Violent Crimes, Property Crimes, OCD, Training, etc.) shall be divided equally between day and night shift (i.e., 50% Alpha and 50% Bravo), unless otherwise directed by the DOC.

(d) Special Operations and non-sworn personnel schedule modifications will be designated by the DOC IC, if needed.

407.4 DEPARTMENT OPERATIONS CENTER (DOC)

When the Departmental Operations Center (DOC) is activated, the incident shall be managed in accordance with ICS protocols. The objectives of any activation is to decisively and immediately respond to, mitigate, and recover from an emergency situation while continuing to provide police services to the citizens of the City of Austin.

407.5 CRITERIA FOR DOC ACTIVATION

Situations that trigger activations may be unique and therefore activations are a judgment call based upon numerous factors; however, generally, the DOC should be activated when a situation exists that has overwhelmed or will overwhelm and/or depleted department resources, regardless if the Austin-Travis County Emergency Operations Center (EOC) has been activated or not.

When the Watch Lieutenant is aware of a situation that could potentially trigger a DOC activation, he or she will consult with the Duty Commander. The Duty Commander will consult with the Duty Chief to make the final determination to activate the DOC. The Duty Commander will factor the magnitude of the incident along with the incident's impact on department operations.

Incidents that would merit a DOC activation may include, but are not limited to the following:

(a) 9-1-1 system crash

(b) Large spontaneous protest

(c) Large-scale power outage

(d) APD Medical Countermeasure Plan Activation

(e) Hazardous weather event

(f) Officer involved incident with an associated hostile crowd

(g) Larger than normal media response to an incident

(h) Multi-agency protracted response to an event

(i) Large training exercise

(j) Continuity event requiring APD COOP activation

(k) As directed by the Chief of Police or designee

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407.6 DOC RESPONSE AND PROTOCOL

Upon initial activation of the DOC, the Duty Commander will respond as the DOC Incident Commander (IC) for the initial operational period. Generally, the DOC will be located at the COMPSTAT Room (4th Floor of Police Headquarters); however, the IC may direct that the DOC be located elsewhere. The IC will begin to assess the situation and direct what personnel will be needed in the DOC as an initial response.

(a) Upon activation, the IC, or designee, will immediately notify other entities that the APD DOC has been activated. Notifications include, but are not limited to, the following:

1. COA HSEM
2. APD Communications
3. AFD DOC, if applicable
4. EMS DOC, if applicable

(b) Upon activation, the IC, or designee, will:

1. Review all relevant emergency operations plans (i.e., Regional, City, APD, etc.).
2. Draft SMART objectives for the operational period using LIPS to prioritize objectives.
3. Determine what the operational periods will be (e.g., 8-hour, 10 hour, Alpha/ Bravo, etc.).
4. Document all relevant decisions, requests for resources, and activity in WebEOC or APD ICS 214 Activity Log.

(c) The DOC will be run in accordance with ICS training and protocol. Each operational period of the incident will be documented in an Incident Action Plan (IAP) using all the applicable APD ICS forms. The number of personnel who will respond to the DOC will vary depending on the size and scope of the incident (scalable). The personnel required at the DOC can either be increased or decreased, as needed. Specific personnel with specialized skills may be required during complex incidents.

(d) All APD personnel (sworn and non-sworn), regardless of rank and/or work groups are either subject to support or subject to callback for the DOC. The usual personnel needed for DOC duties may include, but are not limited to the following:

1. Personnel to assist with:
   (a) Finance
   (b) Logistics
   (c) Operations
   (d) Planning
   (e) PIO
   (f) CTM
   (g) ARIC

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(h) Fleet
(i) Special Events
(j) Special Operations
(k) SRT leadership
(l) CAST leadership
(m) Police Technology
(n) Administrative support

407.7 DOC OPERATIONAL AUTHORITY

The DOC operates with the authority of the Chief of Police. The designated IC may leverage this authority in order to decisively and immediately respond to, mitigate, and aid in recovery from an emergency situation while continuing to provide police services to the citizens of the City of Austin. ICs have all department resources at their disposal and have the authority to do the following, to include but not limited to:

(a) Cancel training courses, court, and leave
(b) Modify work schedules
(c) Direct equipment issue
(d) Suspend the ride-along program
(e) Direct staff to establish an Incident Command Post (ICP)
(f) Hold over APD personnel (sworn and non-sworn)
(g) Direct support units to report to Patrol functions (e.g., Motors, detectives, Highway Enforcement, etc.).
(h) Limit APD response to service types and actions (e.g., not responding to alarm calls, issuing "blue forms" in crashes that require a towtruck, etc.).
(i) Assign personnel (sworn and non-sworn) to serve in the DOC in various capacities.

407.8 INCIDENT ACTION PLANS (IAP) AND EVENT ACTION PLANS (EAP)

The IAP or EAP is a written plan that defines the incident or event objectives and reflects the tactics necessary to manage an incident or event during an operational period. The IAP or EAP is to be considered directive and helps all personnel involved understand incident objectives and issues. An IAP or EAP is primary source of data used to refine public safety systems, protocols, and procedures for subsequent incidents or events. In addition, financial reimbursement to the department for large incidents is contingent upon submitting an IAP. APD EMU will be available, day or night, to assist IC’s designees with drafting an IAP or EAP.

An IAP or EAP or supporting ICS documents are required under the following circumstances:

(a) DOC activations

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(b) EOC activations

(c) Special Events requiring a command post

(d) Anytime a command post is used for any operation for two or more designated operational periods.

(e) Anytime any emergency operations plan (EOP) is applied in to an event or incident in conjunction with a DOC, EOC, and/or command post activation.

407.9 AFTER ACTION REVIEW/REPORT (AAR) AND CORRECTIVE ACTION PLAN (CAP)

Organizational learning requires continuous assessment of organizational performance, looking at successes and failures, and ensuring that learning takes place to support continuous improvement. The After Action Review/Report (AAR) is the primary means and tool used by APD for facilitating this assessment. It works by bringing together a team to discuss a task, incident, event, activity, or project, in an open and honest fashion.

The systematic application of properly conducted AARs across an organization can help drive organizational change. When applied correctly, AARs can become a key aspect of the internal system of learning and motivation.

Subsequent to any incident or event, which requires an IAP or EAP, APD EMU will facilitate an After Action Review with key personnel no later than two calendar weeks after the last operational period of the incident or event. Attendance and participation at the After Action Review is mandatory, unless otherwise authorized by the Chief of Police. APD EMU will compile all input from the review into an After Action Report and submit it to the Chief of Police.

Via APD EMU, the Chief of Police will then issue a Corrective Action Plan (CAP). As the name of the document implies, compliance with the CAP is mandatory. CAPs may direct that corrective action be taken, to include, but not limited to, the following examples:

(a) Department general order changes

(b) Unit SOP changes

(c) Equipment purchases or redistribution

(d) Department reorganization

(e) budget reallocation

(f) Personnel reassignment

In lieu of an APD CAP, the Chief of Police may direct that corrective action be taken in compliance with a CAP published by the City of Austin Homeland Security and Emergency Management department (HSEM).

407.10 DUTY COMMANDER (DOC IC) AND DUTY CHIEF (EOC REPRESENTATIVE) ROSTER

Duty Commander (DOC IC) and Duty Chief (EOC Rep) roster is maintained by the Intelligence Division Commander and is stored and maintained on the Emergency Management Unit

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SharePoint page. Any changes to the Duty Commander (DOC IC) and Duty Chief (EOC Rep) roster can be made 24/7 by either calling the Intelligence Division Commander or the APD Director of Emergency Management.

407.11 ORGANIZATIONAL DEVELOPMENT AND COMPLIANCE REPORTING

In compliance with resolution 20050929-008, and in a continuing effort to ensure all department personnel (sworn and non-sworn) possess and maintain the knowledge, skills, and abilities needed to decisively and immediately respond, mitigate, and recover from any emergency situation, the department provides the up-to-date NIMS and ICS training for its employees.

The APD Director of Emergency Management is tasked with evaluating and determining the applicability of various NIMS and ICS training courses to personnel assignments and ranks within the department. At least twice a calendar year, APD EMU will publish the latest NIMS and ICS training requirements and training compliance roster for all employees. All employees are required to complete all required NIMS and ICS training within 18 months of their initial assignment and/or promotion to their current rank.

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Mobile Field Force

408.1 PURPOSE AND SCOPE

Civil disorders may arise from a number of contributing factors and the event may be triggered by a single cause or a combination of causes. The Department is dedicated to utilizing the most effective techniques and procedures when dealing with civil unrest.

The initial response to emergency and disaster incidents by patrol officers is outlined in General Order 407 (Emergency Management). This order covers the activation and mobilization of on-duty personnel to handle civil disorder situations when it has been determined to use the Mobile Field Force (MFF) concept.

408.1.1 MOBILE FIELD FORCE ACTIVATION

Several different types of scenarios can utilize a MFF. These include planned events, such as a rally or protest, as well as spontaneous incidents that exceed normal response capabilities and require a MFF response.

(a) The activation of a MFF should be considered when dealing with any:
    1. Large scale disturbance; or
    2. Disturbance where there is potential for escalation of violence if a large scale show of force is not present.

(b) The following personnel have the authority to activate a MFF response:
    1. Chief of Police.
    2. Assistant chiefs.
    3. Commanders.
    4. Watch Lieutenant.
    5. Patrol and support lieutenants.

408.2 MOBILE FIELD FORCE CONCEPT

The Mobile Field Force (MFF) is an organized group of specially trained and disciplined officers that can vary in size depending on the scale of the situation. The objectives of the MFF are to:

(a) Life/Safety.

(b) Incident Stabilization.

(c) Property Protection.

(d) Societal Restoration.

408.2.1 MOBILE FIELD FORCE COMPOSITION

(a) The MFF is commanded by the on scene Incident Commander (IC) and/or designated Operations Section Chief(s) who are in charge of the event per ICS protocol. IC responsibilities include:

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1. Determining how many officers will respond to form the MFF; and
2. Designating the location of a Command Post and rally point.

(b) The Incident Commander and/or Operations Section Chief(s) may be assisted by a lieutenant or sergeant acting as a Deputy or Executive Officer (XO).

(c) A MFF squad is usually divided into groups of seven to ten officers and one supervisor.

(d) A MFF platoon is composed of four MFF squads.

1. A platoon should be commanded by a lieutenant, if available.
2. A preemptive platoon will provide the Incident Commander with the flexibility to conduct offensive operations, if needed, and to make mass arrests.

408.2.2 MOBILE FIELD FORCE EQUIPMENT AND SUPPLIES

The MFF will be equipped with Batons or PR24's (excluding ASPs), OC spray, less-lethal shotguns, and helmets with face shields.

(a) Each Patrol Region will maintain an inventory of items necessary for the MFF (e.g., OC spray, less-lethal munitions, flex-cuffs).

(b) The Patrol Region where the incident occurs will be responsible for resupplying the MFF.

(c) When resupply is needed, the Incident Commander will have dispatch designate an available Patrol supervisor from the Region where the incident occurred to deliver these items to the MFF.

408.3 TRAINING AND PREPAREDNESS

Being prepared for incidents of civil unrest can be the key to reducing the potentially catastrophic consequences associated with these incidents. All sworn personnel are responsible for maintaining a level of proficiency in MFF training and tactics.

(a) Patrol commanders shall ensure that all lieutenants and sergeants under their command are familiar with the Unified Tactical Response Plan (UTRP) and MFF implementation.

(b) Patrol and support lieutenants are responsible for:

1. Ensuring that personnel under their command are proficiently trained in MFF tactics, procedures, and commands; and
2. Verifying personnel attend training in MFF procedures and tactics on a regularly scheduled basis.

(c) Sergeants are responsible for ensuring that members of their squad attend MFF training.

(d) All personnel who have received specialty training in the deployment of impact munitions are responsible for maintaining a level of proficiency in those capacities.

(e) All supervisors are responsible for making personnel in their chain-of-command aware of existing conditions or actions that may affect them. This may include:

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1. Changing officers' and supervisors' schedules.
2. Changing officers' and supervisors' assignments.
3. Implementing a callback plan.
4. Inspecting and assessing the readiness of MFF equipment and munitions.
5. Advising personnel of any situation, or potential situation, involving a riot or civil disturbance that could require deployment of an MFF.

408.4 MOBILE FIELD FORCE RESPONSE

The number of officers comprising the MFF will depend on the time of day that the MFF is initiated and is at the discretion of the Incident Commander.

(a) Initiation of the MFF will be broadcast citywide by dispatch.

(b) The MFF activation will utilize a tiered response plan.

1. Tier I Response - This involves using two designated officers from each on-duty patrol shift to respond to a MFF call up.
2. Tier II Response - This involves using officers from the Highway Enforcement Command (Motors, L&W, and Highway Response) and can be supplemented by additional officers from patrol or other Department units as dictated by the Incident Commander.

(c) Generally a Tier I Response will be utilized for most situations. At the Incident Commander's discretion, a Tier II Response can be utilized.

(d) Designated MFF officers will respond to the MFF broadcast.

(e) The Incident Commander will make the determination whether MFF officers will respond to the scene or to a designated staging area. In some situations, MFF officers may be directed to respond directly to the scene to support the on scene officers while others are directed to respond to the staging location to form up a MFF response.

408.5 CONTROL STRATEGIES AND CONSIDERATIONS

The control strategies employed by the MFF include:

(a) Containment.

(b) Arrest.

(c) Local Emergency Orders.

(d) Emergency Response.

408.5.1 CONTAINMENT

After the initial response, the next most important control objective is to contain the spread of disorder. Through the use of perimeter control, officers will limit access to the affected area. The three basic concepts of perimeter control are linear strategy, cordoning, and sectoring.

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(a) **Linear Strategy** - Deploys police as a blocking force along a roadway or geographic barrier perpendicular to access routes into the impacted area.

(b) **Cordoning** - Surrounds a particular problem area by using the linear strategy to seal off access on all sides. These two maneuvers allow the police to prevent outsiders from being drawn into the unrest as victims or participants and, at the same time, limit the spread of violence from inside the affected area.

(c) **Sectoring** - Divides the cordoned area into smaller sized units. Order can be restored one sector at a time as sufficient police resources are assembled to begin the process of regaining control.

408.5.2 ARRESTS

During acts of civil disorder, police must act quickly to arrest violators of the law. These arrests will help diffuse the unrest while also providing a break in the violence.

(a) Arrests must commence from the outset and be made early, quickly, constitutionally, fairly, and reasonably. This pattern must be sustained for the duration of the unrest.

(b) If mass arrests occur, the Incident Commander will request prisoner transport vehicles to the scene.

408.5.3 LOCAL EMERGENCY ORDERS

An essential component of the Department's strategy for responding to a civil disorder is the issuance of emergency orders. The Mayor has the authority to issue and enforce rules, regulations, orders, and directions necessary to maintain Life Safety, Incident Stabilization, Property Conservation, and Societal Restoration (e.g., establish a curfew).

408.5.4 EMERGENCY RESPONSE

A major civil disorder will require the Department to devote a large portion of its resources to restore order. When circumstances indicate that such a response is required, the Incident Commander will announce the mobilization of the MFF and will give the location of the assembly area. Once this has been initiated, all specified personnel will respond to the designated location. The ranking supervisor will refer to the instructions in the Mobile Field Force Supervisor Instructions and Scribe Log (PD0239) and should perform the prescribed tasks.

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GO
409

Austin Police Department
General Orders

Swift Water and Flooding Incidents

409.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidance and direction in responding to a swift water/ flooding incident. The objective in responding to swift water/flooding incidents is to safely remove victims from the danger of swift water or flooding while keeping the safety of responders and citizens at a premium. These situations are inherently dangerous. The possibility of a rescuer becoming a victim is ever present and should be considered at all times.

409.2 EQUIPMENT AND TRAINING

(a) Each patrol vehicle shall be equipped with a Department approved Personal Floatation Device (PFD) and Throw Bag.

(b) Each patrol officer shall be trained in the proper use of the PFD and Throw Bag.

409.3 OFFICER RESPONSE

Water rescue incidents may involve individuals or vehicles trapped in swift water, water evacuations involving individuals stranded by slow moving but rising water, or individuals reported under water. Water rescue is normally a technical rescue to be accomplished only by a swift water rescue Special Operations Team.

(a) Officers should request the AFD Special Operations Team, if not already dispatched.

(b) Upon arrival at the scene, officers will:

1. Park the patrol unit out of potentially vulnerable areas in the event rising water becomes more widespread.
2. Wear their Personal Flotation Device (PFD) at all times at water rescue incidents.
3. Keep personnel and citizens without PFD's a minimum of 15 feet away from the water's edge.
4. Assess the situation, victim status and water conditions and continually update Communications.

409.4 WATER RESCUE GUIDELINES

A water rescue should not be undertaken unless a victim's life is in immediate peril or conditions are rapidly deteriorating and it is unlikely that any immediate assistance will be available from a swift water rescue Special Operations Team.

(a) Officers will only initiate a water rescue after a thorough risk/benefits analysis, including:

1. Life safety issues for both victim(s) and officers; and
2. Risks of initiating rescue operation versus delaying until arrival of trained Special Operations Team resources.

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(b) Notify communications if a rescue operation is attempted.

(c) Do not attempt to swim to a victim.

1. If victim is seen struggling in water, attempt to assist with a Throw Bag from the shore.
2. Never tie a victim or yourself to the Throw Bag rope.

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Austin Police Department
General Orders

Hazardous Material Response

410.1 PURPOSE AND SCOPE

Hazardous substances present a potential harm to employees resulting from their exposure. This order outlines the Department's response when dealing with hazardous materials.

410.1.1 HAZARDOUS MATERIAL DEFINED

Hazardous material - A substance which, by its nature, containment and reactivity, has the capability of inflicting harm during exposure. It is characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby poses a threat to health when improperly managed (Tex. Health and Safety Code § 501.002).

410.2 HAZARDOUS MATERIAL RESPONSE

Employees may encounter situations involving suspected hazardous materials, such as at the scene of a traffic crash, chemical spill or fire. When employees come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The Austin Fire Department is the agency trained and equipped to properly respond and mitigate most hazardous substances and biohazards. In an effort to increase efficiency and effectiveness, AFD and APD will communicate and coordinate activities in accordance with an Incident Command System.

Responders entering the area may require decontamination before they are allowed to depart the scene and should be evaluated by appropriate technicians and medical professionals for signs of exposure.

The following steps should be considered at any scene involving suspected hazardous materials:

(a) Attempt to identify the type of hazardous substance. Identification may be determined by placard, driver's manifest or statements from the person transporting the material.

(b) Utilization of personal protective gear. If in doubt about whether the use of personal protective equipment is appropriate, officers should contact on scene Hazmat personnel.

(c) Notify the Fire Department.

(d) Provide first aid to injured parties if it can be done safely and without contamination.

(e) Begin evacuation of the immediate area and surrounding areas, dependent on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary. The decision to continue evacuation beyond the immediate area or shelter in place should be made after consultation with AFD Haz-Mat units.

(f) Responders should remain up hill and upwind of the hazard until a zone of entry and a decontamination area is established.

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410.2.1 RADIOLOGICAL TESTING
All explosions should be assumed to have dispersed radiological material. Testing for signs of radiation should be conducted by trained APD officers or AFD Hazmat personnel as soon as possible after an incident.

410.3 REPORTING EXPOSURE(S)

(a) Employees who believe they have been exposed to a hazardous material shall immediately report the exposure to a supervisor.

1. Supervisors informed of an employee exposed to a hazardous material shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure.
2. Each exposure shall be documented by the employee in an employee memorandum that shall be forwarded via chain-of-command to the employee's Commander.
3. Should the affected employee be unable to document the exposure for any reason, it shall be the responsibility of the notified supervisor to complete the memorandum.
4. Supervisors shall complete the required Workers' Compensation forms as outlined in General Order 956 (On-Duty Injury or Illness).

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Austin Police Department
General Orders

Hostage, Barricaded, and Suicidal Subject Incidents

412.1 PURPOSE AND SCOPE

Hostage situations and barricaded suspects present unique problems for law enforcement. The protection of the public and law enforcement personnel is of the utmost importance. Proper planning and training will tend to reduce the risks involved with these incidents. The Critical Incident Negotiation Team's (CINT) sole purpose is to facilitate the professional resolution of hostage and/or barricaded subject incidents.

For purposes of this document, "professional resolution" means utilizing nationally recognized law enforcement negotiation techniques which focus on saving human life during critical times involving emotionally disturbed persons and/or criminal subjects. Professional resolution further means recognizing the importance of safety and inter-unit communication and cooperation with regard to the overall success of critical incident resolution.

412.1.1 DEFINITIONS

Barricaded Subject - A person who takes a position of cover or concealment or maintains a position in a structure and who resists capture by law enforcement personnel. A barricaded subject may be armed, suspected of being armed, threatening violence and/or have demonstrated the potential to commit violence against others or themselves.

Hostage - A person held by one party in a conflict as security, so that specified terms will be met by the opposing party.

Hostage Negotiator - An officer who has been selected, trained and certified by the CINT Coordinator.

"Jumper" Situations - An unarmed suicidal subject who is threatening to jump from an elevated position which is capable of causing death.

Unarmed Suicidal Subject - An unarmed suicidal subject who presents no immediately apparent danger to officers or the public.

412.2 CRITICAL INCIDENT NEGOTIATION TEAM RESPONSE

The primary function of the Austin Police Department Critical Incident Negotiation Team is to assist other members of the Austin Police Department and/or other law enforcement agencies who require assistance with the professional resolution of hostage/barricaded subject situations, and unarmed suicidal subjects.

The CINT is a direct support unit to the SWAT Team and together comprise a component of Special Operations. As such, the CINT is on the SWAT call-up trigger page. All requests for hostage negotiators or the CINT are made through the Communications supervisor.

(a) **Hostage and Barricaded Subjects**

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1. SWAT and CINT shall always respond to hostage/barricaded subject incidents.

(b) **"Jumper" Situations**

1. Hostage negotiators may be called to the scene of "jumper" situations. When requested, generally two (2) hostage negotiators will respond.

(c) **All Other Unarmed Suicidal Subjects Situations**

1. SWAT and CINT will not normally respond to any other type of unarmed suicidal subject. In unarmed suicidal subject situations other than a "jumper," officers may request a response from crisis intervention officers or the Crisis Intervention Team (CIT).

412.3 FIRST RESPONDER ASSESSMENT

Nothing in this order precludes an officer from making a call inside a structure to determine what is going on, or to request that a subject come outside to speak with officers.

The ranking officer may request the assistance of an on-duty hostage negotiator to aid in the initial assessment, phone call or verbal contact.

As soon as it becomes apparent that a hostage/barricaded subject incident or "jumper" situation is in progress, officers shall adhere to the notification process outlined in this order.

412.3.1 NOTIFICATION PROCESS AND RESPONSIBILITIES

(a) If the assessment determines a hostage/barricade situation exists, the first responder shall immediately request a supervisor to respond and notify Communications to request a SWAT/CINT response.

(b) If the assessment determines that a "jumper" situation exists, the ranking officer should notify Communications to request a CINT-only response.

(c) The ranking officer on the scene of an actual or potential hostage/barricade situation shall consider the following:

1. Avoid confrontation in favor of controlling and containing the situation until the arrival of trained personnel and/or trained hostage negotiation personnel.
2. Evacuation of bystanders and injured persons.
3. Provide responding officers with a safe arrival route to the location.
4. Follow Department guidelines for perimeter control, containment, and communications.

(d) The ranking officer is responsible for ensuring that personnel on scene with pertinent information are available to relay it to SWAT/CINT as soon as possible.

(e) The responsibility for the disposition of a subject who has been taken into custody for a criminal offense or mental health evaluation lies with the uniformed first responders.

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412.4 SUPERVISOR RESPONSIBILITIES

(a) Supervisors shall immediately respond to the scene of all hostage/barricade situations and be responsible for the following:

1. Rapidly evaluate and assess the situation, and obtain a briefing by the initial responders.
2. Assume the role of Incident Commander and retain this role until relieved.
3. Establish a Command Post and appropriate chain-of-command.
4. Notify tactical and hostage negotiation personnel.
5. Notify appropriate persons within and outside the agency, such as command officers, dog handlers or helicopter pilots.
6. Establish inner and outer perimeters.
7. Request ambulance, rescue, fire and surveillance equipment.
8. Authorize news media access and news media general order.
9. Pursuit/surveillance vehicles and control of travel routes.

(b) Supervisors or the Watch Lieutenant should advise the Special Operations commander with as much of the following information as is available:

1. The number of suspects, known weapons and resources available.
2. Whether the suspect is in control of hostages.
3. If the suspect is barricaded.
4. The type of crime involved.
5. If the suspect has threatened or attempted suicide.
6. The location of the Command Post and a safe approach to it.
7. The extent of any perimeter and the number of officers involved.
8. Whether the suspect has refused an order to surrender, and any other facts critical to the immediate situation.

412.5 ON-SCENE COMMAND RESPONSIBILITIES

(a) Upon arrival of the Special Operations supervisor at the scene, the Special Operations supervisor shall be briefed about the situation by the original on-scene supervisor and/or on-scene personnel with knowledge of the incident.

(b) Once briefed, the Special Operations supervisor or designee shall be responsible for the tactical portion of the operation.

(c) The original on-scene supervisor shall be responsible for perimeter security and general support for the Special Operations teams.

(d) The original on-scene supervisor and the Special Operations supervisor, or authorized designees, shall maintain communication as the situation develops.

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412.6 REPORTING

Unless otherwise relieved by a supervisor, the initial officer at the scene is responsible for completion of reports or coordination of reports for the hostage/barricade incident.

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Austin Police Department
General Orders

Clandestine Lab

413.1 PURPOSE AND SCOPE

Clandestine laboratory enforcement actions are complicated by the presence of hazardous and/or explosive chemicals. Clandestine laboratories often house substantial quantities of highly toxic, corrosive and explosive chemicals posing serious human health and environmental risks. To ensure that issues concerning health, officer safety, and safety of the environment are properly handled, the following procedures will be followed when an employee discovers apparatus they suspect may be used to manufacture narcotics. There are strict federal and state guidelines for the dismantling, removal, and transporting of clandestine lab chemicals and apparatus.

413.1.1 CLANDESTINE LAB TEAM

The Organized Crime Division (OCD) has a certified Clandestine Lab Team (CLT) that is specially equipped and trained for the purpose of investigating, dismantling, and transporting clandestine laboratories. This team is on call 24 hours a day, seven days a week to respond to clandestine labs.

413.2 CLANDESTINE LABS

A clandestine lab can be either a cooking lab in the process of producing an illegal drug, or it can be a boxed-up or dismantled lab.

(a) Clandestine Labs can be found in, but are not limited to, the following places:

1. Residential structures (e.g., houses, motel rooms).
2. Vehicles, boats, and travel trailers.
3. Self-storage units.
4. Wooded areas.

(b) Clandestine labs are dangerous due to the threat of explosion, fire, and chemical contamination to officers and civilians who are close to a lab.

(c) Except in emergency situations, no employee, other than members of the CLT, will enter any room or structure known to contain or reasonably suspected to contain a clandestine laboratory.

(d) Officers should be aware that clandestine laboratories may also be established for the production of biological or chemical agents to be used in weapons of mass destruction (WMD). If a WMD lab is suspected, notification should be made to the APD Bomb Squad as well as the CLT.

413.3 PROCEDURES AFTER THE DISCOVERY OF A LABORATORY OR LABORATORY APPARATUS

Only certified, trained CLT members or an APD Chemist will be involved in the dismantling, removal and transportation of clandestine lab chemicals and apparatus.

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(a) Officers who discover any item(s), which may resemble a clandestine lab and/or chemicals, will notify APD Communications immediately.

1. Communications will contact the Fire Department if any clandestine lab, chemical spill, or chemical situation presents an immediate threat of fire,
2. Communications will immediately notify the on-call CLT sergeant. In the absence of the CLT sergeant, the CLT lieutenant will be notified.

(b) Officers will not attempt to disconnect any apparatus, except in extreme circumstances where taking no action would lead to more serious consequence (e.g., fire, explosion).

(c) If officers discover a clandestine lab during the course of an investigation or arrest, all persons in the house or vehicle should be moved a safe distance from the lab.

1. Any suspect(s) believed to have involvement should be detained until the CLT members arrive and debrief the suspect(s).
2. Residents in nearby dwellings should be moved to a safe location until the area has been declared safe by the CLT supervisor.

(d) Officers will not transport any chemicals or apparatus in police vehicles unless directed otherwise by a CLT member.

(e) Officers should never discard or move any chemical substances found unless at the direction of a CLT member.

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Bomb Threats, Explosive Devices, and Bombing/ Explosion Incidents

414.1 PURPOSE AND SCOPE

These guidelines have been prepared to assist officers in the initial response toincidents involving bomb threats, explosive devices, or bombing/explosion incidents. Under no circumstances should these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety shall always be the primary consideration.

414.1.1 REQUIRED BOMB SQUAD NOTIFICATION

(a) The Bomb Squad shall be notified of, and respond to:

1. Bomb threats made at mobile targets such as aircraft, trains, and watercraft.
2. Incidents where a suspected or known explosive device is discovered.
3. Explosive emergencies.
4. All incidents where an explosion has occurred.
5. Scenes where suspected explosives have been located or recovered (e.g., commercial, military, homemade).

(b) The Bomb Squad should NOT normally be utilized in response to bomb threats targeting a building, dwelling or fixed structures unless an explosive device is found or circumstances warrant it. This includes all fixed structures such as:

1. Industrial buildings.
2. Shopping centers or malls.
3. School or college campuses.
4. Government buildings.
5. Residential dwellings.

414.1.2 USE OF RADIOS/CELLULAR PHONES DURING BOMB RELATED INCIDENTS

The use of equipment during bombing/bomb threat response incidents that generate radio frequency energy is a subjective matter that must balance risk versus benefit. The need for communications among responders can outweigh the risk of communication equipment inadvertently causing a detonation of an unknown explosive device. With this is mind it is permissible to leave radios and cell phones on during a bomb threat search or life saving measures at explosion scenes, but if a suspicious item is identified, do not transmit from a position near the item(National Guidelines for Bomb Technicians, Section 8.5, rev 3/10, U.S. Dept. of Justice, Federal Bureau of Investigation).

414.2 BOMB THREATS AND FOUND EXPLOSIVE DEVICES

Officers responding to a bomb threat and/or who find a potential explosive device shall follow the guidelines outlined in this section.

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414.2.1 BOMB THREATS

When dispatched to a bomb threat, officers should:

(a) Advise Communications of arrival one (1) to two (2) blocks from the location.

(b) Locate, identify and interview the following personnel:

1. Person in charge of the premises.
2. Person who received the threat.
3. Anyone who knows anything about the threat or the suspect.
4. Evaluate the validity of the threat.

(c) Evacuate the premises or area, if necessary:

1. The decision to evacuate a premises on a bomb threat should be made by the person in charge of the premises, but may be superseded by a supervisor at the scene.
2. If evacuation occurs, establish a perimeter of 300 feet or more from the target.

(d) Search for potential explosive devices:

1. The decision to conduct a search of the target of a bomb threat should be made by the person in charge of the premises based on an evaluation of validity of the threat. Officers should assist in conducting any search.
2. If possible, obtain a search team of volunteers who are familiar with the area to be searched.
3. Systematically search the area starting with areas accessible to the public.
4. Search for unusual items that seem out of place or suspicious.
   (a) If no potential explosive device is found, officers can clear the call and go back in-service.
   (b) If an potential explosive device is found, officers shall follow the guidelines below.

414.2.2 FOUND EXPLOSIVES/SUSPECT DEVICES

No known or suspected explosive device should be considered safe regardless of its size or apparent packaging. The device should not be touched or moved except by qualified Bomb Squad personnel. When officers locate a suspected explosive device, the following guidelines should be followed:

(a) All equipment within 300 feet of the suspected device that is capable of producing radio frequency energy (e.g, two-way radios, cell phones, MDC, personal communication devices) should be turned off. These devices may cause a detonation.

1. When it is necessary to communicate with a radio or cell phone, officers should place as much distance and shielding between themselves and the suspect item as possible or use a land line telephone.

(b) Notify a supervisor and request additional assistance, as necessary.

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(c) Have Communications contact the Bomb Squad and Duty Commander. Provide the following information to Communications, as available:

1. Any stated threat(s).
2. Exact comments.
3. Time of device discovery.
4. Exact location of the device.
5. Full description of the device (e.g., size, shape, markings, construction).

(d) Establish a minimum perimeter of 300 feet around the location of the device and evacuate the area. In establishing a perimeter, wind speed and direction must be considered. This information is available from Communications.

(e) Set up an initial Command Post.

1. The designated site for the initial Command Post should be swept for possible secondary explosive devices and other hazards and established upwind of the incident scene if possible.
2. Advise Communications of the Command Post location and direct initial responding units to perimeter locations.
3. Request anyone who has seen the device/explosive to stand by at the Command Post.

(f) Officers will have their Personal Protective Equipment (PPE) immediately available in the event an explosion occurs.

(g) A search of the area should be conducted for secondary devices or other objects that are either hazardous or foreign to the area, and a perimeter should be established around any additional suspicious device found.

(h) Explosive or military ordnance of any type should be handled only by the bomb squad or military ordnance disposal team.

414.2.3 SUPERVISOR RESPONSIBILITY

The first supervisor on the scene to a legitimized bomb threat should do the following:

(a) Assume command of the scene.

(b) Establish the primary Command Post.

1. The primary Command Post can be the same as the initial Command Post or it can be moved at the discretion of the supervisor based on the best information available at the time.
2. The site should be swept for possible secondary explosive devices and other hazards.
3. The Command Post should be established up-wind of the incident scene if possible.

(c) Establish an outer perimeter if believed necessary.

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(d) Order an evacuation if believed necessary.

(e) If possible, contact the responding bomb techs and brief them on the information about the device/explosive.

(f) Execute all suggestions of the bomb techs and await their arrival.

(g) Do not allow anyone other than Bomb Squad personnel to approach the suspected explosive device for any purpose without consulting responding bomb technicians first.

414.3 RESPONSE TO EXPLOSION/BOMBING INCIDENTS

When an explosion has occurred, there are multitudes of considerations which may confront the responding officers. As in other catastrophic incidents, a rapid response may help to minimize injury to victims, contamination of the scene by gathering crowds or additional damage by resulting fires or unstable structures.

(a) Whether the explosion was the result of an accident or a criminal act, responding officers should consider the following actions:

1. Immediately don PPE upon arrival at the scene.
2. Attempt an up-wind approach if feasible.
3. Notify a supervisor and request assistance.
4. Immediately establish a safety perimeter and evacuate anyone in the immediate area. In establishing the perimeter, wind speed and direction must be considered. This information is available from Communications.
5. Have Communications contact the Bomb Squad and Duty Commander.
6. Set up an initial Command Post with other emergency services providers and advise Communications of its location. The location selected for a Command Post should be swept for secondary explosive devices and other hazards
7. Direct initial responding units to perimeter locations.
8. Request anyone who has seen the device/explosion to stand by at the Command Post.
9. Be aware of the possibility of secondary devices and/or explosions.

(b) All explosions should be assumed to have dispersed radiological material. Officers should not attempt to enter the immediate area of the explosion until AFD Hazmat or trained APD officers have made an assessment of possible hazards.

414.3.1 SUPERVISOR RESPONSIBILITY

(a) The first supervisor on the scene of a post-explosion incident should:

1. Assume command of the scene.
2. Establish the primary Command Post. This site can be the same as the initial Command Post or it can be moved at the discretion of the supervisor based on the best information available at the time. The location selected for the primary

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Command Post should be swept for secondary explosive devices and other hazards and established up-wind of the incident scene if possible.

3. Establish an outer perimeter if believed necessary.
4. Order an evacuation if believed necessary.
5. Ensure all APD personnel are wearing appropriate PPE.
6. Contact Communications and advise that a potential WMD/CBRN event is in progress.
7. Contact the responding bomb techs and brief them on the information about the incident, if practicable.
8. Execute all suggestions of the bomb technicians and Hazmat Commanders and await their arrival at the scene.

(b) Supervisors will not permit officers to enter the inner perimeter area until Hazmat has evaluated the scene for potential hazards.

(c) Supervisors will insure that personnel are properly decontaminated at the conclusion of the incident. AFD Hazmat should be contacted for assistance.

414.3.2 CROWD CONTROL

Only authorized personnel with a legitimate need shall be permitted access to the scene. Spectators and other unauthorized individuals shall be excluded to a safe distance as is reasonably practicable given the available resources and personnel.

414.3.3 SCENE OF INCIDENT

As in any other crime scene, steps should immediately be taken to preserve the scene. The scene could extend over a long distance. Evidence may be imbedded in nearby structures or hanging in trees and bushes. The initial perimeter at an explosion scene should be set at 1.5 times the distance from the site of the explosion to the farthest found piece of debris if possible.

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Austin Police Department
General Orders

Aircraft Crashes

416.1 PURPOSE AND SCOPE

This order describes situations involving aircraft crashes, including responsibilities of personnel, making proper notification and documentation.

416.2 RESPONSIBILITIES

In the event of an aircraft crash, employee responsibilities are as follows:

416.2.1 OFFICER RESPONSIBILITY

Officers should treat an aircraft crash site as a crime scene until it is determined that such is not the case. If a military aircraft is involved, additional dangers, such as live ordnance or hazardous materials, may be present. The scene may require additional security due to the potential presence of confidential equipment or information.

(a) Officers arriving on scene of an aircraft crash should:

1. Determine the nature and extent of the crash.
2. Request additional personnel and other resources to respond as needed.
3. Provide assistance for the injured parties until the arrival of EMS, AFD and/or other emergency personnel.
4. Cordon off and contain the area to exclude unauthorized individuals as soon as practicable.
5. Provide crowd control and other assistance until directed otherwise by a supervisor.

(b) Entering an aircraft or tampering with parts or debris is only permissible for the purpose of removing injured or trapped occupants, protecting the wreckage from further damage or protecting the public from danger. If possible, the investigating authority should first be consulted before entering or moving any aircraft or any crash debris. Photographs or sketches of the original positions should be made whenever feasible.

(c) The fire department will be responsible for control of the crash scene until the injured parties are cared for and the crash scene has been rendered safe for containment. Thereafter, police personnel will be responsible for preserving the scene until relieved by the investigating authority.

(d) Once the scene is relinquished to the investigating authority, personnel from this department may assist in containment of the scene until the investigation is completed or assistance is no longer needed.

(e) An airport service worker or the airport manager may respond to the scene to assist the on-scene commander with technical expertise, should it be needed during the operation.

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416.2.2 NATIONAL TRANSPORTATION SAFETY BOARD

The National Transportation Safety Board (NTSB) has the primary responsibility for investigating crashes involving civil aircraft. In the case of a military aircraft incident, the appropriate branch of the military will be involved in the investigation. The NTSB is concerned with several aspects of a crash as described in this section.

Every effort should be made to preserve the scene to the extent possible in the condition in which it was found until such time as NTSB or other authorized personnel arrive to take charge of the scene.

Military personnel will respond to take charge of any military aircraft involved, regardless of any injury or death.

If the crash did not result in a death or injury and the NTSB elects not to respond, the pilot or owner may assume control of the aircraft.

Removal of the wreckage shall be done under the guidance of the NTSB or military authorities or, if the NTSB is not responding for an on-site investigation, at the discretion of the pilot or the owner.

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Austin Police Department
General Orders

Family Violence

418.1 PURPOSE AND SCOPE

Family Violence is alleged criminal conduct and it is the order of the Austin Police Department to stress enforcement of criminal laws related to family violence, the protection of the victim and the availability of civil remedies and community resources.

418.1.1 DEFINITIONS

Bodily Injury - "Bodily Injury" means physical pain, illness, or any impairment of physical condition (Texas Penal Code § 1.07).

Dating Relationship - A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship. The existence of such a relationship shall be determined based on consideration of the (Tex. Fam. Code § 71.0021(b & c)):

(a) Length of the relationship,

(b) Nature of the relationship, and

(c) Frequency and type of interaction between the persons involved in the relationship.

Dating Violence - An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault or sexual assault. However, dating violence does not include actions taken in self-defense. (Tex. Fam. Code § 71.0021).

Family - Individuals who are related either by blood or by marriage. Family includes former spouses, parents of the same child regardless of the marital status or the legitimacy of the child, and foster child/parent relationships (Tex. Fam. Code § 71.003).

Family Violence - An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault. However, family violence does not include actions taken in self-defense (Tex. Fam. Code § 71.004).

- *Family violence also includes the term dating violence (Tex. Fam. Code § 71.004).*

Household - A unit composed of persons living together in the same dwelling, without regard to whether they are related to each other (Tex. Fam. Code § 71.005).

Member of a household - Includes a person who previously lived in a household. (Tex. Fam. Code § 71.006).

Primary Aggressor - The person who appears to be the most significant aggressor rather than the first aggressor. In identifying the primary aggressor an officer shall consider:

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(a) The intent of the law to protect victims of family violence from continuing abuse,

(b) The threats creating fear of physical injury,

(c) The history of family violence between the persons involved, and

(d) Whether either person acted in self-defense.

418.2 ENFORCEMENT GUIDELINES

The primary duties of an officer who investigates a family violence allegation, or who responds to a disturbance call that may involve family violence, are to protect any potential victim of family violence and enforce the law by making lawful arrests of violators.

Officers making an arrest for any incident involving family violence shall direct file all charges as outlined in General Order 323 (Booking and Arrest Review), unless directed otherwise by the appropriate investigator.

418.2.1 ARREST REQUIREMENT FOR ASSAULTIVE OFFENSES

(a) Officers are required to make an arrest for incidents involving family violence when:

1. An assault has occurred that resulted in a minimum of bodily injury or complaint of pain; or where an officer can articulate facts from which a reasonable person could infer that the victim would have felt pain due to:
    (a) The manner in which the suspect made contact with the victim, or
    (b) the nature of observable physical marks on the suspect's body allegedly caused by the suspect's contact with the victim, and
2. The suspect is still on-scene; and
3. The assault meets the definition of "family violence" or "dating violence."

(b) If both parties have been assaulted, officers shall make reasonable efforts to identify the primary aggressor. Arrests of both parties should be avoided unless warranted.

1. If officers at the scene cannot determine the primary aggressor, an on-duty supervisor shall be contacted to make the determination.
2. If the on-duty supervisor cannot determine the primary aggressor and there is adequate and articulable probable cause to believe that each person contributed to the violence, supervisors may authorize officers to make multiple arrests.
    (a) Officers shall write probable cause affidavits for each of the arrests and direct file the charges.
    (b) The name of the supervisor authorizing a multiple arrest situation shall be included in the incident report.

(c) Officers shall not use mediation at the scene as a substitute for appropriate reporting and enforcement action when physical violence has taken place.

(d) Officers shall arrest for assault by threat or assault by contact if no physical violence has occurred that resulted in bodily injury, but circumstances reasonably show that

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further violence is likely to happen. Supervisor approval is required when the arrest is made from inside a residence.

(e) Supervisors may authorize an exception to an arrest if there are articulable facts that lead a reasonable person to believe the alleged suspect was acting in self-defense. The facts leading to the decision for an exception shall be fully documented in the incident report, along with the name of the supervisor approving the exception.

(f) In felony incidents involving family violence the on-call investigator from the Domestic Violence Unit shall be contacted by a supervisor when:

(a) Serious or life-threatening injuries are sustained, regardless of whether an arrest is made; or

(b) A crime scene is complex and may require a response and/or the assistance of a unit detective (ex. search warrant, high profile cases, etc.).

Notification simply due to a felony offense occurring or a felony arrest being made is not required. Should an officer or supervisor determine or feel that a notification to the Domestic Violence Unit in these situations is necessary, such notification should be made via email at family.violence@austintexas.gov.

418.2.2 ARREST PC AFFIDAVITS FOR FAMILY VIOLENCE RELATED ASSAULTS

(a) Arrest affidavits for family violence assaults shall be limited to information that is necessary to establish probable cause. Officers shall refrain from copying and pasting their incident report into the arrest affidavit. It is not necessary to include the primary aggressor's account of events within the arrest affidavit, unless such inclusion is necessary to establish probable cause.

(b) Arrest affidavits prepared by patrol officers shall be reviewed by APD Arrest Review Detectives to ensure the elements of the offense have been met. Arrest Review shall present all arrest affidavits that include said elements to the Municipal Court Magistrate for signature. Rejected affidavits will be documented per general orders and forwarded to the Domestic Violence Unit for further investigation.

418.2.3 FAMILY VIOLENCE INVOLVING MENTAL ILLNESS

If there is reason to believe a suspect that is still on-scene suffers from a mental illness, an on-duty patrol officer that is a certified Crisis Intervention Team (CIT) officer shall be requested to the scene.

(a) A Peace Officer Emergency Commitment (POEC) may be used to remove a suspect from the scene for the purpose of a psychiatric evaluation and/or treatment in lieu of a custodial arrest. The discretion to use a POEC rests solely with the on-scene CIT officer.

(b) It is recommended that a suspect in a family violence offense only be placed in protective custody pursuant to a POEC when sufficient psychiatric bed space is available and has been confirmed at the proper psychiatric facility by the CIT officer prior to transport. Under no condition will a suspect in protective custody pursuant

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to a POEC be transported to a hospital ER for a family violence offense when no psychiatric beds are available in lieu of filing criminal charges.

(c) If the CIT officer determines the subject fits the criteria for a POEC, the CIT officer may transport the subject to a psychiatric facility on the POEC.

1. Once at the facility, the CIT officer will remain with the subject pending the physician's evaluation.

(a) If the facility admits the subject, the CIT officer shall complete all required family violence documentation but will not file any charges on the subject. Additional charges may be filed at a later time.

(b) If the facility does not admit the subject, the CIT officer will place the subject under arrest for the family violence criminal offenses(s) committed. Once arrested, the CIT officer shall complete all documentation and use direct file procedures for the filing of charges at the time of booking.

(d) This section does not:

1. Remove the requirement to complete an *Assault Victim Statement* (AVS) and make any applicable notifications as outlined in this order.

2. Supersede an officer's authority to arrest for a felony offense at the scene in accordance with Department General Orders.

418.2.4 FAMILY VIOLENCE INVOLVING JUVENILES

(a) **Juvenile Suspects**

1. Family violence incidents involving a juvenile suspect between the ages of 10-16 years old shall be enforced and reported the same way as if the suspect was an adult.

(b) **Juvenile Victims**

1. Officers investigating an allegation of family violence that involves the discipline of a child/juvenile should make the determination if the force used was reasonable. Officers are reminded not to allow personal beliefs regarding discipline to interfere with their legal judgment.

(a) Officers who determine that the force was unreasonable, that serious injury occurred, or that the potential for serious injury is likely, shall contact their supervisor prior to making an arrest.

(b) Supervisors shall contact the appropriate Investigative Unit prior to transporting the suspect; these arrests are not direct filed.

(c) **Investigative Unit Responsibility**

1. The incident shall be handled by the Family Violence Protection Team when:

(a) The victim is 15, 16, or 17 years of age and the alleged suspect is any "family member;" or

(b) The victim is 14 years of age or younger and the alleged suspect is a "family member" who **does not** have care, custody and control of the

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child at the time of the incident (e.g., older sibling, cousin, or person not authorized to discipline the child).

2. The incident shall be handled by the Child Abuse Unit when:

   (a) The victim is a juvenile 14 years of age or younger and the alleged suspect is a "family member" who **does** have care, custody, and control of the child at the time of the incident (e.g., parent, guardian, related babysitter).

418.2.5 FAMILY VIOLENCE INVOLVING STRANGULATION/SUFFOCATION

When the suspect impedes the normal breathing or circulation of the blood of the victim by applying pressure to the victim's throat, neck or by blocking the victim's nose or mouth, the assault shall be enhanced to a felony of the third degree (Tex. Penal Code § 22.01(b)(2)(B)).

(a) While in most cases there is evidence of both external and internal injury to the neck, many times there are no visible injuries. In those instances, an internal injury may still have occurred that can result in death. Victim may not understand the danger of their injuries and may be reluctant to seek medical attention.

   1. Call EMS to the scene to evaluate the victim even if the victim doesn't want them.
   2. Advise EMS you suspect strangulation with possible life threatening injury.

(b) Proper documentation of an assault involving strangulation/suffocation is critical and should include at least the following:

   1. **Physical Signs** - This may include, but is not limited to:
      (a) Red marks or bruising around the neck.
      (b) Loss of memory in the recollection of the sequence of events.
      (c) Petechial hemorrhaging (burst blood vessels) in the eye or face area.
      (d) Difficulty and/or painful swallowing or hoarseness in the voice.
   2. **Type/Method**
      (a) Ligature - Involves the use of a weapon (e.g., belt, telephone cord, shoe string, rolled up shirt) to impede breathing or cause air restriction.
      (b) Manual - Involves the use of the suspects' hands to impede breathing or to cause air restriction.
         1. Describe in detail the position of the suspect in relation to the victim (e.g., grabbed from the front or from behind) and what body part was used by the suspect (e.g., one hand, both hands, arm using choke hold).
   3. **Specific Questions**
      (a) What did you think was going to happen?
      (b) What did the suspect say?
      (c) How did it stop?
      (d) What did you say during the assault?

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(e) How did you feel?

4. **Additional Observations**

(a) If the victim has trouble swallowing, breathing or any pain or tenderness in neck area.

(b) Any changes in the victim's voice during interview (e.g., hoarseness, raspy, loss of voice).

418.2.6 ENHANCEMENT DUE TO PRIOR CONVICTION

(a) A misdemeanor assault shall be enhanced to a felony of the third degree if the suspect has an eligible prior conviction on his CCH (Tex. Penal Code § 22.01(b)(2)(A)).

(b) An assault involving strangulation/suffocation shall be enhanced to a felony of the second degree if the suspect has an eligible prior conviction on his CCH, with the exception of a prior conviction involving continuous violence against family (Tex. Penal Code § 22.01(b-1)).

(c) **Eligible Prior Conviction**

1. A prior conviction meets the guidelines for enhancement if:

(a) The victim in the previous offense had a family or dating relationship with the defendant; and

(b) The offense is classified as:

1. Any offense in Tex. Penal Code Chapter 19; or
2. Any offense in Tex. Penal Code Chapter 22; or
3. Kidnapping (Tex. Penal Code § 20.03); or
4. Aggravated kidnapping (Tex. Penal Code § 20.04); or
5. Indecency with a child (Tex. Penal Code § 21.11); or
6. Continuous violence against the family (Tex. Penal Code § 25.11).

418.2.7 CONTINUOUS FAMILY VIOLENCE

(a) Continuous violence against family (Tex. Penal Code § 25.11) is a separate offense and should only be used when the defendant does not have a qualifying previous conviction.

(b) The determination of whether to file the continuous violence against family charge shall be at the discretion of Arrest Review.

418.2.8 INTERFERENCE WITH EMERGENCY TELEPHONE CALL

Interference with emergency telephone call has its own arrest authority (Tex. Code of Crim. Pro. art. 14.03(a)(5)) that is separate from the arrest authority for family violence.

(a) Officers should consult with their supervisor or Arrest Review to confirm there is enough probable cause for the arrest of this offense. If enough probable cause exists, officers may make an arrest.

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(b) When no arrest is made, officers shall write up a report and detail whether the victim wants to file charges for the offense.

(c) When this offense also involves a family violence incident, officers shall make sure an *Assault Victim Statement* (AVS) is completed.

418.3 ADDITIONAL INVESTIGATIVE GUIDELINES

This section includes additional guidelines and required notifications when investigating any incident that involves family violence or may have involved family violence.

418.3.1 ASSAULT VICTIM STATEMENT

(a) An *Assault Victim Statement* (AVS) form shall be completed on every incident involving family violence, regardless of whether an arrest is made. This includes, but is not limited to, any assault offense involving family violence with the exception of assault by contact and assault by threat offenses.

(b) Officers shall advise victims of their right to obtain an emergency protective order (EPO) and ask them if they wish to file one. The required guidelines for filing an EPO are outlined later in this order.

(c) Victims of family violence are to be given the opportunity to complete the AVS and sign it.

1. Victims should be advised that the AVS may be used to file charges.
2. In the event the victim refuses to complete and sign the AVS, the reporting officer shall complete the form and sign it under the signature refused section with a witness to the refusal, if possible.
3. The AVS form must be reviewed for completeness by the officer prior to leaving the scene.

418.3.2 VICTIM INFORMATION

(a) Officers shall provide each adult present with a copy of the information pamphlet entitled *Victim Assistance Information* that includes the *Notice to Adult Victims of Family Violence* and write the incident number on the front page.

(b) Victims should always be referred to Victim Services for counseling.

(c) Victims and offenders should be told that assault charges on family violence arrests may be filed even if the victim does not wish charges to be filed.

1. Victims who express a desire to drop charges should be referred to Victim Services. Victim Services will refer the victim, after counseling, to the County or District Attorney.

(d) Victims with additional questions should be referred to the Family Violence Protection Team.

1. On felony arrests, the victim should be told to contact the Family Violence Protection Team the next day to determine if the assigned investigator needs additional information or statements.

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2. On non-arrest incidents, the victim should be told that the case will be assigned to an investigator for follow-up investigation.

418.3.3 REQUIRED CHILD PROTECTIVE SERVICES NOTIFICATION

(a) **When CPS Notification is Required**

1. Child Protective Services (CPS) must be notified following all incidents of family violence that resulted in a visible injury or aggravated assault if a child is:
   (a) Present at the scene of the incident; or
   (b) Known to reside at the location of the incident.
2. The notification shall be made:
   (a) Regardless of whether the child witnessed the incident; or
   (b) If an officer has reason to be concerned for the physical or emotional welfare of the child.

(b) **How CPS Notification may be Completed**

1. The incident should be reported to CPS from the scene or immediately after clearance; however, notification shall be made prior to the end of the primary officer's tour of duty.
2. It is ultimately the primary officer's responsibility to ensure the required notification is completed, regardless of what method is used.
   (a) The primary officer can complete the notification by using the CPS Law Enforcement Hotline number available through Communications.
   (b) APD Victim Services may be requested to complete the notification.
      1. If Victim Services is used, officers need to provide all the required pertinent information to the team member.

(c) **Required Information for CPS**

1. APD incident number.
2. Brief summary of incident.
3. Names, ages and dates of birth of all children involved.
4. Names, ages, dates of birth of adults involved.
5. Address where incident occurred.
6. Address where parties reside and/or may be located.

(d) **Reporting**

1. Any received CPS call ID number provided to the officer or Victim Services member should be included in the narrative of the incident report.

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418.3.4 EVIDENCE COLLECTION AND PHOTOGRAPHS
Evidence and digital media shall be submitted as outlined in General Order 618 (Property and Evidence Collection Procedures).

(a) **Evidence to be Collected**

1. Any weapon or object used in the commission of the offense shall be seized as evidence.
2. Any other evidence that relates to the offense (e.g., ripped clothing, soiled clothing, broken phone) should be seized and photographed as appropriate. For additional guidance, contact an on-duty supervisor.

(b) **Photographs**

1. Digital photographs should be taken of:
   (a) All visible injuries on the victims and suspects, regardless of severity.
      1. All victims and suspects shall receive proper medical care prior to being photographed, if needed or desired.
      2. Photographs should include, but are not limited to:
         (a) Full body;
         (b) Close up of face;
         (c) Visible injuries;
         (d) Area of body surrounding injury;
         (e) Body part used as a weapon.
      3. Victims whose injuries are not visible at the time of the incident shall be advised to contact the Investigative Unit in the event they become visible. An investigator may be assigned to ensure the injuries are photographed during the course of preparing the case for court.
   (b) The overall scene if there was a struggle or damage to property.
   (c) Any weapon or object used in the commission of the offense.
2. If possible, the clarity/quality of photographs should be confirmed prior to clearing a scene.

418.4 EMERGENCY PROTECTIVE ORDERS

Officers shall offer all victims of family violence the opportunity to file an EPO.

(a) Officers shall file a motion for an EPO on the victim's behalf in all felony family violence arrests, including felony enhancements.

(b) Officers shall file a motion for an EPO on the victim's behalf in all other family violence arrests when:

1. The victim wishes to have an EPO filed; or

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2. The victim is unable or refuses to file and the officer has sufficient reason to believe it is imperative to the safety of the victim to file an EPO.

(c) The reason why the suspect will be a further danger to the victim shall be documented on a motion for an EPO and included in the incident report.

(d) Completed motions shall be turned in at Arrest Review.

418.5 CIVIL STANDBY

Officers may respond to a call for service where a complainant is requesting an officer to standby while he removes some of his minor belongings from a residence. The goal of the standby is to prevent a disturbance from occurring while the complainant takes necessary items from a residence.

(a) When requested to conduct a standby, officers shall:

1. Check to see if the complainant has a protective order against him for the requested address. No person, including the protected person or a law enforcement officer, can authorize any person to violate a protective order.

2. Advise the complainant that the determination of property ownership is not the officer's responsibility. Any contest to property ownership should be handled by the appropriate Justice of the Peace.

3. If the person presents a Writ of Retrieval issued by a justice court, officers should refer the person to the Sheriff's Office or Constable's Office in their respective county (Tex. Prop. Code Sec. 24A.001).

(b) The incident may be cleared as a civil issue without an incident report as long as no disturbance occurs, or there is no alleged violation of court order. However:

1. Officers are encouraged to include notes in the call log summarizing the incident and whether the complainant needs to return for more belongings.

2. Officers shall complete an incident report if a disturbance occurs.

418.6 REPORTING GUIDELINES

(a) A written report shall be completed on all incidents involving:

1. Family disturbances and dating disturbances.

2. Family violence and dating violence allegations.

3. Any complaint of unreasonable discipline against a juvenile, regardless of whether an arrest is made.

418.6.1 USE OF PROPER TITLE CODES

When initiating an incident report, the use of proper title codes is critical to ensure proper report routing.

(a) When no offense has been committed, the following title codes shall be used:

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1. Dating Disturbance (2400) - When the incident involves a dating disturbance or dating violence incident.
2. Family Disturbance (3400) - When the incident involves a family disturbance or family violence incident.
3. Family Disturbance/Parental (3458) - When the incident involves a parent/ guardian and child under 17.

(b) When a family violence related offense is alleged or found to have been committed, the following title codes shall be used:

1. Assault W/Injury Fam/Dating Violence (0900-1).
2. Assault by Threat Fam/Dating Violence (0901-1).
3. Assault by Contact Fam/Dating Violence (0902-1).
4. Agg Assault Fam/Dating Violence (0402-1).
5. Agg Aslt Strangle/Suffocate - FV (0410-1).
6. Agg Aslt Enhancement Strangle/Suffocate - FV (0411-1) - When an assault involving strangulation/suffocation is enhanced due to an eligible prior conviction.
7. Continuous Violence Against Family (4030-1).
8. Felony Enhancement Assault with Injury - FV (0909-0) - When a misdemeanor assault is enhanced due to an eligible prior conviction.

418.6.2 REQUIRED INFORMATION

Officers shall document the following information in an incident report:

(a) Specific facts that lead to the probable cause for an arrest, including a detailed description of injuries sustained and threats made by the victim and/or suspect.

(b) Information supporting, and the name of the supervisor approving, a decision to:

1. Not make an arrest when a suspect is on-scene of a family violence incident; or
2. Make multiple arrests in a family violence incident.

(c) The identity of all children witnessing or residing at the location of an incident. This includes the child's full name, date of birth, race, and sex in the "Persons" section of the incident report.

1. List as witness if the child was present in the household during the disturbance.
2. List as observed/seen if the child was not present in the household during the incident of family violence.

(d) Whether a motion for an EPO is being filed and the reason why, including why the suspect is believed to be a further danger to the victim upon release from jail.

(e) The CPS Call ID number in the event a CPS notification is made as outlined in this order.

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(f) A description of any evidence seized or photographs taken.

(g) Names of EMS and/or AFD personnel on scene that cares for any person, if applicable.

(h) Name of any medical facility that any person is transported to, if applicable.

418.6.3 FOSTER HOME LOCATIONS
In addition to the required incident report, an officer who investigates a family violence incident, or who responds to a disturbance call that may involve family violence, shall make an oral or electronic report to the Department of Family and Protective Services within 24 hours if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center (Tex. Code of Crim. Pro. art. 5.05(a-1)).

418.7 SUPERVISOR RESPONSIBILITIES
Supervisors shall:

(a) Contact the Domestic Violence Unit when:

1. Serious or life-threatening injuries are sustained, regardless of whether an arrest is made.
2. A crime scene is complex and may require a response and/or the assistance of a unit detective (ex. search warrant, high profile cases, etc.).
3. Any family violence incident involving a barricaded subject where SWAT is responding.

(b) Contact the appropriate Investigative Unit when there is an arrest situation involving a juvenile victim 14 years of age or younger.

(c) Determine whether to authorize the following types of family violence arrests:

1. Multiple arrest situations when the primary aggressor cannot be determined; or
2. No arrest is made at the scene; or
3. Assault by contact or assault by threat arrests from inside a residence.

(d) Provide guidance to responding officers on procedural/general order questions that may surface during an on-scene investigation. The Domestic Violence Unit on-call investigator shall not be utilized for this purpose (ex. elements for an offense, authority to arrest, what title code to use, etc.).

(e) Review family disturbance and dating disturbance reports to ensure the reports do not meet the qualifications of a criminal offense and clear said reports administratively. Should a criminal offense be reported, supervisors shall ensure the correct title code is added and the report is routed to the appropriate Investigative Unit.

Notification simply due to a felony offense occurring or a felony arrest being made is not required. Should an officer or supervisor determine or feel that a notification to the Domestic Violence Unit in these situations is necessary, such notification should be made via email at family.violence@austintexas.gov.

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Austin Police Department
General Orders

Protective Orders

419.1 PURPOSE AND SCOPE

Victims of family violence are entitled by law to protection from harm or abuse and the threat of harm or abuse. Various types of orders may be issued by various courts in family violence cases.

419.2 PROTECTIVE ORDERS AND BOND CONDITIONS

(a) Protective orders and bond conditions set by a court may prohibit a person found to have committed family violence from (Tex. Fam. Code 85.022):

1. Committing family violence.
2. Communicating:
   (a) Directly with the protected person or a member of the family or household in a threatening or harassing manner;
   (b) A threat through any person to the protected person or a member of the family or household;
   (c) In any manner with a member of the family or household except through the party's attorney or a person appointed by the court.
3. Going to or near the residence, place of employment or business of the protected or a member of the family or household of the protected person.
4. Going to or near the residence, child care facility, or school of a child protected under the order where the child normally attends or in which the child normally resides.
5. Engaging in conduct directed specifically toward the protected person or a member of the family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person.
6. Possessing a firearm unless the person is a peace officer, as defined by Penal Code 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political division.

419.2.1 EMERGENCY PROTECTIVE ORDERS

A magistrate may issue an emergency protective order (EPO) against a defendant at the defendant's initial appearance before the magistrate, if the defendant is under arrest for family violence, sexual assault, aggravated sexual assault, trafficking, continuous trafficking, or stalking. The order may be issued on the magistrate's own motion, or on request of the victim, the guardian of the victim, a peace officer, or the attorney representing the State (Tex. Code of Crim. Proc. art 17.292).

(a) An EPO shall be entered into TLETS within 3 business days of receipt from the court.

(b) An EPO may be effective for a period:

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1. Between 31-61 days; or
2. Between 61-91 days if the suspect used or exhibited a deadly weapon during the assault.

(c) A violation of an EPO is included in Penal Code § 25.07.

(d) EPO's for victims of family violence shall be filed by officers as outlined in General Order 418 (Family Violence).

419.2.2 TEMPORARY EX-PARTE ORDERS

Temporary ex-parte orders are issued by the court when the court finds there is a clear and present danger of family violence contained in the application for a protective order. The court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex-parte order for the protection of the applicant or any other member of the family or household of the applicant (Tex. Fam. Code § 83.001).

(a) Temporary ex-parte orders may be effective for a period not to exceed 20 days.

(b) A violation of a temporary ex-parte order is included in Penal Code § 25.07 but only after it has been served to the person named in the order.

419.2.3 FINAL PROTECTIVE ORDERS

A final protective order is designed to protect victims of violence by stopping violent and harassing behavior for a longer period of time (Tex. Fam. Code § 85.021).

(a) Final protective orders issued by a court may be effective for the following time periods:

1. A period not to exceed two years; or
2. If a period is not stated in the order, until the second anniversary of the date the order was issued; or
3. If the respondent is in prison on the date the protective order is set to expire, the expiration date is extended for one year from the date the respondent is released.

(b) A violation of a final protective order is included in Penal Code § 25.07.

419.2.4 BOND CONDITIONS

Judges and magistrates can attach conditions to a bond set in a family violence case preventing certain actions. A violation of a bond condition is included in Penal Code § 25.07.

419.3 ENFORCEMENT PROCEDURES

Court orders that are enforceable by law enforcement are

(a) Emergency protective orders.

(b) Final protective orders.

(c) Temporary ex-parte orders after they have been served to the person named in the order.

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(d) Certain bond conditions.

(e) Valid out-of-state and tribal court protective orders (Tex. Fam. Code § 88.004).

419.3.1 VERIFICATION OF ORDER

Whenever a complainant advises of the existence of a protective order, officers shall immediately attempt to determine the following:

(a) If a protective order exists through the following means:

1. The complainant has a certified or official court copy of a protective order in his possession.

2. A protective order is on file via NCIC, TCIC, or APD Central Records. Temporary ex-parte orders are not entered into TCIC or NCIC and can only be verified by checking through APD Central Records.

(b) If the protective order is valid by checking the termination or expiration date of the order, or whether the order has been vacated by the court.

1. Temporary ex-parte orders must have been served prior to enforcement action in order for them to be valid. Service of temporary ex-parte orders can only be verified by checking through APD Central Records.

(c) If a violation of the protective order has occurred by checking:

1. The terms of the protective order; and

2. The location of the protected address.

(a) Some orders specify the applicant's county of residence rather than a specific street address. This attempt by the court to further protect the applicant does not invalidate the order's protection of the residence address. In these cases, if a residence appears to be the applicant's home, it shall be considered the protected address and the order will be enforced accordingly.

(d) Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should utilize all reasonably available resources to confirm the validity of the order.

419.3.2 ARREST GUIDELINES

Officers must carefully read a protective order prior to taking enforcement action to verify the details of the prohibited conduct and that the order is still in effect.

(a) No person can grant the subject of a protective order permission to violate any tenet of the order, including a law enforcement officer or the victim.

(b) The protected person cannot be arrested for personally violating any tenet of the order.

(c) If it is found that a person has violated a court order, the following arrest guidelines apply:

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1. An arrest shall be made when an officer witnesses a violation of any enforceable court order. (Tex. Court of Crim. Proc. art. 14.03(b)).
2. An arrest should be made when an officer has probable cause to believe a violation of any enforceable court order has been committed (Tex. Code of Crim. Proc. art. 14.03(a)(3)).

(d) In the event the suspect is no longer at the scene, officers shall document the incident in a report for follow-up investigation.

419.3.3 WHEN ORDER IS NOT VERIFIABLE

If the victim is not in possession of the protective order and/or for any reason the officer cannot verify the validity of the order, the following action shall be taken:

(a) Write a report and give the report number to the victim.

(b) Inform the victim of how to contact the appropriate Investigative Unit for further action.

419.4 REPORTING

When officers investigate a family disturbance or similar incident and are informed that any person has violated a protective order, officers shall initiate an incident report regardless of whether an arrest is made.

(a) Officers shall use the appropriate title code to the incident report:

1. Viol of Bond Conditions (3006).
2. Viol Temp Ex Parte Order (3007).
3. Viol of Emerg Protective Order (3008).
4. Viol of Protective Order (3009).
5. Viol PO / Sexual Assault Victim (3010).
6. Viol of Court Order - Non EPO/PO (2008) - When the incident is of a civil nature (e.g., restraining order, child custody).

(b) Officers should document the identifying information of the protective order (e.g., order number, effective dates, judge's name) in the narrative.

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Austin Police Department
General Orders

Sexual Assault

420.1 PURPOSE AND SCOPE

This order will establish a procedure by which officers shall investigate and report sexual assault related crimes.

420.2 INVESTIGATION CONSIDERATIONS

420.2.1 INITIAL INTERVIEW WITH THE VICTIM

Officers shall adhere to the following guidelines when conducting an initial interview of a victim involved in a sexual assault.

(a) The physical well-being of the victim takes precedence in the initial response by officers. If the victim requires medical attention, the officer will summon EMS to the scene.

(b) Officers shall contact a Victim Services Unit.

(c) Officers shall conduct the interview of the victim with dignity and respect, being mindful that the victim has experienced a traumatic event.

1. Officers should make every attempt to maintain the victim's privacy and protect the integrity of the investigation.
2. Officers should not interview a victim 12 years of age or younger; these interviews shall be done by an investigator from the appropriate Investigative Unit. However, if the victim made an "outcry" statement to an adult, the officer should identify and interview the adult, if possible.
3. Officers will not ask a victim if they want to prosecute (the suspect / crime); this inquiry is premature.

(d) Officers shall provide the victim with the information outlined in this order on the SAFE (Sexual Assault Forensic Exam). If the victim consents to the exam, approval shall be at the discretion of the Sex Crimes investigator.

(e) Once a sexual assault or attempted sexual assault has been reported and one or more of the following have been identified:

1. There is a crime scene
2. A suspect is detained and/or
3. The victim has agreed to a SAFE

Officers shall contact the on-call Sex Crimes Investigator and fully brief him/her on the incident. The investigator will determine if there is a need to respond to the scene.

(f) Officers should contact a Crime Scene Unit when a crime scene or evidence is present. Officers should be mindful that there are multiple crime scenes in a majority of sexual assaults; the victim, the suspect and the actual scene itself.

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420.2.2 INVESTIGATIVE UNIT RESPONSIBILITY
When conducting a preliminary investigation of an alleged sexual assault, officers shall contact the appropriate Investigative Unit for assistance:

(a) **Child Abuse Unit** - If the victim is 16 years of age or younger.

(b) **Sex Crimes Unit** - If the victim is 17 years of age or older.

420.3 SEXUAL ASSAULT FORENSIC MEDICAL EXAM INFORMATION

(a) Officers will explain the following information to the victim concerning the Sexual Assault Forensic Examination (SAFE) to allow them to make an informed decision about having the exam conducted.

1. A SAFE is not mandatory, but is strongly recommended.
2. The SAFE provides medical attention necessary for emergency and preventative treatment. Additionally, the examination allows for the collection and documentation of valuable forensic evidence.
3. Charges for the SAFE shall be paid for by the City of Austin and not billed to the victim. However, all other charges shall be the responsibility of the victim.
4. Officers should suggest that victims bring a change of clothing to the hospital if they are wearing the clothing they had on during the assault. Officers should explain that the clothing worn during the assault will be collected by the nurse for evidentiary purposes.
5. Whether or not a victim has bathed, showered, or douched does not preclude the exam from being conducted.
6. If the victim needs to urinate prior to the start of the SAFE, officers should obtain a sterile container from hospital personnel and give it to the victim so the victim's urine can be collected and preserved as evidence.

(b) Officers should determine if the victim, a person authorized to act on behalf of the victim or an employee of the Department of Family and Protective Services, will consent to the forensic examination, as appropriate (Tex. Code of Crim. Pro. art. 56.06). If the consent is given, officers shall request authorization from the appropriate Investigative Unit.

(c) Generally, exams shall be approved if the incident occurred within 120 hours. However, if a sexual assault is not reported within 120 hours, the Investigative Unit may still authorize a forensic medical examination.

420.3.1 PREFERRED HOSPITAL FOR FORENSIC EXAM
The gender and age of the victim shall determine the preferred hospital for the examination. However, the victim may choose a particular hospital as long as it is within the city limits of Austin.

(a) The preferred hospitals are:

1. **St. David's Hospital**
   (a) Any adult victim.

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(b) Males who are 12 and older.

(c) Females who have started their menstrual cycle.

2. **Dell Children's Hospital:**

(a) Males under the age of 12.

(b) Females who have not started their menstrual cycle.

(b) The charge nurse at St. David's Hospital will be given the incident number upon arrival. This is to ensure the SANE (Sexual Assault Nurse Examiner) is contacted and can respond to the hospital in a timely manner.

420.3.2 CLOTHING COLLECTION AS FORENSIC EVIDENCE

(a) Officers should attempt to gather clothing worn by victims during the time the sexual assault occurred for evidentiary purposes when victims do not consent to a forensic exam or are no longer wearing the clothing they were wearing at the time the sexual assault occurred.

(b) Proper handling of evidence can be found in General Order 618 (Property and Evidence Collection Procedures).

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422

Austin Police Department
General Orders

Elder Abuse

422.1 PURPOSE AND SCOPE

The purpose of this order is to provide members of this department with direction and understanding of their role in the prevention, detection and intervention in incidents of elder abuse. It is the order of the Austin Police Department to treat reports of violence against elderly persons as a high priority criminal activity that is to be fully investigated regardless of the relationship between the victim and the suspect(s) (Tex. Hum. Res. Code § 40.0527).

422.2 DEFINITIONS

For purposes of this order, the following definitions are provided (Tex. Hum. Res. Code § 48.002).

Dependent Adult - A person with a mental, physical or developmental disability that substantially impairs the person's ability to provide adequately for the person's own care or protection, and who is 18 years of age or older.

Elder - Any person 65 years of age or older.

Abuse -

(a) The negligent or willful infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member or other individual who has an ongoing relationship with the person.

(b) Sexual abuse of an elderly or disabled person, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

Exploitation -The illegal or improper act or process of a caretaker, family member or other individual who has an ongoing relationship with the elderly or disabled person, using the resources of an elderly or disabled person for monetary or personal benefit, profit or gain without the informed consent of the elderly or disabled person.

Protective Services Agency - A public or private agency, corporation, board or organization that provides protective services to elderly or disabled persons in the state of abuse, neglect or exploitation.

Neglect - The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain, or the failure of a caretaker to provide such goods or services.

422.3 MANDATORY REPORTING REQUIREMENTS

The Austin Police Department is considered a mandated reporter. If during the course of an investigation an officer has cause to believe that the elderly or disabled person has been abused,

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neglected or exploited by another person in a manner that constitutes a criminal offense under any law, the officer shall take a report and notify the appropriate state agency (Tex. Hum. Res. Code § 48.051).

422.4 OFFICER'S RESPONSE

All incidents involving actual or suspected elder and dependent abuse shall be fully investigated and appropriately documented.

422.4.1 INITIAL RESPONSE

Officers may be called upon to make a forced entry as the first responders to the scene of a suspected elder abuse case. Entry should be immediate when it appears reasonably necessary to protect life or property. When the need for an emergency entry is not evident, officers should seek supervisory approval. Officers must be prepared to provide emergency care pending the arrival of medical personnel, if medical personnel not already present.

422.4.2 STABILIZE THE SITUATION

Officers must quickly assess the situation to ensure the immediate safety of all persons. Officers shall also consider the following:

(a) Attempt to identify the victim, suspect and witnesses as well as the roles and relationships of all parties. Parties should be interviewed separately when possible. Frequently it is wrongfully assumed that elderly persons are incapable of accurately reporting the incident. Do not automatically discount the statement of an elderly person.

(b) Preserve the crime scene where evidence may be present. All persons should be removed from the scene until it has been photographed and processed. Any evidence that may change in appearance, such as injuries, should be photographed immediately.

(c) Assess and define the nature of the problem. Officers should assess the available information to determine the type(s) of abuse that may have taken place or the potential for abuse in the future that may be eliminated by law enforcement intervention.

(d) Make on-scene arrests when appropriate. Immediate arrest of an abuser (especially when the abuser is a family member or caretaker) may leave the elderly victim without necessary support and could result in institutionalization. The effect of an arrest on the victim should be considered and weighed against the assessed risk and the competent victim's desires. The present and future safety of the victim is of utmost importance.

422.4.3 SUPPORT PERSONNEL

The following person(s) should be considered if it appears an in-depth investigation is appropriate:

(a) Patrol supervisor.

(b) Investigative personnel.

(c) Evidence collection personnel.

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(d) APD Victim Services.

(e) Adult Protective Services.

422.4.4 PROTECTIVE ORDERS AND EMERGENCY PROTECTIVE ORDERS
In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the officer may contact Adult Protective Services and request that they obtain a protective order against the person alleged to have committed or threatened such abuse if that person is not in custody.

Refer to General Order 418 (Family Violence) for guidelines on filing an EPO on any incident where a suspect is arrested and it is clear there has been family violence against an elder or dependent adult.

422.5 ELDER ABUSE REPORTING

Every allegation of elder abuse shall be documented. When documenting elder/dependent abuse cases, the following information should be included in the report:

- Current location of the victim
- Victim's condition/nature and extent of injuries, neglect or loss
- Names of agencies and personnel requested and on-scene
- Any information that indicates a victim or critical witness may suffer from a health condition that may warrant an expedited investigation/prosecution or the preservation of testimony under Tex. Code of Crim. Pro. art. 39.025

Reporting of cases of elder/dependent abuse is confidential and will only be released in accordance with General Order 116 (Security and Release of Records and Information).

422.6 ELDER ABUSE IN A CARE FACILITY

Officers investigating allegations relating to the abuse, neglect or exploitation of an elderly or disabled person in a care facility or under the care of a facility shall notify the Texas Department of Health regardless of whether a crime report was taken (25 Tex. Admin. Code § 1.205).

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424

Austin Police Department
General Orders

Child Abuse

424.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines and procedures for reports of suspected child abuse and the taking of minors into protective custody.

424.2 DEFINITIONS

For purposes of this section the following definitions are provided:

Child - A person who is under 18 years of age (Tex. Fam. Code § 101.003).

Abuse - Includes the following acts or omissions by a person (Tex. Fam. Code § 261.001):

(a) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development or psychological functioning.

(b) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development or psychological functioning.

(c) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation, given and excluding an accident or reasonable discipline by a parent, guardian or managing or possessory conservator, that does not expose the child to a substantial risk of harm.

(d) Failure to make a reasonable effort to prevent an action by another person that causes physical injury that results in substantial harm to the child.

(e) Sexual conduct harmful to a child's mental, emotional or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under Tex. Penal Code § 21.02, indecency with a child under Tex. Penal Code § 21.11, sexual assault under Tex. Penal Code § 22.011 or aggravated sexual assault under Tex. Penal Code § 22.021.

(f) Failure to make a reasonable effort to prevent sexual conduct harmful to a child.

(g) Compelling or encouraging a child to engage in sexual conduct as defined by Tex. Penal Code § 43.01.

(h) Causing, permitting, encouraging, engaging in or allowing the photographing, filming or depicting of the child if the person knew or should have known that the resulting photograph, film or depiction of the child is obscene as defined by Tex. Penal Code § 43.21 or pornographic.

(i) The current use by a person of a controlled substance as defined by Tex. Health and Safety Code Chapter 481, in a manner or to the extent that the use results in physical, mental or emotional injury to a child.

(j) Causing, expressly permitting or encouraging a child to use a controlled substance as defined by Tex. Health and Safety Code Chapter 481, or causing, permitting,

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encouraging, engaging in or allowing a sexual performance by a child as defined by Tex. Penal Code § 43.25.

424.3 MANDATORY NOTIFICATION

When this department receives a report of abuse occurring at the facilities listed below, notification shall be made promptly to the licensing office with jurisdiction over the facility.

(a) A state operated, licensed or certified facility (Tex. Fam. Code § 261.103).

(b) A report of the death of a child who was, at the time of death, living at, enrolled in or regularly attending a facility licensed by the state to care for children, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

Additionally, an immediate notification is required to the appropriate licensing agency if the suspected child abuse occurs while the child is being cared for in a child-day care facility, involves a child-day care licensed staff person or occurs while the child is under the supervision of a community care facility licensee or staff person.

424.4 FAMILY VIOLENCE RELATED CHILD ABUSE

Officers should follow the guidelines outlined in General Order 418 (Family Violence) on the proper investigation and notification procedures for allegations of child abuse and/or excessive discipline.

424.5 SEXUAL ASSAULT RELATED CHILD ABUSE

Officers should follow the guidelines outlined in General Order 420 (Sexual Assault) on the proper investigation and notification procedures for sexual assaults involving children.

424.6 TAKING POSSESSION OF A CHILD IN EMERGENCY OR OTHER SITUATIONS

If there is no time to obtain a court order, a child may be taken into protective custody if an officer determines emergency circumstances described by Tex. Fam. Code § 262.104 exist.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking a child into protective custody, and articulate the facts indicating why an immediate danger to the child may exist. If prior notification is not practicable, officers should contact a supervisor promptly after taking a child into protective custody.

Prior to taking a child into protective custody, the officer should take reasonable steps to deliver the child to another qualified parent or legal guardian unless it reasonably appears that the release would endanger the minor or result in abduction. If this is not a reasonable option, the officer shall ensure the minor is delivered to the appropriate child welfare authority.

An officer may take possession of a child without a court order on the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker or custodian who is presently entitled to possession of the child (Tex. Fam. Code § 262.004). The officer should contact a supervisor as soon as practicable upon taking possession of a child under this authority.

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An officer may take possession of a child when, during a criminal investigation relating to the child's custody, the officer believes that someone may flee or conceal that child (Tex. Fam. Code, § 262.007). The officer should contact a supervisor as soon as practicable upon taking possession of a child under this authority.

Supervisors who have been made aware that a child has been taken into an officer's possession should make reasonable inquiries to ensure the possession is lawful and that the Department of Family and Protective Services (DFPS) will be contacted when appropriate.

424.7 CHILD SAFETY CHECK ALERT LIST

The Texas Department of Public Safety has created a Child Safety Check Alert List as part of the Texas Crime Information Center to help locate a family for purposes of investigating a report of child abuse or neglect (Tex. Fam. Code § 261.3022 (a)).

If an officer encounters a person, including a child, listed on the Texas Crime Information Center's child safety alert list, he/she shall request information from the person or the child regarding the child's well-being and current residence (Tex. Fam. Code §261.3023 (a)).

The officer should investigate as to whether it is appropriate to take possession of the child without a court order under Tex. Fam. Code § 262.104 and General Order 424.6 above.

The officer should inform a supervisor as soon as practicable when a child on the Texas Crime Information Center's Child Safety Check Alert List is located. The circumstances shall be documented in an appropriate report. The officer shall contact the Texas Crime Information Center and advise that the child has been located and shall provide the case number related to the incident.

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Austin Police Department
General Orders

Missing Persons

425.1 PURPOSE AND SCOPE
This order describes the procedure for acceptance, reporting, documenting and investigating missing persons. State law, as well as federal law under 42 USC 5779(a), specify certain requirements relating to missing persons (Tex. Code of Crim. Pro. art. 63.002 et. seq).

425.1.1 DEFINITIONS
For purposes of this section the following definitions are provided (Tex. Code of Crim. Pro. art. 63.001):

Missing Person - A person 18 years of age or older who cannot be located and the circumstances surrounding the disappearance are unknown.

Child - A person under 18 years of age (For purposes of federal law, a child is considered any person under 21 years of age).

Missing Child - A child whose whereabouts are unknown to the child's legal custodian, the circumstances of which indicate that:

(a) The child did not voluntarily leave the care and control of the custodian, and the taking of the child was not authorized by law.

(b) The child voluntarily left the care and control of his legal custodian without the custodian's consent and without intent to return (e.g., runaway).

(c) The child was taken or retained in violation of the terms of a court order for possession of, or access to, the child (e.g., Interference with Child Custody, Enticing a Child, Harboring a Runaway).

High-Risk Missing Person - A person who is missing (Tex. Code of Crim. Pro. art. 63.051(5)):

(a) As a result of an abduction by a stranger; or

(b) Under suspicious or unknown circumstances; or

(c) More than 30 days; or

(d) Less than 30 days if there is reason to believe that the child or person is in danger of injury or death; or

(e) A child who (Tex. Code of Crim. Pro. art. 63.0091):

1. had been reported missing on four or more occasions in the 24-month period preceding the date of the current report; or

2. is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report; or

3. is under 14 years of age and otherwise determined to be at a high risk of human trafficking, sexual assault, exploitation, abuse or neglectful supervision; or

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4. investigators have determined to be high-risk based on other factors or evidence.

(f) Regardless of age, is believed or determined to be experiencing one or more of the following circumstances:

1. Out of the zone of safety for his/her chronological age and development stage.
2. Mentally or behaviorally disabled.
3. Any person known by the Department to have or is reported to have chronic dementia or Alzheimer's.
4. Drug dependent, including prescribed medication and/or illegal substances, and the dependency is potentially life-threatening.
5. Absent from home for more than 24 hours before being reported to law enforcement as missing.
6. In the company of others who could endanger his/her welfare.
7. Absent in a way that is inconsistent with established patterns of behavior and cannot be readily explained. Most children have an established and reasonably predictable routine.
8. Involved in a situation that would cause a reasonable person to conclude the person should be considered at risk, or in life-threatening danger.

425.2 INVESTIGATION GUIDELINES

Upon arrival to a missing person call, officers shall:

(a) Completely identify and interview the complainant to determine the circumstances surrounding the disappearance, along with the last person to have seen or been in contact with the missing individual.

(b) Verify the person is missing, especially in the case of a child, by conducting a thorough search of immediate area where the individual was last seen or known to have been.

(c) Obtain a complete description of the missing individual, consisting of, but not limited to:

1. Full name.
2. Date of birth.
3. Race/Sex.
4. Hair color and length.
5. Eye color.
6. Height and weight.
7. Last known clothing description.
8. Scars, body markings, or tattoos.

(d) Attempt to obtain the following items and forward them to the Missing Persons Unit:

1. A color photograph of the person.

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2. A birth certificate if the child is under 11 years of age.

(e) Identify the missing person's zone of safety to determine how far the individual could travel from the location before he would most likely be at risk of injury or exploitation.

(f) In the case of a missing child, confirm custody status to determine possible role in the disappearance (e.g., parental kidnap, interference with custody, enticing a child).

(g) In the case of dementia or senile patients, determine last known location that the patient would indicate if asked by a citizen where they were living.

425.2.1 HIGH RISK CIRCUMSTANCES REQUIRING SUPERVISOR NOTIFICATION

(a) Officers will contact their supervisor if the missing individual fits any category outlined below:

1. Aged or senile adults that require continuous supervision by a care-giver and are not capable of being left unsupervised.
2. Aged or senile adults 65 or over with a documented mental or medical impairment which creates a threat to personal safety.
3. Children under age 12.
4. Mentally or physically handicapped individuals whose impaired ability would create a risk to their safety and well-being.
5. Suicidal persons who are missing after immediately taking threatening actions against their life or making imminent threats to harm themselves.
6. Individuals with a medical condition or a need for medication, which creates a risk to their safety and well-being.
7. If kidnapping or foul play is feared in the individual's disappearance.

(b) Supervisors will review the incident to determine if it meets the requirements for a Public Alert and notify the appropriate Investigative Unit as outlined in this order. Final approval for a Public Alert rests with the appropriate Investigative Unit.

(c) Supervisors will contact the the appropriate Investigative Unit if an Alert System activation is required to make a determination as to what type of field search effort will be undertaken.

1. Factors to be considered are:
   (a) Length of time that has passed since the disappearance.
   (b) Age and mobility of the missing person.
   (c) Infirmity and/or need for medication.
   (d) Suspicious circumstances (foul play feared).
2. Field searches that may be used include, but are not limited to:
   (a) Door-to-door (foot search making contact with residents).
   (b) Neighborhood canvas (larger scale foot and vehicle search).

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(c) Use of the Canine Unit.

(d) Use of Air Support as outlined in General Order 504 (Air Operations and Air Support).

425.2.2 ATTEMPTED CHILD ABDUCTIONS
Upon receiving a report of an attempted child abduction (Tex. Code of Crim. Proc. Art 63.0041):

(a) Officers shall immediately provide relevant information about the suspect to Communications. Relevant information includes, but is not limited to:

1. Name, race, sex, approximate age,
2. Physical description,
3. Clothing description,
4. Physical/Mental disabilities/infirmities,
5. Unusual circumstances, and
6. Vehicle information, if applicable.

(b) Communications shall ensure that entry is made into the appropriate network as soon as practicable, but no later than 8 hours after receiving a report.

(c) Any additional information obtained after the initial entry should be entered as soon as possible.

425.3 MISSING PERSONS REPORTING

425.3.1 INCIDENT REPORT
Officers shall initiate an incident report for all individuals alleged to be missing.

(a) If the missing person does not meet one of the special circumstances listed above, officers shall:

1. Initiate an incident report titled Request to Locate if the missing person is an adult; and
2. Initiate an incident report titled Runaway Child if the missing person is a runaway.

(b) If the missing person does meet one of the special circumstances, officers shall initiate an incident report with the appropriate title related to the circumstance.

425.3.2 COMMUNICATIONS NOTIFICATION
Upon receiving a report of a missing child or missing person:

(a) Officers shall provide the following information to Communications:

1. Name, race, sex, date of birth; and
2. Physical description; and
3. Clothing description; and
4. Physical/Mental disabilities/infirmities; and

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5. Unusual circumstances; and
6. Vehicle information, if applicable.

(b) Communications shall ensure that entries are made into the appropriate missing person networks:

1. Immediately, when the missing person is determined to be a high-risk missing person; or
2. As soon as practicable, but not later than two hours from the time of the initial report.

(c) Officers shall inform the complainant that the information will be entered into the Missing Persons Clearinghouse.

425.4 MISSING PERSONS LOCATED

A missing persons investigation may be concluded when the missing person is located or when another agency accepts the case and formally assumes the investigative responsibilities.

(a) Runaways

1. Refer to General Order 317.3.1.c (Handling Juveniles) on how to properly recover juvenile runaways.

(b) All Other Missing Persons

1. Officers that locate all other missing persons or respond to the scene of a located missing person shall immediately notify Communications and advise them to cancel any BOLO, NCIC, TCIC, and the state clearinghouse (Tex. Code of Crim. Pro. art. 63.009(f)).
   (a) If the person recovered is 18 years of age or older, the officer's responsibility is to confirm that the person is safe.
   (b) Officers shall not divulge the location of a located person 18 years of age or older if the located person requests his location not be disclosed to anyone unless there is a court order that places that person in the care and custody of another.
2. Officers shall document the recovery as follows:
   (a) Complete a supplement to the original incident report if the missing person originated from APD; or
   (b) Complete an incident report if the missing person originated from another agency.

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Austin Police Department
General Orders

Public Alerts

426.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

426.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television, social media sites, and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

426.3 AMBER ALERTS™

AMBER Alerts™ are used to provide a statewide system for the rapid dissemination of information regarding abducted children.

426.3.1 AMBER ALERT™ CRITERIA

An AMBER Alert™ can only be activated by the state network and only approved by DPS if all of the following criteria are met:

(a) There is reason to believe that a child 17 years of age or younger has been abducted. For purposes of this section, abduction includes a child who is younger than 14 years of age:

1. who departed willingly with someone more than three years older than the child;
2. who departed without a parent or legal guardian’s permission; and
3. the person with whom the child departed is not an immediate relative of the child, as defined by Subchapter B, Chapter 573, Tex. Gov’t. Code;

(b) It is believed that the abducted child is in immediate danger of serious bodily injury or death or of becoming the victim of a sexual assault;

(c) A preliminary investigation has taken place that verifies the abduction and eliminates alternative explanations for the child’s disappearance; and

(d) There is sufficient information available to disseminate to the public that could assist in locating the child, the person suspected of abducting the child or a vehicle that may have been used in the abduction.

426.4 BLUE ALERTS

Blue Alerts are used to provide a statewide system for the rapid dissemination of information regarding a violent criminal who has seriously injured or killed a local, state, or federal law enforcement officer.

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426.4.1 BLUE ALERT CRITERIA
The following criteria are utilized to determine if a Blue Alert should be issued:

(a) A law enforcement officer has been killed or seriously injured by an offender;

(b) The offender poses a serious risk or threat to the public or other law enforcement personnel; and

(c) A detailed description of the offender's vehicle, vehicle tag or partial tag is available for broadcast to the public.

426.5 SILVER ALERTS
Silver Alerts are used to provide a statewide system for the rapid dissemination of information regarding a missing person who is a senior citizen and has an impaired mental condition.

426.5.1 SILVER ALERT CRITERIA
The following criteria are utilized to determine if a Silver Alert should be issued:

(a) The person reported missing is 65 years of age or older or has Alzheimer's disease;

(b) The person's location is unknown;

(c) The person has an impaired mental condition, including Alzheimer's disease, and the family or legal guardian provides documentation of the condition;

(d) It is determined that the person's disappearance poses a credible threat to their health and safety;

(e) The Silver Alert request is made within 72 hours of the person's disappearance; and

(f) There is sufficient information available to disseminate to the public that could assist in locating the person.

426.6 ENDANGERED MISSING PERSONS ALERTS
Endangered Missing Persons Alerts are used to provide a statewide system for the rapid dissemination of information regarding those with intellectual disabilities.

426.6.1 ENDANGERED MISSING PERSONS ALERT CRITERIA
The following criteria are utilized to determine if an Endangered Missing Persons Alert should be issued:

(a) There is reason to believe that a person with an intellectual disability is missing and the person's location is unknown. For purposes of this section, a person is considered to have an intellectual disability if:

1. the person has been evaluated by a physician or psychologist licensed in this state, as required by Tex. Health and Safety Code § 593.005; and

2. the medical professional has determined that the person suffers from an intellectual disability;

(b) The activating official shall obtain a written diagnosis documenting the missing person's intellectual disability from the treating licensed physician or psychologist;

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(c) The Endangered Missing Persons Alert request is made within 72 hours of the person's disappearance;

(d) It is believed that the person's disappearance poses a credible threat to their health and safety; and

(e) There is sufficient information available to disseminate to the public that could assist in locating the person.

426.7 CAMO ALERTS

Camo Alerts are used to provide a statewide system for the rapid dissemination of information regarding a missing military member who has elected to participate in the system and who suffers from a mental illness or a traumatic brain injury.

426.7.1 CAMO ALERT CRITERIA

The following criteria are utilized to determine if a Camo Alert should be issued:

(a) The person has been reported missing to the Department and an employee has verified:

1. The person is a current or former military member and is a participant in the Camo Alert System;
2. The person’s location is unknown; and
3. The person suffers from a mental illness, including post-traumatic stress disorder (PTSD), or a traumatic brain injury. When practicable, the officer receiving the report should request documentation regarding the person’s illness or injury; and

(b) There is reason to believe that the person’s disappearance poses a credible threat to the person’s health and safety, or to the health and safety of another.

426.8 CLEAR ALERTS

Missing Adult Alerts are used to provide a statewide system for the rapid dissemination of information regarding a missing adult who is younger than age 65. This alert is titled the CLEAR Alert System (Coordinated Law Enforcement Adult Rescue Alert).

426.8.1 CLEAR ALERT CRITERIA

The following criteria are utilized to determine if a Missing Adult Alert should be issued:

(a) The person reported missing is between 18 and 64 years of age;

(b) The adult’s location is unknown;

(c) The adult has been missing for less than 72 hours;

(d) A preliminary investigation determines:

1. The adult is in imminent danger of bodily injury or death; or
2. The disappearance of the missing adult may not have been voluntary, including cases of abduction or kidnapping; and

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(e) There is sufficient information available to disseminate to the public that could assist in locating the person or a vehicle suspected of being related to the disappearance of the person.

426.9 ALERT PROCEDURES

In the event a confirmed missing person meets the criteria for an alert, the following procedures shall be followed:

(a) Officers shall notify their immediate supervisor.

(b) Supervisors shall notify the investigative unit to request an alert system activation.

1. AMBER™, Blue, Silver, Endangered Missing Persons Alerts, and CLEAR Alerts are assigned to the Missing Persons Unit.
2. Camo Alerts are assigned to the Crisis Intervention Unit.

(c) The appropriate investigative unit shall:

1. Submit the completed request form to the State Operations Center (SOC);
2. Include required documentation;
3. Email photographs of the missing person, suspect, and/or vehicles, if available, to the SOC;
4. Confirm the form and any sent emails were received by the SOC;
5. Ensure that appropriate entries are made in the TCIC and NCIC databases;
6. Notify the Public Information Office (PIO);
7. Ensure a press release is prepared by PIO or the investigative unit as soon as practicable to include:
   (a) The person's identity, age, and description;
   (b) Photograph, if available;
   (c) Pertinent vehicle description;
   (d) Suspect information, if applicable;
   (e) Details regarding location of incident, direction of travel, potential destinations, if known;
   (f) Name and phone number of the authorized media liaison; and
   (g) A telephone number for the public to call with leads/information; and
8. Ensure the press release is disseminated to local law enforcement agencies, television stations, social media sites, and radio stations.

(d) PIO or the investigative unit shall prepare follow-up press releases with updates regarding the search and investigation, or immediately upon locating the missing person.

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426.10 EXTENSION OF ALERT

If it is determined an extension beyond the initial 24 hours is needed, the Investigative Unit supervisor should contact the State Operations Center during the 23 hour reminder.

426.11 TERMINATION OF ALERT

An Alert system activation should be terminated with respect to a particular missing person if:

(a) AMBER and EndangeredMissing Person Alert:

1. The abducted child or missing person is recovered or the situation is otherwise resolved; or
2. The director determines that the alert system is no longer an effective tool for locating and recovering the abducted child or missing person.

(b) Blue Alert:

1. The missing suspect is apprehended;
2. The department receives evidence the missing suspect has left this state; or
3. The department determines the alert system will no longer aid in the apprehension of the missing suspect.

(c) Silver Alert:

1. The missing person is located or the situation is otherwise resolved; or
2. The notification period ends, as determined by department rule.

(d) Camo Alert:

1. The missing military member is located or the situation is otherwise resolved; or
2. The notification period ends, as determined by department rule.

(e) CLEAR Alert:

1. The missing adult is located or the situation is otherwise resolved; or
2. The notification period ends, as determined by department rule.

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Austin Police Department
General Orders

Exigent Mobile Phone Ping Requests

427.1 PURPOSE AND SCOPE

Case law has determined that pinging a mobile phone is the equivalent of conducting a search; therefore, probable cause must exist prior to obtaining ping results. A court order, signed by a district judge, must be obtained prior to pinging a mobile phone, except under exigent circumstances. This order outlines the procedure for officers wishing to use a mobile phone ping in emergency (exigent) situations.

427.1.1 DEFINITIONS

Designated Officer - For the purposes of this section, a Designated Officer is an APD Officer of any rank who has completed the statutory 24 hours of kidnapping training and is authorized in writing by the Austin Police Department Chief of Police as well as the Travis County District Attorney as having the authority to declare exigent circumstances for the purposes of pinging a mobile phone without a search warrant.

Appropriate Investigative Unit - The unit ultimately responsible for the investigation of the highest applicable criminal charge in an incident (e.g., Homicide for Kidnappings; Region Detectives for Terroristic Threat; Robbery for Robberies.)

427.2 EXIGENT MOBILE PHONE PING REQUESTS

(a) Per Texas CCP statutory restrictions, exigent mobile phone pings will NOT be utilized to attempt to locate a suicidal subject who poses a threat only to themselves.

(b) Some examples of incidents that may qualify for an exigent mobile phone ping are:

1. Active kidnappings.
2. Aggravated crime sprees within a short amount of time (e.g., multiple robberies involving shootings within an hour of each other).
3. Missing or suicidal subjects who threaten another person with serious bodily injury or death or exposes another person to substantial risk of serious bodily injury or death.

427.2.1 EXIGENCY REQUIREMENTS

Officers requesting a mobile phone ping in emergency situations shall adhere to the following guidelines. Exigent mobile phone ping request must meet all of the following requirements:

(a) An immediate threat of serious injury or loss of life of another person; and

(b) Reason to believe a criminal offense is, or will be, involved; and

(c) There is no time to obtain a court order; and

(d) Belief that the phone number is subscribed to or is in possession of the suspect or victim and/or is likely to determine the location of the suspect or victim; and

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(e) Other means to locate suspect have been attempted and were unsuccessful and/or employing other means would create a substantial risk of serious injury or loss of life to the officer or another if attempted.

427.2.2 REQUESTING AN EXIGENT MOBILE PHONE PING

(a) Officers seeking to ping a mobile phone should first determine whether the phone can be located directly by the owner or someone else with legal standing without the need for legal process or an exigent request.

1. Consent is needed by the owner of the phone, or by someone with legal standing.

2. The owner can attempt to locate the phone themselves through a variety of “find my phone” apps through the internet or other mobile devices.

3. If this method is used, the officer shall document the circumstances in their report and no other notification is needed.

(b) When the owner is not available or the officer is unable to utilize this method for some other reason, the officer shall contact their supervisor when requesting an exigent mobile phone ping that meets all the exigency requirements listed in 427.2.1 above.

(c) The supervisor shall review the circumstances surrounding the incident, and upon verifying that the request meets the requirements shall choose between the following options:

1. In almost all situations, the supervisor should directly contact the appropriate investigative unit ultimately responsible for investigation of the incident and follow their direction on the next steps in the process. The Watch Lieutenant does not need to be notified.

2. In rare instances, there may be a situation in which circumstances dictate there is no time to go through the normal notification process of the investigative unit. In these time critical instances, the supervisor should notify the Watch Lieutenant directly and request the ping.

(a) Supervisors should keep in mind that the preferred and most common method will be to contact the appropriate investigative unit directly as they will be following up on criminal charges and need to be included in the process as early as possible.

(b) An example of a situation where a supervisor should circumvent this process and contact the Watch Lieutenant directly is when there is real and credible information that someone is going to commit an act of violence in the very near future and an immediate mobile phone ping is the only way to prevent the violence from taking place. A reasonable belief must exist that waiting for the extra step of notifying the investigative unit is likely to result in loss of life or serious bodily injury.

(c) The Watch Lieutenant shall make the final determination if they will initiate the ping, or redirect the supervisor to the appropriate investigative unit.

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427.2.3 EXECUTING AN EXIGENT MOBILE PHONE PING

(a) If an investigative unit is executing the mobile phone ping, the on call investigator who was contacted shall:

1. Contact their unit's Designated Officer to request formal authorization/ permission to ping the mobile phone.
2. If approved by the Designated Officer, work directly with the phone carrier to request the ping and provide the location information to involved units until the incident is resolved.
    (a) Once approved, if necessary, the appropriate investigative unit may request assistance from the Watch Lieutenant's Office with completing and signing the necessary paperwork as well as receiving and disseminating the location information from the phone carrier to the involved units.
3. The Designated Officer shall immediately afterward, notify the on-call Assistant District Attorney at 512-923-3782 (daytime) or 512-860-2002 (after hours).

(b) If the Watch Lieutenant agrees with the patrol supervisor that there is no time to notify the appropriate unit, the Watch Lieutenant shall:

1. Obtain authorization/permission from any Designated Officer available to them. For the purposes of this process, a short list of Designated Officers who have agreed to be available for this purpose may be kept on file at the Watch Lieutenant's Office so that they may obtain legal authorization in an expedited manner.
    (a) The Designated Officer providing authorization/permission shall immediately afterward, notify the on-call Assistant District Attorney at 512-923-3782 (daytime) or 512-860-2002 (after hours).
2. Request and obtain the location information from the phone carrier by using the Watch Lieutenant's Guide to Exigent Cell Phone Pings flowchart located in the Watch Lieutenant's Office.
3. As soon as is reasonably possible under the circumstances, notify the appropriate investigative unit so they may take control over the cell ping and overall investigation.
4. The appropriate investigative unit shall be responsible for completing any additional paperwork required by law.

427.2.4 RESPONSIBILITY TO TRAIN AND UPDATE LIST

(a) The APD Training Academy will coordinate and host at least 1 training per calendar year which will fulfill the statutory requirements to authorize new Designated Officers to various investigative units throughout the Department.

(b) It is the responsibility of the supervisor of any unit with investigatory responsibility to ensure they have an adequate number of personnel attend this training so that they always have a Designated Officer assigned to their unit.

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1. In the event that a unit does not have a Designated Officer assigned to their unit, it is the responsibility of the supervisor of that unit to identify a Designated Officer from another unit that can be contacted and assist in the event their unit needs to ping a phone.

(c) At the conclusion of the training, the APD Training Academy will supply the list of newly trained Designated Officers to the Intelligence Division Commander.

1. The Intelligence Division Commander, or his designee, will add the names of the new Designated Officers to the Department wide list and remove any names of personnel who have promoted or moved out of investigative assignments. The newly updated list will be provided to the Chief's Office to fulfill the statutory requirement of designating these officers in writing both by the Chief of Police and the Travis County District Attorney.

427.2.5 DOCUMENTATION

(a) The officer originally requesting the cell phone ping shall ensure that a detailed offense report outlining the facts and circumstances that gave probable cause to ping the phone is completed in Versadex prior to the end of their tour of duty.

(b) Regardless of whether the mobile phone ping is initiated by the appropriate investigative unit or the Watch Lieutenant, the following steps shall take place:

1. The Designated Officer who authorized the mobile phone ping shall immediately afterward, notify the on-call Assistant District Attorney via the 24 hour on-call number at 512-923-3782 (daytime) or 512-860-2002 (after hours).

2. Within 48 hours of ordering the exigent cell phone ping, the assigned investigator in the appropriate investigative unit shall ensure the applicable court order has been properly completed, delivered to the District Attorney's Office, and signed by the appropriate judge.

3. All Officers of any rank who took investigative action of any kind, including but not limited to authorizing the cell ping and/or executing the cell ping, will write a supplement to the original report detailing their involvement in the process.

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Austin Police Department
General Orders

Medical Marijuana

428.1 PURPOSE AND SCOPE

The purpose of this order is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under Texas's medical marijuana laws.

428.1.1 DEFINITIONS

Definitions related to this order include (Tex. Occ. Code § 169.001; Tex. Health and Safety Code § 487.001):

Dispensing organization - An organization licensed by DPS to cultivate, process and dispense low-THC cannabis to a patient under a prescription.

Low–THC cannabis - Marijuana and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin or oil of that plant that contains not more than 0.5 percent by weight of tetrahydrocannabinols (THC).

428.2 POLICY

Texas medical marijuana laws are intended to provide protection from prosecution to those who use or possess marijuana in the form of low–THC cannabis by prescription. However, Texas medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Austin Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Texas law and the resources of the Department.

The Texas medical marijuana law only permits prescriptions issued under the Compassionate Use Program of the State of Texas.

428.3 INVESTIGATION

Investigations involving the possession, delivery, production or use of marijuana generally fall into one of two categories:

(a) Investigations when no person makes a medicinal claim.

(b) Investigations when a medicinal claim is made by a person with a prescription.

428.3.1 INVESTIGATIONS WITH NO MEDICAL CLAIM

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation. A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0408

428.3.2 INVESTIGATIONS INVOLVING A PERSON WITH A PRESCRIPTION
Neither the patient for whom the low-THC cannabis is prescribed, nor the patient's legal guardian, shall be arrested for possession of low-THC cannabis obtained under a valid prescription from a dispensing organization (Tex. Health & Safety Code § 481.111).

Reasonable effort should be taken to confirm a person has a prescription for low-THC cannabis if it is not in the person's possession.

428.3.3 ADDITIONAL CONSIDERATIONS
Officers should consider the following when investigating an incident involving marijuana possession, delivery, production or use:

(a) Officers may obtain information from the Compassionate-Use Registry for the purpose of verifying whether a patient has a prescription for low-THC cannabis and whether it has been filled (37 Tex. Admin. Code § 12.41).

(b) Officers may obtain information from the Texas Department of Public Safety for the purpose of verifying whether a purported licensed dispensing organization has a valid license.

428.4 FEDERAL LAW ENFORCEMENT
Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

428.5 DEPARTMENT RESPONSIBILITIES
Sworn personnel shall ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not authorized for destruction without a thorough investigation, direction from the County/District Attorney Offices, or court order.

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges, or an acquittal, the Disposal Unit or Investigative Bureau should, as soon as practicable, authorize the return to the person from whom it was seized any useable marijuana, plants, drug paraphernalia, or other related property.

The Evidence Section shall not destroy marijuana that was alleged to be for medical purposes, except upon authorization from the investigative or Disposal Unit, or upon receipt of a court order.

Medical marijuana may be released to federal law enforcement authorities upon presentation of a valid court order, or by a written order of the assigned detective or investigative.

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Austin Police Department
General Orders

Death Investigations

434.1 PURPOSE AND SCOPE

The investigation of cases involving death includes those ranging from natural causes to homicide. Some causes of death may not be readily apparent and some cases differ substantially from what they appeared to be initially. The thoroughness of death investigations cannot be emphasized enough.

434.2 INVESTIGATION CONSIDERATIONS

Death investigation cases require certain actions be taken. Officers responding to the scene of a death incident shall adhere to the following guidelines:

(a) Paramedics shall be called in all suspected death cases even when the death is obvious (e.g., decapitated, decomposed). Officers are not authorized to pronounce death, and shall obtain the time and doctor's name who pronounced death from EMS and document that information in their report.

(b) A supervisor shall be notified in all death investigations.

(c) Gather as much information regarding the incident and deceased as possible.

1. Identify the name, DOB, address and social security number of the deceased, if possible.
2. Identify the attending physician and whether he will sign the death certificate, if applicable.
3. Identify any witness(es) to the incident and request that they remain on scene until the Homicide Unit determines if any witnesses need to be interviewed.

(d) Notify the Homicide Unit to determine if the death is reportable and whether an investigator from the Homicide Unit will respond.

(e) Establish a perimeter for suspicious deaths/homicides or as necessary.

(f) Initiate a *Crime Scene Log* for suspicious deaths/homicides, or as necessary, to include a list of all persons who enter the crime scene and their purpose for doing so.

(g) With the exception of certain Nursing Home and Hospice situations described in 434.3 below, officers responding to a death shall notify the appropriate authority and advise them of the circumstances of the death and the deceased person’s information. The appropriate authority is the Travis County Medical Examiner (TCME) in Travis County, and the Justice of the Peace in Williamson or Hays Counties.

1. The TCME investigator or Justice of the Peace shall notify the officer of who will sign the death certificate and who the deceased will be released to.
2. If the deceased can be released to a funeral home, ensure the requested funeral home is notified.

(h) Remain at the scene until the deceased has been removed by personnel from the TCME's Office or funeral home.

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(i) Document all reportable natural deaths and suspicious deaths/homicides in an incident report as outlined in this order.

(j) Except when it is necessary to provide information to EMS or other officers for life saving measures or for officer safety purposes, the following information should not be transmitted over the radio or provided to the public:

1. The name of the victim,
2. The nature, type, or location of injuries to any victim (however, generally stating gunshot wounds or stab wounds is appropriate),
3. The specific type of weapon used, or
4. Any other details that may compromise the integrity of the case.

434.2.1 SEARCHING DEAD BODIES

The TCME or the Justice of the Peace is generally the only person permitted to search a body that is known to be dead. The only exception is that an officer is permitted to search the body of a person killed in a traffic collision for the limited purpose of locating an anatomical donor card. If such a donor card is located, the TCME or the Justice of the Peace shall be promptly notified. Should exigent circumstances indicate to an officer that any search of a known dead body is warranted prior to the arrival of the TCME or the Justice of the Peace, the investigating officer shall first obtain verbal consent from the TCME.

Whenever possible, a witness, preferably a relative to the deceased or a member of the household, should be requested to remain at the scene with the officer pending the arrival of the TCME or the Justice of the Peace. The name and address of this person shall be included in the narrative of the death report. The handling officer should obtain a receipt from the TCME or Justice of the Peace whenever personal effects are removed from the body of the deceased. This receipt shall be attached to the death report.

434.3 REPORTABLE AND NON-REPORTABLE NATURAL DEATHS

Officers should assume that an apparent natural death is reportable until the officer can determine that all qualifications for a non-reportable natural death are met. Officers shall always initiate a report entitled "Deceased Person" when responding to a reportable natural death. Officers may contact the Homicide Unit at any time for guidance on any of the below items.

(a) **Reportable Natural Death**

1. A reportable death is a death that requires a law enforcement agency and a medical examiner or Justice of the Peace to be notified and an incident report to be written.
   (a) Any death at a private residence is a reportable death unless the death meets the requirements of a "hospice death" as explained below.
   (b) Any death of a child 17 and under is a reportable death and investigated by the Homicide Unit and reviewed by the Travis County Child Fatality Review Team.

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(b) **Nursing Home Death**

1. An apparent natural death at a nursing home is not always reportable; nursing homes are considered 24 hour health care facilities. A death that occurs at a nursing home is reportable only if it meets any of the conditions set forth in the Texas Code of Criminal Procedure (Art. 49.25, Sec 6 (a)).

2. An apparent natural death that occurs at an Assisted Living facility is considered an at home death and shall be reported.

(c) **Hospice Death**

1. An apparent natural death at a qualified Hospice facility is not considered a reportable death. Usually these facilities will not call police in the event of a death, however from time to time they may call police to the scene. If called to a qualified hospice facility, officers should verify that it is in fact a hospice death by asking for the Physician's Order that the decedent was a hospice appropriate patient. At any time officer may contact the Homicide Unit for guidance on determining the status of the hospice facility and the decedent. While on scene officer shouldinquire as to whether there are any suspicious circumstances surrounding the death. If there are no suspicious circumstances and it is verified that the facility is a qualified hospice facility and it is in fact a hospice death, the officer should go back in service without writing a report. There is no need to notify the Homicide Unit, nor is there a need to notify the TCME or the Justice of the Peace. This policy does not prevent any officer from notifying the Homicide Unit, writing a report or documenting any information if they feel it would be appropriate.

2. Although a private residence hospice death is by definition a reportable death, by agreement with the various counties described below, the responding officer may not need to initiate an incident report depending on the circumstances. Officer should verify that it is in fact a hospice death by asking for the Physician's Order that the decedent was a hospice appropriate patient. At any time officer may contact the Homicide Unit for guidance on determining the hospice status of the decedent. When responding to these scenes, officers should determine whether any suspicious circumstances exist. If any suspicious circumstances exist, officers should notify the Homicide Unit and document their findings in an incident report. If there are no suspicious circumstances and the below criteria are met, the officer may clear the call without writing a report and does not need to notify the Homicide Unit.

   (a) Private Residence Hospice Deaths Occurring in Travis County

      1. If no suspicious circumstances are present, the responding officers shall contact the Travis County Medical Examiner's office and speak with an investigator. If the TCME Investigator verifies that the decedent is a verified Hospice patient, the officer can clear the call with no report. There is no need to notify the Homicide Unit. The name of the TCME Investigator shall be logged into CAD notes

   (b) Private Residence Hospice Deaths Occurring in Williamson or Hays Counties

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1. If no suspicious circumstances are present, and the below two criteria are met, the responding officer may clear the call without notifying the Justice of the Peace and without writing a report
   (a) The responding officer verifies that the cause of death will be listed as natural, and that the terminal illness and subsequent death was not caused by a previous assault or any type of accident, motor vehicle, or otherwise
   (b) The responding officer verifies with a family member or nurse on scene as to the name of the Hospice organization that is caring for the decedent as well as the name of the doctor willing to sign the death certificate and logs that information into the CAD call notes.

434.4 DEATH NOTIFICATION

It is normally the responsibility of the Medical Examiner's Office to make death notifications to the next-of-kin.

(a) At the Medical Examiners' request and when practicable, notification to the next-of-kin may be made by the Victim Services Unit or investigative personnel.

(b) If the next-of-kin lives in another jurisdiction, the law enforcement agency from that jurisdiction shall be requested to make the notification.

434.5 REPORTING GUIDELINES

Officers shall include the following information when an incident report is required:

(a) Deceased persons information (e.g., name, DOB, race, sex).

(b) How the body was discovered and by whom.

(c) A description of the body and scene as it was found at the officers arrival.

(d) Any alterations to the body or the scene made by the officer or any other person (e.g., EMS, AFD).

(e) Time of death.

(f) Name of physician who will sign the death certificate.

(g) Name of witnesses.

(h) Name and employee number of Homicide Investigator.

(i) Name(s) of Medical Examiner's personnel.

(j) Next of kin information.

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Austin Police Department
General Orders

Abandoned, Stolen, and Unauthorized Use of A Motor Vehicle

435.1 PURPOSE AND SCOPE

This order prescribes the guidelines for handling:

(a) Abandoned/Junked Motor Vehicles.

(b) Stolen Vehicles.

(c) Unauthorized Use of Motor Vehicles.

435.2 ABANDONED/JUNKED MOTOR VEHICLES

(a) Generally, routine calls regarding abandoned/junked vehicles shall not be dispatched to field officers.

1. Communications shall obtain what information the complainant can give and forward it to the Abandoned Vehicle Unit. Communications shall direct the complainant to contact the Abandoned Vehicle Unit for further assistance.

2. An officer should be dispatched to the scene if the complainant reports that the vehicle may be stolen, is creating an immediate traffic problem, or appears to have been involved in the commission of a crime.

(b) When Communications and/or officers receive a complaint regarding an alleged violation of the Parking in a Front or Side Yard City Ordinance (16-5-22) they shall direct the complainant to the appropriate District Representative Unit.

(c) Follow-up on all calls for service referred to the Abandoned Vehicle Unit shall become the responsibility of the Abandoned Vehicle Unit. The supervisor shall be responsible for ensuring that the proper follow-up investigation is conducted.

(d) Tagging Abandoned Vehicles

1. If a field officer tags an abandoned vehicle on public property, the officer will initiate an incident report using the "Abandoned Vehicle" title code.

   (a) The Abandoned Vehicle Unit will be responsible for follow-up on the removal of the vehicle.

2. Field officers shall not tag abandoned vehicles on private property. Officers shall contact the Abandoned Vehicle Unit or appropriate District Representative officer for assistance with abandoned/junked vehicles on private property.

(e) Unless the vehicle is a traffic hazard, officers will not tow any tagged vehicle except as authorized by the Abandoned Vehicle Unit.

435.2.1 ABANDONED MOTOR VEHICLES ON UT PROPERTY

(a) Abandoned Vehicles on Public Streets

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1. The University of Texas Police Department (UTPD) directly provides abandoned vehicle information to the Abandoned Vehicle Unit.
2. Upon receipt, the Abandoned Vehicle Unit shall handle the complaint in the same manner as any other abandoned vehicle in the city limits.

(b) Abandoned Vehicles on Private Property

1. UTPD directly provides the Abandoned Vehicle Unit with the private property affidavit signed by the owner of the property stating that the owner wants the vehicle removed.

435.3 STOLEN VEHICLES

435.3.1 STOLEN VEHICLE REPORT

(a) Prior to determining if a vehicle is stolen, officers shall:

1. Determine if the alleged stolen vehicle is actually an Unauthorized Use of a Motor Vehicle (UUMV); and
2. Find out if the vehicle has been impounded or repossessed by running the license plate.

(b) **Stolen Vehicles**

1. Officers should inform a subject reporting a stolen vehicle of the reporting and recovery process.
2. Officers shall require the subject to complete and sign an Auto Theft Affidavit.
   (a) If the subject refuses to sign the affidavit, the officer will inform him that the vehicle information will not be entered into TCIC/NCIC.
   (b) Auto Theft affidavits shall be scanned into the Xerox Workflow Scanning "Auto Theft Affidavit" folder by the end of an officer's tour of duty.
   (c) The original auto theft affidavit shall be sent via interoffice mail to the Auto Theft Unit.
3. Officers shall inform the subject that the assigned investigator will notify him if the vehicle is recovered.
4. Officers shall provide the complainant/victim with the incident number and the phone number to the Auto Theft Interdiction Unit.
5. Officers should inform the complainant/victim to notify 3-1-1, 9-1-1 or the Auto Theft Interdiction Unit if he recovers the vehicle so an officer can be dispatched to the scene.
6. Request Communications to enter the vehicle into TCIC/NCIC and the BOLO file.

(c) **Stolen Vehicle Incident Report Guidelines**

1. Officers shall complete an incident report titled "Auto Theft." Indicate whether the subject signed an Auto Theft Affidavit.

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(a) If there is one victim involving multiple stolen vehicles (e.g. Auto Dealership) then only one report incident number is required.

(b) If there is more than one victim involving multiple stolen vehicles at one location (e.g. Apartment Complex) then separate incident numbers are required for each victim.

435.3.2 RECOVERING STOLEN VEHICLES

(a) When a call for service indicates a stolen vehicle has been found, or a stolen vehicle hit is returned through TCIC/NCIC, confirmation shall be obtained by an officer prior to recovering the vehicle.

1. Officers shall be dispatched to all recovered stolen vehicle incidents.
2. Officers shall request Communications to have the vehicle removed from TCIC/NCIC.
3. All confirmed and recovered stolen vehicles shall be processed for latent prints.
   (a) Vehicles should be processed by a Property Crime Technician if one is on-duty and available within a reasonable amount of time. A Property Crime technician shall not be left alone while processing a recovered stolen vehicle.
   (b) If a Property Crime Technician is not available, the responding officer shall process the recovered vehicle for prints.
   (c) If a stolen vehicle is not processed at the time it is confirmed and recovered, the reason must be explained in the narrative of the incident report/supplement.
4. Confirmed stolen vehicles may be returned to the registered owner if he is present at the scene, however, they shall still be processed for latent prints.
5. If the registered owner is not present, confirmed stolen vehicles shall be impounded by the City contracted impound wrecker, regardless of its involvement in other incidents, collisions, or its condition.
6. Recovered stolen vehicle incidents at a wrecker company other than the City contracted impound wrecker shall be handled as follows:
   (a) The vehicle should remain at the storage lot except under unusual circumstances (e.g., investigative purposes).
      1. Supervisor or Investigative Unit approval is required to move the vehicle.
      2. If there is no need to move the vehicle:
         (a) The vehicle shall be confirmed and processed at its current storage location.
         (b) A hold can be placed on the vehicle for the Investigative Unit involved, if needed.

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(b) When a recovered stolen vehicle has been processed and no hold is placed, the wrecker company may release the vehicle to the owner, lien holder or insurance company and collect accumulated fees.

7. Recovered out-of-city stolen vehicles where a suspect is present, and no local charges exist, shall be handled as follows:

(a) The request for confirmation shall include:

1. All pertinent information regarding the vehicle and suspect; and

2. Authorization to hold the suspect for that agency before officially arresting the suspect.

(b) The suspect shall be detained until the confirmation is received.

(b) **Recovered Stolen Vehicle Incident Report Guidelines**

1. If the vehicle was originally reported stolen to APD, the responding officer shall write a supplement to the original incident report.

2. If the vehicle was originally reported stolen to another law enforcement agency, the responding officer will generate a new incident report titled "OOC Auto Theft". The originating agency case number should be documented in the narrative.

435.4 UNAUTHORIZED USE OF A MOTOR VEHICLE

An Unauthorized Use of a Motor Vehicle (UUMV) occurs when a complainant has allowed another person to use their vehicle and the person has not returned it. Officers responding to a possible stolen vehicle incident need to determine if the complainant is aware of who is in possession of the vehicle and if the person had been given permission to use the vehicle at one point. This is a matter of current or prior permission to use the vehicle, not a matter of familiarity with the suspect.

(a) Officers responding to a UUMV incident shall take the following steps:

1. Determine if the vehicle has been impounded or repossessed by running the license plate and/or VIN.

2. Provide the complainant with the UUMV form letter and incident number.

3. Inform the complainant it is their responsibility to send the UUMV form letter by certified mail with return receipt requested to the last known address of the person who had possession or control of the vehicle. This will serve as an official notice demanding return of the vehicle within 10 days of receipt of the letter.

4. Inform the complainant the incident will remain a civil matter until the return receipt has been received and the 10 days have passed.

5. Inform the complainant that once the 10 days have passed they should contact the Auto Theft Interdiction Unit at 512-974-5265 to schedule an appointment. Advise the complainant that only after they have met with a detective and provided a sworn statement will the vehicle be entered as stolen.

(b) UUMV Incident Report Guidelines

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1. Officers will enter notes into the CAD call indicating who was given the UUMV form letter and their contact information.
2. Officers will ensure that the call type is changed to UUMV and clear the call 10-8-5. No written report needed.

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Austin Police Department
General Orders

Identity Theft

436.1 PURPOSE AND SCOPE

Identity theft is a growing trend that frequently involves related crimes in multiple jurisdictions. This order is intended to provide guidelines for the reporting and investigation of such crimes.

436.2 REPORTING

(a) In an effort to maintain uniformity in reporting, officers presented with the crime of identity theft (Tex. Penal Code § 32.51) shall initiate a report for victims residing within Austin, regardless of where the incident occurs.

(b) While victims should make a report to the law enforcement agency where the victim resides, officers of this department should investigate and report any identity theft related incident that occurs within Austin, regardless of where the victim resides (e.g., the victim lives elsewhere but the stolen credit card was used in Austin).

(c) If a victim does not reside within Austin and the incident did not occur within APD jurisdiction, the officer may either take a courtesy report to be forwarded to the victim's residence agency or encourage the victim to promptly report the identity theft to the law enforcement agency where he resides.

(d) Officers should include all known incidents of fraudulent activity (e.g., credit card number applied for in victim's name when the victim has never made such an application).

(e) Officers should also reference all known reports made by the victim (e.g., U.S. Secret Service, credit reporting bureaus, U.S. Postal Service and Department of Public Safety, Driver License Division) with all known report numbers.

(f) Officers should make a notation in the report narrative if the victim is an elderly individual, as defined by Tex. Penal Code § 22.04, since the penalty for offenses committed against an elderly individual is enhanced (Tex. Penal Code § 32.51).

(g) Following supervisory review and department processing, the initial report should be forwarded to the appropriate Investigative Unit for follow-up investigation, coordination with other agencies and prosecution as circumstances dictate.

436.3 INFORMATION

The victim should also contact the Federal Trade Commission, which is responsible for receiving and processing complaints under the Identity Theft and Assumption Deterrence Act. The victim can contact the FTC online at http://ftc.gov or by telephone at 1-877-ID Theft (877-438-4338). Additional information may be found at the United States Department of Justice (USDOJ) website, http://www.usdoj.gov.

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Austin Police Department
General Orders

Criminal Trespass

437.1 PURPOSE AND SCOPE

This order outlines the procedures for handling criminal trespass situations.

437.1.1 DEFINITIONS

Entry - The intrusion of the entire body.

Notice - This may be in the following forms:

(a) Oral or written communication by the owner or someone with apparent authority to act for the owner; or

(b) A sign(s) posted on the property or at the entrance to a building where it is reasonably likely to come to the attention of intruders indicating that entry is forbidden; or

(c) Fencing or any other enclosure designed to exclude intruders.

Owner/Agent - Person(s) designated as the owner or with apparent authority to act on behalf of the owner (e.g., manager, custodian).

437.2 INVESTIGATION GUIDELINES

For a violation to have occurred:

(a) A subject must enter (or remain) in or on the property without consent of the owner/agent and the subject received notice that entry was forbidden (within one year prior to the current date); or

(b) A subject had consent to be on the property but the owner/agent has withdrawn consent and the subject fails to leave.

437.2.1 ARREST AUTHORITY

Officers should be familiar with Chapter 14 of the Texas Code of Criminal Procedure (CCP) and Texas Penal Code 30.05 (PC 30.05) when enforcing criminal trespass offenses. The authority to make a warrantless arrest is contingent upon the particular circumstances an officer encounters when responding to trespass-related incidents. Officers will not make an arrest unless the violation occurs in the officer's presence or view, or the offense is committed in a manner which constitutes a breach of the peace. Furthermore, the other guidelines and stipulations established by this order must be met before an officer can make an arrest for criminal trespass.

(a) Officers relying on CCP article 14.01(b) [offense within view] to make a warrantless arrest for criminal trespass do not need to actually witness the offense to make an arrest. Officers can rely on the totality of the circumstances, including any/all of the following, to establish probable cause and show that the offense was committed in their presence or view under CCP article 14.01(b):

1. Facts within the arresting officer's personal knowledge and observations, including first-hand inspections of physical or video evidence.

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2. Trustworthy or reliable information from a credible person, including probative video of a suspect committing the offense.

3. Information from fellow officers.

(b) Except under narrow and limited circumstances, a criminal trespass offense alone - absent the threat of violence - is typically not considered a breach of the peace, therefore:

1. Residents generally may not legally arrest for this offense (i.e. citizen's arrest).

2. Officers will not make an arrest unless the violation occurs in the officer's presence or view as defined by section (a), or is one of the rare instances in which a criminal trespass could be considered a breach of the peace.

(c) This section does not eliminate the need to obtain arrest warrants in many situations. If less intrusive means adequately resolve the situation and serve the interests of justice, and there is no other public safety concern that might justify more immediate action, officers should seek an arrest warrant.

(d) Officers should consult with a supervisor, the applicable investigative unit, or the Arrest Review Unit if further guidance is required to determine the most appropriate method for resolving a particular incident.

437.2.2 TRESPASS NOT IN PROGRESS - JUST OCCURRED

Officers should not make warrantless arrests for criminal trespass that occurred at an earlier time and which the officer did not personally observe unless:

(a) The offense recently occurred and the subject is still nearby the property, and

(b) The officer can develop reliable and credible evidence, including video and/or witness statements, sufficient for the officer to reasonably believe that the subject committed the earlier criminal trespass. This can include a store owner, employee, or other witness's credible account that the person was at the place in question, and

(c) The officer confirms that the subject had previously received notice that entry was forbidden or received notice to depart, but failed to do so.

1. To ensure proof of the required notice element, officers shall rely on documented or personally observed criminal trespass notices, posted signage, or the presence of fencing (or other physical forms of notice listed in Penal Code § 30.05) to verify that the subject had prior notice that entry was forbidden or received notice to depart, but failed to do so.

2. Officers should confirm and document the way in which the subject received notice as prescribed in section 437.2.4 (b) of this order.

437.2.3 TRESPASS IN PROGRESS - CONSENT WITHDRAWN

In cases where a subject initially enters a property with consent but fails to leave when given notice to do so by the owner/agent, officers shall adhere to the following guidelines:

(a) Officers must witness:

1. The subject in/on the property; and

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2. The owner/agent administer to the subject the notice to leave.

(b) If the subject does not leave, officers may make an arrest for criminal trespass.

(c) If the subject leaves, officers shall write a criminal trespass notice report as outlined in this order.

437.2.4 TRESPASS IN PROGRESS - PRIOR NOTICE DOCUMENTED

Officers may make an arrest for criminal trespass when the officer witnesses a subject on the property without the consent of the owner/agent after the subject received notice that he was not to enter and meets the following guidelines:

(a) The complainant has sole or undisputed authority to restrict the subject from the location (e.g., another tenant in an apartment complex may allow others on the premises' common areas).

(b) Confirm and document the way in which the subject received notice:

1. Previous oral notice witnessed by the officer and less than one year old.

2. Previous oral notice was documented in an incident report and less than one year old.

3. Written notice less than one year old (e.g., *APD Criminal Trespass Incident Form*, proof by registered letter).

4. Fencing or other enclosure obviously designed to exclude intruders.

5. Posted sign prohibiting entry:

(a) The sign should state "No Trespassing," and may lay out the parameters of the restriction. The sign may allow for certain individuals to enter the premises such as tenants, customers, or patients.

(b) Arrest will not be made when conditions of the posted sign single out a specific class group such as transients, homeless people, or a minority group.

437.2.5 TRESPASS IN PROGRESS - PRIOR NOTICE NOT DOCUMENTED

In cases where the subject is witnessed on the property by an officer and the owner/agent claims to have previously given a trespass notice to the subject but it is not documented; and

(a) The owner/agent will immediately furnish an affidavit attesting that a prior trespass notice was given to the subject, the subject may be arrested.

(b) The owner/agent cannot or will not immediately furnish an affidavit attesting that a prior trespass notice was given to the subject:

1. The owner/agent should administer another trespass notice to the subject in the officers presence and advise the subject to leave the property:

(a) If the subject does not leave, officers may make an arrest for criminal trespass.

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(b) If the subject leaves when given notice, the officer will write a criminal trespass incident report as outlined in this order and instruct the owner/agent to follow-up with the appropriate Investigative Unit if he wishes to file charges.

437.2.6 TRESPASS IN PROGRESS - PRIOR NOTICE MORE THAN ONE YEAR OLD
In cases where the subject is witnessed on the property by the officer but the trespass notice is more than one year old:

(a) The owner/agent should administer another trespass notice to the subject in the officer's presence and advise the subject to leave the property:

1. If the subject does not leave, officers may make an arrest for criminal trespass.
2. If the subject leaves when given notice, officers will write a criminal trespass incident report as outlined in this order and instruct the owner/agent to follow-up with the appropriate Investigative Unit if he wishes to file charges.

(b) If the owner/agent provides compelling information, or the current incident contains aggravating circumstances that would substantially warrant an arrest for criminal trespass and the documented notice was given more than one year prior, the officer may make an arrest with supervisor approval. The details warranting arrest, as well as the supervisor's name, must be articulated in the incident report narrative.

437.2.7 TRESPASS IN PROGRESS - OWNER/AGENT NOT ON-SCENE
Officers may arrest a subject that trespasses on a property when the owner/agent is not on-scene if all of the following are met:

(a) A letter is on file from the owner/agent authorizing APD to facilitate an arrest on the owner's/agent's authority in the owner's/agent's absence; and

(b) An APD incident report documenting the owner/agent's written authorization is verified prior to an arrest being made; and

(c) A criminal trespass notice has previously been given to the subject in accordance with the PC 30.05.

437.3 REPORTING PROCEDURES

437.3.1 CRIMINAL TRESPASS NOTICE
When an officer witnesses a subject being given a trespass notice by an owner/agent, the officer shall document the incident by either writing a "Criminal Trespass Notice" incident report (title code 2730) or complete a *Criminal Trespass Notice Incident Form* (PD0040 or PD0040E). A subject does not need to be on the property at the time the notice is given in order for the notice to be valid.

If the notice is to be temporary and the suspect leaves when told to do so by the owner/agent, the officer will title the report "Assist Complainant" and document that the notice was temporary and should not be considered a permanent (e.g., up to one year) notice.

(a) **Criminal Trespass Notice Report**

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1. Use the offense title "Criminal Trespass Notice" (title code 2730).
2. Use the Trespass Notice template when writing the narrative.
3. The narrative should contain the following information:
   (a) Location of occurrence.
   (b) Date and time of occurrence.
   (c) Witnesses to the incident.
   (d) Type of notice issued (e.g. oral, written, posted sign).
   (e) Name and identifying information on the owner/agent who issued notice.
   (f) Reason the owner/agent wants to issue the notice.
4. Under no circumstances will "Criminal Trespass Warning" or "CTW" be used in the body/narrative of the report. Refer to it as a criminal trespass notice, not a warning.

(b) **Criminal Trespass Notice Incident Form**

1. Officers may use the *Criminal Trespass Notice Incident Form* in lieu of writing an incident report.
2. The officer shall complete all the fields of the form except for the narrative and have the suspect read and sign the form in the officer's presence. If the suspect refuses to sign the form, notice is still considered to be valid. The officer will note the refusal on the form.
3. The officer shall detach both the yellow and pink pages of the completed form prior to beginning the narrative portion.
4. The suspect will be given the pink page of the completed 3-part form.
5. The owner/agent will be given the yellow page of the completed 3-part form. The officer shall recommend to the owner/agent that the copy be kept accessible and on file for future reference and documentation.
6. Officers will complete the narrative portion of the white page:
   (a) The same information listed above shall be included in the narrative portion of the form.
   (b) A copy of the white page will be turned in to the appropriate Investigative Unit inbox.
   (c) The original white copy shall be turned in to Data Entry for entry into APD's electronic report writing system.
7. If additional narrative space is needed, attach a narrative form to the *Criminal Trespass Notice Incident Form*.

(c) **Criminal Trespass Notice List – SharePoint**

The Criminal Trespass Notice SharePoint list allows users to effectively and efficiently locate and identify active and expired Criminal Trespass Notices (CTNs). The list is searchable by

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case number, first and last names, business names, and addresses. The list provides two (2) views, *Active CTNs* and *Expired CTNs*. CTNs in the *Active CTNs* view will automatically transfer to the *Expired CTNs* view upon their expiration date.

The Criminal Trespass Notice SharePoint list is located on the Patrol page in SharePoint. The list is accessible through the Patrol page or the quick link titled Criminal Trespass Notices on the SharePoint homepage. The hyperlink on the *APDnet* homepage titled *Criminal Trespass Notices* allows direct access to a blank CTN template.

The Criminal Trespass Notice list in SharePoint shall be used to document:

1. Authorization Letters for Criminal Trespass Arrest – Business locations.
   (a) Entered by District Representatives or patrol officers.
2. Criminal Trespass Notices issued by City Employees for City property.
   (a) Entered by CTECC Non-Emergency Call Takers.
3. Criminal Trespass Notices issued by Patrol Officers.
   (a) Entered by patrol officers.

437.3.2 CRIMINAL TRESPASS ENFORCEMENT ACTION OR FOLLOW-UP
Any time an incident leads to an arrest or requires follow-up by an Investigative Unit where the owner/agent wishes to file charges, officers shall complete an incident report.

(a) Use the offense title "Criminal Trespass" (title code 2716).

(b) The following information must be documented in the narrative section of the report:
   1. Location of occurrence.
   2. Date and time of occurrence.
   3. Witnesses to the incident.
   4. Name and identifying information on the owner/agent who issued notice and whether or not that person still has authority to issue the notice.
   5. History of prior notices including any applicable incident report numbers. If history exists between the owner/agent and the suspect, the court prefers to have this information prior to acceptance of PC affidavit. Include it in both the narrative of the report and in the PC affidavit.

437.4 SUPERVISOR RESPONSIBILITIES
Supervisors shall review each criminal trespass incident report to confirm the correct title code is used. If the incident is a:

(a) Criminal trespass warning only and no enforcement action is needed, title code 2730 (Criminal Trespass Warning) shall be used.

(b) Criminal trespass offense that includes charges being filed or follow-up is required from an Investigative Unit, title code 2716 (Criminal Trespass) shall be used.

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Austin Police Department
General Orders

Hate Crimes

438.1 PURPOSE AND SCOPE

This department recognizes and places a high priority on the rights of all individuals guaranteed under the Constitution and the laws of this state. When such rights are infringed upon by violence, threats or other harassment, this department will utilize all available resources to see that justice is served under the law. This order has been developed to meet or exceed the provisions of the James Byrd, Jr. Hate Crimes Act and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

438.1.1 FEDERAL JURISDICTION

The federal government also has the power to investigate and prosecute bias-motivated violence by providing the U.S. Department of Justice with jurisdiction over crimes of violence where the perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability (18 USC § 245).

438.2 DEFINITIONS

Hate Crimes - An intentional criminal act committed in whole or in part because of a bias or prejudice against a person or group's (Tex. Code of Crim. Pro. art. 42.014):

(a) Disability

(b) Gender

(c) National origin or ancestry

(d) Race, ethnicity or color

(e) Religion

(f) Sexual orientation

(g) Age

(h) Peace Officer

(i) Judge

438.3 CRIMINAL STATUTES

Tex. Penal Code § 12.47 - Penalty enhancement if an offense is committed because of bias or prejudice.

Tex. Penal Code § 22.04 - Prohibits assaulting elderly or disabled individuals.

Tex. Penal Code § 25.071 - Violation of a protective order preventing an offense caused by bias or prejudice.

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438.4 UNDERSTANDING HATE CRIME ENHANCEMENT

"Hate Crime" is not a specific offense that any person can be charged with but rather a penalty enhancement (Tex. Penal Code § 12.47).

(a) Officers cannot enhance the level of a crime at the time of booking even if there is sufficient evidence that the crime was motivated because of bias or prejudice.

(b) Investigators do not control whether an offense committed because of bias or prejudice is enhanced; the decision to file for the enhancement is handled by the prosecution.

(c) The enhancement allows for specific offenses to be increased to the next category of offense; however, a Class A misdemeanor cannot be increased to a felony.

438.5 PROCEDURE FOR INVESTIGATING AN ALLEGED HATE CRIME

Whenever any member of the Department receives a report of a suspected hate crime, or other activity that reasonably appears to involve a potential hate crime, the following should occur:

(a) Officers will be assigned to the incident to conduct a preliminary investigation.

(b) A supervisor should be notified of the circumstances as soon as practicable.

(c) Once all "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects), the assigned officers will take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved.

(d) Officers will interview available witnesses, victims and others to determine what circumstances, if any, indicate the situation may involve a hate crime.

(e) Officers should not tell individuals they are a victim of a hate crime as the determination is not made by law enforcement, however, officers should treat victims with empathy.

(f) Officers or supervisors may request additional assistance from the appropriate Investigative Unit or other resources to further the investigation.

(g) Officers should take photographs and collect physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups (e.g., graffiti, clothing with symbols, letters).

(h) Officers will provide victims of any suspected hate crime with a *Victim Assistance Information* pamphlet.

(i) Officers will complete an incident report and include:

1. The title code that relates to the specific offense (e.g., assault, robbery). In addition, the Hate Crime Information title code 4601 shall be added. This will result in the report routing to the Hate Crimes Review Committee report queue for review.

2. The “BIAS” box must be filled out if there is any suspicion of a hate crime. This is required for inclusion in the Department's report to the FBI.

3. Specific facts (e.g., racial slurs, ethnic slurs, other derogatory slurs, signs and symbols) used during the incident to indicate the likelihood a hate crime

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occurred. It is important to quote the exact language used by the suspects whenever possible.

438.5.1 HATE CRIME REPORTING

This Department shall report hate crimes in the form and manner and at regular intervals as prescribed by rules adopted by the Department of Public Safety. This shall be conducted by the Central Records Manager or assigned to the Investigation Unit (Tex. Gov't. Code § 411.046(b)).

(a) A Hate Crimes Review Committee shall review all suspected hate crimes on a monthly basis to determine those cases that fall within the definition of a hate crime for reporting purposes.

(b) The Department may request hate crime-related information or statistics from the Department of Public Safety to carry out investigations or other lawful business (Tex. Gov't. Code § 411.046(c)).

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Austin Police Department
General Orders

Service Animals

440.1 PURPOSE AND SCOPE

Service animals play an important role in helping to overcome the limitations often faced by people with disabilities. The Austin Police Department recognizes this need and is committed to making reasonable modifications to its policies, practices and procedures in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA) to permit the use of any animal that is individually trained to assist a person with a disability.

440.2 SERVICE ANIMALS

The ADA defines a service animal as any guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability. Service animals may be of any type or breed and need not be certified by any government agency or service group.

Some service animals, such as guide dogs, may be readily identifiable but many do not have a distinctive symbol, harness or collar.

The following examples are just some of the ways service animals may provide assistance:

(a) Guiding people who are blind or have impaired vision.

(b) Alerting people who are deaf or hard of hearing.

(c) Retrieving or picking up items, opening doors or flipping switches for people with disabilities that limit use of their hands, arms, or legs.

(d) Pulling Wheelchairs.

(e) Providing physical support by assisting people with physical disabilities with stability and balance.

(f) Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities or psychiatric disabilities, such as reminding a person with depression to take medication or to wake the person.

(g) Alerting a person with anxiety to the onset of panic attacks; providing tactile stimulation to calm a person with post-traumatic stress disorder; assisting people with schizophrenia to distinguish between hallucinations and reality; and helping people with traumatic brain injury to locate misplaced items, to find places or to follow daily routines.

440.3 EMPLOYEE RESPONSIBILITIES

Under the Americans with Disabilities Act, service animals assisting individuals with disabilities are permitted in all police facilities and areas where the general public is allowed. Employees are expected to treat individuals with service animals with the same courtesy and respect that the Austin Police Department affords to all members of the public.

If an animal exhibits vicious behavior, poses a direct threat to the health of others or unreasonably disrupts or interferes with normal business operations, the employee may direct the partner/

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handler to remove the animal from the premises. Barking alone is not a threat nor does a direct threat exist if the partner/handler takes prompt, effective action to control the animal. Each incident must be considered individually and past incidents alone are not cause for excluding a service animal. Removal of a service animal may not be used as a reason to refuse service to an individual with disabilities. Members of this department are expected to provide all services as are reasonably available to the individual with the disability.

If it is unclear whether an animal meets the definition of a service animal, officers should ask the individual only the following questions:

(a) Is the animal required because of a disability?

(b) What task or service has the service animal been trained to perform?

If the individual explains that the animal is required because of a disability and has been trained to work or perform at least one task, the animal meets the definition of a service animal. No further question as to the animal's status should be asked. The person should not be asked questions about his disabilities nor should the person be asked to provide any license, certification or identification card for the service animal.

Service animals are not pets. Employees should not interfere with the important work performed by a service animal by talking to, petting or otherwise initiating contact with a service animal.

440.4 INQUIRIES AND COMPLAINTS

When handling calls of a complaint regarding a service animal, members of this department should remain neutral and should be prepared to explain the ADA requirements concerning service animals to the concerned parties. Under the Americans with Disabilities Act, people with disabilities have the right to be accompanied by service animals in all public areas.

(a) Businesses are required to permit service animals to accompany their partner/handler in all areas that other customers or members of the public are allowed. Individuals who believe they have been discriminated against as a result of their disability should be referred to the Civil Rights Division of the U.S. Department of Justice.

(b) The Austin Police Department considers interference with or denial of this right by any member of the Department to be a serious violation of this order. Complaints alleging violations of this order against any Department employee will be promptly investigated and should be referred to the Internal Affairs Unit.

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Austin Police Department
General Orders

Mental Health Response

445.1 PURPOSE AND SCOPE

The Crisis Intervention Team (CIT) Unit and (CIT) officers are tasked with addressing and responding to any calls for police assistance related to the mental health community to include Intellectual Developmental Disabilities (IDD) and cognitive disorders. This order sets guidelines for utilizing the CIT Unit and the certified CIT officers assigned to field duty.

445.1.1 DEFINITIONS

Crisis Intervention Team (CIT) Officer - An officer off probationary status who has successfully completed the TCOLE prescribed CIT certification course. The Austin Police Department has CIT officers who receive a mental health certification pay/stipend (see Meet and Confer Agreement, Article 7 Wages and Benefits, Section 4, Mental Health Certification Pay) to respond to CIT calls and perform Peace Officer Emergency Detentions (POED). If an officer who receives mental health certification pay is not available, an officer who is a CIT Officer can respond to a CIT call or perform a POED.

Crisis Intervention Team (CIT) Unit - A unit of specially trained CIT officers within APD who act as liaisons between the CIT officers assigned to patrol and the facilities, providers, and consumers within the mental health community. CIT Unit officers also respond to calls for service as outlined in this order.

Mental Illness - An illness, disease or condition other than epilepsy, senility, alcoholism or mental deficiency that substantially impairs a person's thoughts, perception of reality, emotional process or judgment, or grossly impairs behavior as demonstrated by recent disturbed behavior.

Intellectual Development Disorder (IDD) - A significantly sub-average intellectual function that is concurrent with deficits in adaptive behavior and which originates during the developmental period.

Cognitive Disorders - organic mental disorders such as Traumatic Brain Injury (TBI), dementia, Alzheimer's, Parkinson's, and substance withdraw delirium, etc. Symptoms of these disorders could include but are not limited to the following: memory loss, loss of motor skills, delirium, deficits in general mental ability/reasoning/problem solving/planning/abstract thinking/judgment, communication disorders, etc

Jail Diversion – Alternative method(s) of addressing a mentally ill, cognitively disabled, or IDD person's behavior, other than with arrest and confinement in jail.

Expanded Mobile Crisis Outreach Team (EMCOT) - A group of medical or mental health professionals who respond to the scene of a psychiatric crisis, assisting officers with jail diversion and emergency detentions.

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445.2 INCIDENTS REQUIRING A CIT OFFICER

(a) If the incident is an emergency involving a person in mental health crisis, a CIT officer will be dispatched as the primary responding officer. If a CIT officer is not available, any patrol officer will be dispatched immediately and a CIT officer will respond as soon as possible.

(b) If the incident is non-emergency in nature, a CIT officer shall respond as the primary officer, with the exception of an emergency room transport of a POED to a psychiatric hospital (secondary transport)..

(c) The following incidents also require the response of a CIT officer:

1. Any situation where the responding officer believes that a person's mental health is adversely affecting the person's behavior (e.g., attempted suicide, suicidal subject, Peace Officer Emergency Detention (POED) evaluation).
2. Any request from a member of the community for a CIT officer.
3. Mental health related calls from a facility/provider that furnishes services on behalf of the mental health community.
4. Any health care facility or emergency room request for assistance relating to a person suspected of a mental illness.

445.3 CIT OFFICER REFERRALS

Officers receiving a mental health request for assistance from a complainant will refer the individual to an on-duty CIT officer or the CIT Unit. An incident report will be completed as outlined in this order.

(a) If the person about whom the call is made poses any threat to safety, the responding officer will remain at the scene until contact is made with an on-duty CIT officer or the CIT Unit to determine the appropriate action to be taken.

(b) When deemed necessary by a CIT officer or the CIT Unit, an EMCOT employee will be called to the scene to assist with:

1. Assessment of the client (including suicide assessments).
2. Assessment of the situation.
3. Linking the client with existing mental health services in the community.
4. In-depth counseling for the client and family.
5. Transportation of the client, when appropriate.
6. Jail Diversion, when appropriate (see section 445.6 of this order for further details).

445.4 MENTAL HEALTH COMMITMENTS

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445.4.1 VOLUNTARY COMMITMENT

Employees encountering persons desiring to be voluntarily committed to a mental health facility and that meet the criteria for an Emergency Detention shall contact an on-duty CIT officer. If the subject does not meet the criteria for an Emergency Detention the officer may do one of the following:

(a) Request EMCOT to the scene.

(b) Provide voluntary transport to a facility within the located county.

(c) Provide referral information.

445.4.2 PEACE OFFICER EMERGENCY DETENTION

(a) The authority to apprehend a person by using the Peace Officer's Emergency Detention (POED) is granted under the Tex. Health and Safety Code § 573.001. This type of custody is protective rather than criminal in nature and does not constitute an arrest. A POED may be used when:

1. The officer has reason to believe, and does believe, that the person is mentally ill; and

2. Because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

3. The officer believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) An employee encountering a person who needs to be assessed for a possible POED shall contact an on-duty CIT officer.

1. The responding CIT officer shall be responsible for:

(a) Conducting an assessment to determine whether the person should be handled as an Emergency Detention;

(b) Providing transportation to the appropriate mental health facility or furnishing referral information;

1. The CIT officer may transport the Emergency Detention or have a non CIT officer transport the Emergency Detention after completing all paperwork and advising where the subject is to be taken.

(c) Preparing all required documentation.

2. If it is determined that the person does not meet the criteria for a POED, the initial officer may:

(a) Request a response from the Expanded Mobile Crisis Outreach Team (EMCOT), (refer to 445.6)

(b) Release the person, if no criminal violation has been committed;

(c) Use other available referral services or release options; or

(d) Place the person in jail, provided the officer has legal authority to do so.

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3. Officers shall perform secondary transports of subjects from an emergency room to a psychiatric hospital on an APD Emergency Detention. All officers are responsible for the following:
   (a) Taking custody of the individual who is detained under a POED.
   (b) Collect and verify all necessary documents for the transfer of the detained individual.
   (c) Transport the patient to the directed psychiatric hospital with all required paperwork and personal property.
   (d) Complete a supplement to the original POED report.
4. Officers shall transport persons on a still active APD POED from the Judge Guy Herman Center to another arranged hospital or psychiatric hospital when the Center's staff determines that patient care exceeds the capabilities of the Center. All transporting officers are responsible for the following:
   (a) Verifying a nurse-to-nurse/doctor-to-doctor transfer was completed and collecting all necessary documents for the transfer, if available.
   (b) Taking custody of the individual who is detained under an APD POED.
   (c) Transporting the person and their property to the directed hospital or psychiatric hospital, if available.
   (d) Completing a supplement to the original POED report.

445.4.3 ORDER OF PROTECTIVE CUSTODY

Due to special requirements, employees receiving a request to transport a subject due to an Order of Protective Custody (OPC) shall contact the Travis County Sheriff's Office (TCSO) CIT Unit to transport the person named in the order.

445.4.4 UNAUTHORIZED DEPARTURES FROM MENTAL HEALTH FACILITIES

When officers comes into contact with a person who is a confirmed Unauthorized Departure (UD) from a mental health facility, officers will confirm that a court order has been issued for the individual requiring him to return to the appropriate mental health facility.

(a) If confirmed, take the person into custody and transport him to the appropriate mental health facility.

(b) If no court order exists the employee shall request an on-duty CIT officer to respond and complete a supplement detailing his observations.

445.5 MENTALLY ILL PERSONS REQUIRING MEDICAL ATTENTION

Officers shall call EMS to treat and/or transport the person to a medical facility when a mentally ill person needs medical attention.

(a) If the subject is transported, a *Mental Health Transport Form* shall be completed and given to EMS personnel.

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(b) If the subject is not transported, officers shall request an on-duty CIT officer to respond to the scene.

445.6 ARRESTS AND JAIL DIVERSION OF MENTALLY ILL, COGNITIVELY DISABLED, AND IDD PERSONS

(a) The arrest of a mentally ill person creates an extraordinary burden on the criminal justice and judicial systems. The department and the community benefit from alternative methods of addressing a mentally ill person's behavior, other than with arrest and confinement in jail. In lieu of arrest under certain circumstances, when encountering a mentally ill, cognitively disabled, or IDD person during a call for service, any officer can request the assistance of the local mental health authority, Austin Travis County Integral Care (ATCIC) and their response group, or Expanded Mobile Crisis Outreach Team (EMCOT) when deemed appropriate.

1. Officer must obtain supervisor approval prior to jail diversion. When the decision has been made to jail divert, officers may request that communications dispatch EMCOT. EMCOTs inability to respond does not prevent an officer from using jail diversion.
    (a) EMCOT is available to respond within 30 minutes of dispatch during the following hours:
        1. Monday-Friday: 6am-10pm
        2. Saturday and Sunday: 10am-8pm
2. The acceptance of EMCOT's services by the person is voluntary.
3. The option of calling EMCOT will not be exercised in the following situations:
    (a) Violent crimes in which another person has been assaulted.
    (b) Crimes involving damage to property.
    (c) Crimes involving theft if the property is not recovered.
    (d) Any felony offense
    (e) Any offense involving the use or possession of a firearm
    (f) Any situation in which the person meets the criteria for a POED
4. Once EMCOT has arrived and conducted a preliminary evaluation of the mentally ill, cognitively disabled, or IDD person the EMCOT employee will advise the officer if they are needed further or if they are free to return to service. The ultimate decision as to whether or not the officer stays on scene or returns to service will be based on the officers own judgment.

(b) An arrest shall be made in lieu of a POED under the following circumstances:

1. Felony offense;
2. DWI offense;
3. For Family violence offenses see General Order 418.2.2.

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(c) If a suspected mentally ill person is placed in jail, officers shall:

1. Advise the intake officers; and
2. Complete all paperwork required by Travis County (e.g., Mental Health Hold/ Evaluation Form); and
3. Bring the person to the jail nurse.

(d) When a mentally ill, cognitively disabled, or IDD person is diverted from arrest, the officer shall document the details and reason for the diversion in an offense report.

445.7 REPORTING PROCEDURES

Employees responding to any incident involving a mental health individual shall comply with the following reporting requirements:

(a) **Responsibility**

1. CIT officers responding to a scene shall complete the incident report. If the primary officer is not a CIT officer, he shall complete a supplement detailing his observations.
2. When a CIT officer does not respond, the primary officer shall complete the incident report.
3. When a mentally ill person is arrested, detained, and/or released for an offense, the arresting officer shall complete the incident report.

(b) **Guidelines**

1. Officers completing an incident report shall:
   (a) Use the appropriate EDP title code; and
   (b) Not include any reference to the mental health of a person in a report synopsis that is available for public disclosure (e.g., "press release"). All such information shall be documented in the narrative section, as needed.

445.8 INCIDENTS INVOLVING EMERGENCY DETAINED SUBJECTS IN POSSESSION OF FIREARMS

Peace Officers have authority to seize firearms from a person who is being detained for mental health services under the Texas Health and Safety Code § 573.001(g). This seizure is for the safety of the detained individual and community.

(a) Officers may seize any firearm found in possession of a person being detained into custody under an Emergency Detention (Health and Safety Code 573.001).

(b) If a firearm is seized under this authority, Officers shall:

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Mental Health Response

1. Complete the Receipt for Seized Firearm and Procedures (PD0222 A)
2. Review the front page of the Receipt for Seized Firearm and Procedures (PD0222 A) with the detained subject and place it in their property.
3. Make a reasonable attempt to identify an immediate family member for the detained subject and notate that person's name and contact information in the incident report.
4. Contact the Crisis Intervention Team by the end of the officers tour of duty either by phone at (512-854-3450) or by email Crisis.Intervention@austintexas.gov with the following:
   (a) Officer's name,
   (b) Incident number, and
   (c) Actions taken.
5. Use the title codes Emergency Detention/Firearm Seized 3465.

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Austin Police Department
General Orders

Informants

450.1 PURPOSE AND SCOPE

In many instances, a successful investigation cannot be conducted without the use of informants. To protect the integrity of the Austin Police Department and the officers using informants, it shall be the policy of this department to take appropriate precautions by developing sound informant policies.

450.1.1 TYPES OF INFORMANTS

The following types of informants are considered resources of the Austin Police Department. Informants shall not be considered as personal sources of information to any individual officer.

(a) **Citizen Informants** - Persons who provide information or evidence to assist the Department in the reduction of crime without any expectation of payment or benefit. This is normally referred to as the "concerned citizen."

(b) **Paid Informants** - Persons who are providing information or evidence to APD in exchange for money paid by APD.

(c) **Defendant Informants** - Persons who have been:

1. Arrested and the evidence is sufficient to support a charge; or
2. Formally charged with an offense; or
3. Indicted.

(d) **Juvenile Informants** - Persons under the age of 17 years old may only be used as an informant with parental consent or as authorized by a court order.

450.1.2 RELATIONSHIP WITH INFORMANTS

No member of the Austin Police Department shall maintain a social relationship with a known paid or defendant informant or otherwise become intimately involved with a such an informant. Members of the Austin Police Department shall neither solicit, accept gratuities, or engage in any private business transaction with any informant.

450.2 PATROL GUIDELINES

450.2.1 CITIZEN INFORMANTS

Officers working patrol and patrol related assignments normally encounter citizen informants.

(a) Information regarding criminal activity obtained in this manner shall be handled as follows:

1. Where exigent circumstances exist, the officer should take appropriate action and document the source of information in an incident report.
2. Where no exigent circumstances exist, the officer shall refer the informant to the appropriate Investigative Unit.

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(b) Occasionally officers will encounter individuals who want to provide information but do not desire to be identified.

1. Officers shall not enter into any agreement promising that the individual's involvement in a particular incident will remain confidential. The individual could be required to testify in court or provide additional information to other law enforcement entities.
2. Informants still desiring to remain confidential should be referred to the appropriate Investigative Unit or to Crime Stoppers for follow-up.

(c) If a citizen informant wishes to be paid, officers shall follow the paid informant guidelines.

450.2.2 PAID INFORMANTS

Officers working patrol and patrol related assignments who encounter individuals wishing to provide information in exchange for compensation or some other benefit (other than dismissal of arrest charges - see Defendant Informants below) will be handled in the following manner:

(a) The officer's supervisor must be notified that a person is attempting to provide information.

(b) The supervisor and officer should determine whether or not exigent circumstances exist.

1. Where exigent circumstances exist (e.g., a crime is in progress or imminent):
   (a) The officer should attempt to obtain the information and take enforcement action as needed.
   (b) Any monetary compensation will be determined after the fact by the appropriate Investigative Unit following the Organized Crime Division (OCD) Confidential Informant Payment Guidelines.
2. Where no exigent circumstances exist (e.g., a crime has already occurred or is an on-going long-term situation):
   (a) The informant should be referred to the appropriate Investigative Unit or to Crime Stoppers for follow-up.
   (b) If the informant wishes to work with an Investigative Unit:
      1. The officer should contact or email the appropriate Investigative Unit supervisor with the informants' identity, a brief explanation of the situation, and the incident number.
      2. The Investigative Unit's supervisor will determine whether to use the informant. Informant use must be approved by OCD as outlined in this order.

(c) With supervisor approval, officers may be requested to:

1. Act as a liaison between the informant and Investigative Unit.
2. Set up interviews with the informant and investigators.

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(d) Officers will not engage in any other phase of the investigation unless authorized by the Investigative Unit and the officer's chain-of-command.

450.2.3 DEFENDANT INFORMANTS

Officers working patrol and patrol related assignments who arrest an individual that wishes to provide information or evidence will be handled in the following manner:

(a) Officers shall not enter into any agreement to accept information in lieu of filing charges.

(b) Informants should be referred to the appropriate Investigative Unit.

1. Officers should contact or email the appropriative Investigative Unit supervisor with the informants' identity, a brief explanation of the situation, and the incident number.

2. Investigative Unit supervisors will determine whether to use the informant. Informant use must be approved by OCD as outlined in this order.

450.3 ALL OTHER ASSIGNMENTS

450.3.1 CITIZEN INFORMANTS

Investigative Units within the Department wishing to utilize a citizen informant shall adhere to the following guidelines:

(a) A citizen informant does not have to be documented in the Confidential Informant Database unless he wishes to be paid for the information or evidence being provided.

(b) If a citizen informant wishes to be paid, the paid informant guidelines shall be followed or refer the informant to Crime Stoppers.

450.3.2 PAID AND DEFENDANT INFORMANTS

Investigative units within the Department shall not deal with any paid informant or defendant informant unless policies and procedures outlined within the unit SOP and/or Operations Manual that mirror OCD's general orders on informants.

(a) **Any** potential paid informant or defendant informant shall be approved by an OCD supervisor **before** using the informant. The OCD supervisor will check the informant through the Confidential Informant Database.

(b) When use of an informant has been approved:

1. All informant information shall be entered into the Confidential Informant Database by an OCD supervisor and issued an informant control number.

2. All employees shall forward original informant files to OCD for filing, retention, and archival.

3. A copy of an informant file may be kept by the unit controlling the informant.

4. All payments made to an informant shall be immediately communicated to an OCD supervisor so the Confidential Informant Database can be updated with the payment information.

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450.4 WILLIAMSON COUNTY GUIDELINES

Guidelines for using Defendant Informants are different for Williamson County and must be followed. When a subject is being considered for use as a Defendant Informant in Williamson County, an OCD supervisor shall be contacted before using the informant.

450.5 ORGANIZED CRIME DIVISION RESPONSIBILITIES

OCD shall be the Department's central repository for all informant paper files and maintain a Confidential Informant Database that will contain informant information as well as all payments made to the informant. Informant records shall be maintained indefinitely.

450.5.1 REPORTING OF PAYMENTS

Each confidential informant receiving a cash payment shall be informed of his/her responsibility to report the cash to the Internal Revenue Service (IRS) as income. If funds distributed exceed $600 in any reporting year, the confidential informant should be provided IRS Form 1099 (26 CFR 1.6041-1). If such documentation or reporting may reveal the identity of the confidential informant and by doing so jeopardize any investigation, the safety of peace officers or the safety of the confidential informant (26 CFR 1.6041-3), then IRS Form 1099 should not be issued.

In such cases, the confidential informant shall be provided a letter identifying the amount he/she must report on a tax return as "other income" and shall be required to provide a signed acknowledgement of receipt of the letter. The completed acknowledgement form and a copy of the letter shall be retained in the confidential informant's file.

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Austin Police Department
General Orders

Social Media for Official Use

455.1 PURPOSE AND SCOPE

The Department endorses the use of social media to enhance communication, collaboration, and information exchange. This order establishes the department's position on the utility of social media, including management, administration, and oversight. This order is intended to address social media in general, not a particular form of social media.

455.2 APPLICABILITY

This policy applies to employees who are on duty or representing the department in an official manner. See General Order 972 Employee Speech, Expression, and Social Networking for non-duty related social media.

455.3 POLICY

Social media assists the department in meeting community outreach, problem-solving, investigations, and crime prevention. Social media is a valuable tool when seeking evidence or information including missing persons, wanted persons, gang activity, crimes perpetrated online, and photographs or videos of a crime. The content of postings on personal social media sites by employees reflects on them in their official capacity. This order provides information on the use of social media by department personnel.

(a) The Austin Police Department will not utilize social media to seek or retain information about:

1. Individuals or organizations solely on the basis of their religion, political association, social views or activities.
2. An individual's participation in a particular non-criminal organization or lawful event.
3. An individual's race, ethnicity, citizenship, place of origin, disability, gender, or sexual orientation unless such information is relevant to the individual's criminal conduct or activity or if required to identify the individual.
4. An individual's age other than to determine if someone is a minor.

(b) The Austin Police Department will not directly or indirectly receive, seek, accept, or retain information from an individual or nongovernmental information provider who may or may not receive a fee or benefit for providing the information if there is reason to believe that the information provider is legally prohibited from obtaining or disclosing the information.

455.4 DEFINITIONS

Confidential information - Information designated as confidential by law (state, federal statute, or court decision).

Post - Content an individual shares on a social media site or the act of publishing content on a site.

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Online Alias - Profile information that a user provides about himself or herself on a social networking site for the purposes of gathering intelligence or advancing a criminal investigation.

Social Media - A category of Internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, MySpace), microblogging sites (Twitter, Nixle), photo- and video-sharing sites (Flickr, YouTube), wikis (Wikipedia), blogs, and news sites (Digg, Reddit).

Social Networks - Online platforms where users can create profiles, share information, and socialize with others using a range of technologies.

Speech - Expression or communication of thoughts or opinions in spoken words, in writing, by expressive conduct, symbolism, photographs, videotape, or related forms of communication.

Web 2.0 - The second generation of the World Wide Web focused on shareable, user-generated content, rather than static web pages. Some use this term interchangeably with social media.

Wiki - Web page(s) that can be edited collaboratively.

455.5 PROCEDURES

Social media content shall adhere to applicable laws, regulations, and policies, including information technology and records management policies. Employees representing the department via social media outlets shall conduct themselves as representatives of the Department and shall adhere to all Department and City standards of conduct.

(a) Employees will:

1. Identify themselves as members of the department
2. Observe and abide by all copyright, trademark, and service mark restrictions in posting materials to electronic media.

(b) Employees will not:

1. Make comments regarding the guilt or innocence of suspects or arrestees.
2. Make comments concerning pending prosecutions.
3. Post, transmit or otherwise disseminate confidential or law enforcement sensitive information, including pictures, videos, evidence, or other materials in the department relating to training, work assignments, and enforcement efforts without the express written permission of the Strategic Intelligence Commander.
4. Divulge information gained by reason of their authority, make statements, speeches, appearances, and endorsements, or publish materials that could reasonably be considered to represent the views or positions of this department without express authorization of the Chief of Police.
5. Conduct political activities or private business on departmental social media.
6. At no time will the identity, image, or other information of a real person be used in an undercover operation without their express written consent and that person being documented as a Confidential Source if acting in such a capacity.

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455.6 UTILIZATION AND ACCESS TO SOCIAL MEDIA MONITORING TOOLS

No authorization is necessary for general research, topical information, or other law enforcement uses that do not require the acquisition of an online alias.

(a) Social media may be used by Departmental personnel for a valid law enforcement purpose. The following are valid law enforcement purposes:

1. Pre-employment background investigations.
2. Crime analysis and situational assessment reports.
3. Criminal intelligence development.
4. Criminal investigations.

(b) Information and/or intelligence gathered from social media will be evaluated to determine source reliability and content validity (confidence levels).

(c) Employees will utilize social media, access social media websites, online aliases, and social media monitoring tools only for a valid law enforcement purpose. The on-duty utilization of an online alias or social media monitoring tool for personal use is prohibited and is considered employee misconduct.

(d) Employees will only utilize social media to seek or retain information that:

1. Is based upon a criminal predicate or threat to public safety, or
2. Is based upon reasonable suspicion that an identifiable individual or organization, regardless of citizenship or U.S. residency status:
   (a) Has committed an identifiable criminal offense or is involved in or is planning criminal conduct or activity that presents a threat to any individual, the community, or the nation and the information is relevant to the criminal conduct or activity (criminal intelligence information), or
   (b) Is relevant to the investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention of crime, or
   (c) Is useful in crime analysis or situational assessment reports for the administration of criminal justice and public safety.

455.7 ALIAS AUTHORIZATION

(a) Authorization for an online alias is based upon:

1. A criminal predicate or threat to public safety; or
2. Reasonable suspicion that an identifiable individual or organization, regardless of citizenship or U.S. residency status, has committed a criminal offense or is involved in or is planning criminal conduct or activity that presents a threat to:
   (a) Any individual, or
   (b) The community, or

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(c) The nation, and

(d) The information is relevant to the criminal conduct or activity.

(b) Employees seeking authorization to use an online alias must be approved by their supervisor. The supervisor must evaluate the request to determine whether an online alias would serve a valid law enforcement purpose. The supervisor must maintain the requests for online alias and their status (approved/denied) for two years from the date of deactivation of the online alias.

1. If approved, the supervisor will complete Request for use of Online Alias PD0238 and route it to the Strategic Intelligence Lieutenant. The request must include:

(a) Purpose for the request (i.e. type of investigative activity)

(b) Username/Alias

(c) Identifiers to be utilized for the online alias, such as email address

1. Do not include password(s) for online aliases.

2. Ensure password(s) are secured at all times.

(d) Photograph to be used with online alias, if applicable.

(e) Social media accounts utilized.

(f) Anticipated duration for the online undercover activity.

(g) The Strategic Intelligence Lieutenant will approve or deny all requests and return a copy of the request to the supervisor submitting it.

(h) If there is a disagreement in the approval, the employee's commander will confer with the Strategic Intelligence Commander. The Strategic Intelligence Commander has final authority to approve or deny the request.

(c) Approved requests for an online alias will be deconflicted at the Austin Regional Intelligence Center.

455.8 ALIAS USE AND REVIEW

(a) All approved online undercover activity requests will be reviewed not less than every 90 days by the employee's unit supervisor to ensure continued need for the online undercover activity.

1. Approved online undercover activity that does not provide information regarding a valid law enforcement purpose will be discontinued.

2. A summary will be placed in the file indicating the date of termination of the online undercover activity. The online alias may be maintained if it is anticipated that it will be utilized again.

(b) Departmental personnel with an approved online alias may use their online alias to make false representations in concealment of personal identity in order to establish social media accounts.

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1. The establishment of a social media account with an approved online alias must be documented by the unit supervisor.
2. Online undercover activity occurs when the agent utilizing the online alias interacts with a person via social media.

(c) Online undercover operations will only be utilized when there is reason to believe that criminal offenses have been, will be, or are being committed (e.g. internet chat rooms where child exploitation occurs).

(d) In some instances, an Intelligence or Criminal Analyst may obtain and maintain an on-line alias user name or password to a closed online network or site related to an online surveillance operation. The Intelligence Division Supervisor, or designee, will maintain a list of authorized on-line aliases used by departmental personnel.

455.9 DOCUMENTATION AND RETENTION

(a) Other than crime analysis and situational assessment reports, all information obtained from social media websites shall be placed within a case file, suspicious activity report, or intelligence report. At no time should departmental personnel maintain any social media files outside of these authorized files.

(b) Crime analysis and situational assessment reports may be prepared for special events management, including First Amendment-protected activities. If there was no criminal activity related to the information gathered, the information obtained from the social media monitoring tool will be retained for no more than fourteen (14) days. Information from the social media monitoring tool that does indicate a criminal nexus will be retained in an intelligence report, suspicious activity report, or case investigative file pursuant to retention and destruction schedules adopted by the City.

(c) Information identified as criminal in nature that is obtained in the course of an investigation from a social media site will be collected and retained using screen shots, printouts of chat logs, copying uniform resource locators (URL's) for subpoena or investigatory purposes, or storing the information via secure digital means. When possible, employees will utilize investigative computer systems and software intended to record data from social media sites.

455.10 DISSEMINATION

Retention and dissemination of social media information within an intelligence file will be treated in the same manner as an intelligence file. Information developed during the course of a criminal investigation will be located in the investigative case file and retained and disseminated in the same manner as the investigative case file.

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Chapter 5 - Field Support Operations

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Austin Police Department
General Orders

Bicycle Operations

500.1 PURPOSE AND SCOPE

Bicycle operations have been shown to be an effective way to increase officer visibility, accessibility, and response in congested areas. The purpose of this order is to provide uniform guidelines regarding the use of bicycles by Austin Police Department personnel.

500.2 UTILIZATION AND DEPLOYMENT

The use of bicycle patrols will emphasize the mobility and visibility of the Department to the community.

(a) Bicycles may be used for:

1. Regular Patrol duty.
2. Traffic enforcement and parking control.
3. Special events.

(b) Bicycles may be deployed to any area at any hour of the day or night in accordance with Department needs and as staffing levels allow.

(c) Requests for specific deployment of bicycle patrols may be coordinated through any chain-of-command, a specific Commander, or the Watch Lieutenant.

500.3 POLICE BICYCLE TRAINING AND CERTIFICATION

Officers must successfully complete all required Police Mountain Bike courses in order to use a bicycle during their normal course of duty.

(a) Officers interested in becoming a Certified Bicycle Officer by attending the initial Police Mountain Bike course must meet each of the following requirements:

1. Have two or more years of police service with the Department unless otherwise approved by a supervisor; and
2. Get supervisor permission prior to signing up for the Police Mountain Bike course; and
3. Pass a prerequisite Fitness Assessment conducted by the APD Wellness Office or pass a Physical (for strenuous activity) by your personal physician within 6 months prior to the first day of class.

(b) Priority for acceptance into the Police Mountain Bike course shall go to officers assigned to a full-time Bicycle assignment (e.g., Downtown Patrol).

(c) Certified Bicycle Officers shall complete a Department-approved Police Mountain Bike Refresher course as required.

500.4 BICYCLE OFFICER RESPONSIBILITIES

This section establishes the specialized procedures for officers that work any part of their assigned duty on a bicycle.

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(a) Bicycle Officers shall follow all guidelines outlined in Department General Orders, the Police Mountain Bike course, and any subsequent refresher courses.

(b) Bicycle Officers must operate the bicycle in compliance with the Transportation Code under normal operation (Tex. Transp. Code § 551.101 et seq.).

1. Bicycle Officers may operate the bicycle without lighting equipment during hours of darkness when such operation reasonably appears necessary for officer safety and tactical considerations. Officers must use caution and care when operating the bicycle without lighting equipment.

(c) Bicycle Officers are exempt from the rules of the Transportation Code under the following conditions (Tex. Transp. Code § 546.002):

1. In the execution of daily law enforcement activities and/or tactical considerations.
2. In response to an emergency call.
3. While engaged in rescue operations.
4. In the immediate pursuit of an actual or suspected violator of the law.

(d) Bicycle Officers should be deployed in teams of two.

500.5 REQUIRED UNIFORM AND EQUIPMENT

(a) Bicycle Officers shall:

1. Only use a Department issued bicycle and Department approved equipment in the course of their duties.
2. Wear the Department approved uniform and safety equipment (e.g., helmet with face shield and gloves) while operating a police bicycle.
3. Carry the same required equipment on their duty belt as a regular Patrol assignment.
4. Be responsible for obtaining the necessary forms, citation books and other equipment to perform the duties of their regular assignment and have these available while using a police bicycle.

(b) Bicycle Officers may wear Department approved bicycle eyewear and footwear while operating a police bicycle.

500.6 HANDLING POLICE BICYCLES

The following section outlines the guidelines for Police Bicycles:

(a) Accountability.

(b) Care and Use.

(c) Repair and Maintenance.

(d) Storage Locations.

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500.6.1 ACCOUNTABILITY

Each authorized unit that utilizes Bicycle Officers shall be allocated a specific number of bicycles.

(a) A supervisor shall be responsible for the assignment of allocated bicycles to unit personnel.

(b) Officers shall not use a bicycle that is assigned to another unit without approval of a supervisor.

(c) Officers shall not remove, modify, or add components to a bicycle unless approved by a supervisor or there is an emergency.

(d) During prolonged periods of non-use, each unit assigned a bicycle shall periodically rotate the equipment batteries on unused bicycles in order to increase battery life.

500.6.2 CARE AND USE

(a) Officers shall conduct a preliminary inspection of the bicycle and equipment prior to each use to ensure proper working order of the equipment (e.g., tire pressure, brakes, chain lubrication).

(b) Officers should not expose the bicycle to unreasonable hazards or abuse.

(c) Bicycles shall be properly secured when not in the officer's immediate presence except in exigent circumstances.

(d) Bicycle racks are available on certain police vehicles should the officer need to transport the bicycle. Due to possible component damage, transportation of the bicycle in a trunk or on a police unit push-bumper is discouraged.

(e) Bicycle batteries shall be rotated on the assigned charger at the end of each tour of duty.

(f) Officers shall return the bicycle clean and ready for the next tour of duty at the end of their assignment.

500.6.3 REPAIR AND MAINTENANCE

Bicycles shall have scheduled maintenance conducted throughout the year as outlined in the Bicycle Maintenance Contract.

(a) Repair of flat tires shall be the responsibility of each individual Bicycle Officer.

(b) For all other repairs, Bicycle Officers should complete a repair work order and transport the bicycle to the designated Department bicycle repair location.

1. Bicycle Officers may be issued a temporary spare bicycle, if one is available, until the primary bicycle is repaired.

500.6.4 STORAGE LOCATIONS

Every bicycle storage location must have at least two tire pumps, a first aid kit, repair tool kits, tire tubes, equipment information, and use manuals.

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500.7 RECORDS MANAGEMENT AND REPORTING

Records will be kept on each bicycle and its associated Department issued equipment by Police Equipment and the Commander or designee of where bicycles are assigned.

(a) Each Command will utilize the Department Bicycle Sign-Out Form.

(b) All bicycles will be numbered with the first two initials of the bike make and last four of the serial number.

(c) Maintenance records shall be kept and filed according to bicycle number and shall consist of repair requests and all documented maintenance/repairs performed.

(d) An annual Department bicycle inventory and inspection shall be conducted by Police Equipment to determine the number of bikes in each chain-of-command. The inventory and inspection shall include all associated serial number(s), equipment, and personnel assignment(s).

500.8 ANNUAL INSPECTION AND INVENTORY

All personnel shall assist and cooperate with the Risk Management Unit when conducting staff inspections as well as the Police Equipment Unit when conducting an annual inventory. Discrepancies and or deficiencies noted during these inspections will be corrected in a timely manner by the appropriate responsible party.

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Austin Police Department
General Orders

Canine Unit

503.1 PURPOSE AND SCOPE

The purpose of this order is to establish the guidelines and procedures for using the APD Canine Unit.

503.2 UTILIZATION OF THE CANINE UNIT

(a) The Canine Unit may be requested for the following situations:

1. To locate suspects that have fled on foot from officers, or from the scene of a crime, for Class B and above offenses, and suspects related to window peeping (Tex. Penal Code § 42.01(a)11);
2. Residence and building searches w/forced entry or when information exists that a criminal suspect may still be inside (e.g. real-time audio/video, etc.);
3. Article searches when evidence may be located (e.g., gun, knife);
4. High risk traffic stops; and
5. To locate Missing, lost, or injured persons when exigent circumstances exist. If no exigent circumstances exist, AFD Search and Rescue should be utilized.

(b) The Canine Unit shall not be utilized:

1. When a suspect cannot be identified or linked to a crime (e.g., insufficient physical description, no witness).
2. For crowd control (e.g., demonstrations, regular crowd control).
3. During questioning or interrogation of a suspect.
4. To transport prisoners.
5. For routine Patrol calls or arrests.

503.3 ON-SCENE PROCEDURES

(a) Officers at the scene of an incident where a Canine Team may be needed should do the following:

1. Set an **immediate** search perimeter;
2. Notify a supervisor and request approval to utilize the Canine Unit;
3. Request Communications to contact the available or on-call Canine Team; and
4. Stay at the location where the suspect was last seen until the Canine Team arrives.

(b) All officers on the perimeter shall stay in or next to their vehicle with all emergency lights activated.

(c) No officer shall enter the perimeter or building at any time during a canine call unless directed to do so by a Canine Officer.

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1. If a suspect moves within the perimeter, officers shall remain on the perimeter and the ranking officer or Canine Officer on-scene will readjust the perimeter as needed.
2. This does not prohibit an officer from making an immediate arrest or preventing the escape of a suspect out of the perimeter.

(d) Officers shall not place themselves between a working canine and a suspect at any time.

(e) The Canine Officer has the final decision on when and how the canine is utilized on any call.

503.4 USE OF OTHER AGENCY CANINE UNITS

Due to strict APD Canine Unit orders, training, and national certification, no outside agency's Canine Unit shall be called or allowed to be utilized on an APD initiated call without authorization from the APD Canine Unit supervisor.

This does not restrict an outside agency from using its own Canine Unit on any call that the agency initiates which then enters APD jurisdiction (e.g., vehicle pursuits).

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Austin Police Department
General Orders

Air Operations and Air Support

504.1 PURPOSE AND SCOPE

The use of the air support can be invaluable in certain situations. This order specifies potential situations where use of air support may be requested and the responsibilities for making a request.

504.2 REQUEST FOR AIR SUPPORT ASSISTANCE

APD Air Operations shall be the primary responder for all aircraft assistance requests originating within the Department.

(a) If a supervisor or officer in charge of an incident determines that the use of air support would be beneficial, a request for APD Air Operations shall be made by contacting Communications.

(b) If APD Air Operations is unavailable or off-duty and an officer needs aircraft assistance to conduct law enforcement related activities, a request to another law enforcement agency or Starflight shall be made through an APD Air Operations supervisor or the Watch Lieutenant as follows:

1. When the situation involves imminent danger to officers or the public, the request for assistance must be approved by the Watch Lieutenant. The Watch Lieutenant will then immediately notify Air Operations supervisor.
2. For all other law enforcement related situations, a supervisor shall contact the on-duty or on-call Air Operations supervisor to determine the appropriate course of action.

(c) Upon arrival at an incident where the officer determines medical assistance is needed, the officer shall notify Communications of the victim's age, sex and injuries and request EMS. The decision to call Starflight for medical purposes is the responsibility of EMS ground units. Officers shall be responsible for setting up and maintaining a landing zone as outlined in this order.

504.2.1 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED

While it is recognized that the availability of air support will generally provide valuable assistance to ground personnel, the presence of air support will rarely replace the need for officers on the ground.

Law enforcement air support may be requested under any of the following conditions:

(a) When the aircraft is activated under existing mutual aid agreements.

(b) Whenever the safety of law enforcement personnel is in jeopardy and the presence of the aircraft may reduce such hazard.

(c) When the use of aircraft will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community.

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(d) When an aircraft is needed to locate a person who is missing and whose continued absence constitutes a serious health or safety hazard.

(e) Vehicle pursuits.

504.3 ROTARY AIRCRAFT LANDING ZONE GUIDELINES

In the event a rotary aircraft needs to land, officers shall establish and maintain a landing zone.

(a) **Establishing a Landing Zone**

1. Preferably 60 ft. by 60 ft.; and
2. Hard road surface, if possible, otherwise grass or dirt areas if a paved road is not available; and
3. No obstructions such as telephone wires, power lines, poles, structures or vehicles; and
4. No debris on the ground (remove any objects that may be blown around). Officers are also reminded to remove hats or caps which may be blown away during landing and take-off.

(b) **Marking the Landing Zone**

1. All emergency lights, spotlights, and headlights shall be turned off during landing and take-off.
2. Vehicle parking lights may be left on for landing recognition purposes.

(c) **Securing the Landing Zone**

1. At least two (2) officers should be used to secure the landing zone.
2. All personnel and vehicles shall be kept out of the landing zone prior to landing, while the aircraft is on the ground, and during its take off.
3. The pilot has responsibility for, and final authority over, everyone and everything within the immediate area of the landing zone.
4. Officers shall not approach the aircraft from the rear or sides. Approaches to the aircraft shall be made only to the front, and only after the pilot has signaled approval for the approach.
5. No smoking or open flames are allowed within 100 feet of the aircraft.
6. When the aircraft is ready to depart, officers shall ensure the established landing zone area is clear of vehicles and pedestrians.

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Chapter 6 - General Support Operations

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Austin Police Department
General Orders

Victim Services

601.1 PURPOSE AND SCOPE

The Victim Services Division (VSD) was created in 1981 to respond to crime victims' psychological and emotional needs. This is achieved through crisis intervention, counseling, advocacy, education, information, and referral for victims of crime and trauma, individuals with mental illness, witnesses, families of crime and trauma victims, first responders, investigative units, and on a larger scale, the neighborhoods and communities in which they live.

VSD also provides assistance to criminal justice personnel, the community and others in non-crime situations. The overall mission is to positively impact the quality of life for Austin residents by assisting victims/survivors, and families/neighborhoods who have experienced crime and/or trauma.

601.2 VICTIM SERVICE DIVISION PERSONNEL RESPONSE

(a) VSD personnel shall respond immediately to any request for assistance.

(b) VSD personnel shall automatically be dispatched on the following incidents:

1. Partial or Citywide disasters (e.g., aviation, criminal, natural or man-made).
2. Any death of an APD employee.
3. All adult and child sexual assaults regardless if it just occurred or is a delayed report.

(c) VSD personnel shall be notified of the following call types if needed:

1. Homicides, suicides, child deaths, and fatality collisions.
2. Robberies & aggravated robberies (e.g., banks, restaurants, motels).
3. Aggravated assaults (child, family or adult).
4. Family violence.
5. Child/elderly abuse or neglect.
6. Hostage/barricade incident and SWAT/hostage negotiator call outs.
7. Attempted suicides.
8. Any death of an APD employee's family member.
9. Unexpected death of any City employee.

(d) Officers on the scene of any incident may request VSD personnel when they determine assistance may be needed.

(e) VSD personnel may respond to an incident without being requested, but only when a scene is determined to be safe.

(f) VSD personnel shall be contacted by the officer if the victim requests their services.

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601.3 ON-SCENE PROCEDURES

(a) When VSD personnel are dispatched or respond to an incident and the scene is deemed safe, counselors shall:

1. Immediately notify the officer in charge that they are present.
2. Stand by for an officer to complete their contact and release the subject(s) to the counselor.

(b) VSD personnel may be left at the scene only if the officer and counselor agree the scene is safe.

1. If the officer deems the scene is unsafe and needs to return to duty, VSD personnel must:
   (a) Take any subjects to a safe location (e.g., a Department facility, shelter, friend's/family's residence); or
   (b) Leave the scene and advise the subjects of community resources and referrals.

(c) VSD personnel who respond to a scene are required to complete a supplement documenting their observations and actions.

601.4 SUPPORT SERVICES PROVIDED

(a) VSD personnel provide trauma-counseling, referrals and follow-up services to victims, witnesses, survivors, and community members. These services are provided through counselors working with the various Patrol, Support, and Investigative Units of the Department.

(b) VSD personnel provide death notification services in conjunction with the Travis County Medical Examiner's Office and the appropriate investigative unit.

(c) VSD personnel are responsible for notifying victims/survivors of violent crimes of their:

1. Potential eligibility for compensation under State law and the assistance available in filing a claim; and
2. State constitutional rights.

(d) VSD personnel are also responsible for coordinating the Department's policies and procedures concerning General Order 607 (U-Visa Nonimmigrant Status Certifications).

601.4.1 CRIME VICTIM LIAISON

The Austin Police Department VSD is the designated crime victim liaison for the Department. As the liaison, the VSD is responsible for ensuring that crime victims are afforded the rights granted to them under 56.02 of the Texas Code of Criminal Procedures. VSD personnel will be the point of contact for individuals requiring further assistance or information from the Austin Police Department regarding benefits from crime victim resources. This includes notifying victims/ survivors of violent crimes their potential eligibility for compensation under State law and the

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assistance available in filing a claim. VSD shall also be responsible for maintaining compliance with all legal mandates related to crime victims and/or witnesses.

601.5 INFORMATION FOR ALL VICTIMS OF CRIME AND TRAUMATIC EVENTS

All Department personnel, including officers, are responsible for providing victims of crimes against persons and traumatic events with victim assistance information. This information is contained in the English (pink) and Spanish (yellow) brochures entitled "Victim Assistance Information". These brochures are provided to the Department by Victim Services personnel upon request.

(a) Information for victims include:

1. APD incident report number, when applicable.
2. Appropriate Investigative Unit, when applicable.
3. Information on appropriate internal and external referrals.
4. Information on crime victims compensation.
5. Notice to adult victims of domestic violence.
6. Recognizing intimate partner abuse.
7. Information for parents on child exposure to family violence.
8. Safety planning.
9. Rights of crime victims.

601.6 COMMITMENT TO TRAINING

VSD personnel provide training on basic victimology, procedures, special services, types of victims, trauma impact and reactions. This training is provided to:

(a) APD Cadet classes.
(b) Department in-service training.
(c) Communications.
(d) Community groups.
(e) Other law enforcement agencies.
(f) State and federal agencies.

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Austin Police Department
General Orders

Chaplain Unit

602.1 PURPOSE AND SCOPE

The Austin Police Department Chaplain Unit is established for the purpose of providing spiritual and emotional support to all members of the Department, their families, and members of the public.

602.2 POLICY

The Chaplain Unit shall be an interdenominational, ecumenical ministry provided by volunteer clergy. With the exception of gratuities for wedding services, chaplains may not accept gratuities for services or follow-up contacts while functioning as a chaplain for the Austin Police Department.

The Department may, at its discretion, provide financial compensation for the supervision of the Chaplain Unit.

602.3 GOALS

(a) Members of the Chaplain Unit shall fulfill the program's purpose in the following manner:

1. By providing counseling, spiritual guidance and insight for Department personnel and their families.
2. By being alert to the spiritual and emotional needs of Department personnel and their families.
3. By familiarizing themselves with the role of law enforcement in the community.
4. By serving as a resource for departmental personnel when dealing with the public in such incidents as accidental deaths, suicides, suicidal subjects, serious crashes, drug and alcohol abuse, critical incidents, and other such situations that may arise.
5. By providing an additional link between the community, other chaplain programs, and the Department.

(b) The Chaplain Advisory Committee exists to continually oversee chaplains' qualifications and conduct while providing service to the Department.

602.4 DUTIES AND RESPONSIBILITIES

The duties of a chaplain may include, but are not limited to, the following:

(a) Assist in making notification to families of Department personnel who have been seriously injured or killed, where necessary.

(b) Visit sick or injured law enforcement personnel in the hospital or home.

(c) Attend and participate, when requested, in funerals and weddings of active or retired members of the Department and their families.

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(d) Assist sworn personnel in the diffusion of a conflict or incident when requested by on-scene staff.

(e) Maintain an active presence of the Chaplain Unit by riding out with officers on a regular basis. Chaplains are exempt from completing the *Police Observer Information Form*.

(f) Respond to critical incidents, natural and accidental deaths, suicides and attempted suicides, family disturbances and any other incident that in the judgment of the Watch Lieutenant or supervisor aids in accomplishing the Department's mission.

(g) Be on call and, if possible, on-duty for incidents as assigned by the Chaplain Unit supervisor.

(h) Counsel officers and other personnel with personal problems, when requested.

(i) Attend Department ceremonies, academy graduations and social events and offer invocations and benedictions, as requested.

(j) Be responsible for the organization and development of spiritual organizations and support groups within the Department.

(k) Respond to all major disasters such as earthquakes, bombings and similar critical incidents.

(l) Provide liaison with other religious leaders of the community.

(m) Assist public safety personnel and the community in any other function of the clergy profession, as requested.

(n) Participate in in-service training classes.

(o) Be willing to train to enhance effectiveness.

(p) Promptly facilitate requests for representatives of clergy of other denominations and religions.

(q) Make referrals in cases where specialized attention is needed or in cases that are beyond the chaplain's ability to assist.

602.5 CONFIDENTIALITY

Except as otherwise specified, matters of a personal nature that are discussed between chaplains and others shall remain private and confidential. Members of the clergy are not required to reveal penitential communications. However, clergy must report child, elder or dependent adult abuse discovered while acting in any of the following capacities:

(a) Marriage, family or child counselor.

(b) Religious practitioner who diagnoses, examines or treats children, elders or dependent adults.

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Austin Police Department
General Orders

Auxiliary and Support Services

605.1 PURPOSE AND SCOPE

The Department utilizes a variety of civilian personnel who assist in delivering day-to-day law enforcement services to the community. This order serves to identify the various programs and support services these civilian personnel provide.

605.2 SERVICES AND PROGRAMS AVAILABLE

605.2.1 COMMUNICATION FACILITATOR PROGRAM

The APD Communication Facilitator (CF) Program is a branch of the Community Liaison Office that utilizes a volunteer work force to strengthen community relations and build strong partnerships.

(a) The goal and mission of the CF Program is to remove the Spanish language barrier between APD Officers and the Spanish speaking public. This allows Officers the opportunity to complete required law enforcement duties and affords the Spanish speaking public equal access to the justice system.

(b) In addition, the CF Program strives to remove other communication obstacles like behavior or attitude resulting from cultural differences between the Spanish speaking public and APD Officers not familiar with Spanish cultural issues.

(c) The CF Program is available during specific days and hours during which officers may request the assistance of the Communication Facilitators via APD Communications.

605.2.2 CRIME PREVENTION SPECIALIST

The primary function of the crime prevention specialist is the development, implementation, and evaluation of various citizen awareness programs offered to the Austin community. These programs promote public awareness and citizen involvement through a wide range of activities.

605.2.3 CRIME SCENE AND PROPERTY CRIME RESPONSE UNIT

The Crime Scene and Property Crime Response Unit is responsible for handling those property crimes not requiring the immediate attention of an officer, taking reports from citizens, and processing crime scenes for evidence. Personnel are also responsible for providing expert testimony in criminal cases regarding their areas of support.

605.2.4 DOWNTOWN RANGERS

The primary role of the Downtown Ranger Program is to be "goodwill ambassadors" for the Public Improvement District within downtown Austin. They provide information about points of interest and provide assistance to visitors and business owners while being a visible street presence in the downtown area. Downtown Rangers maintain direct communication with APD officers and dispatchers using police radio channels.

605.2.5 LAW ENFORCEMENT EXPLORERS

A program that gives young men and women between the ages of 14 and 20 an opportunity to:

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(a) Interact and work with police officers;

(b) Learn more about available career opportunities; and

(c) Act as youth ambassadors to the community for the Austin Police Department.

Explorers also assist various APD Units with community outreach programs and community service projects. Explorers may be allowed to participate in the Patrol Observer Program which gives them an opportunity to observe Patrol work firsthand.

605.2.6 VOLUNTEERS IN POLICING

Volunteers in Policing (VIPs) is designed to find quality volunteers who will enhance the work of the Austin Police Department by building partnerships and strengthening relationships between APD and the community. Volunteers work in various areas of the Department and may be trained to provide support during a catastrophic event.

605.3 TRAINING REQUIRED

Each program position has minimum training requirements; these are specified in a respective Unit standard operating procedures manual.

For some positions, training may include the use of OC spray and proper reporting procedures required by the Department after its use.

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General Orders

U-Visa Nonimmigrant Status Certifications

607.1 PURPOSE AND SCOPE

U-Visa Nonimmigrant Certification ("Certification") extends temporary legal status to foreign nationals who are victims of a qualifying crime or criminal activity. APD will consider issuing U-Visa Nonimmigrant Status Certification on a case-by-case basis.

607.1.1 DEFINITIONS

Qualifying Crime or Criminal Activity - As listed in 8 U.S.C. § 1101(a)(15)(U), one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

607.2 STATEMENT OF CERTIFICATION INTENT

APD's intent is to consider issuance of Certification to those individuals who prove willing to assist in furtherance of the law enforcement purposes of detecting, investigating, and prosecuting crimes. APD's decision to provide an applicant with a Certification is entirely discretionary. A victim who receives a Certification has an ongoing responsibility to assist APD in the investigation or prosecution of crime(s) listed on their Form I-918, Supplement B.

607.3 ELIGIBILITY FOR U-VISA NONIMMIGRANT STATUS

To be eligible for Certification, a person must:

(a) Be a victim of a qualifying crime or criminal activity; and

(b) Cooperate with law enforcement and the criminal justice systems throughout the investigation and prosecution of the qualifying crime or criminal activity.

607.4 AUTHORITY TO ISSUE CERTIFICATIONS

A lieutenant over the Violent Crime Units is designated by the Chief of Police to issue Certifications on behalf of APD.

607.5 CERTIFICATION PROCEDURES

(a) The I-918 Supplement B, U-Visa Nonimmigrant Status Certification, and associated instructions is available in the UVISA folder on APD Sharepoint.

(b) Requests for Certification must be submitted in writing to APDUvisacertification@austintexas.gov.

(c) All requests for Certification will be routed to the APD UVISA Certification Review Team.

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(d) The UVISA Certification Review Team will make a recommendation for approval or denial of the certification as soon as possible, but no more than 90 days from the date of receipt of the request.

(e) The UVISA Certification Review Team will forward their recommendations to the designated lieutenant for their review.

(f) After reviewing the recommendations from the UVISA Certification Review Team, the lieutenant will make the decision to approve or deny the request. The decision will be final and not subject to appeal.

(g) All requests and their dispositions will be stored according to APD's record retention general order.

607.6 REFERRALS OF APPLICANT TO OTHER CERTIFYING AGENCIES

If APD determines it will not issue Certification in a particular case, it may refer the requester to:

(a) a Federal, State or Local Law Enforcement agency.

(b) a Prosecutor.

(c) a Federal or State Judge.

(d) the Department of Family and Protective Services.

(e) the EEOC.

(f) the Department of Labor.

607.7 NOTIFICATION OF REFUSAL TO ASSIST

If an individual unreasonably refuses to assist in the investigation or prosecution of the qualifying crime or criminal activity after certification has been granted and the I-918 Supplement B has been submitted to the U.S. Citizenship & Immigration Service (USCIS), the authorized Investigative Unit Sergeant shall notify the USCIS in writing of the refusal to assist.

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Austin Police Department
General Orders

Interpreter Services

609.1 PURPOSE AND SCOPE

Immediate language interpretation services are available 24 hours a day by phone. Qualified interpreters for those who are deaf or hard of hearing are available to respond to the scene upon request.

609.2 LANGUAGE INTERPRETER SERVICE

(a) The Language Interpreter Service should be used when interpretation is necessary to provide services to the public and to perform police duties.

(b) The Language Interpreter Service should not be used:

1. For interpretation for Spanish-speaking persons. Spanish-speaking employees are available on each shift and throughout the Department.
2. When other means are available, unless this would jeopardize the investigation.
3. For long interrogations, confessions, or statements.

(c) To obtain an interpreter, the employee should:

1. Request the APD Communications supervisor notify the interpreter service;
   (a) Communications will provide the employee with any applicable agency identification number/code needed when contacting the service.
2. Provide the interpreter service with the agency identification number/code if required, the requester's employee number, and the language required.
3. The employee should explain to the interpreter what is needed.

(d) All calls made from CTECC will be recorded. If a copy of the conversation and translation is needed for evidentiary purposes, a copy should be requested from APD Communications.

609.3 INTERPRETERS & OTHER COMMUNICATION FACILITATION SERVICES FOR THOSE WHO ARE DEAF OR HARD OF HEARING

Qualified interpreters and other communication facilitation services for those who are deaf or hard of hearing are available at all hours. Instructions for obtaining their services are available through APD Communications, the Booking Desk, Centralized Investigations and Municipal Court.

When choosing what type of interpretation, auxiliary aids, or other communication facilitation services to use or provide, employees should give primary consideration to the request made by the person who is deaf or hard of hearing.

609.3.1 INTERVIEWING A SUBJECT TO ESTABLISH PROBABLE CAUSE

If an officer needs to interview a subject who is deaf or hard of hearing to determine if there is probable cause to make an arrest, an interpreter or other service must be provided if written

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communication is ineffective. When an officer cannot wait until an interpreter or other service arrives, the following procedures apply:

(a) **Minor Offenses**

1. If possible, postpone the interview until an interpreter or other service is available. If an interpreter or other service is not available in a reasonable period of time, the officer must document the investigation as completely as possible for later follow-up by the appropriate investigative unit.

(b) **Serious Offenses**

1. If an interpreter or other service is not available in a reasonable period of time, a supervisor shall be contacted to decide if an investigator should be called in to wait for an interpreter or other service. If the supervisor decides that an investigator should not respond, the officer must document the investigation as completely as possible for later follow-up by the appropriate investigative unit.

609.3.2 COMMUNICATING WITH A SUSPECT BEFORE ARREST

If probable cause exists for the arrest of a person who is deaf or hard of hearing and the same standard would apply to a suspect who is not deaf or hard of hearing, then no interpreter or other service would be required before arrest unless the officer is unable to convey the nature of the criminal charges.

If the arrestee requests the opportunity to communicate through an interpreter or other service, the arrestee should be transported to the Central Booking facility. Either the arresting officer or the transporting officer can convey the information through the interpreter or other service upon arrival.

609.3.3 INTERROGATING AN ARRESTEE

If an officer cannot inform the arrestee of the Miranda warnings without the use of an interpreter or other service, then the officer must secure an interpreter or other service before any interrogation.

(a) Suspects who are deaf or hard of hearing must be provided an interpreter or other service before any interrogation whenever one is needed for effective communication. If exigent circumstances do not allow a delay in the interrogation of the arrestee and an interpreter or other service cannot respond within a reasonable period, the officer may go on with the interrogation only if:

1. The arrestee can understand the Miranda warnings as given; and
2. The arrestee specifically declines the opportunity to have an interpreter or other service present or available.

(b) If written communication becomes ineffective, the officer must stop the interrogation and wait until an interpreter or other service is present or available.

609.3.4 COMMUNICATING WITH A TRAFFIC VIOLATOR

If a person who is not deaf or hard of hearing would be issued a traffic citation without the need of being questioned, then a person who is deaf or hard of hearing in the same situation does not need to be provided an interpreter.

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If an officer has stopped a subject for a traffic violation and is unable to convey the nature of the infraction through written communication or the use of other means, the officer should use discretion about whether to call an interpreter or other service or to issue a warning rather than a citation.

609.3.5 INTERVIEWING A VICTIM OR CRITICAL WITNESS

If officers can communicate effectively in writing with a person who is deaf or hard of hearing, they may proceed with an interview using a notepad or electronic device (written notes should be retained). However, if an investigating officer is unable to communicate effectively with a victim or a critical witness, the officer must utilize an interpreter or other communication facilitation service. If the officer cannot wait until an interpreter or other service arrives, the following procedures apply:

(a) **Minor Offenses**

1. Have an interpreter or other service dispatched to the victim's or critical witness's location and request APD Communications re-contact the officer when the interpreter arrives; or
2. The officer may ask the victim or critical witness to come voluntarily to the station when an interpreter or other service is available. When the victim/witness arrives, the investigating officer may then return to the station to complete the investigation or arrange for follow-up by the appropriate investigative unit.

(b) **Serious Offenses**

1. When the victim or witness is deaf or hard of hearing and is critical to establishing probable cause for an arrest or for completing the investigation, the investigating officer must contact the appropriate supervisor before leaving the scene. The supervisor will decide if an investigator will be called in to wait for an interpreter or other service. If the supervisor decides that an investigator should not respond, the officer must document the investigation as completely as possible for later follow-up by the appropriate investigative unit.

609.3.6 SPECIAL COMMUNICATION FACILITATION CIRCUMSTANCES

In circumstances where an interpreter or another communication facilitation service is required, employees may not rely on the family members, friends, or other persons accompanying a person who is deaf or hard of hearing to provide interpretation or communication facilitation services except as specifically permitted by this order.

(a) If the person accompanying the person who is deaf or hard of hearing is an adult, then employees may rely on the accompanying adult to provide interpretation or communication facilitation services only when:

1. There is an emergency involving an imminent threat to the safety or welfare of an individual or the public and no department-provided interpreter is immediately available; or
2. The person who is deaf or hard of hearing specifically requests that the accompanying adult provide interpretation or communication facilitation services, the accompanying adult agrees to provide such assistance, and

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reliance on that adult for such assistance is appropriate under the circumstances (e.g., such assistance may not be appropriate if the person who is deaf or hard of hearing is a suspect in a serious criminal offense).

(b) If the person accompanying the person who is deaf or hard of hearing is a child, then employees may rely on the child to provide interpretation or communication facilitation services only in an emergency involving an imminent threat to the safety or welfare of an individual or the public and no department-provided interpreter is immediately available.

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Austin Police Department
General Orders

Crime Analysis

610.1 PURPOSE AND SCOPE

Crime Analysis can aid in disseminating appropriate information to authorize personnel both internally and externally. Crime Analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of criminals, providing crime pattern recognition, and providing analysis of data from field interviews and arrests. Crime analysis can be useful to the Department's long range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

610.2 DATA SOURCES

Crime analysis data is extracted from many sources including, but not limited to:

(a) Crime reports

(b) Field interviews

(c) Computer aided dispatch data

(d) Department of Public Safety - Crime Records Service

(e) Open Record / Public Information Sources

610.3 CRIME ANALYSIS FACTORS

The following minimum criteria should be used in collecting data for crime analysis:

(a) Frequency by type of crime

(b) Geographic factors

(c) Temporal factors

(d) Victim and target descriptors

(e) Suspect descriptors

(f) Suspect vehicle descriptors

(g) Modus operandi factors

(h) Physical evidence information

610.4 CRIME ANALYSIS DISSEMINATION

For a crime analysis system to function effectively, information should be disseminated to the appropriate units or persons on a timely basis. Information that is relevant to the operational and tactical plans of specific line units should be sent directly to that unit. Information relevant to the development of the Department's strategic plans should be provided to the appropriate staff units. When information pertains to tactical and strategic plans, it should be provided to all affected units.

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Austin Police Department
General Orders

Communication Operations

612.1 PURPOSE AND SCOPE

The basic function of the communications system is to satisfy the immediate information needs of the law enforcement agency in the course of its normal daily activities and during emergencies. The latter situation places the greatest demand upon the communications system and tests the capability of the system to fulfill its functions. Measures and standards of performance are necessary to assess the effectiveness with which any department, large or small, uses available information technology in fulfillment of its mission.

612.1.1 FCC COMPLIANCE

Austin Police Department radio operations shall be conducted in accordance with Federal Communications Commission (FCC) procedures and guidelines.

612.2 COMMUNICATION OPERATIONS

This department provides 24-hour telephone service to the public for information or assistance that may be needed in emergencies. The ability of citizens to telephone quickly and easily for emergency service is critical. This department provides access to the 9-1-1 system for a single emergency telephone number. This department has two-way radio capability providing continuous communication between CTECC and officers.

612.3 TELECOMMUNICATOR TRAINING

All personnel hired as telecommunicators shall be trained as necessary in the operation of the communications equipment and in Department operations. All telecommunicators are required to complete TCOLE Basic Telecommunicator Course and required NCIC/TCIC courses within one year of assignment.

612.3.1 TCOLE TELECOMMUNICATOR TRAINING

Any person hired as a telecommunicator shall complete at least 40 hours of training as determined by the TCOLE (Tex. Occ. Code § 1701.405 et seq.).

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Austin Police Department
General Orders

Central Records Procedures

614.1 PURPOSE AND SCOPE

The Central Records Manager shall maintain the Department Central Records Procedures Manual on a current basis to reflect the procedures being followed within the Central Records. Policies and procedures that apply to all employees of this department are contained in this chapter.

614.2 FILE ACCESS AND SECURITY

Austin Police Department employees shall not access, view or distribute, or allow anyone else to access, view or distribute any record, file or report, whether hard copy or electronic file format, except in accordance with department order, and with a legitimate law enforcement or business purpose or as otherwise permissible by law.

All reports including, but not limited to, initial, supplemental, follow-up, evidence and all reports related to a case shall be maintained in a secure manner accessible only to authorized APD personnel.

614.3 REPORTS TO THE DEPARTMENT OF PUBLIC SAFETY

The Central Records Manager will ensure that all offenses listed under Tex. Penal Code § 22.011 and Tex. Penal Code § 22.021 are reported on a monthly basis to the Texas Department of Public Safety as mandated (Tex. Gov't Code § 411.042 and 37 Tex. Admin. Code § 27.121). The Central Records Manager should promptly advise the Chief of Police if this mandated reporting will be delayed for any reason.

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Austin Police Department
General Orders

Public Safety Camera System

616.1 PURPOSE AND SCOPE

The Public Safety Camera system assists the Department in the identification of criminal activity as it is occurring, the prevention and deterrence of criminal activity, and the capture of video evidence to support prosecutions in cases of criminal activity. This is accomplished through the use of overt cameras in public areas.

The primary use of the cameras will be to enhance public safety in areas where the safety and security of individuals are at increased risk. The cameras are installed at the direction of the Department and operated in such a manner that will protect individual privacy rights.

The decision to place cameras in specific locations will be made based on current crime data, large crowd events, or community requests. The Department acknowledges that real-time camera monitoring of the public safety cameras is ideal but that this may not always be feasible due to resource constraints.

616.2 PUBLIC SAFETY CAMERA SYSTEM OPERATION

(a) Information obtained through the public safety cameras shall only be used for lawful law enforcement purposes. Information shall not be sought, gathered, or retained if there is reason to believe such information was gathered or retained in violation of local, state or federal law, or Department General Orders.

(b) The Department will utilize reasonable means to ensure compliance with the law when a legal expectation of privacy exists.

(c) The following factors shall not be considered reasons to create suspicion except when used as part of a specific suspect description and information shall not be sought, gathered, or retained solely on the basis of:

1. Race, ethnicity, citizenship, age, disability, gender, or sexual orientation; or
2. Participation in a particular organization or event; or
3. Religious, political, or social views or activities.

616.2.1 PROGRAM MONITORING OFFICERS

Only personnel specifically trained in the operation of the public safety camera system will be allowed to use, monitor and manage the camera system. Trained officers will conduct safety camera monitoring only from the Public Safety Camera Command and Control Center, or other designated monitoring stations as recommended by the Public Safety Camera Advisory Board.

616.2.2 TRAINING

All designated Public Safety Camera operating officers and supervisors shall receive the following training prior to being authorized to use any camera equipment:

(a) How to properly operate the public safety camera equipment; and

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(b) Department policies and procedures; and

(c) Privacy concerns covered by the First Amendment and Fourth Amendment.

616.2.3 TEMPORARY MOBILE CAMERA GUIDELINES

(a) In the event the temporary use of a public safety camera is warranted, one or more mobile cameras may be utilized.

1. Approval for the mobile camera(s) must first be obtained from the affected assistant chief.
2. Mobile camera(s) shall contain the same or similar signage to the stationary public safety camera locations.
3. Use of these mobile camera(s) will be temporary, logged, and reported during regular Public Safety Camera Advisory Board meetings.

616.3 PUBLIC SAFETY CAMERA ADVISORY BOARD

The Public Safety Camera Advisory Board is comprised of the following personnel:

(a) Intelligence Division Commander.

(b) Austin Assistant City Attorney.

(c) All Patrol Commanders, or respective designee(s).

(d) Crime Data Advisor (APD Crime Analysis).

The Intelligence Division Commander will assume the role of Technical Advisor and Chairperson over the Board and conduct the business of the Public Safety Camera Advisory Board as outlined in this order.

616.3.1 BOARD DUTIES AND RESPONSIBILITIES

The Public Safety Camera Advisory Board is responsible for making recommendations regarding APD's Public Safety Camera system to the Chief of Police. The Public Safety Camera Advisory Board shall:

(a) Review all requests for camera placement, relocation and removal.

(b) Analyze the effectiveness of camera placement/relocation.

(c) Forward a list of approved public safety camera locations to the Chief or designee for final approval.

(d) Ensure annual audits of the Public Safety Camera system are completed as outlined in this order.

(e) Review current program training and make recommendations to the Chief regarding changes or improvements to training for the Public Safety Camera system.

(f) Prepare an annual report to the Chief of Police related to the overall system performance measures.

(g) Verify that rules of retention are being followed.

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616.3.2 INTELLIGENCE DIVISION COMMANDER
The Intelligence Division Commander or their designee, will be the single point of contact for questions or concerns related to the Public Safety Camera Program. The Intelligence Division Commander or their designee shall ensure:

(a) Each camera has a historical log that documents the date and location of each camera's placement and relocation if applicable.

(b) The placement and relocation of each camera is monitored to maximize utilization of the system.

(c) Meetings of the Public Safety Camera Advisory Board will be held annually or more frequently as required by operational needs.

(d) A maintenance program is in place that is designed to increase effectiveness and decrease down time.

616.3.3 COMMANDER RESPONSIBILITIES

(a) Each Patrol Commander shall be responsible for providing appropriate time during Commander Forums for citizen input on any proposal to place a camera within the affected Commanders geographic area.

(b) Members of the Public Safety Camera Advisory Board should be invited to any Commanders Forum where citizen input is requested regarding camera placement. All input will be considered, along with those other criteria defined in this order when making recommendations to the Chief of Police for final camera placement.

(c) The appropriate Patrol Commander shall be responsible for notification to the community if removal of a camera is deemed appropriate after recommendation by the Public Safety Camera Advisory Board to the Chief of Police.

616.4 PUBLIC SAFETY CAMERA PLACEMENT

Public safety cameras will be placed in locations pursuant to recommendation by the Public Safety Camera Advisory Board and contingent on final approval by the Chief or designee. Cameras will be overt and have markings that clearly indicate the camera as being part of the Public Safety Camera system.

Once a location has been recommended by the Board and approved by the Chief, the location shall be made known to the public at least 72 hours prior to installation.

616.5 RETENTION

Retention of images recorded by the safety cameras shall be done in accordance with City, State and Department General Orders. Such retention shall be no longer than 10 days.

616.6 REVIEW AND RELEASE OF CAMERA IMAGES AND INFORMATION

(a) All images and information obtained through the use of the public safety camera system shall be handled in accordance with:

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1. Accepted Department procedures and legal rules governing the handling of evidence; and
2. The Texas Public Information Act; and
3. Applicable laws, statutes, record retention policies, and court orders.

(b) All images and information that would interfere with the detection, investigation, or prosecution of a crime shall be released to the public only to the extent required by law.

(c) All requests for non-evidentiary video must be submitted on form PD0149 and approved by a Commander or above, unless authority to approve such request is granted by RTCC/HALO SOPs.

616.7 PERFORMANCE MEASURES

(a) Performance measures for the cameras are based on information and data indicating disruption of known patterns of crime, identification of criminals and criminal activity and confirmed cases of the video evidence obtained from the public safety cameras being used to assist in the prosecution of crimes.

(b) The Intelligence Commander or designee will provide quarterly reports to the Public Safety Camera Advisory Board for camera locations which will include:

1. Identifying what each camera placement has accomplished as demonstrated through the stated performance measures.
2. Identify what actions will be taken to eliminate a future need for the camera at the current location.
3. When the camera may be removed from the location.

(c) The Intelligence Division Commander will present updates to Public Safety Commission as needed.

616.8 AUDIT REQUIREMENTS

The Public Safety Camera system will be audited separately by the Austin Police Department Risk Management Unit and the Office of City Auditor for policy compliance. The results of the audits will be presented to the Chief of Police and may be public information as allowed by law. At minimum:

(a) The Risk Management Unit will perform quarterly random audits of the system to insure compliance to policies and procedures.

(b) The Office of City Auditor will perform random audits based on a schedule known only to the City Auditor.

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Austin Police Department
General Orders

Critical Incident Support Systems and Procedures

617.1 PURPOSE AND SCOPE

This order describes support systems for employees involved in on-duty or off-duty critical incidents and assistance provided to the employee's family.

617.1.1 DEFINITION

Critical Incident - For the purpose of this order, a "critical incident" is defined as an event in which an employee:

(a) Is injured and hospitalized while performing a law enforcement function; or

(b) Causes the death or serious injury of another person; or

(c) Is traumatized due to feeling responsible for a tragedy while at the same time being helpless to prevent the tragedy; or

(d) Any police incident or interaction which results in an employee experiencing emotional or psychological distress, ranging from mild to severe.

617.2 CRITICAL INCIDENT SUPPORT SYSTEMS

The following critical incident support systems are available for employees involved in a critical incident:

(a) Critical incident support partner.

(b) Peer Support.

617.2.1 CRITICAL INCIDENT SUPPORT PARTNER

Employees involved in a critical incident will be able to have another employee function as a critical incident support partner. The critical incident support partner's work schedule may be adjusted to accomplish this role.

(a) The critical incident support partner will:

1. Remain available to the involved employee until the employee is escorted home.
2. Attempt to provide emotional support and needed assistance to the involved employee.

(b) The critical incident support partner will not be involved in the investigation, nor act as a spokesperson for the employee involved.

617.2.2 PEER SUPPORT

Peer Support is comprised of sworn and civilian employees who have been trained to support and assist employees during times of need, including, but not limited to, critical incidents.

(a) The Duty Commander, Watch Lieutenant, or an employee's supervisor may contact the Peer Support Coordinator anytime it is deemed necessary to support an employee or the employee's family.

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(b) Peer Support may act as a critical incident support partner for employees involved in a critical incident or serve as a secondary support system for an employee's designated critical incident support partner.

617.3 CRITICAL INCIDENT PROCEDURES

(a) The Peer Support Program Coordinator will be notified by the Watch Lieutenant anytime there is a critical incident involving an APD employee.

1. If requested by the on-scene supervisor or an involved employee, the Peer Support Coordinator may, as needed, respond to the scene or direct trained Peer Support employees to respond and assist.

(b) The on-scene supervisor will ensure the employee's Department Support Contact is notified.

1. If the on-scene supervisor determines the employee's designated Department Support Contact is unavailable, then:

(a) An on-scene supervisor may request a trained peer support employee as the Department Support Contact; or

(b) The employee's on-duty lieutenant/manager or on-scene supervisor may designate another employee as the Department Support Contact.

(c) The employee's supervisor will email Court Liaisons at court.liaisons@austintexas.gov for the purpose of requesting a continuance if:

1. The employee has scheduled court appearances within ten (10) days of the incident; or

2. The employee is incapacitated or injured to the point they are unable to attend court.

(d) In the event sworn employees are incapacitated or injured to the point they are unable to notify their family of their injury, their Department Support Contact will be utilized to assist Victim Services and appropriate members from the chain-of-command with any necessary emergency/next-of-kin contact notifications.

(e) Supervisors may contact APD-HR or the Watch Lieutenant to access employees emergency contact information.

1. An emergency contact report is run every 24 hours and placed in a restricted folder located in the "G" drive called "Emergency Contact". Watch Lieutenants and APD HR personnel have access to this report.

2. Employees with access to the emergency contact report will safe guard the information. This report WILL NOT be copied, e-mailed, printed or saved to another location without the approval of an APD HR Manager.

617.4 HOSPITALIZED EMPLOYEES

When an employee is hospitalized for an on-duty injury, a supervisor may assign another employee to transport the injured employee's family members to the hospital.

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617.4.1 HOSPITAL GUARD
The lieutenant of a hospitalized officer or the Duty Commander may assign an officer as a hospital guard if the employee requests one or there is reason to believe that reprisals might be planned against the injured employee.

(a) The work schedule of the officer performing guard duty may be adjusted to accomplish this service.

(b) Shifts for officers serving as hospital guards will not exceed four (4) hours.

617.5 DEBRIEFING
This section covers the required debriefings of employees involved in a critical incident. The debriefings are conducted by the Department Psychologist and City Legal.

617.5.1 DEBRIEFING WITH THE DEPARTMENT PSYCHOLOGIST
The involved employee's commander/manager will ensure the Department psychologist is notified within 24 hours after a critical incident.

(a) The Department psychologist will conduct a debriefing session within 72 hours of the incident. The employee's immediate family may be included in the debriefing session.

(b) The purposes of the debriefing are:

1. To inform employees and their immediate families of the normal symptoms and reactions associated with critical incidents and allow everyone an opportunity to express their feelings; and

2. To provide support and guidance to employees and their immediate families in relation to dealing with the psychological after-effects of the incident.

(c) The debriefing is not related to any Department investigation and nothing discussed in the debriefing will be reported to the investigators. By state law (Article 5561h, Vernon's Civil Statutes) and Department General Orders, the contents of the debriefing session will remain confidential.

617.5.2 LEGAL DEBRIEFING
Should an employee be sued for civil liability resulting from a critical incident, a City attorney or other qualified attorney will brief the employee. The briefing will include an overview of the procedures in liability suits and a summary of the outcome of similar suits in Austin.

617.6 WORK ASSIGNMENTS WHILE ON ADMINISTRATIVE DUTY
When an employee is placed on Administrative Duty status pending an investigation of a critical incident, the employee's commander/manager will work with the appropriate assistant chief to assign the employee to duties which serve the Department's needs and best use the employee's skills and experience.

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Austin Police Department
General Orders

Property and Evidence Collection Procedures

618.1 PURPOSE AND SCOPE

It is the duty and obligation of employees of the Department to properly seize, control, care for, store, process, and dispose of property and evidence that may come into their possession. Employees will adhere to the property handling procedures described in this document. For the purposes of this document, all items that come into police care and control will be considered property or evidence and will be handled equally.

618.2 DEFINITIONS

(a) **Administrative Value (AV)**: The Administrative Value retention period is generally associated with routine or administrative business documents. The retention period is tied to the usefulness of the records for the conduct of current or future administrative business.

618.3 GENERAL PROVISIONS

(a) Employees will not convert to their own use, manufacture, conceal, destroy, remove, tamper with, or withhold any property or evidence in connection with an investigation or other departmental action.

(b) Employees shall not purchase, convert to their own use, or have any claim to any found, impounded, abandoned, or recovered property, or any property held or released as evidence.

(c) Employees, or persons acting on their behalf, shall not bid in any auction of property seized, confiscated, or found by the Department.

(d) Email messages, text messages, images, and attachments stored on a personally owned electronic device shall be forwarded to a City account unless there is no administrative value in retaining the information. Additional guidelines are listed in Administrative Bulletin 08.06 which can be found on the COA Human Resources Policies and Procedures intranet page.

(e) When handling valuable items such as cash, coins, jewelry, or electrical devices (smart phones) employees will document proper handling, control, processing and disposal of such items. Methods of documentation include; but, are not limited to:

1. Detailing actions of handling and disposal in the incident report;
2. Utilizing video/audio recording equipment at all times if those resources are available;
3. In cases involving currency during a field investigation, have a second officer witness and verify:
   (a) The amount seized
   (b) The amount returned if not submitted as evidence.

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COA 0480

618.4 PHYSICAL EVIDENCE COLLECTION

Employees will assess a crime scene before seizing any item of physical evidence. Only items of physical evidence that relate to allegations of criminal conduct or the identity of a suspect will be seized. Employees will ensure that items identified as evidence are not tampered with in any way prior to being photographed and collected.

(a) Guidelines for crime scene and latent print processing are outlined in General Order 401 (Preliminary Field Investigations).

(b) Before seizing physical evidence, it should be photographed or videotaped in its original location and condition, with a scale marker when practical and necessary to the investigation.

1. Crime Scene personnel should be used to photograph or videotape all physical evidence found at major crime scenes.

2. Employees who are qualified in the use of Department issued cameras should photograph or videotape physical evidence at lesser crime scenes

(c) Seized physical items, such as, cell phones and computers, containing original digital evidence requiring forensic analysis will be submitted to the Digital Forensics Unit along with the appropriate request.

(d) Seized physical items containing original digital evidence not requiring forensic analysis will be processed in the following manner:

1. The device will be submitted to evidence according to section 618.6 of this order.

2. Digital media from the device will be processed by the appropriate investigative unit according to section 618.5 of this order.

618.4.1 STOLEN PROPERTY

(a) Employees will only seize items considered as stolen property when reasonable grounds exist to believe it is stolen or when the items are readily identifiable and traceable.

(b) In theft offenses, if the owner of the property is known and the ownership of the property is uncontested, employees will take a digital image of the property and make a reasonable effort to return it to the owner.

1. Property recovered in shoplifting offenses will generally not be seized.

2. If a digital camera is not available at the scene, personnel may bring the property to the station to be photographed and then return the property to the rightful owner.

618.4.2 FOUND PROPERTY

(a) Employees will only seize items of abandoned or found property which:

1. Are readily identifiable and traceable; or

2. Are of value, such as money and jewelry; or

3. Appear to have been involved in a criminal offense; or

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4. Constitute a hazard to the public safety; or
5. May be offensive to public morals or sensitivities.

(b) Employees will make a reasonable effort to return the property to the owner immediately when the owner of the property is known.

(c) Employees will treat the property as though it was stolen if the facts and circumstances suggest that is the case.

618.4.3 CONTRABAND

(a) Except during undercover operations, employees will seize all items in their presence that they have probable cause to believe is contraband, including narcotics, illegal weapons, and gambling equipment.

(b) Suspected controlled substances will be treated as known controlled substances. Employees will not taste or smell a suspected controlled substance but will instead field test it and submit it to the evidence room.

618.4.4 HAZARDOUS MATERIALS

(a) Unless assigned to the Bomb Squad or the Clandestine Lab Team, employees will not move or disturb any suspected:

1. Explosive device.
2. Hazardous chemicals.
3. Flammable substances.
4. Radioactive materials.

(b) Employees will immediately notify a supervisor and Communications, and adhere to procedures as outlined in General Order 413 (Clandestine Lab) and General Order 414 (Bomb Threats, Explosive Devices and Bombing/Explosion Incidents).

618.4.5 FORGERY DOCUMENTS

Forgery documents will be placed in a plastic bag with an evidence tag, attached to the forgery incident report, and submitted to the evidence room. Employees will not process forgery documents for latent prints; forgery documents are only processed by the forensic lab when a request is made by the appropriate investigator.

618.5 DIGITAL EVIDENCE COLLECTION AND STORAGE

The purpose of this section is to give employees guidelines for collection and storage of digital evidence. The Department utilizes various vendors for digital storage; however, due to limited space, some digital evidence will be stored in a Digital Case Folder. The digital case folder is a subfolder within the unit's respective G drive folder that contains digital evidence that is not already stored in other approved locations. Each investigative unit shall create and maintain the folder according to records retention. Cases should be organized by the case number year and clearly labeled for easy retrieval.

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(a) Photos

1. Photos taken with the Axon Body Camera App are uploaded to Evidence.com.
2. Photos taken with City owned digital cameras are uploaded to Digital Crime Scene Management System (DCSMS).
3. Photos taken with personal digital cameras are stored in the digital case folder.
4. Digital photos provided by outside sources, such as, citizens or other law enforcement agencies, are stored in the digital case folder.
5. Physical photos that are provided by outside sources will be scanned and stored in the digital case folder. Originals are submitted to evidence.

(b) Videos

1. Videos captured on the Body Worn Camera (BWC) are uploaded to Evidence.com.
2. Videos captured on an in-car video system are uploaded to the Department's relevant official system of record.
3. Videos, such as, surveillance videos, provided by outside sources are stored in the digital case folder. The original device the video was provided on is submitted to evidence.

(c) Documents

1. Digital documents, excluding photos and videos, are uploaded to Versadex.
2. Emails that are relevant to a case are stored in the digital case folder.

(d) Any other digital evidence not mentioned here that is not stored elsewhere shall be stored in the digital case folder.

618.6 EVIDENCE PROCESSING AND SUBMISSION

Employees will process and submit all property taken into their custody as expeditiously as possible while following established guidelines.

(a) Employees seizing property will be responsible for properly marking it to make it readily identifiable in court.

1. When evidence is marked, the mark shall be distinctive, but as small as practical; property will not be marked in a way that impairs its evidentiary value or reduces its monetary value.
2. Evidence will not be marked for later identification when:
   (a) It bears a serial number; or
   (b) It can be identified through distinctive markings and recorded information.

(b) Evidence that cannot be marked or identified by distinctive marking shall be packaged and sealed with a completed chain of custody label.

(c) Before submitting property, personnel will complete the following:

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1. Enter each item into Versadex; and
2. Print a bar code for each item to be submitted; and
3. Complete any necessary chain of custody label(s); and
4. Package the item in a way that protects it from damage and ensures the item's integrity as evidence; and
5. Attach the chain of custody label(s) to the item in an area that will reduce potential damage caused by the label. If the item can be placed in a bag, the chain of custody label should be placed on the outside of the bag.

(d) Employees receiving evidence or property from another employee or agency will sign and notate the date and time on the chain of custody form.

618.6.1 EVIDENCE SUBMISSION GUIDELINES

Employees will submit processed physical evidence or property to an assigned investigator, the Evidence Section, or a temporary drop box/locker (e.g., North Substation, South Substation) before completing their tour of duty, however:

(a) The following types of evidence or property will **only** be turned in at the East Substation Evidence Section:
1. Combustibles in outside lockers.
2. Hazardous materials (e.g., gasoline, aerosols, volatile chemicals) in outside lockers.
3. Rape kits in inside lockers, refrigerated if necessary.
4. Blood tubes in inside lockers, refrigerated if necessary.
5. Perishables in inside lockers, refrigerated if necessary.

(b) Firearms will not be dropped off at the Main.

618.6.2 SUBMITTING NARCOTICS AND NARCOTIC PARAPHERNALIA

(a) Narcotics and narcotic paraphernalia may be turned in as follows:
1. Identified narcotics and narcotic paraphernalia may be turned in at the Evidence Section located at the East Substation or any temporary evidence drop box/ locker location when:
(a) Charges have been direct filed (affidavit turned in at the time of the arrest); or
(b) A Field Release citation has been issued; or
(c) Charges will not be filed.
2. In cases involving a custody arrest and narcotic charges are pending:
(a) narcotics that cannot be identified will only be turned in to the Evidence Section located at the East Substation.

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3. The temporary evidence drop box at Arrest Review is designated only for narcotics and narcotic paraphernalia that can be identified or unidentified items where no charges are filed.

(b) Officers with supervisor approval may authorize disposal of evidence in certain cases. Officers will document the approving supervisor's name and employee number in the offense report. Officers submitting narcotics evidence for disposal will follow the below procedure:

1. This section only applies to the below cases where evidence is being submitted for destruction:
   (a) Possession of Drug Paraphernalia, after being photographed;
   (b) Found Controlled Substances
   (c) No charges filed cases having no identifiable suspect(s) (Titled "Found Controlled Substance")
2. When submitting evidence, the officer should notate the item status of "D" for "Disposal" on the individual Versadex Property Description Form to reflect which item(s) is being submitted for disposal and check the Evidence indicator box.
3. Under no circumstance will sworn personnel authorize the destruction of marijuana, drug paraphernalia, or other related property seized from a person potentially engaging or assisting in the lawful use of medical marijuana without a thorough investigation, direction from the County/District Attorney Offices, or a court order.
4. A supervisor may authorize the return of marijuana, drug paraphernalia, and other related property in cases where the items are being legally possessed, but were submitted into the Evidence Section for safekeeping, or as property not accepted by the jail.

(c) All narcotics and/or paraphernalia will be submitted in accordance with procedures established by the Evidence Section. This includes prescription medication.

618.6.3 SUBMITTING BIOHAZARD MATERIAL

Evidence with blood or body fluids should be packaged in accordance with methods outlined in evidence handling procedures available at evidence drop-off locations. Items with blood or body fluid must be packaged to prevent any cross contamination of other evidence/property and must be clearly marked as "Biohazard".

618.6.4 SUBMITTING CURRENCY

Foreign and domestic currency must be counted and verified by a second employee, sworn or non-sworn, before being submitted.

(a) After counting and verifying the amount of currency, both employees will place their initials, employee number, and the date on the seal.

(b) The submitting officer and the person who verified the currency amount will document their verification in a supplement to the incident report.

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618.6.5 SUBMITTING FIREARMS

Employees shall use a clearing barrel or clearing tube when available to unload weapons prior to submission. If a weapon cannot be unloaded, employees shall:

(a) Make every effort to make the firearm safe or inoperable (ex. Use of tie strap to prevent firearm from cycling).

(b) Place the firearm into an individual evidence submission locker. Do not deposit the firearm into a bulk receptacle, such as, a mailbox style drop box.

(c) Place a magnetic Loaded Firearm warning label or some type of hand written warning notice inside the locker which is easily noticeable by evidence staff.

(d) Notify the On-Call Evidence Specialist via Communications of the facility location and locker number in which the loaded firearm was submitted.

618.6.6 SUBMITTING SEIZED DIGITAL EVIDENCE

Employees shall submit all seized digital evidence to the Digital Forensics Unit for analysis.

(a) Employees submitting seized digital evidence to the Digital Forensics Unit shall follow the Department's general orders related to seized evidence processing and submission.

(b) Employees shall submit an ATLAS Forensics Analysis Request to the Digital Forensics Unit no later than 30 days after submitting the seized digital evidence.

(c) Employees shall not attempt to access seized digital evidence, unless exigent circumstances exist or the employee accesses the evidence at the direction of a Digital Forensics Unit detective.

618.7 INCORRECTLY PROCESSED EVIDENCE AND PROPERTY

Seized property and evidence not packaged properly will be collected but will not be processed by the Evidence Section. In the event this occurs, the following will take place:

(a) Evidence Section personnel will contact the submitting officer's supervisor and give direction on how to correct the error. All corrections will take place at the Evidence Section during the Evidence Section's normal business hours or as directed by personnel from the Evidence Section.

(b) The submitting officer's supervisor will ensure the necessary corrections are made within 5 days of being notified by personnel from the Evidence Section.

618.8 RELEASE OF EVIDENCE AND PROPERTY

(a) Temporary Releases

1. Employees will not remove property from the Evidence Section except to comply with a subpoena or for an official law enforcement function (e.g., laboratory or forensic testing).

2. Except for routine forensic testing, only the investigator assigned the case may temporarily check out the property without a subpoena or prior written approval from the manager of Forensic Division.

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(b) Permanent Releases

1. Property may only be released to a law enforcement agency, the courts, the owner, or the owner's agent.
2. Only the investigator assigned to a case, the investigator's supervisor, or the Evidence Section manager may authorize the permanent release of property.
3. It will be the responsibility of the investigator assigned to the case to notify the owner, as expeditiously as possible, when property is ready for release.

618.9 SUBMITTING FIREWORKS

(a) When an officer is provided fireworks by a citizen for destruction, the officer may dispose of the fireworks at an Austin Fire Department facility if fireworks are being accepted by the Fire Department.

(b) When an officer seizes small quantities of fireworks as part of a criminal investigation or as contraband, or when the Austin Fire Department refuses acceptance, the officer will submit the fireworks into evidence at the following locations:

1. 4708 E. MLK Blvd. (Evidence Warehouse) between 6am - 4pm Monday - Friday (closed on City Holidays),
2. Any unmanned evidence submission point.

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Chapter 8 - Equipment Policies

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GO
800

Austin Police Department
General Orders

Property and Equipment Accountability

800.1 PURPOSE AND SCOPE

Department employees are expected to properly care for City property and equipment assigned or entrusted to them. Employees may also suffer occasional loss or damage to personal or City property while performing assigned duties. This order outlines the procedures for the handling, accountability and replacement of City and personal property used for official duties.

800.2 GENERAL POLICY

For purposes of this order, Department property is synonymous with City property.

(a) Willful damage to City property by an employee is prohibited.

(b) Negligent or incorrect use of City property is prohibited.

(c) Employees are responsible for the ordinary care and cleaning of City equipment in their custody and control, and will maintain it in the best possible condition.

(d) Each employee will, by practical means, secure all equipment from unauthorized access or use.

(e) Lockers, desks, computers, and other such items that have been assigned for the use of an individual employee remain the property of the City of Austin and are subject to inspection or examination by a supervisor at any time. Employees should not store personal information or belongings at these locations with an expectation of privacy.

800.3 CITY PROPERTY AND EQUIPMENT GUIDELINES

This section covers the guidelines for the handling of property and equipment checked out from a Property Control Office (PCO) or issued by the Department.

800.3.1 CHECKING OUT EQUIPMENT AND SUPPLIES FROM A PROPERTY CONTROL OFFICE (PCO)

Employees must acknowledge in writing receipt of all equipment and supplies received from a PCO.

(a) Expendable supplies are items which do not have to be returned to PCO (e.g., flares, pager batteries).

(b) Non-expendable equipment is any item that is reusable on a continual basis and must be returned to PCO at the end of each shift (e.g., radar, car keys, digital cameras).

1. Employees must acknowledge in writing the return of all non-expendable equipment and supplies to a PCO.

2. Any non-expendable item not returned at the end of the duty shift or on the expected return date will be flagged by PCO.

(a) PCO will immediately notify the employee's commander/manager of the situation by email, phone, or in writing.

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(b) Commanders/managers are responsible for ensuring that the property is returned by the employee.

800.3.2 ISSUANCE OF CITY PROPERTY AND EQUIPMENT

Employees must acknowledge receipt of all property, equipment, and clothing issued from the Equipment and Supply Section by signing a *Department Receipt Form*.

(a) The Equipment and Supply Section will assemble the initial issuance of equipment for cadets. Distribution of equipment to the cadets will be conducted by the Equipment and Supply Section.

(b) New non-sworn employees will process through the Equipment and Supply Section within five (5) workdays after beginning work to establish an equipment issue record. Non-sworn employees required to wear uniforms will be issued the appropriate items by the Equipment and Supply Section or will be furnished a clothing requisition form in order to draw clothing from the City Clothing Store.

(c) All employees who are transferred into or out of a position which requires the issuance of specialized equipment are required to process through the Police Equipment and Supply Section within five (5) work days after the effective date on the personnel directive.

(d) Employees will be furnished a clothing requisition form for all items issued from the City Clothing Store.

1. The employee will sign for all items and ensure that the sizes are correct at the time of issue by the Clothing Store.
2. An electronic copy of the form will be sent by the Clothing Store to the Equipment and Supply Section so that it can be filed in the employee's permanent equipment issue file.
3. Once issued, the care and maintenance of clothing is the employee's responsibility.
4. Subsequent alterations needed due to weight loss or gain will be the employee's responsibility.

800.3.3 DEPARTMENT ISSUED PERSONAL COMMUNICATION DEVICES

Depending on an employee's assignment and needs of the position, the Department may, at its discretion, issue a Personal Communication Device (PCD). Department issued PCDs should only be used by employees for Department business.

(a) For purposes of this order, the term Personal Communication Device (PCD) is intended to include all mobile phones, Personal Digital Assistants (PDA) and other such wireless two-way communication and/or portable Internet access devices that are owned by the Department.

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(b) Department owned PCDs shall remain the sole property of the Department and are subject to inspection and monitoring (including all related records and content) at any time without further notice.

(c) The use of any Department owned PCD shall occur only with the understanding that any and all messages transmitted or received are subject to disclosure to, and review by, the Department without further notice.

800.3.4 BODY ARMOR

The Department will issue body armor to authorized employees. Employees will be notified by Equipment and Supply Section 60 days prior to the date of expiration to be measured for new issued body armor. All body armor will be replaced prior to the expiration date of the manufacturer warranty.

(a) Any issued body armor believed to be defective will be turned in immediately to Equipment and Supply Section:

1. Employees turning in issued body armor as defective will be temporarily issued an unexpired body armor.
2. Equipment and Supply Section will make arrangements with the vendor to have the reported defective body armor examined.
3. If the determination is made that the body armor is defective, Equipment and Supply Section will notify the employee that the issued body armor will be replaced.
4. Equipment and Supply Section will make arrangements to have the employee measured for new body armor.
5. The employee will turn in the temporarily issued body armor at the time the new body armor is issued.
6. If the determination is made that the body armor is not defective, Equipment and Supply Section will notify the employee to return the temporarily issued body armor and pick up the originally issued body armor.

800.3.5 PURCHASE OF ISSUED CITY PROPERTY AND EQUIPMENT

(a) Officers being promoted may purchase the prior rank badge (cap and/or breast badge) at the prevailing replacement cost. Officers will turn in or purchase the badge set at the time they are issued the new rank badge set.

(b) Officers resigning in good standing will be permitted to purchase their badge set at the prevailing replacement cost if they have:

1. Five (5) years minimum service with the Department; or
2. Commissioned a minimum of two (2) years and are hired by another law enforcement agency.

(c) Retiring officers in good standing will be presented with their current breast badge and may purchase their cap badge and Department-issued handgun.

1. These privileges will expire if not executed at the time of retirement.

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2. Payment must be made prior to final clearance.

(d) For purposes of this section, "good standing" is defined as not being under investigation, suspension, or indefinite suspension at the time of resignation or retirement.

800.3.6 RETURNING ISSUED CITY PROPERTY AND EQUIPMENT

Upon resignation, termination, transfer to another City Department, or retirement, employees are required to process through the Equipment and Supply Section no later than the effective date of the action in order to turn in all APD issued equipment and uniforms.

(a) When an employee turns in any property, equipment, or clothing to the Equipment and Supply Section, he will sign a receipt form countersigned by the Equipment and Supply Section employee receiving the item(s).

(b) An inventory audit will be conducted and a clearance form will be completed. The employee and the Equipment and Supply Section employee will sign the form after accounting for all equipment.

(c) Employees who fail to clear through the Police Equipment and Supply Section or who fail to adequately account for all APD issued equipment prior to the effective date of separation will be sent a letter demanding payment or the return of any outstanding equipment.

800.4 HANDLING DAMAGED, LOST, AND STOLEN PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care, use, and replacement of City property assigned or entrusted to them.

(a) An employee's intentional or negligent abuse or misuse of City property may lead to discipline including, but not limited to, the full or partial cost of repair or replacement. For the purpose of this order, negligence is the failure to use such care and prudence as would be expected of a reasonable person.

(b) The Equipment and Supply Section Manager will determine whether damaged City property is to be repaired or replaced. If the cost of repair is greater than the cost of replacement, the Equipment and Supply Section Manager will replace the property.

800.4.1 DAMAGED, LOST, AND STOLEN CITY PROPERTY

(a) If issued property is damaged, lost, or stolen, the employee to whom the property is issued must within five (5) working days of discovering the damage or loss:

1. Complete *Form PD-0021A*; and

2. Complete an incident report which fully describes the loss or damage; and

3. Email the form, through the chain-of-command, to their commander/manager.

(b) Commanders/managers will review the Form PD0021A and the offense report for completeness and within five (5) calendar days of receiving the documents:

1. Forward the Form PD0021A to the commander in charge of the Equipment Committee.

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(c) The Equipment Committee Commander will:

1. Determine if the employee exercised reasonable care; and
2. Determine if re-issue of the equipment is necessary; and
3. Notify the affected employee's commander and the Equipment and Supply Section manager of his decisions; and
4. Email the completed Form PD0021A to APD Police Equipment Manager.

(d) If the Equipment Committee Commander deems the employee was negligent, the employee may be required to reimburse the City for the lost or damaged property.

(e) The employee may present a written appeal on the decision of the Equipment Committee Commander to his assistant chief concerning whether the employee was negligent in the loss or damage of the property.

1. The employee may be required to make full reparation of the depreciated value of a lost item to a maximum of $500 per item.
2. The employee may be required to make payment of repaired damaged property up to a maximum of $500 per item (excludes City vehicles damaged in a traffic crash).
3. When payment to the City is required for lost or damaged property, the employee may be allowed to reimburse the City through a payment schedule. Unless the employee agrees to a higher amount, the payments will not exceed $100 per pay period.
4. The employee has 30 days to either pay for the equipment in full through the accounts payable department or arrange for a payment schedule through APD-HR.
5. The Equipment and Supply Section Manager will provide the Equipment Committee Commander with a monthly report of employees that have NOT paid for or made payment arrangements for negligently lost or damaged equipment.

(f) Re-issuance of equipment will be handled as follows:

1. Equipment that is not essential to the performance of duty will not be re-issued to the employee until final action is taken on *Form PD-0021A* by the commander/ manager.
2. Equipment essential to the performance of duty such as badge, handcuffs, flashlight, etc. can be temporarily checked out from the Police Equipment and Supply Section for 30 days pending payment for their lost/damaged property.

800.4.2 DAMAGED, LOST, OR STOLEN PERSONAL PROPERTY

Employees may request restitution for lost or damaged personal equipment if the loss or damage was suffered while on duty and in performance of official business. Employees shall not be reimbursed if they contributed to the loss or damage through negligence.

(a) To request restitution, the employee shall complete the following two forms:

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1. APD's *Form PD-0021* may be sent electronically through the employee's Chain of Command and digitally signed. The employee's commander/manager shall determine whether or not the employee exhibited reasonable care and indicate the amount to be reimbursed, if any.
2. The City of Austin's "Business Expense Reimbursement Form" (or BERF) requires a hard signature and cannot be stamped.

(b) The employee must provide a clear, legible receipt or proof of purchase for the original damaged, lost, or stolen item. A receipt of proof of purchase for a replacement item of equivalent type and value is also acceptable.

1. Reimbursement amounts will generally follow these guidelines, but it will be up to the commander/manager to make the final decision on whether the employee will be reimbursed more or less:
   (a) Prescription glasses $500
   (b) Sunglasses $50
   (c) Contact lenses $100 per lens
   (d) Personal Firearm $300
   (e) Any other personal equipment (e.g. clipboard, watch, boots…) $100

(c) The employee must submit original copies of *Form PD-0021*, the BERF, and the receipt to the Austin Police Department's Accounts Payable Office.

800.5 EQUIPMENT INVENTORY CONTROL

There are eight categories of departmental inventory with specific employees responsible for control of each. Commanders/managers may establish additional controls within their area of responsibility.

(a) **Fixed Assets or "Capital Equipment"**

1. This category includes items with a purchase price of $1,000 or more and having a life span of one year or longer. The Materials Manager is responsible for Department-wide control of these assets. Geographic "zone managers" (commanders/managers), are responsible for the care and control of the assets within their area.

(b) **APD Numbered Equipment**

1. This category includes items issued by Equipment and Supply with a purchase price of less than $1,000 and having a life span of one year or longer.

(c) **Vehicle and Radio Equipment**

1. This category includes vehicles, mobile radios, hand-held radios, radar, visibars and MDTs. The Fleet and Equipment Manager is responsible for the Department-wide management of these resources.

(d) **Photography/Video/Surveillance Equipment**

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1. This category includes items classified as fixed assets, but may also include lower cost items provided they have a life span of one year or longer. The Multi Media Laboratory supervisor is responsible for the Department-wide management of photography and video equipment. Certain specialized photography and video surveillance equipment is the responsibility of the Technical Unit of the Organized Crime Division.

(e) **Donated or Loaned Property**

1. This category may include items in any of the above categories, and will be included in the inventories of the division utilizing the property, but listed in a separate "donated or loaned property" section of the inventory list. Donated and loaned property is considered Department-owned property as per City purchasing policy. The employee taking receipt, having custody, or making use of these items will furnish a copy of the documentation regarding the donation or loan of the item(s) to the Equipment and Supply Section manager.

(f) **Converted Equipment**

1. This category includes equipment forfeited under applicable criminal laws which has a fair market value of $250 or more and a life span of one year or longer and is converted to ownership of the Police Department. The employee taking receipt, having custody, or making use of the item will furnish the commander/ manager and the Materials Manager a copy of the court order and any other appropriate documentation so that the item may be added to the inventory.

(g) **Forfeited Funds Purchased Equipment**

1. This category includes equipment purchased with forfeited funds. Items included are valued at $250 or more and have a life span of one year or longer. The employee authorized to purchase these items will provide a copy of the receipt to the Materials Manager and will present the equipment to have an inventory number placed on it.

(h) **LESO Military Equipment**

1. This category includes equipment obtained through the Law Enforcement Support Office (LESO) military portal for use within the Austin Police Department. This equipment cannot be issued outside of the Austin Police Department without proper justification through the program manager and without approval of the Assistant Chief over Special Operations. Federal rules and regulations in obtaining the equipment, maintaining the equipment, dispersal of the equipment, and return of the equipment will be followed at all times and properly documented through APD PCO and the program manager. This equipment will be inventoried through the program manager and PCO. LESO equipment will be issued the same as any APD equipment following all guidelines in General Order 800 (Property and Equipment Accountability). Issued equipment will be placed on the employee's personnel inventory.

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800.5.1 ZONE MANAGERS AND SPECIALIZED EQUIPMENT MANAGERS
Specific responsibility for fixed assets and certain other specifically identified items will be assigned to commanders/managers who will serve as geographic "zone managers" or "specialized equipment managers."

(a) Zone managers will assist in conducting the annual inventory and, upon request, reconciling any differences from prior inventories.

(b) Specialized equipment managers will conduct complete inventories and, upon request, provide updated database information for reconciliation with prior inventories.

800.6 ANNUAL INVENTORY
City of Austin policies require that each Department conduct a physical inventory of fixed assets and reconcile that inventory annually. APD will conduct its inventory in July of each year.

(a) A computerized listing of all equipment assigned to a unit will be provided to the supervisor when the inventory has been completed.

(b) Each employee will be provided a copy of his issued clothing and equipment record in July.

1. The employee and immediate supervisor will account for all equipment shown as issued and sign and return the inventory form within 10 days after receipt.

2. The employee will attach a Lost/Stolen/Damaged Report on any items not found and comply with the requirements of this order on handling lost, stolen and damaged property.

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Austin Police Department
General Orders

Equipment and Uniform Regulations

801.1 PURPOSE AND SCOPE

The equipment and uniform order of the Austin Police Department is established to ensure that all employees of the Department exhibit a consistent and professional appearance to the community when representing the Department.

Unless otherwise stated, commanders/managers may approve an exemption to this order for employees assigned to undercover operations, certain specialized activities, or due to special circumstances.

801.2 EQUIPMENT GUIDELINES

This section includes guidelines for Department approved identification and equipment to include:

(a) Department Issued Identification.

(b) Duty Belt and Accessories.

(c) Armor.

(d) Department Issued Pagers.

(e) Headgear.

(f) Footwear.

(g) Jackets.

(h) Reflective Vests.

(i) Scarves and Gloves.

801.2.1 DEPARTMENT ISSUED IDENTIFICATION

The Department issues each employee an official Department identification card (APD ID) bearing the employee's name, identifying information and photo likeness.

(a) Employees shall be in possession of the issued APD ID card at all times while on-duty.

(b) Employees shall conspicuously display the issued APD ID card when the employee is not in uniform and is on the premises of any APD facility.

(c) Employees shall be in possession of the issued APD ID card at all times while carrying a concealed weapon off-duty.

(d) Employees shall present their issued APD ID card in a courteous manner to any person upon request and as soon as practicable whenever on-duty, acting in an official capacity, or representing the Department.

(e) Employees shall not lend their APD ID to another person, or permit it to be photographed or otherwise reproduced without the prior approval of the Chief or designee.

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(f) Sworn employees working specialized assignments may be excused from the possession and display requirements when directed by the employee's commander.

801.2.2 DUTY BELT AND ACCESSORIES

(a) Employees may only wear an authorized duty belt and accessories. Basket weave designs are not allowed. When practical, the accessories must be made of the same material as the belt itself. Arrangement of the approved items is optional with each officer unless a specific location is designated.

(b) Employees assigned to office positions and who have limited direct contact with the public may be allowed to remove the duty belt while in the office during on-duty hours with the approval of the respective commander. Once removed, the duty belt will be placed in a secure location in the office.

(c) The following list contains the authorized duty belt and accessories:

1. Duty Belt - The duty belt will be worn with the center of the buckle in line with the center of the trouser zipper flap and secured with keepers. The Department issues four (4) keepers but additional keepers may be purchased at the officer's expense.
2. Trouser Belt - A black trouser belt made of either nylon web or leather will be worn with the uniform trousers.
3. Duty Weapon - Handgun issued by the department.
4. Holster - Holsters must be equipped with a Level 2 or above security retention device and will be worn on the side of the shooting hand with the butt of the pistol toward the rear. Information on approved holsters can be found at the Training Academy.
5. Ammunition Magazines and Holder(s).
6. Conductive Energy Device (CED) - CED's must be in an approved holster and worn on the side of the body opposite of the duty weapon. Extra CED cartridges are allowed.
7. OC Canister and Holder - Only approved chemical agents will be worn as outlined in General Order 206 (Control Devices and Techniques).
8. Baton and Holder - Only approved batons will be worn as outlined in General Order 206 (Control Devices and Techniques).
9. Folding Knife - Only folding knives are permissible; fixed blade knives (e.g., Bowie, dagger) are not approved.
    (a) The primary purpose of the folding knife is to act as a tool and not a weapon.
    (b) The folding knife must be secured in a case or pouch on the duty belt with at least one level of retention (e.g., snap, Velcro), or affixed to the body armor.
    (c) Officers working a plain clothes assignment who choose to carry a folding knife must carry it in a concealed fashion.

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(d) Officers assigned to specialized tactical units who want to carry a fixed blade knife or carry a folding knife in a manner other than described above must receive prior written permission from their assistant chief.

10. Handcuff Case - Minimum of one (1), maximum of two (2). Handcuff locking mechanisms will be operable with a universal size key.
11. Portable Radio and Holder.
12. Flashlight and Holder.
13. Tape Recorder and Case.
14. Keys and Whistle - If using a key silencer it must be black in color.
15. Pager - A pager may be worn in case or clipped on belt. Pagers will not be worn attached to a uniform shirt/jacket epaulet.
16. Cell Phone - A cell phone may be used but should be secured in a case or pouch on the duty belt, or concealed within the uniform or pocket.
17. Glove Case - A glove case may be used to hold protective gloves (e.g., latex, nitrile).

801.2.3 LOAD BEARING VESTS

The Department recognizes the need for officers to maintain a level of comfort and physical health when wearing the required equipment while in uniform. Officers are permitted to wear an authorized Load Bearing Vest (LBV) and accessories while in uniform. Officers may obtain information about authorized LBVs from Police Equipment.

(a) Within 30 days of being issued the LBV, officers will complete a familiarization course at the Training Academy.

(b) Only the authorized LBV and accessories will be worn while in uniform. The list of the authorized LBV and accessories is located at Police Equipment.

(c) The following items will remain on the duty belt while wearing an LBV:

1. Duty Weapon - Handgun issued by the Department.
2. Holster - Holsters must be equipped with a Level 2 or higher security retention device and will be worn on the side of the shooting hand with the butt of the pistol toward the rear. Information on approved holsters can be found at the Training Academy.
3. Conductive Energy Device (CED) - CEDs must be in an approved holster and worn on the side of the body opposite of the duty weapon.
4. Folding Knife - Only folding knives are permissible; fixed blade knives (e.g., Bowie, dagger) are not approved.
   (a) The primary purpose of the folding knife is to act as a tool and not a weapon.
   (b) The folding knife must be secured in a case or pouch with at least one level of retention (e.g., snap, Velcro).

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(d) The following items may be worn on the duty belt or the LBV:

1. Ammunition magazines and holders.
2. OC canister and holder - Only approved chemical agents will be worn as outlined in General Order 206 (Control Devices and Techniques).
3. Expandable baton and holder - Only approved batons will be worn as outlined in General Order 206 (Control Devices and Techniques).
4. Handcuff case - Minimum of one (1), maximum of two (2). Handcuff locking mechanisms will be operable with a universal size key.
5. Portable radio and holder.
6. Flashlight and holder.
7. Keys and whistle - Key silencers must be black or navy blue in color.
8. Pager - A pager may be worn in a case or clipped onto the belt or LBV. The pager will not be clipped to a uniform shirt or jacket epaulet.
9. Cell phone - A cell phone may be secured in a black or navy blue pouch or case.
10. Glove case (e.g. latex, nitrile).
11. Tourniquet.
12. Extra CED cartridges secured in a pouch or case.

801.2.4 ARMOR

(a) Body Armor

1. Issued body armor must be worn at all times by uniformed officers engaged in:
   (a) Field duty.
   (b) Secondary Law Enforcement Related Employment (LERE).
   (c) The pre-planned service of any arrest or search warrant.
2. Officers assigned to office positions are exempt from wearing body armor during normal duty assignments.
3. Officers seeking a medical waiver from wearing body armor while in uniform shall adhere to the following guidelines:
   (a) Officers will request a waiver by submitting a memorandum through the chain-of-command to the Chief detailing the reasons for the waiver. The memorandum must be accompanied by:
      1. Medical documentation clearly showing the condition caused by the wearing of the body armor.
      2. A signed letter from the employee's physician confirming a medical condition and recommending that the employee be allowed to wear the body armor at the employee's discretion.

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3. A liability release with all required information filled in and signed by the requesting employee. Refusal to sign the liability release will be grounds for denying the waiver.

(b) If the medical waiver is approved, the Chief or designee will ensure:

1. A copy of the memorandum, letter, documentation and liability release are forwarded to the person who requested the waiver; and

2. All originals will be forwarded to APD Health Services for placement in the employee's medical file.

(c) A waiver is a privilege granted by the Chief, not an entitlement or a right. As such, it can be revoked by the Chief or designee at any time for any reason.

(d) The waiver will be updated annually.

4. Defective and expired body armor will be handled as outlined in General Order 800 (Property and Equipment Accountability).

(b) Patrol Plate Carriers - Due to the increased threat of calls for service in which suspects may be armed with high powered weapons, the Department will issue enhanced ballistic plates and carriers (heavy vests) to authorized employees. The following order will cover the issuance, care and use of the heavy vests.

1. Heavy vest issue/care:

(a) The heavy vests will be issued through the Police Equipment section and will become part of the employee's inventory.

1. The Police Equipment section will develop a plan to replace the heavy vests before they expire. No heavy vest will be worn after the warranty expiration date has passed, except for training purposes as approved.

2. Employees will contact their supervisor and the Police Equipment section if they believe their heavy vest is defective.

3. The Police Equipment section will issue a loaner heavy vest if one is available.

4. The Police Equipment section will make arrangements for the vest to be replaced or repaired.

(b) Employees will follow General Order 800.2 and the manufacturer's care instructions when caring for their heavy vest.

(c) Heavy vests must be stored in an air conditioned location in order to minimize heat damage to the armor.

(d) All officers will receive training on the proper care, fitting, inspection, use, storage, and maintenance of the armor.

(e) Personally owned heavy vests.

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1. Employees may wish to purchase heavy vests or rifle plate inserts at their own expense for use while on duty. If an employee chooses to do so, the following guidelines will apply:
    (a) The personally owned heavy vest plates will have the same or higher ballistic rating that is approved by the NIJ Level IV standard as the departmentally issued heavy vest.
    (b) The heavy vest carrier will be black in color and have the word "Police" clearly visible in a light color on the front and back. No other markings or patches will be worn on the heavy vest.
    (c) The heavy vest carrier will be similar in appearance to the heavy vest carriers issued by the department.
    (d) Supervisors will inspect the personally owned heavy vest to ensure it is not worn past the warranty expiration date.

2. Heavy Vest Use:
    (a) The purpose of the heavy vest is to offer a higher level of ballistic protection for employees responding to incidents where the possibility of engaging a suspect with a high powered firearm is present.
        1. Examples of when the heavy vest may be deployed are:
            (a) Active shooter(s)
            (b) Calls which state a subject is or may be armed with a firearm
            (c) Building/open field clearing
            (d) Forcing entry into a structure/breaching a door
            (e) This list is not all inclusive and other scenarios may arise where the use of the heavy vest is appropriate.
        2. Examples of when the heavy vest should not be deployed are:
            (a) Routine traffic stops
            (b) Routine, low priority calls for service
            (c) Lunch breaks

Nothing in this order is intended to discourage the use of the heavy vest when appropriate. The appropriate use of the heavy vest should be measured and monitored by the shift supervisor. Corrective action will be taken by the supervisor in the event the heavy vest is not used in accordance with this order.

801.2.5 DEPARTMENT ISSUED PAGERS

(a) Employees issued a Department pager will ensure the pager is operational and, when practicable, in their possession at all times.
    1. Employees will respond to any Departmental page as soon as practicable.

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2. Employees paging another employee will include their employee number or other identifying designation in the page (e.g., their name or employee number).
3. Pages requiring an immediate response or are urgent in nature (e.g., SWAT call out) should be sent using a designated City of Austin paging system (e.g., Wireless Office, CAD). Systems such as outlook, the internet, and the telephone are not as reliable and/or may not work during large events where technology usage is high.

(b) Employees may request to receive individual pages as a text message or e-mail with the following considerations:

1. Employees are still required to have their pager in their possession as outlined above.
2. Requests must be submitted by email to the Help Desk and include the employee's name, employee number, email address, cell phone number, and cell phone provider.
3. Only individual pages sent by text message or email via Wireless Office will be received. Group or mail drop pages will not work with this system.
4. Employees are responsible for any costs incurred with their cell phone provider for using this optional service. The Department provides pagers at no cost to the employee and will not reimburse employees for any messages received.
5. Employees making the request must be an authorized person on cell phone provider account to make billing changes and accept charges.

801.2.6 HEADGEAR

The Department authorizes only the following types of headgear:

(a) **Military Style Hat**

1. Will be immediately accessible when wearing the Class A uniform, and will be worn when directed to do so.
2. May not be worn with Class B, C and D uniform.
3. Will be worn in a traditional manner with the bill facing forward.
4. Emblems, pins, or decorations other than the Department hat badge and authorized command braid will not be placed on the hat.

(b) **Baseball Style Cap**

1. Only the Department issued or approved baseball style cap with cloth hat badge may be worn.
2. May only be worn with a Class C or D uniform.
3. Will be worn in a traditional manner with the bill facing forward.
4. Emblems, pins, or decorations other than the cloth Department hat badge and authorized command braid will not be placed on the hat.

(c) **Fur Trooper Style Winter Cap**

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1. Officers may purchase a black or dark navy blue fur trooper style cap to be worn during cold weather.
2. The hat badge will be affixed to the cap's front.

(d) **Winter Style Knit Stocking Cap**

1. A black or a navy blue knit stocking cap may be worn with the Class B, C, and D uniform during cold weather.
2. May not be worn when attending a formal ceremony.

(e) **Helmet**

1. General duty helmets may be worn with a Class B, C or D uniform.
2. Tactical helmets may only be worn with the Class D uniform.
3. May be worn with or without a face shield, as appropriate.

801.2.7 FOOTWEAR

(a) Types of authorized footwear:

1. Black low quarter shoes, including dress, tactical or athletic style shoes.
2. Black tactical style boots (leather or leather and nylon construction), including combat or jump style boot, and "Rocky" styles.
3. Black walking boots, including Wellington or Roper styles.

(b) All footwear must:

1. Be made of smooth grained leather or a similar synthetic material having an acceptable likeness to leather; and
2. Be black in color; and
3. Be capable of being shined, polished, or cleaned; and
4. Have a round or medium-round toe style.

(c) The following footwear is prohibited:

1. Sharp pointed shoes or boots.
2. Footwear with decorative stitching, embossing, welts, and holes or other patterns, ornamental designs, buckles, stripes, or "wingtips".
3. Footwear with taps or metal plates.

(d) Socks worn with low-cut shoes will be black or dark navy blue.

801.2.8 JACKETS

(a) Authorized jackets include:

1. Jackets issued or authorized by the Department; or
2. Individually purchased black leather Bomber or patrol style, similar to the issued winter style jacket.

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(b) Jackets will be worn with the sleeves rolled down and buttoned at all times.

(c) Jacket linings or other type vests will not be worn separately.

801.2.9 REFLECTIVE VESTS

A Department issued reflective vest will be worn whenever an officer is directing traffic, at a collision scene on a public road, or is directly exposed to vehicular traffic for an extended period of time.

801.2.10 GLOVES AND SCARVES

(a) Black leather or cloth, full-fingered gloves may be worn only during cold weather conditions.

(b) Full-fingered Kevlar type gloves specifically designed to protect the hands from cuts and punctures may be worn only:

1. During the frisk or search of persons, vehicles, objects or premises.
2. While handling evidence or objects that are hazardous (e.g., hypodermic needles, edged weapons, broken glass).

(c) Dark navy or black winter weight neck scarves, ski-type neck warmers, or cowls may be worn with authorized jackets during cold weather conditions.

801.3 UNIFORM GUIDELINES

Sworn employees wear a uniform to be identified as the law enforcement authority in society. The uniform also serves to identify the wearer as a source of assistance in an emergency, crisis or other time of need. Some civilian employees also wear a uniform to be identified as part of a specific assignment (e.g., crime scene, victim services).

(a) All sworn employees shall possess and maintain a serviceable uniform and the necessary equipment to perform uniformed field duty at all times.

(b) Uniforms shall be neat, clean and appear professionally pressed.

(c) Undershirts worn beneath a uniform shall be white, black, or dark navy blue. No visible slogans, logos, or printing on the shirt are permitted.

(d) Officers shall not wear any garment under the uniform shirt whose sleeves extend beyond the uniform shirt's sleeves.

(e) Officers shall wear approved footwear with a clean, shined finish while in uniform.

(f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.

(g) Employees shall only wear a uniform while on-duty, while in transit to or from work, for court, or at other official Department functions or events.

(h) Employees under suspension shall not wear any part of the police uniform.

(i) Employees who normally wear a uniform as required by assignment shall not appear for duty in plainclothes without permission of a supervisor. Employees shall be considered out of uniform when not wearing the prescribed uniform.

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(j) Employees are not to purchase or drink alcoholic beverages while wearing any part of the Department uniform.

(k) Mirrored sunglasses shall not be worn with any Department uniform.

(l) Exemptions to the uniform guidelines may only be made by the appropriate assistant chief upon request from the commander.

1. Units requesting a permanent exemption will be referred to the Equipment Committee.

2. Uniform standards for units exempt from this order will be outlined in the specified units' Standard Operating Procedures.

801.3.1 CLASS A - DRESS/CEREMONIAL UNIFORM
The Class A uniform consists of:

(a) Dark blue long-sleeved uniform shirt with metal badge and name plate.

(b) Uniform pants (non-tactical or BDU style without side pockets).

(c) Tie with authorized tie bar.

(d) Duty belt.

(e) Formal military style hat.

801.3.2 CLASS B - STANDARD UNIFORM
The Class B uniform consists of:

(a) Dark blue long-sleeved or short-sleeved uniform shirt with metal badge and name plate.

(b) Uniform pants(non-tactical or BDU style without side pockets).

(c) Hats and ties are not authorized.

(d) Duty belt.

1. For office duty assignments, the full duty belt is not required; however, officers shall wear the Department issued handgun in a holster on their black trouser belt.

(e) Authorized baseball style cap (optional).

801.3.3 CLASS C - PATROL UNIFORM
The Class C uniform consists of:

(a) Dark blue long-sleeved or short-sleeved uniform shirt with embroidered name and badge.

(b) Authorized tactical BDU style pants with side pockets.

(c) Approved shorts may be worn year round.

1. The approved shorts may only be worn with:

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(a) Dark blue short sleeved uniform shirt with embroidered name and badge, or

(b) DTAC blue polo shirt approved by the department.

2. Civilian personnel assigned to direct field support (e.g. Crime Scene, Victim Services) are included in this order.

(d) Authorized baseball style cap (optional).

(e) Duty belt.

1. For office duty assignments, the full duty belt is not required however, officers shall wear the Department issued handgun in a holster on their black trouser belt.

801.3.4 CLASS D - SPECIALIZED UNIFORM
Any exception to this uniform order must be approved by Executive Staff.

801.3.5 EXECUTIVE UNIFORM
Commanders and above may wear the Executive Uniform year round. The Executive Uniform consists of a dress coat with epaulet rank insignia, badge, award ribbons and medals.

801.3.6 CIVILIAN EMPLOYEE UNIFORMS
Civilian employees assigned to positions requiring a uniform shall:

(a) Possess a serviceable uniform and equipment to perform their assignment.

(b) Wear footwear authorized in this order.

(c) Not wear the uniform or any part of the uniform for off-duty activities unless authorized by the respective commander/manager.

801.4 REQUIRED AND AUTHORIZED UNIFORM RAIMENTS

This section covers the use of the required and authorized items employees may place on their uniforms, including:

(a) Badge (required).

(b) Name Tag (required).

(c) Rank Insignia (required).

(d) Service Stripes (authorized).

(e) Award Ribbons (authorized).

(f) Award Medals (authorized).

(g) Service/Unit Pin (authorized).

801.4.1 BADGE

(a) The breast badge will be worn at all times centered over the left breast pocket.

(b) The hat badge will be worn on the formal military style hat and the fur trooper style hat.

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(c) Officers in plainclothes will wear his badge whenever a weapon is visible.

1. The badge will be worn in a clip-type holder, clearly visible from the front.
2. The badge will be worn on the gun side of the waistline and as close to the holster as possible without hindering access to the weapon.

(d) Uniformed employees will wear a black mourning band across the uniform badge whenever a law enforcement officer is killed in the line of duty. The following mourning periods will be observed:

1. An officer of this Department - From the time of death until midnight on the 14th day after the death.
2. An officer from Texas - From the time of death until midnight on the day of the funeral.
3. Funeral attendee - While attending the funeral of a fallen officer.
4. National Peace Officers Memorial Day (May 15).
5. As directed by the Chief of Police or designee.

(e) Employees will not lend their badge to another person, or permit it to be photographed or otherwise reproduced without the prior approval of the Chief or designee.

801.4.2 NAME TAG

(a) Name tags will be silver with only the employee's last name printed in black lettering.

(b) Cloth name tags worn on the Class D uniform will be dark blue with silver lettering.

(c) The name tag will be worn centered and one-quarter (1/4) inch above the right breast pocket when no award ribbons are worn.

(d) When award ribbons are worn, the name tag will be centered above the right breast pocket and one-quarter (1/4) inch above the award ribbons.

801.4.3 RANK INSIGNIA

Officers will wear such insignia of rank or recognition as issued or prescribed by the Department.

(a) **Corporal/Detective**

1. Two sleeve chevrons with a single star centered below them will be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.
2. Employees in the rank of corporal/detective for 10 cumulative years are issued a rocker with two sleeve chevrons with a single star centered below them to be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.

(b) **Sergeant**

1. Three sleeve chevrons will be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.

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2. Employees in the rank of sergeant for 10 cumulative years are issued a rocker with three sleeve chevrons to be worn on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.

(c) **Lieutenant, Commander, Assistant Chief, and Chief of Police**

1. Rank insignia will be worn in symmetrical pairs, centered between the top and bottom edge of the insignia one inch from the front of the collars of uniform shirts and on the epaulets of uniform jackets, including the Executive Uniform jacket.

(a) Lieutenant bars will be worn with the long axis of the bars parallel to the front edge of the collar, with the outer edge of the insignia one inch from the bottom of the collar.

(b) Commander, assistant chief, and Chief stars will be worn with one ray of each star pointing toward the top of the collar.

801.4.4 SERVICE STRIPES

Service stripes may be worn on the left sleeve of long sleeve shirts, four (4) inches from the end of the sleeve.

(a) One stripe is permitted for each completed four (4) years of commissioned police service.

(b) Service stripes are not worn on uniform jackets.

801.4.5 OFFICER RECOGNITION CHEVRONS

Employees in the rank of officer for 10 cumulative years may be issued a single chevron with a single star centered below them to be worn centered on each uniform shirt and jacket sleeve, five and one half inches (5 1/2) below the shoulder seam of each sleeve.

801.4.6 AWARD RIBBONS

(a) Award ribbons may be worn in a line centered and one-quarter (1/4) inch above the top of the right breast pocket of the Class A uniform shirt or Executive Uniform jacket.

(b) The line of ribbons will not normally be broken, and will not extend past either edge of the pocket.

(c) Ribbons will be worn on an authorized ribbon bar. No part of the bar should be visible.

(d) Three award ribbons shall constitute a complete line. If necessary, additional lines will begin centered above the first.

1. Awards will be worn in a descending order with the highest award ribbon placed closest to the heart.

2. If more than one row is used, the higher precedence awards will be on the top.

3. In no case will more than five lines of award ribbons be worn.

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(e) Only the initial ribbon received for any award type will be worn. Subsequent awards of the same type will be indicated by authorized stars placed on the first award ribbon as outlined in General Order 922 (Awards and Commendations).

801.4.7 AWARD MEDALS

Award medals may be worn but only on the Executive Uniform jacket.

(a) Award medals may be worn in a line, centered, and one-quarter (1/4) inch below the police badge on the jacket.

(b) Medals will be worn in a descending order with the highest award medal placed closest to the heart. Only one type of each awarded medal may be worn.

(c) "Ribbon only" awards may be worn centered on the right breast of the jacket.

801.4.8 SERVICE/UNIT PIN

Service/unit pins must be submitted to the Equipment Committee and approved by the Chief or designee. Only one approved pin may be worn on the uniform.

(a) Upon approval, service/unit pins will be worn centered in a line one-quarter (1/4) inch above the name plate. Approved Service and Unit pins are:

1. SWAT
2. EOD
3. Air Unit
4. Patrol K9
5. Hostage Negotiations
6. SRT
7. Honor Guard
8. Motors
9. Mounted Patrol
10. FTO
11. CIT
12. City Years of Service.
13. CAST

(b) Only personnel currently assigned to the unit for which a pin has been authorized shall be permitted to wear the unit pin.

801.4.9 ORDER OF PRECEDENCE AND WEAR CHART

The name tag, award ribbons, and authorized service/unit pins will be worn in the following manner:

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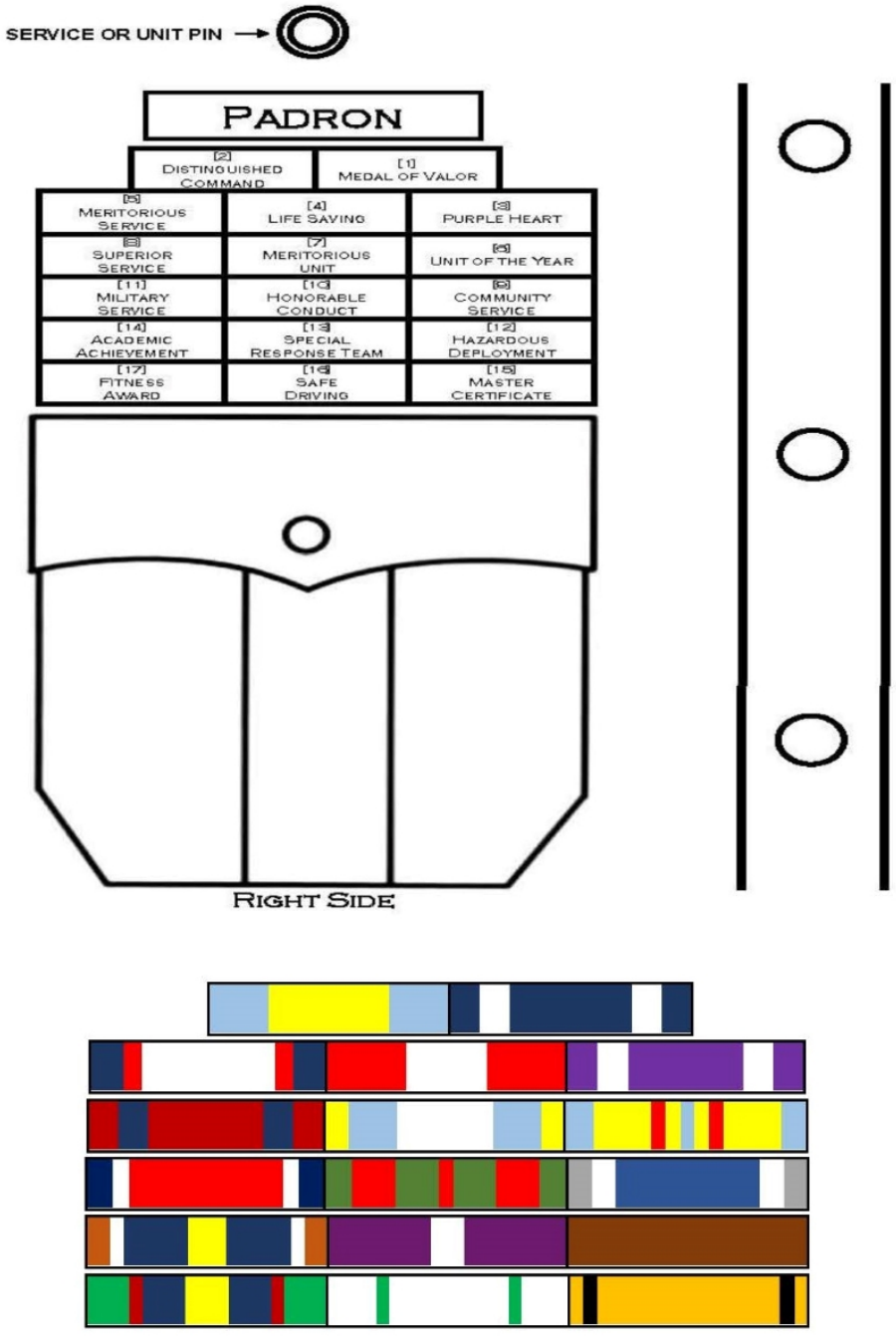

801.5 PLAIN CLOTHES ATTIRE

This section applies to sworn and civilian employees that do not wear a uniform as part of their assignment. Variations from this order are allowed as required by assignment, approved due to a medical condition, or approved by an employee's commander/manager.

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(a) Employees shall wear clothing that fits properly, is clean and free of stains and not damaged or excessively worn.

(b) Male employees who wear civilian clothing to work shall wear:

1. Button-style shirts with a collar, slacks or suits that are moderate in style.
2. Footwear that is appropriate for the assignment and does not present a safety hazard to the employee.
3. A tie is optional unless attending court or formal meetings with the Chief, media interviews, or when designated to be worn by a supervisor for a specific purpose.

(c) Female employees who wear civilian clothes to work shall wear:

1. Dresses, skirts, slacks, blouses, capri or crop pants, or suits that are moderate in style. Dress/skirt lengths shall be professional in appearance.
2. Supportive undergarments.

(d) Employees may wear casual attire (e.g., denim jeans, athletic shoes) on Friday, Saturday, and Sunday, unless the employees is attending court, has a formal meeting with the Chief, a media interview, or when it is not authorized to be worn by a supervisor for a specific purpose.

(e) Sworn employees wearing plain clothes while on-duty may also wear a duty firearm in a Level 1 or above retention holster. If the weapon is visible, the badge shall also be worn as outlined in this order.

801.5.1 PROHIBITED ATTIRE

No item of civilian attire may be worn on-duty that would adversely affect the reputation of the Austin Police Department or the morale of the employees.

(a) Unless otherwise approved, the following items shall not be worn on-duty:

1. T-shirt or tank tops alone.
2. Slippers or flip-flops.
3. Swimsuit, tube tops or halter tops.
4. Form fitting stretch pants or stirrup-type pants.
5. Sweatpants, sweatshirts, sweat suits or wind/warm-up suits.
6. See-through clothing, unless proper undergarments are also worn.
7. Clothing that shows bare shoulders (e.g., strapless, spaghetti straps) unless a coordinating jacket or blouse is worn as a top garment at all times.
8. Attire which reveals midriffs or bosoms.
9. Denim clothing and athletic shoes unless otherwise authorized by this order.
10. Any attire with offensive or inappropriate language.

801.5.2 REQUIRED SWORN EQUIPMENT

Immediately Available - Close at hand, so as to be instantly ready without delay for use

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Available - Readily obtainable or accessible within a short period of time or delay (e.g. in a vehicle parked nearby)

(a) On duty sworn employees will have the following items immediately available while not in contact with the public (e.g. in the office) or while in the public but not identifiable as a police officer and not engaged in any law enforcement activity:

1. Authorized handgun
2. Handcuffs with key
3. APD Badge
4. Police Identification

(b) On duty sworn employees will have the following items on their person while in the public and identifiable as a police officer:

1. An authorized handgun in a Level 1 (or greater) holster affixed to a belt with APD badge displayed adjacent to the handgun or worn on a lanyard which visibly displays the badge at chest level.
    (a) Access to the handgun may not be restricted by clothing (e.g. untucked shirt) other than a jacket, sports coat, windbreaker, or similar clothing item which limits easy access to the area of the handgun.
2. A spare magazine for the handgun in a magazine holder attached to the belt.
3. Approved control device listed in General Order 206.2.3 (Approved Control Devices) attached to the belt.
4. Handcuffs with a key
5. Police Identification, made plainly visible from the front of the officer
6. A ballistic vest
    (a) Available, does not need to be worn
7. A windbreaker, vest, or cover with the word "Police" on the front and back
    (a) Available, does not need to be worn
8. A police radio, powered on

(c) In addition to the requirements in 801.5 (b), on duty sworn employees engaged in law enforcement action, follow-up activity, or field interview will wear a windbreaker, vest, or cover with the word "Police" on the front and back and will log onto the radio with dispatch.

801.6 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, Austin Police Department employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, a photograph as an employee of the Austin Police Department in order to:

(a) Endorse, support, oppose or contradict any political campaign or initiative.

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(b) Endorse, support, oppose or contradict any social issue, cause or religion.

(c) Endorse, support, or oppose any product, service, company or other commercial entity.

(d) Appear in any commercial, social or non-profit publication, or any motion picture, film, video, public broadcast or on any website.

801.7 REQUESTS FOR CHANGE TO AUTHORIZED EQUIPMENT

Requests for new equipment or uniform exemptions shall be routed to the Equipment Committee. The Chief retains the right to add or remove equipment as needed.

801.8 PERSONNEL AND EQUIPMENT INSPECTIONS

Supervisors shall perform inspections of personnel and equipment to ensure compliance with Department General Orders. The supervisor will have until the 10th of the month to submit the completed inspections to their lieutenant. The lieutenant will have until the 20th of the month to review the inspections and forward them to Risk Management at APDRiskManagement@austintexas.gov for storage.

(a) Using form PD0128, first responder units listed in 303.3(d) will be inspected in the following manner:

1. Probationary patrol officers (PPO) will be inspected monthly.
2. All other officers will be inspected quarterly in the months of January, April, July, and October for the previous 3 month period.

(b) Using form PD0127, non-first responder units will be inspected annually in the following months.

1. Units within the Headquarters and Wellness Bureaus will be inspected in the month of February.
2. Non-first responder units within the Patrol Bureaus will be inspected in the month of May.
3. Units within the Investigations I Division will be inspected in the month of June.
4. Units within the Investigations 2 Division will be inspected in the month of August.
5. Units within the Organized Crime Division will be inspected in the month of September.

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GO
803

Austin Police Department
General Orders

Duty Firearms

803.1 PURPOSE AND SCOPE

This order sets guidelines on the types of authorized weapons and ammunition, as well as procedures for registration, qualification and proficiency with authorized duty weapons. For purposes of this order, on-duty is defined as any activity in which the employee is receiving compensation or benefit as a result of their employment with the Department, or wearing any part of the uniform.

803.1.1 AUTHORIZATION TO CARRY FIREARMS

Only sworn personnel who have met all state standards, required Department training, and have been authorized by the Chief of Police shall be able to carry a firearm both on- and off-duty.

Nothing in this directive shall be construed to prevent officers from using any weapon at their disposal for protection from death or serious bodily injury in a bona fide emergency.

803.1.2 ALIAS HANDGUN LICENSE

On written approval of the DPS director, the Department may issue to an officer an alias license to carry a concealed handgun to be used in supervised activities involving criminal investigations (Tex. Gov't Code § 411.198(a)).

803.2 SAFE HANDLING OF FIREARMS

The intent of this order is to promote proper firearm safety on and off duty. Employees shall maintain the highest level of safety when handling firearms.

803.2.1 GENERAL GUIDELINES

(a) Officers shall not unnecessarily display or handle any firearm.

(b) Officers shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by range personnel.

(c) Officers will unload all weapons prior to entering the firearm range when going for firearm practice, training, qualification, or repair. Officers will use a clearing barrel to ensure weapons are unloaded.

(d) Range personnel will inspect all firearms for safety and maintenance needs during the training or qualification sessions or on schedules established by the range supervisor.

1. If the weapon is in satisfactory condition, the officer will be allowed to go on with practice or qualification.

2. If the weapon is not in satisfactory condition, the problem must be corrected before the officer may engage in practice or qualification. If there is a problem with a duty weapon that cannot be corrected:

(a) Affected officer's supervisor and the Learned Skills Unit supervisor will be notified.

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(b) If the weapon is a city issued Smith and Wesson M&P pistol, range personnel will issue the officer a temporary M&P until the problem is corrected

(e) Any unintentional firearm discharge by an employee will be reported as outlined in General Order 202 (Firearm Discharge Situations). If the unintentional firearm discharge is deemed negligent, the employee will be considered in violation of Department General Orders.

803.2.2 STORAGE OF FIREARMS

Officers shall ensure that all firearms and ammunition are secured in a manner that will keep them inaccessible to children and irresponsible adults while in the officer's possession, home, vehicle, or any other area under the officer's control.

803.3 AUTHORIZED WEAPONS

Department approved weapons and ammunition are those authorized by the Training commander for use by the Department while on-duty. Contact the APD Range for the most up-to-date Department Approved Weapons list.

(a) The Department Approved Weapons list will be reviewed at least annually by the Training Division.

(b) Officers who wish to add a weapon to the Department Approved Weapons list must utilize the following procedure.

1. Officers will forward a memorandum to the Training Division requesting a new weapon be added to the current List.
2. The memorandum will contain the following information:
   (a) Information on weapon specifications (e.g., make, model, caliber, location of safety, bullet capacity); and
   (b) Justification for adding the weapon to the list.
3. All test weapons will undergo a thorough inspection. It will be test fired and evaluated for reliability and examined to see if it conforms to existing safety standards (e.g., night sights, ambidextrous thumb safety [if required], functioning grip safety). The test weapon will be left at the Academy Range until all testing and evaluation are completed.
4. Consideration will only be given to weapons with improved design, function, or applicability to the job over those weapons currently on the list.
5. APD will not provide reimbursement for rejected weapons.
6. Final approval to add the weapon to the current list will be made by the Training commander.

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803.3.1 REGISTRATION OF WEAPONS
Officers will not carry a primary or backup weapon on-duty until all the requirements of this order have been met. The Training Division will maintain a record of any weapon(s) an officer is authorized to carry.

(a) Personally owned firearms carried on-duty must be registered with the Department by the officer requesting to carry them.

1. Officers may have a maximum of three handguns and one rifle to include any city issued weapons.
2. Handguns/rifles can be registered (added or deleted) at any time during the calendar year; however, officers may only register (add or delete) two handguns/ rifles per year from his registered weapons list. Exceptions may be considered by the Training commander.
3. All handguns added to an officer's registered weapons list are required to be equipped with night sights.
4. Officers who desire to carry a personally-owned AR-15 while on-duty must meet the requirements listed in the personally-owned Long Rifles section of this order and register the weapon with the Department.
5. All weapon additions must be approved by the Learned Skills Supervisor or their designee.

(b) Officers wishing to add a weapon to his registered list must complete the following steps:

1. Requesting officers shall deliver the weapon to the firearms range for inspection.
2. Firearms range personnel will ensure the weapon is on the current Department Approved Weapons list and that the weapon is in good working order and meets any requirements listed in general orders or the Department Approved Weapons List.
3. Requesting officers must qualify with the weapon on the current course of fire.

803.3.2 MODIFICATION OF FIREARMS
Officers shall not make any unapproved modifications to any firearm carried on duty. Approved modifications and additions will be made in compliance with the Approved Weapons and Ammunition List.

Any modifications made to a firearm must be inspected by Learned Skills Unit personnel prior to being carried on-duty.

803.3.3 DEPARTMENT ISSUED SHOTGUNS
Shotguns are assigned to most marked police units and to individual officers as needed.

(a) At the beginning of each shift, officers are responsible for ensuring there is no shell in the chamber, the hammer is not cocked, and the weapon is secure until it is being readied for imminent use.

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(b) Department shotguns will be loaded to magazine capacity (four or six rounds) with authorized 00 buckshot.

1. One ounce rifled slugs may be used when:

   (a) There is an immediate need or in situations that are deemed special circumstances; or

   (b) Distances to the threat are such that it is beyond the effective range of 20-25 yards for 00 buckshot.

2. The shotgun will be reloaded with 00 buckshot as soon as practicable after the incident.

3. When rifled slugs are discharged from a shotgun, officers will document in an incident report or memorandum to the chain of command why the rifled slug was used.

803.3.4 PERSONALLY OWNED SHOTGUNS

Officers that meet the following criteria may be authorized to carry personally owned shotguns while on-duty. Personally owned shotguns are for the exclusive use of the weapon owner and will not be loaned or distributed for use to any other officer unless there is a bona fide emergency.

(a) To carry a personally owned shotguns, officers must:

1. Receive approval through the chain-of-command up to the commander to carry the shotgun; and

2. Meet requirements listed in the Department Approved Weapons and Ammunition List.

(b) Officers must qualify with the shotgun annually on a course designated by the Learned Skills unit.

(c) Officers authorized to carry a personally owned shotgun on-duty will be subject to monthly inspection by an immediate supervisor.

(d) The weapon must be secured in the patrol vehicle weapon rack.

(e) Officers shall carry only Department authorized ammunition. Officers shall not modify or alter any approved ammunition.

(f) No offensive marking on the weapon. Any questions regarding if the image/word(s) falls under offensive will be directed to the LSU Sergeant with the final determination being made by the LSU Lieutenant.

803.3.5 DEPARTMENT ISSUED RIFLES

Each Patrol shift will normally be authorized two (2) Department issued rifles (i.e., AR-15). Officers that have attended a Department approved Semi-Automatic Rifle Course will be eligible to be assigned a Department issued rifle.

(a) Each Department issued rifle will be issued to an assigned officer and the rifle will be tracked by serial number.

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(b) Officers must qualify with the rifle annually on a course designated by the Learned Skills unit.

(c) If a designated officer is transferred, fails to qualify, or otherwise ceases to be approved to carry a Department issued rifle, the assigned weapon will be stored at the training academy until reassignment.

(d) Shifts will not trade weapons unless there is a bona fide emergency.

(e) The weapon must be carried in either a hard protective case or secured in the patrol vehicle weapon rack.

(f) Department issued rifles will only be equipped with department issued Aimpoint optics and mounts. Officers are prohibited from replacing the issued Aimpoint optic with a different optic from the approved list for personally owned rifles.

803.3.6 PERSONALLY OWNED RIFLES

Officers that meet the following criteria may be authorized to carry personally owned rifles while on-duty. Personally owned rifles are for the exclusive use of the weapon owner and will not be loaned or distributed for use to any other officer unless there is a bona fide emergency.

(a) To carry a personally owned rifles, officers must:

1. Receive approval through the chain-of-command up to the commander to carry the rifle; and
2. Successfully complete the Department approved semiautomatic rifle course; and
3. Meet requirements listed in the Department Approved Weapons and Ammunition List.

(b) Officers must qualify with the rifle annually on a course designated by the Learned Skills unit.

(c) Officers who fail a qualification or who have lost the approval of the chain-of-command will no longer be authorized to carry the rifle on-duty.

(d) Officers authorized to carry a rifle on-duty will be subject to monthly inspection by an immediate supervisor.

(e) The weapon must be carried in either a protective case or secured in the patrol vehicle weapon rack.

(f) No offensive marking on the weapon. Any questions regarding if the image/ word(s) falls under offensive will be directed to the LSU Sergeant with the final determination being made by the LSU Lieutenant.

(g) Short barrel rifles are approved for use on patrol. The requirements for the SBR are:

1. 10.5" barrel length. (9.5" and a 1" flash suppressor does NOT meet the requirement, etc.)
2. Silencers are not authorized.

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3. Officers shall carry only Department authorized ammunition. Officers shall not modify or alter any approved ammunition.
4. Officers MUST possess the proper ATF tax stamp for that specific weapon. The tax stamp will be checked by LSU staff prior to an officer being approved to carry the SBR on duty.
5. If an officer fails to provide the appropriate tax stamp, specific to the rifle they are possessing, the LSU Sergeant will be notified and a memorandum will be sent to the officer's chain of command as well as Internal Affairs.

803.3.7 SPECIALIZED WEAPONS

Specialized weapons may be authorized by the Chief for use by specific Units or persons.

(a) Officers must meet the qualification standard for any specialized weapons before carrying the weapon on-duty and must qualify annually with these weapons.

(b) Qualifications for authorized specialized weapons will be on a course of fire designed and supervised by the Special Operations SWAT Unit, at the direction of a Certified Firearms instruction with a specialty for the specific weapons. All records: annual, bi-annual, quarterly, or monthly qualifications will be performed by Special Operations Swat Team Firearms Instructors, and copies of both the course of fire and the documents showing proficiency will be provide to the Learned Skills Unit. Specialized weapons are those weapons not listed on the approved weapons list for the department.

(c) The Special Operations Commander or his designee will have the authority to add or delete Specialty Weapons as the circumstance and situations change.

(d) Special Operations Firearms instructors will be responsible for logging all qualification courses and those who have passed/failed. Copies of the qualifications will be forwarded to the Learned Skill Unit. The Special Operations Swat Sergeant who is responsible for the Sniper program will hold the original records and make those records available upon requested

803.3.8 AMMUNITION

(a) Officers shall carry only Department authorized ammunition. Officers shall not modify or alter any approved ammunition.

(b) Special Operations officers will carry authorized ammunition that has been tested by Special Operations personnel for use in specialized weapons not authorized for personnel outside of the Special Operations Division. All ammunition carried by Special Operations will be approved by the Special Operations Commander prior to use in the specialized weapons.

803.4 FIREARMS PROFICIENCY

(a) Officers shall annually demonstrate proficiency to the proficiency officer for each authorized firearm carried (Tex. Occ. Code § 1701.355).

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(b) The Learned Skills Unit shall keep accurate records of quarterly qualifications, repairs, maintenance and training as required by law. The course of fire shall meet or exceed the minimum standards required by law. Separate firearms proficiency tests must be demonstrated and conducted for each weapon used, such as a handgun, shotgun, patrol rifle or fully automatic weapon (37 Tex. Admin. Code § 217.21).

(c) At least annually, all personnel carrying a firearm will receive training on the Department Response to Resistance General Order and demonstrate working knowledge and understanding of the order (Tex. Occ. Code § 1701.355).

(d) In the event that the above requirements present a hardship, the Department may request in writing that TCOLE waive an officer's annual demonstration of weapons proficiency requirement (Tex. Occ. Code § 1701.355(b) and 37 Tex. Admin. Code § 217.21(e)).

(e) All sworn personnel will practice and qualify in their regular work attire (e.g. plain clothed officers will qualify in plain clothes).

803.4.1 ANNUAL QUALIFICATION

Officers must qualify annually on a TCOLE approved course of fire with each firearm and type of ammunition he is authorized to carry. In addition, approved firearms and duty ammunition must be thoroughly inspected by firearms personnel as outlined in this order.

(a) Immediate supervisors are responsible for ensuring officers qualify when required to do so.

(b) Scoring on APD qualification courses will be done on a pass/fail basis. No numerical score will be recorded for qualification purposes.

(c) **Nightfire Qualification Requirements**

1. Officers who routinely work all or part of a normal shift under low light or night low light conditions must qualify on the nightfire course.
2. Officers who routinely work Law Enforcement Related Secondary Employment (LERE) during low light or night conditions must qualify on the nightfire course.
3. Officers that qualify on the nightfire course do not have to qualify during the day.

(d) **Qualification Scheduling**

1. Annual qualification will normally be done during the first quarter of the calendar year. Scheduling and signup will be done through TRAIN.

803.4.2 FAILURE TO QUALIFY WITH DUTY WEAPONS

(a) Officers failing to appear at the firearm range to qualify during any mandatory qualification period will be subject to disciplinary action.

1. At the end of each qualification period, the Learned Skills Unit supervisor will prepare a list of officers who did not appear at the firearms range to qualify by the designated deadline. This list will be submitted to the Office of the Chief and the affected Commander.

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(b) Officers that fail to make a passing score on a qualification relay for a primary duty weapon shall be given the opportunity to fire a second qualification relay.

1. **Qualification While On-Duty**

   (a) If an on-duty officer fails the second qualification relay, the officer will be placed in a non-enforcement capacity by the Learned Skills Unit supervisor and scheduled for a remedial training class designed for the type of weapon the officer failed to qualify with.

   (b) The officer's immediate supervisor will be notified.

2. **Qualification While Off-Duty**

   (a) No overtime or compensation time will be given for a second qualification relay.

   (b) If an off-duty officer cannot spend the extra time to qualify, or fails the second qualification relay, the Learned Skills Unit supervisor shall immediately notify the officer's supervisor

   (c) The officer's supervisor will be responsible for:

      1. Changing the officer's duty status to a non-enforcement capacity; and

      2. Assigning the officer to a remedial training class designed for the type of weapon the officer failed to qualify with; and

      3. Ensuring the officer's duty hours are changed, if needed, to attend the remedial class.

3. **Removal of Weapon from an Officer's Registered List**

   (a) Instead of being placed on remedial status for failure to attain a passing score, the following options are available:

      1. An officer failing to qualify with a Secondary/Backup weapon has the option of removing the weapon from his registered list of handguns provided he has qualified with another handgun that is approved as a primary duty weapon. This will be done before the officer leaves the firearms range.

      2. An officer failing to qualify with a City-issued handgun does not have this option.

(c) Officers failing to qualify with a personally owned or City-issued semiautomatic rifle will be prohibited from carrying the weapon until they successfully complete an additional Department approved semiautomatic rifle course.

803.4.3 REMEDIAL FIREARMS TRAINING

Remedial firearms training is specifically for APD personnel who have failed to qualify with an approved weapon.

(a) Classes will be designed by the firearms range staff and conducted as soon as practical after an officer is placed on remedial status.

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(b) After completion of each remedial training class, the officer attending the class will fire in a qualification relay. If due to their assignment the officer is required to pass a low light qualification course, the officer must pass a low light qualification course prior to returning to duty.

1. If the officer makes a passing score, the Learned Skills Unit supervisor will notify the officer's supervisor and recommend the officer be returned to an enforcement capacity.
2. If the officer fails to make a passing score after remedial training, the officer may be subject to indefinite suspension. The Learned Skills Unit supervisor will forward the documentation through the Training commander to the officer's commander.

(c) Firearms range personnel will ensure a training roster is completed and whether the officer passed the qualification relay.

803.5 USE OF RANGE FOR PRACTICE FIRE

The firearm range will be available for practice as shown on the most current range schedule.

(a) Only approved weapons and ammunition will be utilized on the firearms range.

(b) Officers practicing on the range may be issued 50 rounds (maximum) of practice ammunition per day.

(c) Firearm range personnel have the authority to decide which of the two forms of practice is fired.

1. **Free Form**: The shooter fires on his own under firearms range supervision; or
2. **Practice Course**: An organized course is run for all shooters practicing on the firearms range at that time.

803.6 CLEANING AND MAINTENANCE

(a) Officers are responsible for ensuring their weapons are clean, safe and functional.

(b) Handguns may only be repaired by an APD approved gunsmith or armorer. Repairs shall not exceed manufacturer specifications.

(c) When cleaning a Department shotgun, only the barrel may be removed by the officer.

(d) Cleaning a Department issued rifle is the responsibility of the officer to whom the weapon has been assigned. Cleaning will be done per current rifle training protocol.

(e) The supervisor in charge of a unit that uses specialized weapons is responsible for coordinating the cleaning of those weapons.

803.7 FLYING WHILE ARMED

The Transportation Security Administration (TSA) has imposed rules governing law enforcement officers flying armed on commercial aircraft. The following requirements apply to personnel who intend to be armed while flying on a commercial air carrier or flights where screening is conducted (49 CFR § 1544.219):

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(a) Officers wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure purposes.

(b) Officers must carry their department identification card, which must contain a full-face picture, the officer's signature and the signature of the Chief or the official seal of the Department, and must present this identification to airline officials when requested. Officers must also carry their department badge as well as the standard photo identification needed for passenger screening by airline and TSA officials (e.g., driver's license, passport).

(c) Officers must submit a National Law Enforcement Telecommunications System (NLETS) message prior to travel. The NLETS message sent by the employing agency will replace the current original letter of authority, signed by the chief or agency head, required under 49 CFR 1544.219. Once the NLETS message is received by TSA, a return NLETS message will be sent to the employing agency with an eight character Unique Alphanumeric Identifier for verification at the airport on the day of travel.

1. Failure to use the NLETS message in lieu of the Original Letter of Authority (Commonly referred to as the "Chief's Letter") will result in denial to the sterile area for failure to comply with the "Letter of Authority" requirement delineated in 49 CFR 1544.219.

2. Prior to submitting the NLETS request, officers must first obtain authorization signatures from their commander and the Chief of Police or his designee using form PD0284.

(d) Officers must have completed the mandated TSA security training covering officers flying while armed. The training shall be given by the Department appointed instructor.

(e) Officers are responsible for notifying the air carrier in advance. This notification can be accomplished by early check-in at the carrier's check-in counter.

(f) Discretion must be used to avoid alarming passengers or crew by displaying a firearm. Officers must keep the firearm concealed on their person at all times. Firearms are not permitted in carry-on luggage and may not be stored in an overhead compartment.

(g) Officers should not surrender their firearm but try to resolve any problems through the flight captain, ground security manager or other management representative of the air carrier.

(h) Officers shall not consume alcoholic beverages while aboard an aircraft or within eight hours prior to boarding an aircraft.

803.8 CARRYING FIREARMS OUT OF STATE

(a) Qualified active full-time officers and previously approved retired officers of the Department are authorized to carry a concealed firearm in all other states subject to the following conditions (18 USC § 926B and C):

1. Officers or retired officers shall carry a valid, unexpired APD ID card whenever carrying a weapon.

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2. Officers or retired officers is not the subject of any current disciplinary action or current criminal investigation.
3. Officers or retired officers may not be under the influence of alcohol or any other intoxicating or hallucinatory drug.
4. Officers and retired officers are cautioned that individual states may enact local regulations that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property, or that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base or park. Federal authority may not shield an officer or retired officer from arrest and prosecution in such locally restricted areas.

(b) Officers will remain subject to this and all other Department General Orders (including qualifying and training).

(c) Visiting active and retired peace officers from other states are subject to all requirements set forth in 18 USC § 926B and C.

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804

Austin Police Department
General Orders

Department Vehicles

804.1 PURPOSE AND SCOPE

The Department utilizes motor vehicles operated by Department personnel in a variety of applications. In order to maintain a system of accountability and ensure vehicles are used appropriately, regulations relating to the use of these vehicles have been established.

For purposes of this order, Department vehicles are considered to be any vehicle used by Department employees for official Department business, including privately owned vehicles or vehicles owned, rented, leased, or maintained by the City.

804.2 GENERAL OPERATION OF DEPARTMENT VEHICLES

(a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department General Orders. Unsafe or negligent driving is prohibited.

1. Vehicles will be operated in such a manner and at a rate of speed that the driver, by use of ordinary care, can avoid colliding with another vehicle, object, or person.
2. Employees will wear a seatbelt in the front or back seat while operating or riding inside of a Department vehicle unless there is an operational, tactical, or medical need to be unsecured.

(b) Department vehicles will be kept clean by utilizing car washes that are under City contract.

(c) Employees will not use any type of Mobile Audio Video Recording system (MAV/ DMAV) inside a Department vehicle unless the employee has been trained in its use.

(d) The use of a Personal Communication Device (PCD), such as a mobile phone, PDA, or wireless two-way communication device while driving can cause unnecessary distractions and presents a negative image to the public.

1. Employees operating emergency vehicles should restrict the use of these devices while driving to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to complete the call.
2. Except in the case of an emergency, employees who are operating non-emergency vehicles will not use PCDs while driving unless it is specifically designed and configured to allow hands-free listening and talking. Such use should be restricted to business-related calls or calls of an urgent nature.

(e) When a Department vehicle is unattended and out of sight of the operator:

1. The vehicle should be turned off and legally parked, when practical, and properly secured by locking the doors and ensuring the windows are rolled up; and
2. Any firearm inside the vehicle will be locked/secured unless being readied for use.

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804.2.1 CHECK OUT AND RETURN OF DEPARTMENT VEHICLES
This section covers the guidelines for checking out and returning Department vehicles that are stored and maintained at Department facilities.

(a) Employees will not use a vehicle assigned to another area or unit unless prior authorization has been given by a supervisor from the affected area or unit.

(b) Employees checking out a Department vehicle will:

1. Legibly sign the vehicle out on the appropriate roster.
2. Conduct an inspection before using the vehicle and contact their immediate supervisor or PCO if any issues are found; employees will :
   (a) Check for vehicle damage and cleanliness;
   (b) Check the condition of installed equipment; and
   (c) Perform standard maintenance checks including fluid levels.

(c) Employees returning a Department vehicle will:

1. Refuel the vehicle when it has one-half (1/2) a tank of gas or less.
2. Park in a designated area at Department facilities.
3. Turn off all equipment and electronics.
4. Remove any personal equipment and trash from the vehicle.
5. Ensure all firearms are locked or turned into PCO.
6. Secure the vehicle and return the keys to PCO.

804.2.2 ASSIGNMENT AND USE OF DEPARTMENT TAKE HOME VEHICLES
Take home vehicles are used to maintain the effectiveness and efficiency of the Department by allowing personnel to rapidly respond to situations involving the health, safety, or welfare of the community. Take home vehicle assignments may be on a permanent or on-call basis.

(a) Take home vehicle assignments will be determined by the Chief or designee. The Department will maintain a list of assignments authorized to have permanent and on-call take home vehicles.

(b) Employees will not be allowed to utilize a take home vehicle if their residence is more than 25 miles from the city limits of Austin.

(c) Take home vehicles should be safely secured when not in use and parked in secure areas when left overnight.

(d) Employees who have been assigned a take home vehicle will complete the APD Sharepoint Take Home Authorization Form : http://sharepoint.ausps.org/sites/apd/SUPOPS/Lists/Take%20Home%20Car/AllItems.aspx before the employee utilizes the take home vehicle and then complete an updated form in December of each subsequent year.

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(e) Each person in the employees Chain of Command up to the Commander is required to approve the take home vehicle form on Sharepoint.

1. Employees will submit the form to their immediate supervisor for chain-of-command review and assessment.

2. The chain-of-command will forward the form to Fleet Management upon completion of the review.

804.2.3 DEPARTMENT VEHICLE USE FOR OUT-OF-CITY ASSIGNMENTS

(a) Employees who have obtained official authorization to utilize a Department vehicle for an out-of-city assignment may contact a substation PCO and obtain a City credit card prior to departing in the event the vehicle will need fuel or repairs.

(b) Employees will ensure the Department vehicle is mechanically sound prior to departure by taking the vehicle to Service Center #5 for out-of-city trips exceeding 100 miles each way.

804.2.4 AUTOMATED FUEL SUPPORT PROGRAM

(a) The City has two types of fuel facilities:

1. Primary Fuel Site - A fuel facility with an automated fuel card reader. A fuel card must be used at these facilities.

2. Alternate Fuel Site - A non-automated fuel facility located primarily at City fire stations and Parks and Recreation facilities. Fuel issued at these sites is recorded on a Daily Fuel Issue form.

(b) A magnetically coded plastic fuel card is assigned to every Department owned and leased vehicle.

(c) Department vehicles without a fuel card can be denied fuel unless an emergency exists. Any lost, missing, or damaged fuel card will be reported in accordance with Department General Order on Equipment Accountability.

(d) Unless authorized and specifically exempted in a Unit's SOP, whenever a Department vehicle is used for out-of-city trips and it is necessary to refuel at a site other than a City fuel facility, a current odometer reading must be reported prior to using a City fuel facility.

804.3 PARKING OF DEPARTMENT VEHICLES

This section outlines the guidelines for parking Department vehicles while conducting City business. City business does not include an employee parking a vehicle when merely showing up for work at his regular work location.

(a) Employees are not authorized to park a vehicle in any prohibited parking area.

1. Employees receiving a parking citation for parking in a prohibited area are responsible for paying the citation in a timely manner, regardless of whether or not the employee was on City business at the time the citation was issued.

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(b) Employees on City business may park at a metered parking space without paying the meter.

1. Employees receiving a parking citation at a metered parking space while complying with a work related subpoena must adhere to the following guidelines in a timely manner to have the citation dismissed; employees will:

   (a) Legibly write their name, employee number and the court information (e.g., "County Court 3/Cause #123456") in the margin of the parking citation itself; and

   (b) Attach a copy of the subpoena to the citation, if available; and

   (c) Submit the citation to the Court Liaison over the court the employee was attending.

2. Employees receiving a parking citation at a metered parking space while on all other official City business will:

   (a) Legibly write their name, employee number, and the type of City business they were on in the margin of the parking citation itself; and

   (b) Submit the citation to their immediate supervisor or the Court Liaison Unit supervisor.

   (c) Supervisors receiving a citation from employees that fit the criteria for dismissal will legibly write their initials and employee number on the parking citation and the statement, "Recommend Dismissal - On City Business."

3. All citations requesting dismissal that have been reviewed by the employee's supervisor or a Court Liaison will be turned in to the Court Liaison Unit supervisor. The Court Liaison Unit supervisor is responsible for delivering citations requesting dismissal to the Municipal Court Hearings officer.

(c) Employees who routinely travel away from their normal work location as part of normal duties may be issued a City Parking Permit to be used while conducting City business.

1. Requests for issuance of a City Parking Permit must be forwarded through the chain-of-command for approval by the appropriate assistant chief.

2. Approved requests will be given to the Assistant Chief's administrative specialist for processing.

(d) Certain Department vehicles will not be issued a City Parking Permit but will have the vehicle license plate number entered into the City computer system as "exempt" when parking in metered parking spaces.

804.4 USE OF DEPARTMENT VEHICLES TO PUSH/PULL OTHER VEHICLES

Officers have the authority to remove personal property from a roadway or right-of-way if an officer determines that the property blocks the roadway or endangers public safety (Tex. Transp. Code § 545.3051).

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(a) Some Department vehicles have push bars that are designed for and should be used to assist in moving disabled vehicles from the roadway when reasonable and practical.

1. Employees must use caution because improperly pushing another vehicle may cause the safety airbag to deploy in the Department vehicle.

(b) Some Department vehicles are equipped with trailer hitches designed to pull or tow other vehicles.

1. Employees will not pull another motor vehicle or trailer unless the Department vehicle is equipped with a hitch capable of pulling the vehicle or trailer.

(c) Officers are not liable for any damage to personal property removed from the roadway or right-of-way unless the removal is carried out recklessly or in a grossly negligent manner (Tex. Transp. Code § 545.3051).

1. If there is a complaint of damage to any property, including the Department vehicle, as a result of pushing or pulling another vehicle from the roadway:

(a) Officers will notify their supervisor.

(b) Supervisors will inspect the alleged damage and make a determination if the damage is the result of pushing or pulling the vehicle.

2. If the damage is a result of pushing or pulling the vehicle:

(a) Digital images will be taken and downloaded into the appropriate records management system using the incident number.

(b) The employee who pushed the vehicle will:

1. Initiate an incident report titled Damage to City Vehicle.

2. Describe the incident and apparent damage in detail in the incident narrative.

(c) Reviewing supervisors shall:

1. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:

(a) Involved employee's chain of command up to the lieutenant; and

(b) APD Risk Management

2. Review the primary reporting employee's incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.

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(d) Lieutenants in the reporting officers' chain of command will review reports, photos, and any information related to the incident.

1. If the reviewing lieutenant determines that the officer is not negligent, no further action is needed.
2. If the reviewing lieutenant determines that the officer is negligent in the incident; the information is forwarded to the commander for further review and action if appropriate (documented in field notes, training, IAD, etc.).

804.5 RED LIGHT CAMERA CITATIONS

The following guidelines cover how to handle citations generated by a red light camera issued to employees operating a Department vehicle. Employees may be held accountable for running a red light while operating a Department vehicle.

(a) The Red Light Camera Coordinator will send an administrative notice to the appropriate commander when an emergency vehicle activates a red light camera. The commander or designee will make a determination if a violation of general orders occurred.

804.6 REPAIR OF DEPARTMENT VEHICLES

When an employee discovers a defect in a Department vehicle, the vehicle will not be used if the defect is such that the safety of the employee is in doubt or continued use would aggravate the defect. Before removing a Departmental vehicle from service the employee will remove and secure all weapons.

(a) Vehicle defects and malfunctioning emergency lights, sirens and radios shall be reported on the *Vehicle and Equipment Repair Form* and submitted to the on-duty PCO employee.

(b) Vehicles removed from service for maintenance or repair will not be operated by anyone other than a repair employee until the vehicle has been returned to normal duty status.

(c) Damage to police vehicles resulting from a prisoner's actions will be documented in the employee's incident report and the charge of "Criminal Mischief" will be added to any other charges against the person.

1. The employee will complete the repair form, include the incident number and the damage to the vehicle, and forward the repair request to the vehicle fleet manager.

804.6.1 REPAIR OF DEPARTMENT VEHICLES DURING AN OUT-OF-CITY ASSIGNMENT

When a Department vehicle used in an authorized out-of-city assignment becomes disabled and is in need of immediate repair to return safely to Austin, the employee using the Department vehicle will obtain minor repairs locally or coordinate by phone with Fleet Services for major repairs.

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(a) Minor repairs are considered repairs that can be made for less than $300. The employee should attempt to use a service that will honor the City fuel credit card.

(b) Major repairs are considered repairs that can be made for $300 or more.

1. The employee will contact Service Center #5 to coordinate major vehicle repairs. If Service Center #5 is closed, the employee will use the emergency number at (512) 974-3333.

804.7 TOLL ROAD USAGE

The Vehicle Coordinator assigned to fleet operations shall maintain a list of license plate numbers for City vehicles that are authorized to traverse toll roads and furnish this list to the Texas Toll Road Authority in Austin in order to prevent toll charges from accruing on these vehicles.

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Chapter 9 - Personnel Policies

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General Conduct and Responsibilities

900.1 PURPOSE AND SCOPE

It is the policy of the Austin Police Department that employees conduct themselves at all times in a manner that reflects the ethical standards consistent with APD written directives. This order shall apply to all sworn and civilian members, including volunteer, part-time, auxiliary, and non-paid civilians affiliated with the Department through a Department-sponsored program while under the direction of a Department employee.

This order is intended to guide employees in conducting themselves and their affairs, both on-duty and off-duty, in a manner that reflects the professionalism required of Department personnel. Furthermore, this order is intended for internal use only and shall not be construed to increase or establish an employee's civil or criminal liability, nor shall it be construed to create or establish a higher standard of safety or care.

900.1.1 RESPONSIBILITY TO KNOW AND COMPLY

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

(a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.

(b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.

(c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

900.2 REQUIRED REPORTING OF VIOLATIONS

Employees have an obligation and responsibility to report all facts or credible information they know regarding any criminal activity by other employees or any breach of APD written directives.

(a) Suspected Criminal Activity

1. Employees will report any knowledge or credible information regarding criminal activity of another employee via memorandum to IA, SIU, or any supervisor in their chain-of-command.

    (a) When a memorandum is presented to a supervisor, the supervisor will notify his chain-of-command.

    (b) When a memorandum is presented to an assistant chief/director, it will be immediately forwarded to IA and SIU.

(b) Suspected General Order Violations

1. Employees will report any employee known or believed to be guilty of any violation of a rule, regulation, or order issued by the Department to their immediate supervisor.

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2. Supervisors will immediately take action as outlined in General Order 902 (Administrative Investigations) when a violation of a directive comes to their attention, regardless of the supervisor's or violator's assignment or rank within the Department.

900.2.1 CONFIDENTIALITY

All information relating to an employee's suspected criminal act or general order violation is confidential.

(a) Except as required in reporting the incident:

1. Employees will not disclose or discuss such information with anyone except investigators assigned to the case, the employee's attorney, employee's chain-of-command or other persons specifically designated by the Chief.

2. Investigators of such cases will not disclose or discuss information about any such investigation with anyone except other investigators assigned to assist with the investigation, the investigator's chain-of-command, officers of the court, or other persons specifically designated by the Chief.

900.2.2 RETALIATION PROHIBITED

Employees will not, in any way, cause or conspire to cause retaliatory action against any individual who has been involved in any such investigation or subsequent proceeding as a defendant, complainant, witness, victim, investigator, or any other capacity. While the Department wishes to avoid reassigning an employee while a complaint or grievance is being investigated, this order does not prohibit the Department from doing so, including the complainant/victim, while the complaint or grievance is under investigation should an assistant chief determine that a reassignment is in the best interest of the Department and/or the employee.

900.3 GENERAL CONDUCT

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

900.3.1 HONESTY

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

(a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":

1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.

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2. Verbal or written statements made by an officer in connection with their official duties to:

    (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.

    (b) A supervisor conducting an inquiry into the officer's use of force.

    (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.

(b) Employees who obtain their employment by willful misrepresentation or false statements may be dismissed from the Department.

(c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

(d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

(e) Employees will not falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the Department as to the condition of their health.

900.3.2 ACTS BRINGING DISCREDIT UPON THE DEPARTMENT

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

(a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

(b) Employees will refrain from being a party to any malicious gossip, rumor, report or activity, whether written or oral, that would tend to bring discredit to the Department or any member thereof.

1. "Malicious gossip, rumor, report or activity" includes statements made with knowledge of their falsity or made without regard to whether the statements are true or false.

(c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.

1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which would favor one side or the other in conflict with the employee's official duties, or which conflicts with the accomplishment of the Department's mission or goals.

(d) Employees will not congregate or loiter in any place or in any manner as to bring discredit to the Department.

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1. No more than four (4) officers, uniformed or plainclothes, who are identifiable as officers by the display of badges, police radios, insignias, or any articles of clothing identifying them as police officers, will congregate in a public place except when required by official police duties or as authorized by a supervisor.
2. Except as necessary to perform assigned tasks or as authorized by a supervisor, the following restrictions apply to the number of marked APD police units parked in a parking lot or near a public place at any one time:
   (a) No more than two (2) between the hours of 6:00 am and 10:00 pm, daily; or
   (b) No more than four (4) between the hours of 10:00 pm and 6:00 am, daily.

900.3.3 PROHIBITED ASSOCIATIONS

(a) Employees will not establish an external social relationship with a known victim, a known witness, or a known suspect of a crime while such case is being investigated by this Department or prosecuted as a result of such an investigation.

(b) Employees will not establish social and/or business dealings with persons they know, or should know, are likely to adversely affect the employee's or Department's credibility. Employees will not associate with convicted felons. Provisions of this section do not apply to association based on kinship or the discharge of official duties.

(c) Employees will not knowingly loan money, accept as pawn any item, or enter into any type of business arrangement with a suspect of a criminal violation, a person under arrest or detention, a person known to have a criminal record or unsavory reputation, or a person known to be engaged in, or planning to engage in, criminal activity.

(d) Employees will not affiliate with any organization or body, the constitution or regulations of which would in any way prevent or hinder performing departmental duties.

(e) Employees will not knowingly associate with any person or organization which advocates hatred, prejudice, or oppression of any person or group or which disseminates such material.

(f) Employees will not become a member of any organization, association, movement, or group which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means.

900.3.4 PERSONAL CONDUCT

(a) Employees will not knowingly enter a location engaged in prostitution, illegal gambling, or any establishment wherein laws are being violated.

(b) Supervisors will not place themselves under financial obligation to a subordinate.

(c) While on-duty or on the premises of City facilities, employees will not:

1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.

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2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.
3. Indulge in "horseplay."
4. Produce or display graffiti of any nature.
5. Post or display derogatory, offensive or lewd pictures which degrade or lower the self-esteem of fellow employees and would undermine the goal of professionalism within APD.
6. Engage in any sexual conduct including lewd acts or solicitation for sex.

(d) While on-duty or wearing any item which makes one identifiable to the public as an APD employee, employees will not:

1. Sleep.
2. Engage in gambling, including lottery games.
3. Play games, including cards, dominoes, billiards, video or computer games, watch television or movies, or otherwise engage in entertainment, unless it is job related and has been approved by their commander/manager.
4. Read newspapers, magazines, books, or other material, except during approved breaks.
5. Study for promotional examinations.
6. Take an authorized break in a sexually oriented business.
7. Ride a personally owned motorcycle without a DOT approved motorcycle helmet.

900.3.5 USE OF BADGE OF OFFICE OR AFFILIATION WITH THE DEPARTMENT

(a) Employees will not intentionally use their affiliation with the Department to influence another into offering a gift, gratuity, free or discounted service, reward, or special consideration. This includes:

1. For the personal benefit of self, family, friends, or associates.
2. For the financial gain of self, family, friends, or associates.
3. Obtaining privileges not otherwise available to them, except where necessary in the performance of their duty.
4. Avoiding the consequences of illegal acts.

(b) Employees will not permit the use of the name of the Austin Police Department for advertising purposes without the approval of the Chief.

(c) Employees will not permit or authorize the use of their names, photographs, or official titles in connection with testimonials or advertisements of any commodity or commercial enterprise if such use identifies the employee as a member of the Department.

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(d) Employees will not have or use business cards pertaining to a private business showing the employee's connection with APD.

(e) Employees will not present themselves as representing the Department in any matter except as authorized as a function of their position or as authorized by a supervisor.

1. Employees will not prepare any articles or write for publication concerning the affairs of the Department without the consent of the Chief.

2. Employees will not release confidential information.

900.3.6 POLITICAL AFFILIATION AND LEGISLATIVE TESTIMONY

(a) Employees who desire to represent the City or Department in any testimony before any legislative committee must first obtain approval from the Chief or designee.

(b) Employees who desire to represent themselves or a special interest group may do so on their own time or on approved leave, and at their own expense or at the expense of the special interest group, but not on City time nor at City expense.

(c) Employees will remain neutral in all situations, never rendering an opinion as to the qualifications of any candidate, potential candidate or issue while in uniform or on-duty.

(d) Employees are prohibited from:

1. Knowingly becoming a candidate for nomination or election to any public office, unless in compliance with City Policy.

2. Using their official capacity to influence, interfere with or affect the results of an election.

3. Directly or indirectly using, promising, threatening or attempting to use an official influence in aid of any partisan political activity, or to affect the result of any election to partisan or political office by any other corrupt condition or consideration.

4. Promoting, demoting, or in any way favoring or discriminating against any employee with respect to employment because of political opinions or affiliations.

5. Seeking any advantage in employment for any person based on political action.

6. Coercing any employee to provide anything of value to any individual or organization for political purposes.

7. Using any authority of the position to gain support for, or to oppose, any candidate, party, or issue in a partisan election.

8. Taking an active part in another person's political campaign, including attending fund-raising events, making speeches, writing letters, signing petitions, or actively soliciting votes while in uniform or on-duty.

9. Displaying political campaign literature in work areas.

900.3.7 RECOMMENDATION OF ATTORNEY OR AGENT

Employees will not suggest or recommend the services of an attorney, bail bondsman, towing agency, physician, or other business service to any person with whom they have had contact as

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a result of departmental business, except in the transaction of personal business with family and friends.

900.4 REQUIREMENTS OF DUTY

Employee conduct will always be consistent with the Department's values, vision, mission, and any supervisor's instructions.

(a) Employees will maintain themselves in such a physical condition as to be able to handle the requirements of their assignment.

(b) Employees will not exhibit cowardice or shirk their duty in case of danger.

(c) Employees will consider themselves available for duty in any emergency situation.

(d) Employees will report for all duty assignments, including assigned court appearances, at the time and place required by assignment or orders and be properly prepared and equipped to immediately assume their duties.

(e) Employees will remain at their assignment and on-duty until properly relieved by another employee or until dismissed by proper authority.

(f) Employees are considered on-duty while on authorized breaks.

(g) Employees will remain alert and observant while on-duty and devote their time and attention to the business of the Department. Any exceptions require supervisor approval.

(h) Employees will not engage in any strike, work slowdown or stoppage, concerted failure to report for duty, or any other action which interferes with the efficiency or integrity of the administration of criminal justice or departmental discipline, nor will any employee encourage, coerce or conspire with any other individual to do so.

(i) Employees assigned to investigate an incident where the complainant and/or suspect is considered a friend or relative will contact their supervisor; supervisors will reassign the incident to another employee.

(j) Unless otherwise authorized by law, City policy, or Department directive, employees will not go outside of the Department in an attempt to resolve police-related matters until appropriate Department procedures have been followed.

(k) Employees will write a memorandum to the Chief through their chain-of-command before filing claims for damages or entering into legal compromises or settlements regarding events connected with the performance of duty.

(l) Employees will not serve civil process or render assistance in civil cases except when:

1. The City is a party; or
2. There is a statutory duty to do so; or
3. A court order requires assistance; or
4. Authorized by a supervisor.

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900.4.1 DISCRETION AND REQUIREMENT TO TAKE ACTION

Sworn employees are charged with the responsibility to enforce the law, preserve the peace, and to protect lives and property.

(a) By itself, the mere fact that a minor violation of the law has occurred may not be sufficient reason to justify arrest. Laws generally serve as the tools officers use to protect residents' rights and to maintain peace in the community.

(b) Officers will take immediate action, if reasonably possible, to prevent any obvious felony offense, arrest any known wanted felon they encounter, and protect all persons and property from imminent harm.

(c) Officers assigned to Specialized Units or other special duty assignments are not relieved from taking enforcement action outside the scope of their specialized assignment when necessary.

(d) Whether or not an officer should take immediate action to enforce any law depends on a number of things including, but not limited to, whether another more serious situation exists at the same time and needs to be addressed first.

(e) When a law or general order does not provide clear guidance regarding a particular situation, employees will consult with their immediate supervisor for direction, when practicable.

900.4.2 MAINTAINING REQUIRED LICENSES AND CERTIFICATIONS

Employees will maintain all required licenses and certifications in good standing including, but not limited to, a Texas driver's license and required licenses and certifications issued by TCOLE.

(a) It is the responsibility of the employee to notify his immediate supervisor in the event of any suspension, revocation or cancelation of a license or certification necessary to the performance of job assignments.

(b) Suspension, revocation, or cancelation of a license or certification necessary to the performance of job assignments will result in termination of that assignment or of employment with the Department.

(c) Sworn employees will not be permitted to be a deputy or hold a commission from any other law enforcement agency, whether local, state or federal, except when authorized as part of a multi-agency task force.

900.4.3 NEGLECT OF DUTY

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

(a) Lack of knowledge of the application of laws required to be enforced.

(b) Unwillingness or inability to perform assigned tasks.

(c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.

(d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.

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(e) Absence without approved leave.

(f) Repeated poor evaluations.

(g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.

(h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

(i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

900.4.4 DUTY TO IDENTIFY

(a) Unless doing so would jeopardize an undercover officer or a covert operation, employees will furnish the name and identification number of any employee, including themselves, to any person requesting such information regarding matters in which the employee was acting in an official capacity. Names of employees will be given in sufficient form to fully identify the employee.

(b) Sworn employees taking police action while not in uniform will, as soon as possible, display their police badge or APD ID and state the purpose for taking police action.

(c) Employees will provide the name and business telephone number of their immediate supervisor upon request by any person.

900.4.5 NEGOTIATIONS ON BEHALF OF SUSPECT

Prohibitions in this section do not relieve supervisors from their obligations to review enforcement contacts of subordinates and take appropriate action, if necessary, to prevent the filing or adjudication of improper charges.

(a) Employees will not participate in any arrangement between a suspect and victim that would result in the suspect escaping the penalty of the law nor will any employee seek the continuance or dismissal of any case on behalf of the suspect in court for any reason.

(b) Employees will not promise informants any immunity from or leniency in any criminal prosecution without approval of the prosecuting attorney.

(c) Employees will not obstruct an investigation or legal process by interfering or attempting to interfere with any legal process.

(d) Employees will consult with the investigator assigned to a suspect's original charge(s) before attempting to negotiate with that suspect to secure a more serious charge against another suspect.

900.5 RESPONSIBILITY TO COWORKERS

Cooperation among employees of the Department is essential to effective law enforcement.

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(a) Employees are expected to treat each other with respect.

1. Employees will be courteous and civil at all times in their relationships, perform their duties in a cooperative and supportive manner, and not threaten, display physical aggression toward, or use insolent or abusive language with one another.

2. Employees will address one another by proper use of rank or title when on-duty and in the presence of the public.

(b) Employees will not discuss the identity or assignment of any employee serving in a confidential or covert assignment unless required to do so as a direct result of their official duties.

(c) Employees will not covertly record the conversations of other employees unless all persons being recorded are aware that they are being recorded and agree to be recorded. This does not apply to Department authorized criminal or administrative investigations, training modules, or MAV recordings from equipped APD vehicles.

(d) Employees must be cautious about speaking to plainclothes officers when in public so as not to inadvertently compromise their anonymity and place them in potential danger; therefore, employees will not address undercover/plainclothes officers, or call attention to their presence, unless first addressed by them.

(e) Employees will not reply to an outside request for a professional work reference for an active or past member of the Department; all work reference requests must be forwarded to APD-HR.

900.5.1 SUPPORTING FELLOW EMPLOYEES

(a) Employees will not knowingly aid, abet, or assist another Department member in violating any Department directive or order.

(b) Employees will cooperate, support, and assist each other at every opportunity.

(c) Employees will not publicly criticize the work or the manner of performance of duty of any other employee.

(d) Officers are required to take appropriate police action to aid, assist, and protect fellow employees in times of danger or under circumstances where danger might reasonably be impending.

900.5.2 SYMBOLISM IN THE WORK AREA

(a) Work areas are not to be so adorned that it is difficult to conduct business.

(b) Symbols which are of an insulting, profane, and demeaning nature are not permitted.

(c) Wall area decor which is perceived to be offensive to any employee will be explained by the person displaying the symbolism. If the explanation does not satisfy the offended person, the Chief or designee will make the final decision as to whether or not the symbolism remains in the work area.

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900.5.3 SEXUAL RELATIONSHIPS BETWEEN EMPLOYEES

Supervisors are not to engage in any sexual conduct with a subordinate in their direct chain-of-command. If a supervisor and a subordinate begin developing a relationship that is likely to involve sexual conduct, they are both responsible for arranging a transfer before engaging in any sexual conduct.

900.6 REQUIRED EMPLOYEE CONTACT AND EMERGENCY CONTACT INFORMATION

It is imperative the Department be able to immediately contact any employee for mobilization in the event of an emergency situation. The Department must also be able to identify an employee's next of kin or other designated emergency contact person in the event of a critical incident. Employees will not disclose the physical or mailing addresses, phone numbers, or pager number of another APD employee unless permitted by law.

900.6.1 EMPLOYEE CONTACT INFORMATION

The e-PIF (electronic personnel information on-line form) contains the employee's address, phone number, emergency contact, support contact, and religious affiliation. Employees are required to keep all information on their e-PIF current.

(a) Employees will update their e-PIF within 10 days of any change.

(b) If an employee has no physical address they will email a map with clear and detailed directions to the residence to APDHR@austintexas.gov. HR personnel will then attach this map to the employees record in the Master Work Schedule.

(c) Employees will list their telephone numbers to include home, pager, work, and cell (if receiving stipend).

1. Employees will maintain an operational phone capable of receiving and placing calls from their residence.
2. Employees receiving a cell phone stipend will ensure the phone is operational and available for use at all times.
3. Employees assigned a direct office phone number will use that number as their work number.
4. Employees who are not assigned a direct office phone number may use a generic phone number (e.g., 974-5000), or, with the permission of their supervisor, the supervisor's phone number.

(d) Sworn employees will list two APD employees to serve as their *Support Contact*. The *Support Contact* will represent the department when working with the employee's emergency contacts in the event the employee is involved in an emergency or critical incident.

(e) Employees will identify at least one emergency contact.

(f) The e-PIF does not contain beneficiary information; beneficiary information is maintained by the City of Austin's Human Resources and Benefits Section.

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Austin Police Department
General Orders

Special Investigations

901.1 PURPOSE AND SCOPE

The mission of the Special Investigations Unit (SIU) is to investigate allegations of criminal misconduct that involve APD employees, public integrity cases involving other City employees, all Level 1 response to resistance incidents, certain in-custody deaths of APD prisoners, shootings by law enforcement officers from other agencies operating within the city of Austin, and any other criminal cases as directed by the Chief of Police or designee.

901.2 SCOPE OF INVESTIGATIONS

(a) SIU may conduct investigations on the following:

1. Allegations of criminal misconduct involving law enforcement officers and APD civilian employees.
2. Allegations of criminal misconduct by other City employees when the alleged offense falls into the category of public integrity.
    (a) The appropriate Investigative Unit (e.g., decentralized detectives, OCD) will investigate all criminal incidents by other City employees when the allegation has no bearing on public integrity.
3. Level 1 response to resistance incidents as described in General Order 211 (Response to Resistance Inquiry, Reporting, and Review) when an APD employee is involved. SIU will be the lead Investigative Unit in these incidents.
4. Death of an in-custody prisoner arrested by an APD officer.
    (a) Investigation of an in-custody death that occurs in a jail within 24 hours of booking by an APD officer will generally be led by SIU.
    (b) Investigation of in-custody death that occurs in a jail more than 24 hours after booking by an APD officer will be investigated by the agency operating the jail; SIU will assist if requested.
5. Officer-involved shootings involving law enforcement officers from other agencies that occur within the jurisdiction of the Austin Police Department, in partnership with the involved law enforcement agency as directed by the Chief of Police or designee.
6. SIU may conduct proactive investigations when approved by the Chief of Police.

(b) Allegations of criminal offenses involving APD employees that would normally be investigated by SIU but occur outside of APD jurisdiction shall be referred to the law enforcement agency that has jurisdiction.

(c) Any APD unit may be utilized as an investigative resource to assist SIU in conducting major investigations involving any City employee. Operational confidentiality of such investigations is a priority and shall be maintained.

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(d) When any APD unit initiates an operation or investigation and an APD employee becomes a suspect, SIU will be notified immediately. SIU will retain operational decision making authority during such investigations.

901.3 CONCURRENT INVESTIGATIONS

901.3.1 ROLE OF INTERNAL AFFAIRS

(a) While the SIU is conducting an investigation involving APD employees, Internal Affairs (IA) will conduct a concurrent investigation into related general order violations as outlined in General Order 902 (Administrative Investigations).

(b) The SIU supervisor will coordinate the investigation with the IA supervisor to ensure the integrity of all investigations. Information and documents related to the criminal investigation will be made available to IA unless directed otherwise by the proper prosecutorial agency; however, to protect the integrity of both the criminal and administrative investigations certain documents and/or information may not be shared.

1. Grand Jury documents and testimony will not be made available to IA.
2. "Garrity" protected documents and information will not be made available to SIU.
3. Matters that clearly do not fall under the protection afforded by "Garrity" and the secrecy of the Grand Jury may be used in the criminal and administrative investigation in accordance with State and Federal Laws, Rules of Evidence, and Department General Orders.

901.3.2 ROLE OF THE CITY AUDITOR'S OFFICE AND HUMAN RESOURCE DEPARTMENT
When the SIU conducts a criminal investigation involving a city employee from another city department, the City Auditor's Office and the Human Resources Department may conduct an internal investigation into related general order violations. Information and documents related to the criminal investigation will not be made available to the City Auditor's Office or the Human Resources Department, except as authorized by the assistant chief of Investigations.

901.4 SPECIAL INVESTIGATIONS PROCESS

This section outlines the following:

(a) Notification of investigations.

(b) Investigation of offenses.

(c) Completed investigations.

(d) Misdemeanor charges and felony indictments.

901.4.1 NOTIFICATION OF INVESTIGATIONS

(a) When the SIU supervisor becomes aware of an incident within SIU's scope of investigation, he will electronically notify the assistant chief of Investigations through the chain-of-command. The following additional notifications may be made, as appropriate:

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1. When an allegation of criminal misconduct involves an APD employee, the IA supervisor will be electronically notified. Involved employees' commanders/ managers will be verbally notified as long as it will not compromise the investigation.
2. When an allegation of criminal misconduct involves a law enforcement officer from another agency, IA and/or the Chief of the accused officer's agency will be notified unless the notification will compromise the investigation.

(b) When IA initiates an allegation of criminal misconduct, the IA commander will electronically notify the assistant chief of Investigations.

1. After the preliminary facts have been gathered, the assistant chief of Investigations will brief the Chief of Police or designee to determine if a criminal investigation will take place. If the decision is made to open a criminal case, the assistant chief of Investigations will route the IA electronic notification to SIU through the Violent Crimes commander.

(c) When SIU intends to proactively initiate an investigation, the SIU supervisor will electronically notify the assistant chief of Investigations through the chain-of-command and outline the purpose of the investigation.

1. The electronic notification will request a review of the preliminary facts to determine if a criminal and/or IA investigation should be opened.
2. After the preliminary facts have been gathered, the assistant chief of Investigations will make a decision that reflects one of the following.
   (a) A criminal investigation is warranted and will be opened by the SIU.
   (b) No criminal investigation is warranted, however an IA investigation should be opened due to a possible general order violation.
   (c) No criminal or IA investigation is warranted based on the facts known.
3. A copy of the electronic notification will be retained in the case file by the SIU supervisor.
4. A copy of the electronic notification will be forwarded to IA if deemed appropriate by the assistant chief of Investigations or designee.

901.4.2 INVESTIGATION OF OFFENSES

(a) Class B misdemeanor and higher offense cases will be thoroughly investigated and routinely discussed with the Violent Crimes chain-of-command, and the District or County Attorney's Office as needed.

(b) Class C misdemeanors will be documented in a secured incident report and reviewed by the assistant chief of Investigations to determine if it will be further investigated.

1. If approved for criminal investigation the case will be assigned to an SIU Investigator and handled the same as a Class B or higher offense; however, the victim will be directed to the appropriate court to file a complaint.

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(c) The involved officer, victim, or witnesses may be asked to conduct a re-enactment of the incident.

1. If the involved officer is participating in the re-enactment, he will be informed that the re-enactment is voluntary and will constitute a waiver of the officer's Fifth Amendment rights against self-incrimination. When possible, the re-enactment may be done prior to the conclusion of the on scene investigation.
2. Re-enactments can be videotaped by CSU personnel. The original tape will be marked as evidence and the SIU will maintain custody of the tape. The original, or copies, may be distributed to other department or law enforcement personnel only with the approval of the appropriate prosecutorial agency.

901.4.3 COMPLETED INVESTIGATIONS

The SIU supervisor will maintain a database of all cases investigated for tracking and statistical purposes.

(a) Completed investigations on APD employees or officers from another agency will normally be routed up the Violent Crimes chain-of-command for review prior to case closure.

1. If the investigation clearly reveals that no criminal offense occurred, the report will be unfounded in accordance with Department General Orders.
2. SIU will present completed investigations that are not unfounded to the appropriate prosecutor.
   (a) Misdemeanor charges that do not involve an abuse of official capacity or official oppression will be presented to the County Attorney's Office. The County Attorney's Office will determine if the facts of a case are sufficient for charges to be brought against the suspect or if prosecution will be declined.
   (b) Felony charges and misdemeanor investigations involving an abuse of official capacity or official oppression will be presented to the District Attorney's Office. The District Attorney's Office will determine if the facts of a case will be presented to a Grand Jury or if prosecution will be declined.

(b) Notification of unfounded investigations and cases where prosecution is declined will be handled as follows:

1. The assistant chief of Investigations or designee will send written notification to the APD employee who was under investigation if the final status of a case is unfounded or prosecution is declined. This notification will be copied to the employee's chain-of-command.
2. The SIU supervisor will send written notification of the final status of a case if it is unfounded or prosecution is declined to:
   (a) The appropriate Department director of a city employee who was under investigation; or
   (b) The Chief of Police of a sworn officer from another agency who was under investigation.

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901.4.4 MISDEMEANOR CHARGES AND FELONY INDICTMENTS
Notification of cases resulting in misdemeanor charges and felony indictments will be handled as follows:

(a) The SIU supervisor will immediately notify the Violent Crimes chain-of-command when it is learned that a case is to be presented to the Grand Jury by the District Attorney's Office or when misdemeanor charges are being brought by the County Attorney's Office.

(b) The SIU supervisor will immediately notify the SIU chain-of-command when an APD employee is charged with a misdemeanor or indicted on felony charges.

1. The assigned Investigative Unit detective and/or supervisor will make arrangements for the suspect to be arrested.

2. The Investigative Unit supervisor will coordinate with the SIU chain-of-command and APD PIO to have a press release ready should there be media inquiries.

901.5 ARREST AND RELEASE OF APD EMPLOYEES AND OTHER AGENCY SWORN OFFICERS

901.5.1 ARRESTS OF APD EMPLOYEES AND SWORN OFFICERS FROM OUTSIDE AGENCIES

(a) The SIU supervisor will be immediately notified of any criminal incident involving an APD employee or sworn officer from another law enforcement agency.

1. The role of the SIU supervisor is to initiate an immediate investigation into the facts of the case, not to determine whether an arrest should be made.

2. The SIU supervisor will normally respond to the scene of the incident unless the incident is of a nature that would not warrant the response.

(b) Officers making custody arrests will follow the guidelines set out in Department General Orders for arrest and booking. SIU investigators will be assigned the case and follow the guidelines set out in Department General Orders for follow-up investigations.

901.5.2 RELEASING WITHOUT FILING CHARGES OR FILING LESSER CHARGES
Approval by the commander of Violent Crimes or Duty Commander is required to release an APD employee or officer from another agency without filing charges or to charge the employee or officer with a lesser offense. The name of the commander authorizing a change in the filing of charges will be noted in a supplement to the incident report.

(a) When authorized by a commander, an arrested person will be released without being charged or will be charged with a lesser offense when:

1. A magistrate declines to accept the probable cause affidavit.

2. An Assistant District or County Attorney advises prosecution will be declined.

3. The complainant or victim refuses to file charges or assist with prosecution. However, the District or County Attorney may proceed with prosecution without the cooperation of the victim, such as in family violence cases.

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4. The written report by the arresting officer does not include sufficient probable cause for the arrest, or fails to establish that a crime occurred.
    (a) The assigned detective will attempt to contact the arresting officer prior to releasing the prisoner to obtain additional probable cause or information.
    (b) If the detective is unable to contact the arresting officer, the prisoner may be released pending further investigation.
5. After investigation by the assigned detective, there is insufficient probable cause to support charging the arrested person.
6. Filing charges may jeopardize prosecution of a more serious offense.
7. The arrested person is willing to assist detectives and can provide specific information that will solve a more serious offense or numerous equal offenses.
8. Considering all available information, the facts will not support the original offense, but do support the filing of lesser charges.

901.6 CONFIDENTIALITY

(a) All investigations conducted by the SIU are of a confidential nature. No member of SIU will disclose information gained from their official duties as Department employees to persons not connected with SIU, Internal Affairs, or to persons who have no legitimate need to know.

(b) Reports investigated by the SIU are secured in the computer reporting system to prevent viewing by unauthorized individuals. These reports can be unsecured by a SIU supervisor when there is no longer a need to secure them from viewing.

901.7 RELEASE OF INFORMATION

The Chief of Police and designees are the only personnel authorized to release information to the news media. No information will be released that will interfere with or prevent the apprehension and prosecution of the suspect(s) during an on-going investigation.

(a) The name of the suspect will not be released until the charges have been filed.

(b) A photograph of an employee charged with a criminal offense will not be released to the news media without the approval of the assistant chief of Investigations.

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902

Austin Police Department
General Orders

Administrative Investigations

902.1 PURPOSE AND SCOPE

This document establishes the required process for the administrative investigation of alleged employee misconduct by Internal Affairs and the employee's chain-of-command. It also outlines the imposition of fair and equitable disciplinary action when misconduct is identified. Investigations conducted by APD Human Resources are governed by City Personnel Policies.

This document does not supersede any rights or privileges afforded civilian employees through City Personnel Policies or sworn employees through the Meet and Confer Agreement, nor does it alter or supersede the powers vested in the Civilian Oversight Process of the Austin Police Department (APD) through that Agreement. In addition, nothing in this document limits or restricts the powers vested in the Chief of Police as the final decision maker in all disciplinary matters.

902.1.1 ADMINISTRATIVE INVESTIGATIONS OVERVIEW

The following is a broad outline of the internal administrative investigation process from start to finish. Each section of this order will go into more detail of the process associated with investigating administrative complaints.

(a) **Complaint Acceptance** - Complaints are accepted as outlined in this order and forwarded to Internal Affairs (IA). Once IA receives a complaint it will be entered into the electronic case tracking system.

(b) **Complaint Assessment and Classification** - IA will give the complaint an initial classification level. This classification shall determine whether the complaint requires investigation and, if so, who shall conduct the investigation.

(c) **Complaint Investigation** - Complaints that require further investigation may be handled as follows:

1. Allegations of criminal conduct require concurrent investigations by both IA and the Special Investigations Unit (SIU) or outside agency holding jurisdiction over the incident.

2. Allegations of administrative general order violations may be investigated by IA, the employee's chain-of-command and/or APD-HR.

(d) **Complaint Disposition** - Once the complaint has been investigated by the appropriate investigative Unit or Command, the involved employee's commander shall recommend a disposition for the case. If the case receives a disposition of "sustained" it shall go through the discipline process. For all other dispositions the case shall be closed and filed.

(e) **Discipline Process** - If the disposition of a complaint is "sustained" then the commander of the employee shall recommend the level of discipline based on the guidelines set forth in this order and the Discipline Matrix. Depending on the amount of discipline to be imposed, this may lead to a Discipline Meeting (DM) or a Dismissal Review Hearing (DRH). The Chief of Police is the final decision maker on all levels of discipline.

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902.1.2 DEFINITIONS

(a) **Administrative Investigation** - An investigation of alleged misconduct by an APD employee that could result in disciplinary action. These may be conducted by:

1. APD Internal Affairs (IA).
2. Employee's chain-of-command.
3. APD-Human Resources (APD-HR) or City-Human Resources (City-HR).
4. The City Auditor's Office.
5. An independent investigator appointed by the Chief of Police or their designee and/or the City Manager.

(b) **Anonymous Complaint** - Any complaint in which the Complainant does not identify him or herself or does not wish to be identified. There shall be no duty to determine or reveal the identity of an anonymous Complainant.

(c) **Classification** - Level of designation for a complaint to determine how it is investigated (e.g. "Class A", "Class B", "Supervisor Referral").

(d) **Commander in Charge** - Generally, the commander over the employee who is the subject of an investigation. In Class B OFCA eligible complaints, the commander in charge shall designate the investigative supervisor, determine the final disposition of a complaint and recommend discipline for "Sustained" complaints.

(e) **Complainant** - A person, including an officer, claiming to be a witness to or the victim of misconduct by an officer. “Complainant” does not include the Department designee in the case of an Administrative Referral, except that the Office of Police Oversight (OPO) may act as the Complainant in any allegation on its own initiative, and in the case of an anonymous complaint, the OPO or whichever entity that receives an anonymous complaint may act as the Complainant. If the OPO acts as the Complainant, the Director of OPO shall document the source of the complaint.

(f) **Complaint** - Either (1) an affidavit or (2) any other written or verbal communication setting forth allegations or facts that may form the basis of future allegations of misconduct that violate policy against an officer and which serves as the basis for initiating an investigation. Anonymous written or verbal communications meet this definition of “Complaint”.

(g) **Criminal Investigation** - An investigation of alleged criminal conduct by an APD employee. These investigations are generally conducted internally by SIU. When there is an allegation of criminal conduct, a concurrent administrative investigation shall also be conducted by IA.

(h) **Critical Incident** - For purposes of administrative investigations, the term "Critical Incident" shall have the meaning as agreed upon in the Meet and Confer Agreement. “Critical Incident” means:

1. Any force resulting in death.
2. Any force that resulted in a substantial risk of death.

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3. Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
4. Any unintentional firearm discharge resulting in another person's injury or death.
5. Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
6. Use of an impact weapon, including kinetic energy projectiles, and improvised weapons that strikes the head of a subject resulting in serious bodily injury or death.
7. In custody deaths: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as critical incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.
8. The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.
9. Note: The definition of "serious bodily injury" found in the Texas Penal Code, Section 1.07(a)(46) will apply.

(i) **Disciplinary Action** - A temporary suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.

(j) **Discipline Meeting (DM)** - A meeting generally conducted by an employee's chain-of-command on "Sustained" complaints to determine the level of discipline an employee is going to receive. A Discipline Meeting is only held for discipline not to exceed a 15 day suspension.

(k) **Dismissal Review Hearing (DRH)** - A meeting generally conducted by the Chief of Police or designee on allegations that have been recommended to be "sustained" to determine the amount of discipline, if any, the employee is going to receive. A Dismissal Review Hearing is only held when discipline may exceed 15 days, up to and including indefinite suspension, and/or demotion in rank.

(l) **Disposition** - The final determination of how a complaint is closed (e.g. "Sustained", "Unfounded", "Administratively Closed").

(m) **Evidence** - Any statements, reports, records, recordings, documents, computer data, text, graphics, videotape, photographs, or other tangible forms of information, including a complaint.

(n) **Formal Discipline** – A discipline action at or above the level of a written reprimand, including temporary suspension, reduction in rank, and/or termination.

(o) **IA External Complainant Contact Form (PD0084)** - A form used to document an external complaint on an employee. This is generally used by supervisors who are attempting to handle minor complaints prior to notifying Internal Affairs.

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(p) **IA Internal Complaint Memorandum (PD0081)** - A form used to initiate an internal complaint on an employee.

(q) **Independent Investigation** - An administrative investigation or inquiry of alleged or potential misconduct by an officer, authorized by the Chief of Police or City Manager and conducted by a person(s) who is not:

1. An employee of the City of Austin; or
2. An employee of the Office of Police Oversight.
3. An “Independent Investigation” does not include attorney-client work product or privileged material related to the defense of claims or suits against the City of Austin.

(r) **Informal Discipline** - A discipline action at or below the level of an oral reprimand, including a Conduct Counseling Memorandum, Employee Success Plan, or training.

(s) **Internal Affairs Case Management System (ICMS)** - The electronic system used to enter and track all complaints received by Internal Affairs and the Office of Police Oversight.

(t) **Investigator** - An agent or employee of the Department or an Independent Investigator who participates in conducting an investigation.

(u) **Minor Policy Violation** – Violations that may not normally result in formal discipline, including, but not limited to, tobacco use, operation of police vehicles (non collisions), equipment violations, language use, etc.

(v) **Statement** - Any oral or written communication setting forth particulars or facts regarding the alleged misconduct under investigation.

(w) **Supervisor** - References made to a supervisor in this order do not include the rank of corporal unless they are the acting sergeant.

902.2 COMPLAINT ACCEPTANCE PROCESS

Complaints may be initiated internally or externally. This process outlines how each type of complaint is properly documented and handled.

902.2.1 AVAILABILITY OF COMPLAINT FORMS

The most current versions of the *IA External Complainant Contact Form* (PD0084) and *IA Internal Complaint Memorandum* (PD0081) shall be maintained on the "Public Drive" in the "Approved Forms" folder.

902.2.2 INTERNALLY INITIATED COMPLAINTS

This process does not prevent an employee from directly notifying a supervisor of an issue they feel needs to be addressed. Supervisors who receive information of an internal complaint shall follow the guidelines set forth in the initial supervisor responsibility section of this order.

(a) The following is a list of the most common avenues for initiation of internal complaints:

1. Possible misconduct of an employee learned of or observed by any department employee.

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2. A complaint initiated by an employee's chain-of-command.
3. Administrative inquiry at the direction of the Chief of Police.

(b) All internal complaints must meet the following documentation requirements and be processed accordingly:

1. **Civilian Employees**: Complaints that are received in IA from a civilian employee must be in writing, signed by the person making the complaint, sworn to and notarized.
2. **Sworn Employees**: Complaints filed by an officer shall be on an *IA Internal Complaint Memorandum*. They may be emailed, faxed or personally delivered to IA.
3. Any commander may initiate an internal investigation of any officer under his or her command provided the information in the complaint meets the criteria for a Class A or Class B complaint. The commander, or their designee, initiating the investigation shall provide IA with a completed *IA Internal Complaint Memorandum* describing the basic facts of the case. The memorandum will provide enough information for the case to be entered into the electronic case tracking system. Internal complaints that do not meet the Class A or Class B qualifications shall be referred back to the commander in charge.

902.2.3 EXTERNALLY INITIATED COMPLAINTS

Under the Meet and Confer Agreement, the Office of Police Oversight (OPO) is a non-exclusive location for accepting administrative complaints of alleged officer misconduct from the public.

(a) The following is a list of the most common avenues for initiation of written and verbal external complaints:

1. Complaint made directly to any department employee or supervisor, either in person, by mail or via phone.
2. Complaint made through the OPO.
3. Complaint made directly to IA.

(b) All external complaints must meet the following documentation requirements and be processed accordingly:

1. Written complaints
   (a) Complaints may be submitted from citizens outside the Department.
   (b) Complaint letters received by any member of the Department (other than IA) shall be emailed, faxed, or personally delivered to IA.
2. Verbal complaints (in person or by telephone)
   (a) Civilian employees receiving an alleged minor nature complaint against an officer should refer the citizen directly to the OPO.
   (b) Sworn employees receiving an alleged minor nature complaint against an officer should request a supervisor to respond to the scene. If a supervisor

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is not available, or if the complainant is not able to wait for a supervisor, the officer shall obtain the citizens contact information and forward it to a supervisor. The supervisor may handle the complaint as outlined in the Initial Supervisor Responsibility section.

3. Complaints of a serious nature require the immediate notification of an available supervisor. Serious complaints must be initially investigated by the rank of sergeant or above.

902.2.4 ANONYMOUS COMPLAINT

Employees may be investigated based on an anonymous complaint. Anonymous complaints shall be treated as an internal complaint for documentation purposes.

902.2.5 INITIAL SUPERVISOR RESPONSIBILITY

Unless a complaint is submitted directly to the OPO or IA, the initial response to an internal or external complaint shall generally rest with the employee's immediate supervisor.

(a) Supervisors investigating a complaint shall adhere to the following guidelines:

1. If the incident is force related, follow the guidelines set forth General Order 211 (Response to Resistance Inquiry, Reporting, and Review).
2. Supervisors shall ensure the procedural rights of the accused employee are followed pursuant to state and federal law, as well as the Meet and Confer Agreement.
3. During the preliminary investigation of any complaint, supervisors should make every reasonable effort to obtain names, addresses, and telephone numbers of additional witnesses.

(b) Allegations of a Minor Nature:

1. Supervisors notified of a minor complaint are required to contact the complainant within one (1) calendar week of the time the complaint was received and attempt to resolve the issue.
2. After attempting to resolve any minor complaint, supervisors shall ensure that an *IA External Complainant Contact Form* has been completed as fully as possible and should indicate whether the complainant was satisfied. Forms will be emailed to Internal.Affairs@austintexas.gov.
   (a) Minor complaints that are marked as "satisfied" on the form shall be entered into the IA Tracking Database as information and marked as closed.
   (b) Minor complaints that are marked as "not satisfied" on the form shall be entered into the IA Tracking Database and will follow the normal complaint assessment, classification and investigation process as outlined in this order. If a complainant is not satisfied, supervisors shall refer the complainant to the OPO.

(c) Allegations of a Serious or Criminal Nature:

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1. Allegations of a serious or criminal nature shall be initially investigated by a supervisor the rank of sergeant or above.
2. Supervisors receiving a complaint involving allegations of a potentially serious administrative nature shall notify an IA investigator as soon as possible. Serious administrative allegations include, but are not limited to:
   (a) Serious violations of a general orders, rules, or regulations.
   (b) Conduct that challenges the integrity, good order, or discipline of the Department.
3. A supervisor receiving a complaint involving allegations of a criminal nature shall notify the following personnel as soon as possible:
   (a) The Watch Lieutenant.
   (b) The Duty Commander.
   (c) An SIU supervisor.
   (d) An IA investigator.
   (e) The involved employee's chain-of-command.

902.3 COMPLAINT CLASSIFICATION AND INVESTIGATIVE ASSIGNMENT PROCESS

When a complaint is received by IA it will undergo an initial assessment. Based upon this initial assessment, IA shall determine whether further investigation is warranted and designate a classification level for the complaint. IA shall enter the complaint into the IA electronic case tracking system and the complaint information will be forwarded to the OPO. All initial classifications are subject to approval by the IA commander or designee.

If facts uncovered during an investigation indicate that a more serious offense than originally alleged may have occurred, the case may be reclassified and reassigned to the appropriate unit or command with investigative responsibility. Conversely, any case may also be reclassified as a lower classification and reassigned if the facts warrant. All case reclassifications shall be mutually agreed upon between the IA commander and the commander in charge. If agreement cannot be reached, the final decision shall be made by the Chief of Police or designee. Nothing precludes any case being initially assigned to the Internal Affairs unit for investigation, regardless of the potential discipline involved.

902.3.1 COMPLAINT CLASSIFICATION AND INVESTIGATIVE ASSIGNMENT TABLE

The following table outlines who has investigative responsibility for each classification level.

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Classification	Assessment	Investigative Responsibility
Administrative Inquiry	An inquiry into a critical incident, or other incident, ordered by the Chief of Police or designee. Inquiries are generally for issues that could destroy public confidence in, and respect for, the Department or which is prejudicial to the good order of the Department.	Administrative Inquiries will be assigned to the appropriate Unit or Division based on the circumstances surrounding the inquiry.
Class A Complaint	Cases in which the potential discipline is more than a 15-day suspension, indefinite suspension and/ or demotion according to the Discipline Matrix. Generally, Class A Complaints are allegations of a serious nature, which include, but are not limited to: • Criminal conduct. • Serious violations of a general order, rule, or regulation. • Conduct that challenges the integrity, good order, or discipline of the Department.	Class A complaints are investigated by IA. Complaints that involve allegations of criminal conduct are also concurrently investigated by SIU as outlined in General Order 901.
Class B Complaint	Cases in which the potential discipline is a 15-day suspension or less. Generally, Class B Complaints are allegations of a less serious nature, which include, but are not limited to: Less serious violations of a Department general order, rule or regulation (e.g., profanity, belittling language, inadequate police service, minor traffic violations). • Negligent damage or loss of property. • Negligent crashes as outlined in the Department's Collision General Order.	Class B Complaints that are OFCA eligible will be investigated by the employee's chain-of-command. Class B complaints not eligible for OFCA will be investigated by IA. The OPO has full access rights to Class B investigations that are conducted by an employee's chain-of-command. Class B complaints are resolved through three different procedures: • Investigation by IA • OFCA, if eligible (chain-of-command investigations) • Mediation, if eligible

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Classification	Assessment	Investigative Responsibility
Class C Complaint	Generally, allegations that: Do not fit into the Class A or Class B category, • The complaint does not rise to the level of a general order violation, and • The complaint would best be handled through other departmental processes (e.g., grievance, Conduct Counseling Memorandum, Employee Success Plan, or training).	Class C complaints will be reviewed by the IA commander and the employee's chain-of-command. If all of the parties agree with the initial Class C classification, the complaint will be "Administratively Closed". If it is determined that additional investigative follow-up is needed, the complaint may be reclassified and investigated according to its new classification.
Class D Complaint	Allegations that do not rise to the level of a general order violation and meet one or more of the following criteria: • A preliminary review of the allegation shows it is not true (e.g., video or audio recording shows allegation is false), and/ or • The complaint is about the probable cause for an arrest or citation that appears to be unsubstantiated.	Class D complaints will be reviewed by the IA commander and the employee's chain-of-command. If all of the parties agree with the initial Class D classification, the complaint will be "Administratively Closed". If it is determined that additional investigative follow-up is needed, the complaint may be reclassified and investigated according to its new classification.
Supervisor Referral	A compliant: • that is a minor policy violation which may result in informal discipline, or • where no formal complaint affidavit has been received by IA, however the complainant requests that the issue be brought to the attention of the supervisor, or • where there is no policy violation. These informal complaints can either be made directly to IA, an officer's supervisor and/or the OPO and are most appropriately handled through other departmental processes (e.g., grievance, Conduct Counseling Memorandum, Employee Success Plan, or training).	If IA/OPO receives this informal complaint from a citizen, it will be forwarded to the appropriate supervisor and chain-of-command for its follow-up and response. Supervisor Referrals are entered into the IA tracking system for documentation purposes only and not for disciplinary purposes.

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Classification	Assessment	Investigative Responsibility
Information Incident	An incident where no apparent general order violation has been committed and a signed affidavit has not been received. Information incidents may also be from complaints that are brought to the direct attention of a supervisor, handled satisfactorily and documented on an IA External Complainant Contact Form.	Complaints documented using the IA External Complainant Contact Form will be forwarded to IA with a notation that the complaint either was/was not handled satisfactorily. Satisfactorily handled complaints will be marked as "Information". Information incidents are entered into the IA tracking system for documentation purposes only and not for disciplinary purposes.

902.4 COMPLAINT INVESTIGATION

After IA has received, classified and entered a complaint into ICMS, the complaint will be assigned to the unit or command with appropriate investigative responsibility based on the classification level. Minor nature complaints that have been satisfactorily handled by a supervisor will be entered into ICMS and closed as "Information".

902.4.1 COOPERATING WITH ASSIGNED INVESTIGATORS

(a) Employees will cooperate with any assigned investigator as if they were addressing the Chief of Police. Employees who fail or refuse to cooperate with an assigned investigator will be subject to disciplinary action, up to and including indefinite suspension.

(b) Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times during interviews with investigators as outlined in General Order 900 (General Conduct and Responsibilities).

1. Employees who are found to have given a false official statement are subject to indefinite suspension as outlined in the Discipline Matrix ("Dishonesty - False Official Statements").

2. There may be cases where officers have not been truthful but the dishonesty does not constitute a false official statement. In those situations, the Chief of Police shall consider each case on a fact specific basis and may decide that corrective action other than indefinite suspension is warranted as outlined in the Discipline Matrix ("Neglect of Duty - Misleading Statements").

902.4.2 WITHDRAWN COMPLAINTS

(a) If the complainant withdraws their complaint or refuses to further cooperate with the administrative investigation, the investigation may be closed as incomplete.

(b) If the nature of the allegations can be sufficiently determined without the assistance of the complainant, the investigation shall proceed and be completed as normal.

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902.5 ALLEGATIONS OF CRIMINAL CONDUCT

When employees are accused of potential criminal conduct, SIU shall be assigned to investigate the criminal allegations as outlined in General Order 901 (Special Investigations) apart from any administrative investigation. This section explains how IA and SIU work together in concurrent investigations.

902.5.1 CONCURRENT CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

The Chief of Police will normally allow the administrative investigation and/or disciplinary action to proceed prior to the final (legal) disposition of any criminal investigation of an employee.

Internal Affairs will proceed with a concurrent investigation in cases involving a general order violation. SIU and IA shall coordinate their investigations and make a joint determination concerning whether involved officer(s) and witnesses should be initially interviewed by SIU or IA. Supervisors and assigned investigators from SIU and IA will regularly communicate on the joint progress of their investigation and share information expeditiously as allowed by law.

A supervisor from SIU shall be the Department's liaison with the prosecutor's office concerning any criminal investigation. The IA investigator or supervisor will not contact the prosecutor unless authorized to do so by the Chief of Police or designee.

902.5.2 INFORMATION AND EVIDENCE SHARING BETWEEN IA AND SIU

The following criteria shall dictate the sharing of information/evidence between the administrative and criminal investigations:

(a) Representative(s) from IA will not normally be present during any criminal interview of an APD employee conducted by the SIU.

(b) All evidence obtained during the criminal investigation shall be shared with the administrative investigator, to the extent allowed by law. An SIU investigator or supervisor shall consult with the prosecutor concerning the appropriate time to release this information to the administrative investigator.

    1. Investigative information received though a Grand Jury subpoena or testimony shall not be released or shared with Internal Affairs.

(c) All evidence obtained during the administrative investigation, except for Garrity related materials, may be shared with the criminal investigator and/or prosecutor, to the extent allowed by law. The IA legal advisor shall review all potential Garrity related material prior to authorizing its release.

    1. Garrity Related Materials - Garrity related materials are the result of an administrative order requiring an employee to give evidence or statements as a condition of continued employment. This includes, but is not limited to:

        (a) Sworn statements provided by the accused employee.

        (b) The results of a Department ordered polygraph.

        (c) The results of a Department ordered blood and/or breath test.

        (d) Cellular telephone records.

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(e) Credit card receipts.

(f) Medical records.

2. Except as provided herein, Garrity related materials obtained during the administrative investigation shall not be provided to a criminal investigator and/or prosecutor unless:

(a) The employee who is the subject of the administrative investigation authorizes its release.

(b) The evidence relates to a false statement, given under oath by the employee, which may constitute perjury or aggravated perjury.

(c) In response to a lawful subpoena.

(d) Investigative information shall be shared with IA in a timely manner. When a criminal investigation has been completed, the assigned SIU investigator or an SIU supervisor will notify the IA investigator conducting the administrative investigation of the final status of the criminal case.

902.5.3 180 DAY INVESTIGATION TIME FRAME

Generally, in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations based on a criminal nature, an investigation must be completed and discipline imposed within 180 days from the date an Assistant Chief of Police or the Chief of Police has notice of the potential misconduct, provided that the officer is still subject to prosecution under the applicable criminal statute of limitations.

(a) If a prosecutor notifies the SIU supervisor that taking disciplinary action will jeopardize the criminal investigation, the Chief of Police or designee shall decide whether to notify the Attorney General of his or her intent to take disciplinary action outside of the 180 day statutory period. Notification to the Attorney General is authorized only when the following criteria have been met:

1. The Chief of Police or designee, at the time of the filing of the notice with the Attorney General, intends to indefinitely suspend the officer; and

2. The prosecutor has notified the Chief of Police or designee that a delay in imposing an indefinite suspension is necessary to protect a criminal investigation; and

3. The Chief of Police or designee consults with the IA legal advisor concerning the propriety of filing the notice to the Attorney General.

902.6 ADMINISTRATIVE INVESTIGATION GUIDELINES

Generally, in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations of an administrative nature, an investigation must be completed and discipline imposed within 180 days from the date the incident occurred.

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The assigned investigator shall follow the rules established by Civil Service Law (generally, Tex. Local Gov't Code § 143.312) and the Meet and Confer Agreement between the City and the Austin Police Association (APA). This includes:

(a) Investigators shall prepare and furnish a written *Notice of Allegations* which explains the nature of the complaint to the accused officer not less than 48 hours before beginning the initial interview of an accused officer.

(b) Regardless of who is responsible for investigating the complaint, investigators:

1. Shall be one rank higher than the officer subject to the investigation unless otherwise authorized by the Chief of Police or designee.

2. Shall not be a person who is the complainant, the ultimate decision maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct.

(c) Interviews of accused employees shall be conducted during business hours. If the employee is normally off-duty during that time the employee shall be compensated.

1. Off-duty interviews should only be conducted based on the seriousness of the investigation and other factors where time is of the essence.

2. When appearing before Internal Affairs for a scheduled interview, employees shall wear:

(a) The Class A, B, or C uniform, or

(b) Plain clothes in adherence to General Order 801.5 – Plain Clothes Attire.

(d) Investigators may not interview employees at their home without the employees' prior permission.

(e) Employees who are the subject of an investigation have the right to be informed of the identity of every person who will be participating in any interview of the employee. No more than two interviewers should ask questions to prevent any confusion or misunderstanding.

1. A representative from the OPO may attend an interview of the officer who is the subject of the investigation or administrative inquiry, as well as all witness interviews. The OPO representative may directly question the officer who is the subject of the investigation and any witness officer only if agreed to by the subject officer or witness officer or his/her representative and the IAD investigator. At the conclusion of or during a break in any interview, the OPO representative may take the IAD investigator aside and request that the investigator ask additional questions. Whether such information is sought in any interview is within the discretion of the IAD investigator.

(f) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated.

(g) Employees shall not be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Employees refusing to answer questions directly related to the investigation may be ordered

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to answer questions administratively or be subject to discipline for insubordination. However, nothing administratively ordered may be provided to a criminal investigator.

(h) Employees subject to a "do not discuss" order may only discuss details of an investigation with the people designated in the order.

1. In order to maintain the integrity of each individual employee's statement, multiple employees subject to the same investigation may not discuss the details with each other. Multiple involved employees may not collectively meet with a representative or attorney to discuss details of an incident prior to being interviewed.

(i) Absent circumstances preventing it, interviewers should record all interviews of employees and witnesses. Employees may also record the interview if they notify the investigator of their intent to record.

(j) Employees who have been previously interviewed shall have a copy of the recorded interview made available to listen to prior to any subsequent interview and/or when they are reviewing their transcribed statement.

1. Employees who are reviewing their statement may only make grammatical changes. Changes in content must be done through a follow-up interview or memorandum.

2. Employees shall be required to sign their transcribed statement as it reflects the actual interview.

(k) A sworn employee who is the subject of an investigation or administrative inquiry shall have the right to be represented by an attorney of the officer’s choice or an Austin Police Association (APA) representative or both during an interview, provided the attorney/representative complies with the Internal Affairs interview protocol (i.e. to observe only). Any failure to adhere to this observation rule may result in removal of the attorney or union representative from the interview room. A sworn employee who is a witness or complainant is not permitted to bring an attorney or union representative into the interview.

(l) In accordance with Municipal Civil Service Rule 6.03(D), a civilian employee who is the complainant, respondent, or witness, in an Internal Affairs investigation, may bring a representative of their choosing to attend the interview as an observer only, provided the representative does not have personal involvement in the incident as a complainant, witness, or subject of the investigation. Any failure to adhere to this observation rule may result in removal of the representative from the interview room.

902.6.1 ADMINISTRATIVE INVESTIGATION TOOLS

The results of any compelled technique shall be restricted to the administrative investigation. When civilian employees are the subject of an investigation, the IA Legal Advisor must be consulted prior to utilizing any of the following investigative tools.

(a) Sworn employees of this department may be administratively ordered by the Chief of Police or designee to submit to:

1. A blood, breath or urine test for alcohol and drugs.

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2. A polygraph examination under the conditions set forth in Tex. Gov't Code § 614.063.
3. A psychological evaluation.
4. Other medical or laboratory tests as deemed necessary.
5. Conduct a video re-enactment.
6. Be photographed.
7. Participate in a physical lineup.
8. Produce documents reasonably related to an investigation (e.g. financial documents, credit reports, phone records).
9. Other administrative orders, as necessary.

(b) Employees may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties or if the employee is assigned to or being considered for a special assignment with a potential for bribes.

(c) Employees shall have no expectation of privacy when using telephones, computers, radios, desks, filing cabinets, lockers, or any other type of equipment or storage space provided by the Department. An investigative search of departmentally assigned areas (e.g., desks, lockers, office space, assigned vehicles) may be conducted upon a suspicion that official misconduct is involved.

902.6.2 INVESTIGATIONS HANDLED BY INTERNAL AFFAIRS

Investigations handled by IA shall adhere to the investigative guidelines set forth in this order and the Internal Affairs SOP. IA will investigate Administrative Inquiries, Class A, and Class B investigations that do not fit the criteria for eligibility to be handled using the officer final classification agreement (OFCA) outlined in section 902.6.4.

(a) Once IA has completed their investigation they shall give the involved employee's commander access to the case file. The commander shall recommend a disposition for the allegation based upon a preponderance of the evidence. Disposition guidelines are outlined in Section 902.7.

1. If the recommended disposition is "Sustained", commanders shall follow the guidelines for administration of discipline as described in Section 902.9 and inform IA of the recommended discipline based on the Discipline Matrix.
2. If the disposition of all allegations is something other than "Sustained", commanders shall notify IA who will then close the case.

(b) IA shall notify the employee of the results of the investigation on Department memorandum.

902.6.3 INVESTIGATIONS HANDLED BY EMPLOYEE'S CHAIN-OF-COMMAND

(a) Assignment to Command

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1. Class B investigations that are eligible to be handled as an OFCA will be assigned to the employee's chain-of-command. If either the commander in charge or the officer do not accept the OFCA option, the investigation will remain with Internal Affairs and be conducted as a full Class B investigation.
2. For OFCA investigations conducted by an employee's chain-of-command, the commander of the employee shall be designated as the commander in charge of the investigation. The command that the subject officer is currently assigned to will normally conduct the investigation, even if the allegation of misconduct occurred in a prior command. The commander in charge shall receive an investigative packet from IA containing all evidence relating to the complaint, all required forms and an investigative template.

(b) Appointment of Investigative Supervisor

1. The commander in charge shall appoint a sworn supervisor to be the investigator. The investigator must be the rank of sergeant or above and at least one rank higher than the employee being investigated. The investigating supervisor may not be the complainant or have personal involvement in the alleged misconduct under investigation.

902.6.4 INVESTIGATIONS HANDLED THROUGH THE OFFICER FINAL CLASSIFICATION AGREEMENT

The Officer Final Classification Agreement (OFCA) is an option available to officers who wish to shorten the investigative and discipline process time for minor complaints meeting the criteria specified below.

(a) Minor nature complaints shall be reviewed by an IA lieutenant and/or commander to determine if the complaint falls into an eligible category for OFCA. If the complaint falls within an eligible category, an IA lieutenant shall review the officer's complaint history to determine if there are any patterns of behavior or serious allegations which would eliminate them from eligibility.

(b) The following guidelines shall be used to determine which complaints may be eligible:

1. Class B INTERNAL complaints that involve less serious violations of Department policies or procedures where the Matrix guidelines allow for discipline not greater than three (3) days may be eligible. Examples include, but are not limited to:
   (a) Failure to Qualify.
   (b) Unintentional Discharge (not at a training site).
   (c) Preventable Discharge.
   (d) Pursuits.
   (e) Officer Involved Collisions.
2. Class B EXTERNAL complaints that involve less serious violations of Department policies, or procedures where the Matrix guidelines allow for discipline not greater than a written reprimand may be eligible. Examples include but are not limited to:

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(a) Allegations of profanity and/or inappropriate language.

(b) Allegations of inadequate police service.

(c) Allegations of rudeness.

3. Class A, C and D complaints are not eligible.

4. An officer with 2 or more complaints of a similar nature within the previous 12 months is not eligible for the OFCA for similar subsequent violations.

(c) If the officer is found to be eligible for OFCA, IA shall simultaneously notify the officer's chain-of-command and the OPO of said determination. If the officer's Commander agrees that the officer is eligible then the officer shall be offered this option when they are served with their *Notice of Allegations*. Officers agreeing with the complaint and wanting to invoke their OFCA option may do so by submitting a memorandum along with a signed OFCA form to IA within 48 hours of receiving the *Notice of Allegations*.

(d) By accepting the OFCA, the officer is accepting responsibility for their actions and the complaint shall receive a final disposition of sustained. The officer will not receive discipline exceeding a three (3) day suspension for internal complaints or a written reprimand for external complaints. These cases are not subject to additional investigation unless new information is received that indicates a more serious general orders violation may have occurred. OFCA's should be completed within twenty (20) days of the date the investigation is assigned to the chain-of-command. If an OFCA is invoked, the ten (10) business days' time frame for the administration of discipline does not apply.

902.6.5 INVESTIGATIONS HANDLED THROUGH MEDIATION

As an alternative to the normal IA process utilized in investigating complaints, the complainant and involved officer(s) may be invited to voluntarily participate in mediation. Mediation shall be an option discussed by the Office of Police Oversight (OPO) intake staff after the external complaint affidavit has been submitted by the complainant. Complaints recommended for mediation will be noted on the OPO Interoffice Delivery Sheet. The OPO Interoffice Delivery Sheet and the original external complaint affidavit will be delivered to IA by OPO staff. Once mediation has occurred, the matter cannot be returned to the Department to be handled as a disciplinary matter unless the officer fails to complete the mediation session. Complaints resolved via mediation will not be counted as an incident in the Guidance Advisory Program (GAP).

(a) The OPO intake staff shall not offer mediation to the complainant at the conclusion of the external complaint affidavit intake or as a complaint resolution option. Approval from the chain of command and willingness on the part of the officer to mediate a complaint shall be obtained prior to offering mediation to the complainant. To do otherwise may yield an unintended consequence of mistrust or dissatisfaction on the part of the complainant.

(b) Complaints shall be reviewed by the IA lieutenant or commander within two (2) business days of receipt to determine whether they would be appropriate for mediation. Only Class B external complaints that involve less serious violations of

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Department policies and procedures may be eligible for mediation. Examples may include, but are not necessarily limited to:

1. Allegations of profanity, belittling or rudeness.
2. Allegations of inadequate police service.

(c) If mediation is deemed appropriate for the allegation, the IA Lieutenant shall review the officer's complaint history and confer with the officer's chain of command to determine if the officer meets the qualifications for the mediation process. The chain of command shall report back to the IA lieutenant within five (5) calendar days indicating whether the officer has accepted or declined mediation as a complaint resolution. The option to utilize mediation may be withdrawn by the Chief of Police or designee if withdrawal is deemed to be in the best interest of the Department.

1. Officers will be eligible to choose mediation as an option to resolve complaints of a substantially similar nature no more than once every six (6) months or twice per calendar year.
2. IA will consult with the officer's chain of command to determine if subsequent complaints are of a substantially similar nature to previous complaints.

(d) The officer's chain of command must obtain and review any audio/video related to the officer/complainant interaction. If the parties agree to mediate the complaint, the audio/video will be submitted to IA, copied to a designated flash drive or other portable media and supplied to the Dispute Resolution Center for the mediation session.

(e) If the allegations are appropriate and the officer meets the qualifications for mediation, the offer to mediate shall be extended to the officer. If the officer agrees to mediate, the OPO shall extend the offer to mediate to the complainant.

1. If either the complainant or the officer declines to participate in mediation, the OPO Mediation Coordinator will notify the IA lieutenant. IA will utilize its usual investigative process to handle the complaint and notify both parties that mediation will not occur.
2. If the officer and the complainant accept the offer to mediate, the OPO Mediation Coordinator will notify the Dispute Resolution Center of the referral via facsimile. The OPO Mediation Coordinator will furnish a summary of the incident and allegations to the Dispute Resolution Center as background information about the dispute. The assigned mediator may request additional information, if necessary, while contacting the complainant and the officer to schedule the session.

(f) A neutral third party mediator from the Dispute Resolution Center will contact the complainant and the officer to complete an intake/assessment, answer questions specific to mediation and schedule a date/time for the mediation session. Mediations will be scheduled on the earliest possible date; generally within thirty (30) days from the date of receipt of the formal complaint affidavit, if possible.

(g) A formal confirmation letter stating the date, time and location of the mediation will be sent to the officer and the complainant by the Dispute Resolution Center. A

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mediation brochure will also be provided to both parties prior to the mediation session. A mediation session will be scheduled for a two (2) hour time slot.

(h) Officers must schedule mediation sessions during their normal duty hours if those hours coincide with the normal business hours set forth by the Dispute Resolution Center. Officers working outside of the normal business hours set forth by the Dispute Resolution Center shall submit an overtime request form to the IA lieutenant.

(i) An officer attending a mediation session is considered to be on-duty, shall behave in a professional manner during the session, and is bound by general orders. The officer is expected to fully participate in the mediation session. The officer shall wear a uniform or clothing suitable for court, as outlined in general orders. Officers will not be prohibited from carrying their duty weapon while participating in a mediation session, but must comply with department general orders regarding weapons.

(j) Mediation sessions are confidential. Unless all parties agree, only complainants, officers, and the mediators will be allowed into the session. A qualified, neutral interpreter will also be present if the complainant or a third party mediator deems such action necessary. All parties will be required to sign a Dispute Resolution Center Agreement to Mediate Waiver and Consent form. Once the form is signed by both parties and the mediation session has commenced, there is no provision for a complaint to be returned to IAD for investigation if the complainant is dissatisfied with the mediation process or the outcome of the mediation session. The mediation session will not result in a written agreement between the parties.

(k) At the conclusion of a mediation session, the mediator will provide the OPO Mediation Coordinator a written response stating whether both parties appeared and whether the session resulted in a completed mediation. This written response will be submitted to the OPO Mediation Coordinator and entered into ICMS. The written documentation will be maintained by IA. Although the mediation session is confidential, the nature of the complaint and the officer's identifying information shall be recorded in the ICMS database as a 'mediated' complaint. Mediated complaints will NOT be included as an incident in the Guidance Advisory Program (GAP).

(l) The Dispute Resolution Center will provide each party with a satisfaction survey at the conclusion of the mediation session. The complainant and the officer will complete the survey prior to leaving the Dispute Resolution Center. The survey will be submitted to the OPO Mediation Coordinator and entered into ICMS. The written documentation will be maintained by IA.

902.6.6 MEDIATION SCHEDULING CONFLICTS

(a) If the officer or complainant is going to be late for the scheduled mediation, they should contact the Dispute Resolution Center to inform them what time they will arrive:

1. If the officer or complainant will be delayed **less** than twenty (20) minutes, the session shall commence upon the party's arrival.

2. If the officer or complainant will be delayed **more** than twenty (20) minutes, the Dispute Resolution Center shall consult with the other party to determine whether the delay is acceptable or whether that party would prefer to reschedule.

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(b) If the officer or complainant is unable to attend the mediation due to an unforeseen emergency, they should make every effort to immediately notify the Dispute Resolution Center to have the session rescheduled. The officer shall also contact the IA lieutenant regarding any cancellation and/or rescheduling. If the officer or complainant fails to appear and does not call the mediator, the mediation session shall be canceled for that day and the mediator will notify the OPO Mediation Coordinator and IA.

1. The OPO Mediation Coordinator shall attempt to make contact with the complainant to determine if there was a legitimate reason for the complainant's failure to attend the mediation session. If it is determined by the OPO Mediation Coordinator that a reasonable explanation did exist, the mediation session shall be rescheduled. If the OPO Mediation Coordinator determines the complainant did not have a reasonable explanation for missing the mediation session, the complaint shall be closed as a contact by IA.
2. The IA lieutenant shall contact the officer to determine if there was a legitimate reason for the officer's failure to attend the mediation session. If it is determined that an explanation did exist, the mediation session shall be rescheduled. If IA determines the officer did not have a reasonable explanation for missing the mediation session, the option for the officer to engage in mediation may be withdrawn by IA and the allegation(s) made by the complainant will be fully investigated.
3. Regardless of the circumstances, the officer and complainant may only reschedule a mediation session one time each.
4. Failure to attend a rescheduled mediation session will result in the following action:
   (a) If the officer fails to attend, the allegation will be fully investigated by IA.
   (b) If the complainant fails to attend, the complaint shall be closed as a contact by IA.

902.6.7 EDUCATIONAL BASED DISCIPLINE

Educational based discipline (EBD) is an alternative to traditional discipline suspensions. EBD reduces management-employee conflict and offers behavior focused education and training, enhanced communication, character, competence, and trust which is beneficial to the employee and the department. Minor nature complaints shall be reviewed by an IA lieutenant and/or commander to determine if the complaint falls into an eligible category for EBD. If the complaint falls within an eligible category, an IA lieutenant shall review the officer’s complaint history to determine if there are any patterns of behavior or serious allegations which would eliminate them from eligibility.

(a) A subject officer may be eligible for educational based discipline for a suspension of 1 to 5 days:

1. The EBD must be offered by the Chief of Police, their designee, or the involved officer's chain of command.
2. The involved officer must voluntarily accept the EBD.

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(a) The EBD days are not a one for one replacement for the number of suspension days and may be more or less.

(b) All EBD classes will be attended while on duty.

(c) The involved officer must waive their right to appeal.

3. All classes must be completed within one year of the subject officer's acceptance of the EBD.

(a) If the training is not completed within one year, the involved officer will receive the original number of recommended suspension days with no right to appeal.

(b) Educational Based Discipline cannot be utilized for written reprimand, suspensions above five (5) days, indefinite suspensions, demotions, or certain general order violations as determined by the Chief of Police.

(c) Educational Based Discipline may be offered during:

1. The Officer Final Classification meeting;

2. At the time the involved officer receives their notice of sustained allegations;

3. At the conclusion of the involved officer's Discipline Meeting; or

4. At the conclusion of the involved officer's Dismissal Review Hearing.

(d) The Officer's IAD history will reflect a written reprimand and the number of days it was in lieu of the suspension.

902.7 DISPOSITION PROCESS

Regardless of which unit or command conducts an investigation, the involved employee's chain-of-command is responsible for recommending a disposition for each allegation based on the guidelines below. The final disposition for any allegation is ultimately determined by the Chief of Police or designee. Pursuant to a Department of Justice recommendation and a study of industry-wide best practices, IA does **not** recommend a disposition for any complaints.

902.7.1 DISPOSITIONS

Each allegation shall be designated with one of the following dispositions based on a finding of fact and considering the totality of circumstances. The standard of proof used to arrive at a final disposition is a "preponderance of the evidence".

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper according to Departmental General Orders.

Unfounded - When the investigation discloses that the alleged act(s) did not occur.

Inconclusive - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

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Administratively Closed - Complaints will be administratively closed under the following circumstances:

(a) An administrative inquiry has been completed and no allegations were made or misconduct discovered.

(b) The case was classified as a Class C or Class D complaint.

(c) At the discretion of the Chief of Police or designee.

Mediated - Completed the mediation process as detailed in this order.

Retired or resigned under investigation.

Information - An incident maintained for documentation purposes only.

Supervisor Referral - An informal complaint referred to a supervisor for their attention.

If an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any possible additional allegations. Any additional allegations shall go through the assessment, classification, and investigation process.

902.8 POST INVESTIGATIVE REVIEW

Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the OPO to discuss the matter further.

902.9 DISCIPLINE PROCESS

The Discipline Process is a guide to be used by all levels of management in determining the appropriate discipline based upon the type of violation committed. This process does not create a binding procedural or substantive due process right for any officer.

The guidelines recommended do not diminish the authority of the Chief of Police in determining whatever disciplinary action is necessary to maintain the integrity of the Department. The Chief of Police retains the full authority to make all disciplinary decisions. Deviation from this process, whether by the Chief of Police or any other manager, does not violate any procedural or substantive rights of any officer unless the deviation violates a specific right guaranteed by law or the Meet and Confer Agreement. The Chief of Police retains the right to dissolve this process at any time, without consulting with, or obtaining the approval of any employee. Further, the Chief of Police maintains the option to revise or modify the process at any time without consulting with, or obtaining the approval of any employee. In the event the Chief of Police modifies or dissolves this process, any disciplinary hearing already scheduled will be handled under the provision(s) in place at the time it was scheduled. In the event the Chief of Police exercises discretionary authority to modify or dissolve this process, that decision is final.

902.9.1 PHILOSOPHY AND GUIDING PRINCIPLES OF PROGRESSIVE DISCIPLINE

Progressive discipline is a process for responding to on-duty and off-duty job related behavior that does not meet expected and communicated performance standards. The primary purpose

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for progressive discipline is to assist the employee to understand that a performance problem or opportunity for improvement exists. The process features increasingly formal efforts to provide feedback to the employee so they can correct the problem.

The goal of progressive discipline is to improve employee performance. Progressive discipline is most successful when it assists an individual in becoming an effectively performing member of the organization. Failing that, progressive discipline enables the organization to fairly, and when appropriate, terminate employment.

Development of the Discipline Process was based upon several guiding principles:

(a) To provide motivation to employees to respect Departmental values and adhere to Department policies, procedures, rules, and regulations.

(b) To encourage and maintain expected levels of performance through self-discipline and acceptance of responsibility.

(c) To give employees a clear understanding of what is expected of them.

(d) To ensure that consequences for inappropriate behavior are clearly explained.

(e) To ensure that a consistent, fair, impartial, objective, timely, and unbiased disciplinary process exists.

(f) To support effective law enforcement and the protection of civil rights as complementary pillars for policing in partnership with the community we serve.

(g) To encourage and reinforce positive behavior by identifying and correcting poor employee performance through counseling, training, and/or discipline.

(h) To use discipline as a corrective action.

902.9.2 DISCIPLINE LEVELS

Additional training and counseling or evaluation may be coupled with any of the below options when in the best interest of the Department and/or the employee. Changes in assignment are at the discretion of the Chief of Police or designee. Any change in assignment may be warranted when in the best interest of the Department and/or employee. All types of progressive discipline will be classified as informal or formal discipline and will be documented in IA.

(a) **Oral Reprimand** - A formal document of counseling notifying the employee that a department general order has been violated. It may be issued for any misconduct that the supervisor determines is necessary and appropriate to correct the problem. The original is sent to IA and a copy is given to the employee.

(b) **Written Reprimand** - A formal letter of reprimand notifying the employee that a department general order has been violated. It is issued for any misconduct or performance in which the supervisor determines this level of discipline is necessary to correct the problem. Generally, written reprimands will be issued when there is a continuation of problems or a supervisor determines a onetime event is serious enough to warrant a written record being placed in the employee's file. The original is sent to IA and a copy is given to employee.

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(c) **Temporary Suspension** - These may range from a 1 to 3 days, 4 to 15 days or an agreed upon 16 to 90 days suspension. When an employee receives a temporary suspension, the original suspension letter is sent to the Civil Service Commission; a copy shall go to the employee, be placed in the employee's IA file, and provided to APD-HR. A suspension may be given for any misconduct or performance problems as provided below:

1. Progressive disciplinary measures such as counseling, oral reprimands, and/or written reprimands have not been successful in correcting performance or conduct problems, or would not be appropriate given the circumstances. A suspension in this case would be part of the progressive discipline process and shall range from 1 to 15 days. Previous actions need not have been for the same violation in order to use suspension as a corrective measure. A compilation of different issues will enable a supervisor to apply a disciplinary suspension.
2. Progressive disciplinary measures, including lower level suspensions, have not corrected performance or conduct problems.
3. The involved officer must agree to suspensions of 16 to 90 days in lieu of indefinite suspension.

(d) **Educational Based Discipline** - An alternative to traditional suspensions offering optional behavior-focused education and training for suspension of 1 to 5 days at the determination of the Chain of Command.

(e) **Demotion Recommendation** - A recommendation to the Civil Service Commission of a permanent reduction in one or more steps in rank. The same guidelines provided in "Temporary Suspension" shall apply. This form of discipline may be used when a reduction is appropriate and will not transfer an irreconcilable problem to a different rank or grade. The demotion recommendation is sent to the Civil Service Commission; a copy shall go to the employee, placed in the employee's IA file, and provided to APD-HR.

(f) **Indefinite Suspension** - Equivalent to dismissal or termination from the Department. When an indefinite suspension occurs the original suspension letter is sent to the Civil Service Commission; a copy shall go to the employee, be placed in the employee's IA file, provided to APD-HR, and sent to the APD Training Academy. A termination may only occur with the approval and direction of the Chief of Police as provided below:

1. The occurrence of a onetime violation is listed in the attached Discipline Matrix as an Indefinite Suspension (IS) offense.
2. Progressive disciplinary measures, including suspension, have not been successful in correcting performance or conduct problems, or retention of the employee would tend to bring discredit to the Department, or any conduct deemed to warrant dismissal by the Chief of Police.

(g) **Alternative Discipline and Last Chance Agreements** - As authorized by the Meet and Confer Agreement and the Chief of Police or designee.

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902.9.3 FACTORS TO CONSIDER IN DETERMINING DISCIPLINE

In determining proper discipline, it is recognized that similar discipline should normally be imposed for similar violations; however, equal treatment does not necessitate identical discipline. The following non-inclusive factors, if applicable to the particular case, should be considered, especially in those instances where more severe discipline is likely:

(a) The nature and seriousness of the violation and its relationship to the employee's duties and responsibilities.

(b) Multiple violations.

(c) The employee's motive (e.g., intentional act, technical mistake, inadvertent, or personal gain).

(d) Whether the employee's actions or speech involved bias or discrimination (the treatment or consideration based on class or category rather than individual merit, driven by partiality or prejudice).

(e) Whether the employee is in a supervisory or management role (it is the Department's intent that individuals in a supervisory or management role will be held to a higher standard with regards to their conduct).

(f) The employee's past disciplinary and work record.

(g) The effect of the violation upon the Department's confidence in the employee's future job performance.

(h) Whether the officer's conduct has brought discredit to the Department.

(i) Whether the employee accepted responsibility for their actions.

(j) The consistency of the discipline with those imposed upon other employees for a similar offense and within the discipline matrix.

(k) The progressive nature of discipline.

902.9.4 SUBSEQUENT CORRECTIVE ACTION

The Discipline Matrix reflects increased levels of discipline for subsequent violations of the same or similar orders. A violation is considered "subsequent" if it occurs within 36 months of the occurrence date of the last violation. Exceptions are those more serious general order violations that result in suspensions of more than three days, or those involving dangerous conduct, such as accidental discharge. In those instances any past violation will be considered a previous occurrence. Additionally, an officer with a history of multiple unrelated violations within the previous 36 month period may be subject to discipline outside the prescribed Matrix range.

902.9.5 ADMINISTRATION OF DISCIPLINE

After an investigation has been completed the commander in charge shall recommend a discipline level and, if applicable, the length of suspension. The commander in charge shall notify the employee of the specified discipline and provide them with any relevant paperwork, including a *Notice of Sustained Allegations*. All paperwork related to the discipline and the original case file shall be forwarded to IA for retention.

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(a) Temporary and/or Indefinite Suspension

1. For discipline resulting in a suspension, the commander in charge shall supply the employee with a written *Notice of Sustained Allegations*, specifying the following:

(a) The disposition for all allegation(s) listed.

(b) The length of the suspension recommended for sustained allegations.

(c) The date/time of a Discipline Meeting (for 15 days or less) or Dismissal Review Hearing (for more than 15 days, demotion or indefinite suspensions) at which the final disciplinary decision made by the Chief of Police will be administered by the commander in charge.

1. Generally, the DM or DRH will not be conducted any earlier than 10 business days after the *Notice of Sustained Allegations* has been presented to the subject officer unless the Chief of Police or designee determines this requirement will jeopardize the ability to impose disciplinary action within the 180-day statutory period or is in the best interest of the Department.

(d) Informing the subject officer if they are eligible for Educational Based Discipline

(e) Informing the subject officer that they and/or their attorney have the right to review the investigative file for a total of eight (8) hours prior to the scheduled DM or DRH, pursuant to the Meet and Confer Agreement. Reviews shall be conducted at the IA offices.

(f) Informing the subject officer that they have the right to be represented by:

1. An attorney of the employee's choosing pursuant to the Meet and Confer Agreement; or

2. An APA representative of the employee's choosing provided that the representative was not in their chain-of-command at the time of the incident, is not in his chain-of-command at the time of the DM or DRH, and has no personal involvement in the investigation as a complainant or witness; or

3. Both an attorney and an APA representative.

(b) Additional guidelines for the DM and DRH are provided in the sections below.

(c) After all external investigations are completed, the discipline level has been decided and the investigation packet is received in IA, a letter shall be mailed to the complainant explaining the outcome of the investigation. All files shall be retained per the guidelines set forth below.

902.9.6 DISCIPLINE MEETING

Discipline Meetings (DM) are conducted for temporary suspensions of 1 to 15 days.

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(a) If an employee has received a *Notice of Sustained Allegations* to attend a DM they, and/or their attorney or APA representative, has the right to provide a written response to the investigation directly to the commander in charge:

1. The written response must be in the form of a Departmental memorandum or, if submitted by the attorney/APA representative, in an appropriate letter and may contain any facts or evidence the subject officer, the attorney/APA representative deems pertinent to the investigation and discipline process. The memorandum/letter must be presented to the commander in charge no more than five (5) calendar days after the *Notice of Sustained Allegations* is received by the subject officer.
2. The commander in charge shall forward a copy of any written response memorandum received to IA immediately upon receipt.
3. The commander in charge shall review the memorandum and may consider this information when deciding whether further investigation is warranted or when determining the appropriate disciplinary recommendation.
4. After the commander in charge has reviewed the subject officer's memorandum, the commander shall notify the officer of the outcome. If, based on the review, the commander in charge determines changes should be made to the *Notice of Sustained Allegations*, they shall advise the subject officer that disciplinary action shall be imposed at the scheduled DM. The commander in charge shall make note of any changes on the original *Notice of Allegations* kept in the case file for documentation purposes.

(b) Independent Discipline Review Process

1. Officers may request an Independent Discipline Review of the proposed disciplinary action after being notified by the commander in charge of the DM.
2. If the officer does not request an Independent Discipline Review the DM shall be conducted as scheduled. The commander in charge shall notify the officer of the Chief's disciplinary decision. The commander in charge is responsible for ensuring that all relevant paperwork is completed.
3. If an Independent Discipline Review is requested, the scheduled DM shall not take place until after the Review has occurred, unless this Review will prohibit the Department from imposing disciplinary action within the 180-day statutory deadline. The following procedures shall be followed when an Independent Discipline Review is requested:
    (a) An Independent Reviewer shall be an assistant chief not in the subject officer's direct chain-of-command.
    (b) The Independent Reviewer shall review the case file, including any response memorandum submitted by the subject officer and/or his attorney/APA representative.
    (c) The Independent Reviewer shall have no personal contact with the subject officer.

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(d) After reviewing the case file, the Independent Reviewer shall make a recommendation to the commander in charge concerning the length of the suspension.

1. The Independent Reviewer's recommendation will pertain only to the length of the suspension.
2. The Independent Reviewer will not make a recommendation concerning whether the allegations should be sustained.
3. The Independent Reviewer cannot recommend a suspension longer than that recommended by the commander in charge but may recommend a shorter period of suspension.
4. The suspension recommended by the Independent Reviewer must fit within the parameters defined by the Discipline Matrix.

(e) The Independent Reviewer shall note their recommendation and justification on the original *Notice of Allegations* kept in the original case file.

(f) Upon receipt of the Independent Reviewer's recommendation, the commander in charge shall conduct the scheduled DM and administer the disciplinary action imposed by the Chief of Police.

(g) The commander in charge must notify the OPO and afford the OPO representative the opportunity to attend the DM.

(h) The commander in charge must coordinate with the IA Legal Advisor to ensure that the appropriate suspension letter is drafted and signed by the Chief of Police or designee.

902.9.7 DISMISSAL REVIEW HEARING

Dismissal Review Hearings (DRH) are conducted for possible temporary suspensions of 16 or more days, indefinite suspensions, and/or demotions. It shall be optional for the officer who is the subject of the investigation to attend and answer any questions at the hearing. Questions posed at the DRH do not constitute an “investigation” as defined in the Meet and Confer Agreement. No negative inference will be permitted should the officer elect not to attend or answer questions. If the officer chooses not to attend or has determined he / she will not answer any questions at the hearing, the officer must give 48 hours notice to the Department by filling out the necessary waiver form. Although the officer is not required to participate in the DRH, the officer must still appear at the designated time and location to execute and receive any relevant paperwork.

(a) Employees shall appear before the DRH wearing the following:

1. For male employees, a full suit or sports coat, slacks and dress shirt with tie.
2. For female employees, a dress, suit or blouse with dress slacks or skirt.

(b) Employees that are the subject of the DRH shall not carry any type of weapon, openly or concealed, into the facility where the DRH is being conducted.

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(c) The Office of Police Oversight has the right to attend the DRH. Other attendees at the hearing shall be at the discretion of the Chief of Police or designee.

(d) Employees who are scheduled for a DRH may present facts or evidence for consideration by the Chief of Police or designee. Following the completion of the DRH, the Chief of Police shall normally, within two (2) business days, render the final disciplinary decision. The subject officer shall be contacted and will meet with their chain-of-command so that they can be advised of the Chief's disciplinary decision.

902.9.8 DISCIPLINARY APPEALS

Guidelines for disciplinary appeals are described in Chapter 143 of the Texas Local Government Code, the Rules and Regulations of the City's Civil Service Commission, and the current Meet and Confer Agreement.

902.10 CONFIDENTIALITY AND RETENTION OF INVESTIGATIVE FILES

902.10.1 CONFIDENTIALITY OF INFORMATION

(a) All information relating to an open IA investigation, or a closed IA investigation which did not result in formal discipline, is considered confidential. Employees shall not disclose or discuss details of any open IA case, or closed IA case which did not result in formal discipline, with anyone except:

1. Investigator(s) assigned to the case.
2. The employee's attorney.
3. The employee's chain-of-command.
4. Other persons specifically designated by the Chief of Police or designee.

(b) IA employees, including administrative staff, shall not disclose or discuss information about any investigation with anyone who does not have a legitimate need to know without first obtaining approval from the IA commander and IA Legal Advisor.

902.10.2 RECORDS RETENTION SCHEDULE

The Chief of Police or designee shall be the records management officer for Internal Affairs.

(a) All records of investigations shall be securely maintained for the minimum periods defined by the Austin Police Department Internal Affairs Records Control Schedule.

1. No local government office may dispose of records listed in the schedule prior to the expiration of its retention period.

(b) Local Government Code § 202.002 states the following:

1. Records involved in litigation or records subject to a request pursuant to the Texas Public Information Act may not be destroyed until either the litigation is finalized or the request is resolved.

(c) Retention periods are from the final disposition date of the investigation. Once the retention period has passed the file shall be destroyed. The following is the established retention periods for records as adopted by the Department:

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Records Retention Schedule	
Record	**Retention Period**
Law enforcement shooting incidents which result in death or injury to any person, including the officer and/or any Critical Incident as defined in General Order 902 (Administrative Investigations)	Permanently retained
Investigations that result in sustained “formal discipline” above a written reprimand as defined by this section, to include suspension, indefinite suspension, and demotion	15 years or 5 years from date of separation, whichever is longer
Investigations that result in sustained "formal discipline" as defined by this section, or cases where the employee retires or resigns while under investigation	15 Years
Investigations that result in sustained "informal discipline" as defined by this section, or whose findings are inconclusive	5 Years
Investigations whose findings are not sustained (e.g., Unfounded, Exonerated or Administratively Closed)	3 Years
Complaints that do not lead to a formal IA investigation(e.g., Mediation, Class C, Class D, Information incidents and Supervisory Referrals)	2 Years from the date that determination is made not to initiate an IA investigation

902.10.3 OPEN RECORDS REQUESTS

Open records requests shall be handled as outlined in General Order 116 (Security and Release of Records and Information).

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Discipline Matrix

903.1 PURPOSE AND SCOPE

The Discipline Matrix is designed as a guide to be used in conjunction with General Order 902 (Administrative Investigations). This matrix is not an all-encompassing document, but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as IS (Indefinite Suspension), Fact Specific, or those that may include discipline greater than a 15-day suspension will be investigated by Internal Affairs.

Discipline Matrix				
Violation	**General Order Reference**	**1st Occurrence**	**2nd Occurrence**	**3rd Occurrence**
Required reporting of violations	900-General Conduct and Responsibilities 900.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Requirements of duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Time and attention to duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Unprofessional or abusive behavior to coworkers	900-General Conduct and Responsibilities 900.5	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Duty to Identify	900-General Conduct and Responsibilities 900.4.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources not involving personal gain	1000 - Department Technology Use 1000.3.1	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources involving personal gain	900 - Employee Speech, Expression, and Social Networking 972.4	4-15 Days	Indefinite Suspension	
Confidentiality	900-General Conduct and Responsibilities 900.3.5	4-15 Days	Indefinite Suspension	

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Criminal violation while on duty or related to job duties	900-General Conduct and Responsibilities	Indefinite Suspension		
Driving While Intoxicated	900-General Conduct and Responsibilities	Indefinite Suspension		
Other criminal violations	900-General Conduct and Responsibilities	Fact Specific		
Dishonesty (false official statements)	900-General Conduct and Responsibilities 900.3.1	Indefinite Suspension		
Neglect of Duty (misleading statements)	900-General Conduct and Responsibilities 902.4.3	Fact Specific		
Duty to take action	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Dereliction of Duty	900-General Conduct and Responsibilities	4-15 days to Demotion	Demotion to Indefinite Suspension	
Neglect of duty	900-General Conduct and Responsibilities 900.4.3	Fact Specific		
Association with those of ill repute	900-General Conduct and Responsibilities 900.3.3	Fact Specific		
Failure to properly investigate a complaint and/or forward an external complaint contact form to Internal Affairs	902.2.5-Administrative Investigations	15 days up to Indefinite Suspension	Indefinite Suspension	
Courtesy (rudeness complaints)	301- Responsibility to Community 301.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Impartial attitude	301- Responsibility to Community 301.2	Fact Specific		

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Insubordination	110-Organizational Structure and Responsibility 110.4.4	4-15 Days	Indefinite Suspension	
Refusing to cooperate with Internal Affairs	902-Administrative Investigations 902.6	Indefinite Suspension		
Quid pro quo sexual harassment	914-Discrimination and Harassment 914.3.2	Indefinite Suspension		
Failure of Random drug test or test resulting from reasonable suspicion	916-Drug and Alcohol Free Workplace 916.2.3	Indefinite Suspension		
Missed court appearance	935-Court Appearances	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Written Reprimand to 1-3 Days
Secondary employment violations	949-Secondary Employment 949	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Abuse of sick leave	955-Attendance and Leave General Order 955.7	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Failure to properly investigate	401-Preliminary Field Investigations, 403-Follow-Up Investigations	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper handling of evidence (not related to criminal conduct)	701-Property and Evidence	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper destruction of evidence	701-Property and Evidence 701.2	Written Reprimand to 4-15 Days	Increased one level	Increased one level
Biased based profiling/Racial Profiling	328-Racial or Biased Based Profiling	Fact Specific		
Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Oral Reprimand to 1-3 Days

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Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		
Inappropriate electronic messages *	305-Radio and Mobile Data Computer Use 305.2	Written Reprimand	1-3 Days	4-15 Days
Internet/Computer violations	1000 & 1002-Department Technology Use	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Objectively unreasonable use of deadly force	Chapter 2-Response to Resistance	Indefinite Suspension		
Objectively unreasonable use of force	Chapter 2-Response to Resistance	Fact Specific		
Preventable discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Unintentional discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Violations of duty weapons general order	803-Duty Weapons	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Violations of pursuit general order	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Pursuit general order, Aggravated	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	1-15 Days	4-15 Days	4-15 Days to IS

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Operation of police vehicle (non-collision)	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At-fault/negligent collision (not involving bodily injury or death)	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At-fault/negligent collision causing bodily injury or death	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Fact Specific		
Negligent/Reckless conduct resulting in SBI or death	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit General Orders	Indefinite Suspension		
Violation of tactics, other than above "A".	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit General Orders	Fact Specific		

* If inappropriate electronic messages bring discredit to the Department, increase one level.

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Austin Police Department
General Orders

Grievance Procedures

904.1 PURPOSE AND SCOPE

It is the policy of this department that all grievances be handled quickly and fairly without discrimination against employees who file a grievance. The Department's philosophy is to promote open and honest communication between employees and supervisors.

This order applies to both sworn and civilian employees; however, changes to City of Austin Personnel Policies will take precedence over any section of this order for civilian employees.

904.1.1 DEFINITIONS

Grievance - A grievance can be any of the following

(a) Any difference of opinion concerning terms or conditions of employment or the interpretation or application of any of the following documents:

1. The Meet and Confer Agreement.
2. Department General Orders.
3. City Personnel Policy.

(b) Complaints related to alleged acts of sexual, racial, ethnic or other forms of unlawful harassment and discrimination as set forth in General Order 914 (Discrimination and Harassment).

Business Day - For purposes of this order, a business day does not include weekends or City observed holidays.

904.2 GRIEVANCE PROCEDURES

(a) Civilian employees shall follow the grievance procedure outlined in the City Personnel Policy.

(b) Sworn employees shall follow the grievance procedure outlined in:

1. The Meet and Confer Agreement to file a grievance related to the Agreement.
2. Chapter 143 of the Texas Local Government Code, the Rules and Regulations of the City's Civil Service Commission, and the current Meet and Confer Agreement for grievances and appeals related to disciplinary action.
3. This order is for all other grievances.

904.2.1 PRE-GRIEVANCE

Sworn employees should attempt to resolve any grievance or complaint informally by communicating with their immediate supervisor and/or next level supervisor within fifteen (15) business days of the occurrence of the reason for the complaint. Every effort should be made by the employee and supervisor to resolve the grievance at this level.

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904.2.2 FORMAL GRIEVANCE

(a) Sworn employees may file a formal grievance as outlined below if no resolution is reached by informally speaking with a supervisor.

1. Complete the APD Civil Service Grievance Form, which may be obtained from APD-HR.

2. Submit the completed form to the APD-HR Manager no later than five (5) business days after the final pre-grievance meeting with the officer's supervisor(s).

(a) APD-HR will date stamp the grievance and provide the Officer with a copy.

(b) Within five (5) business days after the written grievance is filed with APD-HR, the grievant's commander shall schedule a meeting with the grievant and any other relevant parties in an attempt to resolve the grievance. This meeting shall occur no more than ten (10) business days after the grievance has been filed.

1. If a resolution to the grievance is reached, the resolution shall be noted on the grievance form by the commander and grievant, and forwarded to the Chief for approval. If the Chief concurs with the resolution he will sign the grievance document and return the document to the APD-HR Manager who will forward a copy of the grievance to the grievant, the commander, and if appropriate, to the Austin Police Association (APA).

2. If no resolution to the grievance is reached, or if the Chief does not concur with the resolution, the Chief shall schedule a meeting with the grievant to occur no later than ten (10) business days after receipt of the grievance.

(a) The Chief shall issue a written decision on the resolution of the grievance within five (5) business days of this meeting.

(b) The decision of the Chief for the grievance shall be final.

904.3 NO REPRISAL

No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of filing a grievance or complaint in good faith, or for participating in the investigation of a grievance or complaint.

No action of a formal or informal nature shall be taken by the Department against an employee, their witnesses, or the employee's representative, merely for having filed a grievance in good faith, nor is such filing to be unfavorably looked upon by the Department.

904.4 EMPLOYEE REPRESENTATION

Department employees are entitled to have representation during the grievance process. Employees may select their representative which may include, but is not limited to, an attorney or union representative.

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904.5 GRIEVANCE RECORDS

At the conclusion of the grievance process, all documents pertaining to the process shall be forwarded to APD-HR for inclusion into a secure file for all written grievances.

(a) If a civilian employee files a grievance with the City Employee Relations Division, City-HR will coordinate and retain the records for the grievance.

(b) Employee grievances and the records relating to them will not be made part of the employee's personnel record unless requested in writing by the affected employee.

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Guidance Advisory Program

906.1 PURPOSE AND SCOPE

The Guidance Advisory Program (GAP) is an employee early warning system designed to give supervisors tools to manage their officers and proactively identify potential areas of concern before they lead to a more significant impact on the officer and/or Department.

GAP should not be used to disseminate any form of discipline, but should be used as an opportunity to assess, identify, and assist an officer with any issue(s) the officer may be experiencing.

906.2 INDICATORS FOR PERFORMANCE HISTORY AUDITS

Performance indicators represent the categories of activity that have been determined to be relevant data for generation and analysis into a Performance History Audit.

(a) GAP tracks three (3) categories on all officers:

1. **Use of sick leave** - Use 160 hours or more in any 12 month period.
2. **Complaints received by Internal Affairs** -
   (a) Level 1- A, Admin, B, C-- Two (2) or more per 12 month period
   (b) Level 2- D, I, S-- Four (4) or more per 12 month period
3. **Response to Resistance**:
   (a) Patrol related duties (excluding DTAC) - Six (6) or more incidents per 12 month period.
   (b) DTAC patrol - Nine (9) or more incidents per 12 month period.
   (c) Non-Patrol related duties - Varies based on the assignment.

906.3 NOTIFICATION AND RESPONSE

Each quarter a Performance History Audit report will be run and verified by the Risk Management Unit. If an officer exceeds the established threshold for any one of the tracked categories, the officer's immediate supervisor is notified. The supervisor may be required to meet with the officer. The officer should be notified they have exceeded the GAP threshold and allowed the opportunity to discuss any action or incidents related to the GAP activation.

(a) Prior to the meeting, supervisors may review:

1. Officer's use of sick leave.
2. Recent mobile video recording tapes.
3. Response to resistance reports or other Versadex reports.
4. Activity logs.
5. Internal Affairs complaint history.

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6. Secondary employment activity.

(b) Supervisors may consider taking the following action plans:

1. Refer the employee to:

(a) The APD Psychologist.

(b) The Employee Assistance Program (EAP).

(c) A Chaplain.

(d) Peer Support.

2. Place the officer on an Employee Success Plan, issue a Conduct Counseling Memo, or any other action the officer's chain-of-command deems appropriate

(c) No follow-up action is necessary when the GAP thresholds are activated due to long term illness, approved Family Medical Leave, or incorrect data entered into the APD database.

906.4 COMPLETION OF REVIEW

Upon completing the review, supervisors may discuss their findings with the officer.

(a) Supervisors will write a memorandum addressed to their commander to document the findings. The memorandum should be signed by each level of the officer's chain-of-command as it is routed to the commander.

(b) Commanders will review the GAP memorandum then scan and email it to the GAP Coordinator for retention and any necessary follow-up. The original memorandum shall be retained by the officer's chain-of-command.

(c) If an action plan is initiated, the GAP memorandum should include a date for the completion of the required action(s).

906.5 CONFIDENTIALITY OF DATA

Information, data and copies of material compiled to develop Performance History Audits Reports shall be considered confidential as part of the employee's personnel file and will not be subject to discovery or release except as provided by law. Access to the data in the system will be governed under the same process as access to an officer's personnel file as outlined in General Order 910 (Peace Officer Personnel Files).

906.6 RETENTION AND PURGING

Except as incorporated in separate training or disciplinary records, all performance indicators and Performance History Audit Reports shall be purged from the Risk Management Unit and all other locations within the Department five years from the date generated. The City Attorney however, shall retain a copy of Performance History Audit Reports for an additional one year period as attorney work product.

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General Orders

Reporting of Employee Arrests and Police Involvement

908.1 PURPOSE AND SCOPE

Arrests and convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. All employees shall report any arrest, charge, or indictment of a:

(a) Class B Misdemeanor offense or higher; or

(b) Class C Misdemeanor involving the duties and responsibilities of office or family violence.

908.2 DOMESTIC VIOLENCE CONVICTIONS AND RESTRAINING ORDERS

Texas and federal law prohibit individuals convicted of certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child (18 USC § 922; Tex. Penal Code § 46.04(b); Tex. Penal Code § 46.04(c)).

All employees are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this order.

908.2.1 EMPLOYEE DOMESTIC VIOLENCE

The Department's position is one of zero tolerance toward domestic violence. It is the order of the Department to use early prevention strategies in order to avoid or minimize the occurrence and effects of domestic violence. This order addresses the dynamics of domestic violence and how it impacts the employee and the Department. The purpose of this order is to heighten awareness of domestic violence and provide guidance for employees, supervisors, and management.

(a) The order takes a continuum approach, seeking first to educate at all phases of an employee's career, then prevent or intervene in domestic abuse situations in order to reduce victimization of the family member or partner and increase the chances of employee career stability.

(b) The Department will respect the confidentiality and autonomy of its employees to direct their own lives, to the fullest extent permitted by state law. The Department will provide assistance to employees, which may include, but is not limited to:

1. Resource and referral information; and
2. Safety plans for the workplace; and
3. Work schedule adjustment or leave necessary to obtain medical, counseling, or legal assistance and arrange for housing and child care; and
4. Workplace relocation.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0591

908.2.2 PREVENTION AND INTERVENTION OF EMPLOYEE DOMESTIC VIOLENCE

(a) The goal of the Department is to accomplish the following in regard to domestic violence:

1. Heighten awareness.
2. Provide guidance for employees, supervisors, and management.
3. Identify warning signs.
4. Establish prevention and intervention guidelines.

(b) In order to provide non-punitive avenues of assistance to employees, their partners, and other family members before an act of domestic violence occurs, the Department will provide confidential referrals to reputable internal or external counseling services.

(c) Employees with knowledge of suspected abuse or violence involving another employee of the Department shall report it to their immediate supervisor.

(d) Supervisors will monitor employees for warning signs of domestic violence. If warning signs exist, intervention measures must be taken. The following are some examples of steps that can be taken, based on the level of violence and the likelihood of recurrence:

1. Problem solving meeting with both parties conducted by the Department's Psychological Services.
2. Mediation.
3. Referral to counseling services for emotional support and guidance:
   (a) Internal (e.g., APD Peer Support, Wellness Office, Victim Services).
   (b) External (insurance coverage).
   (c) Employee Assistance Program (city benefits).
4. Referral to Family Violence Protection Team for assistance with protective orders.
5. Develop a safety/prevention plan with the assistance of counseling services.
6. Arrange for temporary reassignment to avoid further contact.
7. Issue directive to restrict contact with the other party.
8. Liberal use of employees accumulated existing leave time up to and including approved Administrative Leave.

908.3 OTHER CRIMINAL OFFENSES

State law prohibits any person convicted of a felony from being a peace officer in the State of Texas. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty plea or *nolo contendre* plea.

Convictions of certain violations of the Texas Transportation Code (e.g., suspended drivers license) and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

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Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

908.3.1 TELECOMMUNICATORS
Any person who has been convicted of a felony offense or convicted of barratry as defined by Tex. Penal Code § 38.12 may not be a telecommunicator in the State of Texas (Tex. Occ. Code § 1701.312; Tex. Occ. Code § 1701.313). In addition, telecommunicators are held to the statutory standards outlined in 37 Tex. Admin. Code § 217.2 with regard to certain misdemeanor offenses.

908.4 REPORTING PROCEDURE

(a) Employees who are arrested will inform the booking officer they are employed by APD and request APD Communications be immediately notified of the arrest.

(b) Employees shall immediately report to their supervisor, with a follow-up memorandum through the chain-of-command to the Chief, of:

1. Any arrests, criminal charges, and/or criminal court actions brought against the employee (to include the name of the arresting agency, a description of the nature of the charges, and the style, court and cause number of the charge or indictment, if any); or
2. Anytime an employee is involved in an off-duty incident that results in a response from any law enforcement agency with the exception of traffic violations, minor collisions, and other minor calls for service where the employee is not considered to be a suspect (e.g. alarm calls, noise complaints); or
3. Anytime an employee becomes the subject of a family violence protective order issued by a court of competent jurisdiction.

(c) Supervisors receiving such information shall immediately notify the Internal Affairs Commander, with a follow-up memorandum through the chain-of-command to Internal Affairs, detailing the circumstances of the situation.

(d) Employees who receive a criminal conviction which unduly restricts or prohibits them from fully and properly performing their duties may be disciplined up to and including indefinite suspension/termination.

(e) Employees failing to provide prompt notice pursuant to this order are subject to discipline.

908.4.1 DEPARTMENT RESPONSIBILITY TO REPORT
When a peace officer or county jailer is arrested, the Chief of the arresting agency must report such fact, as mandated by 37 Tex. Admin. Code § 211.28, to TCOLE within 30 business days of the arrest.

In addition, the Chief must report the arrest, charge or conviction of any person who is under appointment with this department to TCOLE within 30 days of the arrest, as mandated by 37 Tex. Admin. Code § 211.29.

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908.4.2 RESPONSIBILITY TO REPORT
Employees who hold a license issued by TCOLE shall report to the commission in writing within 30 days:

(a) Any name change;

(b) A permanent mailing address other than an agency address

(c) All subsequent address changes;

(d) An arrest, charge, or indictment for a criminal offense above the grade of Class C, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, including the name of the arresting agency, the style, court and cause number of the charge or indictment, if any;

(e) The final disposition of the criminal action; and

(f) Receipt of a dishonorable or other discharge based on misconduct which bars future military service.

In addition, a licensee must report:

(a) Any name change to the APD HR, and

(b) Any of the above mentioned arrest, charge or indictment for a criminal offense to the Austin Police Department.

908.5 PROCEDURE FOR RELIEF
While a peace officer may be permitted to carry a firearm following a conviction under state law, federal law does not provide for any similar relief, and therefore the peace officer is not relieved of the restrictions imposed by federal law. Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave, reassigned or disciplined.

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GO
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Austin Police Department
General Orders

Peace Officer Personnel Files

910.1 PURPOSE AND SCOPE

This section governs the maintenance, retention and access to peace officer personnel files in accordance with established law. It is the policy of this department to maintain the confidentiality of peace officer personnel records pursuant to state law (generally, Tex. Gov't Code § 552.102 and Tex. Local Gov't Code § 143.089).

910.2 PERSONNEL FILES DEFINED

Peace officer personnel records shall include any file maintained under an individual officer's name. Employee records will generally be maintained in any of the following:

(a) **Civil Service Personnel File** - That file maintained by the Department and based on the guidelines set by Tex. Local Gov't Code § 143.089(a).

(b) **Confidential Employee Personnel Files** - Any file maintained internally by the Department, separate from the Civil Service Personnel file, and based on the guidelines set by Tex. Local Gov't Code § 143.089(g).

910.3 CIVIL SERVICE PERSONNEL FILE

(a) The Civil Service Personnel File must contain any letter, memorandum or document relating to (Tex. Local Gov't Code § 143.089(a)):

1. A commendation, congratulation or honor bestowed on the officer by a member of the public or by the Department for an action, duty or activity that relates to official duties.
2. Any misconduct by the officer if the letter, memorandum or document is from the Department and if the misconduct resulted in disciplinary action. For purposes of this section, the phrase "disciplinary action" does not include discipline at the level of a written reprimand or lower.
3. The periodic evaluation of the officer by a supervisor.

(b) The Civil Service Personnel File may not contain a letter, memorandum or document relating to alleged misconduct when there is insufficient evidence to sustain the charge of misconduct.

910.4 CONFIDENTIAL EMPLOYEE PERSONNEL FILES

The Department may maintain confidential employee personnel files on a peace officer for the Department's use, but the Department may not release any information contained in these files to any agency or person requesting information relating to a peace officer except as permitted by law (Tex. Local Gov't Code 143.089(g)).

Confidential employee personnel files may include, but are not limited to, the following:

(a) **Department File ("201 file")** - The permanent record of a sworn officer's employment with the Department.

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(b) **Internal Affairs File** - Information relating to the complaint and investigation history of each employee regardless of disposition.

(c) **Training File** - Documentation of the training records of an employee.

(d) **Medical File** - Information relating to an employee's medical history.

(e) **Division File** - Documentation used by an employees supervisor for the purpose of completing timely performance evaluations.

(f) **Recruiting File** - Required hiring documentation of employees.

910.4.1 DEPARTMENT FILE ("201 FILE")

(a) The Department File is maintained by the Human Resources Department and may contain, but is not limited to, the following:

1. Performance evaluation reports regularly completed by appropriate supervisor(s) and signed by the affected employee shall be permanently maintained and a copy provided to the employee, along with any written statements the employee makes in response to the evaluation report. (generally, Tex. Local Gov't Code § 143.082).
2. Commendations, with a copy provided to the involved employee(s).
3. Personnel Action Reports reflecting assignments, promotions and other changes in the employee's employment status.
4. A photograph of the employee.

(b) If a negative letter, memorandum, document or other notation of negative impact is included in an officer's personnel file, the Department shall, within 30 days after the date of the inclusion, notify the affected officer. The officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document or other notation (Tex. Local Gov't Code § 143.089).

1. Any such employee response shall be attached to and retained with the original adverse comment.
2. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.

910.4.2 INTERNAL AFFAIRS FILE

(a) The Internal Affairs File is maintained under the exclusive control of the Internal Affairs Division on behalf of the Office of the Chief of Police.

(b) While the Civil Service Personnel File contains the appropriate sustained complaint history of employees, the Internal Affairs File shall contain all the documentation relating to the complete investigation of all formal complaints of employee misconduct regardless of disposition.

(c) Access to these files may only be approved by the Chief of Police or the supervisor of the Internal Affairs Unit.

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(d) Further details on an employee's Internal Affairs File can be found in General Order 902 (Administrative Investigations).

910.4.3 TRAINING FILE

(a) The Training File is maintained by the Training Division for each employee and shall contain:

1. Records of all training and education; and
2. Original or photocopies of available certificates, transcripts, diplomas and other related documentation; and
3. Firearms qualifications, including mandated annual qualification.

(b) It shall be the responsibility of the involved employee to provide the Training Commander or designee with evidence of completed training/education in a timely manner.

(c) The Training Commander or designee shall ensure that copies of such training records are placed in the employee's Training File.

910.4.4 MEDICAL FILE

(a) The confidential Medical File is maintained by Risk Management separately from all other files and shall contain documents relating to the employee's medical condition and history, including but not limited to the following:

1. Materials relating to medical leaves of absence.
2. Documents relating to workers compensation claims or receipt of short-term or long-term disability benefits.
3. Fitness for duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
4. Medical release forms, doctor's slips and attendance records that reveal an employee's medical condition.
5. Any other documents or material which reveals the employee's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

(b) Documentation regarding an employee's FMLA status is maintained separately by APD Human Resources.

910.4.5 DIVISION FILE

(a) The Division File is considered an interim file that is maintained by an employee's supervisor and may contain information (e.g., supervisor log entries, notices to correct) used to serve as a foundation for the completion of employee performance evaluation.

(b) If any item will be included in the employee's Department File, a duplicate copy of it may also be placed in this interim file in anticipation of completing any upcoming performance evaluation.

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910.4.6 RECRUITING FILE

(a) The Recruiting File is maintained by the Recruiting Division and contains all the required TCOLE documents of employees who are hired by the Department, including:

1. A copy of any TCOLE Forms L1, L2, L3, and any previous F5Rs; and
2. Required background information including, at a minimum, proof of citizenship and age, proof of education, proof of criminal history checks, and proof of military discharge if applicable.

910.5 REQUESTS FOR DISCLOSURE

All personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to state and federal discovery procedures, state law or with the employee's consent.

Nothing in this section is intended to preclude review of personnel files by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

910.5.1 REQUEST FOR CIVIL SERVICE PERSONNEL FILE INFORMATION

Subpoenas for documents or items from the Civil Service Personnel File maintained by IA will be directed to the IA Commander or Lieutenant. Any open records request for IA files will be referred to the APD Legal Adviser. No documents or items will be released pursuant to a subpoena without authorization from the APD Legal Adviser.

(a) Open records requests can come directly from the general public, APD or City PIO, or through the Civil Service Commission. Records will be released to the public only when authorized by law. All sustained complaints that resulted in disciplinary action are subject to open records requests. For purposes of this section, "disciplinary action" means (Tex. Gov't Code 143.089(a)(2)):

1. Temporary suspension (1-15 days); or
2. Agreed suspension (16-90 days); or
3. Indefinite suspension (the civil service equivalent of termination); or
4. Demotion.

(b) When IA is notified that an open records request has been received for a particular file, IA personnel shall review the file to ensure information that is not related to the sustained allegation, which formed the basis of the "disciplinary action", is redacted.

(c) The IA Legal Advisor shall be consulted before any file is released in relation to an open records request to ensure that any necessary redactions have been completed.

(d) If the request is submitted through the Civil Service Commission, the original redacted case file will be transferred to the Commission as soon as possible to ensure compliance with the statutory deadline for responding to the open records.

910.5.2 REQUESTS FOR CONFIDENTIAL EMPLOYEE PERSONNEL FILE INFORMATION

Subpoenas and open record requests for any portion of an Confidential Employees Personnel File shall be submitted to APD PIO or City Legal.

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910.5.3 EMPLOYEE ACCESS TO PERSONNEL FILES
Employees, or the employees' representative, may request access to their own Confidential Personnel Files by completing the appropriate form or memo during the normal business hours of the Division responsible for maintaining such files. Employees may be restricted from accessing confidential portions of their Internal Affairs files that have not been sustained against the employee.

910.5.4 APD EMPLOYEES SEEKING OTHER EMPLOYMENT
Former and current APD employees seeking employment with another law enforcement or government agency may have a representative from that agency granted access to portions of their Confidential Employee Personnel File as required by law when the following conditions are met:

(a) The representative presents their agency credentials; and

(b) The representative presents a signed, legally sufficient release/waiver form signed by the former employee; and

(c) Prior to reviewing the file, an IA supervisor and the Legal Advisor give their approval to grant access to said file.

910.6 RECORD RETENTION
All records and files shall be maintained for the minimum period outlined by law.

(a) All Internal Affairs files, records, and investigations shall be securely maintained as outlined in General Order 902 (Administrative Investigations).

(b) Contents of an employee's Division File may be destroyed:

1. Once the information is incorporated into an employee performance evaluation; or

2. If the original materials were forwarded for inclusion into another personnel file.

(c) All other portions of the confidential employee personnel file may be kept indefinitely.

910.7 BRADY MATERIAL IN PERSONNEL FILES
The purpose of this section is to establish a procedure for releasing potentially exculpatory information, known as *Brady* material, contained within confidential peace officer personnel files.

910.7.1 DEFINITIONS
Brady material - In the *Brady v. Maryland* decision (373 U.S. 83 (1963)) the United States Supreme Court held that the prosecution has an affirmative duty to disclose to the defendant evidence which is both favorable and material to the guilt and/or punishment of the defendant.

The prosecution - Refers to any prosecuting attorney and all investigative agencies involved in the criminal prosecution of a defendant, including this department.

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910.7.2 RELEASE OF PERSONNEL FILES TO PROSECUTING ATTORNEY
Generally, the only time the prosecuting attorney, Attorney General or Grand Jury is entitled to access confidential peace officer personnel files without filing a court motion is when they are investigating the conduct of an officer or this department. Such access shall not be considered a waiver of the confidentiality of the information contained in these files.

Absent a specific investigation of identified officer(s) or a specific investigation of this department, or the consent of an involved officer, no confidential information from any officer's personnel file shall be released to the prosecuting attorney or Grand Jury without full compliance with the court process. The prosecution of a criminal defendant is not considered an investigation of any involved officer.

Should an officer's credibility or other issues related to an officer's personnel file arise in the context of an officer acting as a witness for the prosecution, access to that officer's personnel file by either the prosecuting attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in court and evidentiary rules.

910.7.3 PROCEDURE
If an officer is a material witness in a criminal case, a person or persons designated by the Chief may examine the subject officer's personnel file to determine whether there are *Brady* materials contained therein (e.g., evidence which is both favorable and material to the guilt and/or punishment of the defendant). If *Brady* material is located, the following procedure shall apply:

(a) In the event that a court motion has not already been filed by the criminal defendant or other party, the prosecuting attorney shall be notified of the potential presence of *Brady* material in the officer's personnel file.

(b) The prosecuting attorney should be encouraged to file a court motion in order to initiate an in-camera review by the court.

(c) As with any court motion, and prior to any review of the files by the court, subject officer(s) shall be notified in writing that a court motion has been filed.

(d) The Central Records Manager or authorized designee shall accompany all relevant personnel files during any in-camera inspection, and address any issues or questions raised by the court in determining whether any material contained in the file is both material and favorable to the criminal defendant.

(e) If the court determines that there is relevant *Brady* material contained in the file(s), only that material ordered released will be copied and released to the parties filing the court motion.

    1. Prior to the release of any materials pursuant to this process, the Central Records Manager or designee should forward the request to the City Attorney to evaluate the need for a protective order from the court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.

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912

Austin Police Department
General Orders

Personnel Evaluations

912.1 PURPOSE AND SCOPE

Performance appraisal should be a continuous process done by supervisors for each employee under their command. Appraisals assist in making the best use of human resources, ensure that personnel problems are identified and dealt with promptly and appropriately, and help the employee reach optimum performance and job satisfaction.

Nothing in this order negates the Department's right to immediately take appropriate corrective action when deficient behavior is observed and/or discipline an employee for poor performance.

Performance - Issues related to the employee's knowledge, skills and/or abilities. These are issues that the employee may improve to a satisfactory level of performance given additional training, time, and/or other resources. Performance Issues may be addressed by an Employee Success Plan.

Conduct - Issues related to the employee's behavior, attitude, and/or the manner in which his or her duties are accomplished. These are issues covered by policies and standard operating procedures. The employee should be able to correct these issues immediately with little assistance from the supervisor. Conduct Issues may be addressed by a Conduct Counseling Memo.

912.2 POLICY

The evaluation system used by the Department is subject to periodic change and may be different for sworn and non-sworn employees. The system will provide evaluation of performance as it relates to, and supports, the Department's goals and objectives. The Department utilizes the City's Success Strategy Performance Review (SSPR) process for all employees.

(a) Employees will only use the approved evaluation system.

(b) The SSPR form must be specific to the employee's assignment during the evaluation period.

(c) Evaluations will cover a specified period of time.

912.3 EVALUATION FREQUENCY

(a) Written performance evaluations will be conducted with the following frequencies:

1. **Sworn Employees**

   (a) Officers will be evaluated annually with monthly performance counseling sessions being conducted by the supervisor unless they are enrolled in the Field Training Program (FTP).

   (b) Officers enrolled in the Field Training Program (FTP) will be evaluated as designated by the FTP SOP.

2. **Civilian Employees**

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(a) Probationary employees will be evaluated every three (3) months.

(b) Non-probationary employees will be evaluated annually, with at least one documented interim feedback session at six (6) months.

(b) Employees with documented performance deficiencies may be evaluated more frequently until the deficiency has been satisfactorily corrected.

912.4 EMPLOYEE ANNUAL SSPR EVALUATION SCHEDULE

Non-probationary employees shall be given performance counseling on a monthly basis by their supervisor and shall have an annual SSPR conducted according to the schedule below.

(a) Sworn employee evaluations will be completed as follows:

1. Officers, corporals, and detectives are evaluated between September 1 and September 15 by sergeants.
   (a) Completed evaluations will be forwarded to the lieutenant for review by September 20.
   (b) Lieutenants will review and return the evaluations to their sergeants by October 5.
   (c) Sergeants will review the evaluations with their employees.
2. Sergeants are evaluated between September 20 and October 5 by lieutenants.
   (a) Completed evaluations will be forwarded to the commander by October 10.
   (b) Commanders will review and return the evaluations to their lieutenants by October 20.
   (c) Lieutenants will review the evaluations with their sergeants.
3. Lieutenants are evaluated between October 10 and October 20 by commanders.
   (a) Completed evaluations will be forwarded to the assistant chief by October 25.
   (b) Assistant chiefs will review and return the evaluations to their commanders by October 31.
   (c) Commanders will review the evaluations with their lieutenants.
4. Commanders are evaluated between October 25 and October 31 by assistant chiefs.
   (a) Completed evaluations will be forwarded to the Chief by November 10.
   (b) The Chief will review and return the evaluations to the assistant chiefs by November 20.

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(c) Assistant chiefs will review the evaluations with their commanders.

5. Executive evaluations will be completed between November 10 and November 30 by the Chief.

(b) Civilian employee evaluations will be completed by October 31 each year.

912.4.1 RESPONSIBILITIES OF SUPERVISORS OF PROMOTED AND TRANSFERRED SWORN EMPLOYEES

(a) Annual SSPR evaluations of employees promoted or transferred from one assignment to another will be handled by the employee's supervisor within 15 days of the effective date of the promotion or transfer as follows:

1. An annual SSPR evaluation of the employee will be completed within 15 days of the employee's promotion unless the promotion is within 60 days of the last SSPR. The completed evaluation will be sent to the employee's new supervisor to accompany the evaluation given in the post-promotional position.

2. An annual SSPR evaluation of the employee will be completed within 15 days of the employee's transfer if the effective date of the promotion or transfer occurs within two months of the next annual SSPR evaluation.

3. If an employee transfers within two months of the next annual SSPR evaluation, the transferring supervisor will send the employee's monthly performance counseling notes to the employee's new supervisor to be incorporated into the employee's SSPR.

(b) Within 15 days of an employee promoting or transferring, the employee's new supervisor will review the job description and SSPR with the employee to establish expectations.

912.4.2 RESPONSIBILITIES OF PROMOTED AND TRANSFERRED SWORN SUPERVISORS

(a) When supervisors promote or transfer within two months of the next annual SSPR, supervisors will complete evaluations on all of the supervisor's previous employees no later than 15 days after the effective date of their promotion or transfer. The evaluations will be given to the incoming supervisor.

(b) Within 15 days of taking over a unit or command, promoted or transferred supervisors will:

1. Review current evaluation documents or develop new evaluation documents related to the unit or command; and

2. Review those evaluation documents with their new employees to set the supervisors expectations.

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912.5 EVALUATION PROCESS FOR SWORN EMPLOYEES

The principle objective when rating employees is to determine whether or not they can perform the required functions of the job. Supervisors/raters should evaluate an employee's knowledge, skills, and abilities and determine if any training or developmental needs exist.

(a) Employees are responsible for actively participating in the monthly performance evaluations and annual SSPR process for their professional growth and development. Employees should come to the evaluation meeting prepared to discuss career goals and any skills, training, education, or other assistance needed to enhance their career development and/or their performance.

(b) Supervisors will follow the instructions for completing and submitting employee evaluations included with the specific evaluation system being used.

1. Supervisors/raters are responsible for providing a written explanation by giving specific reasons for the rating given based on the monthly field notes observations.

2. At any time of employment when an employee fails to meet conduct expectations in a single incident or duty, supervisors may issue the employee a Conduct Counseling Memo (PD0102).

   (a) Employees are expected to make minor errors in the performance of their jobs. These issues are best addressed informally with the employee by their supervisor.

   (b) The Conduct Counseling Memo will be made in person with the employee's supervisor in a private setting.

   (c) If the employee has any questions or concerns with the memo it must be documented in writing on the document.

   (d) The employee and CoC will sign the memo.

3. At any time of employment when unsatisfactory performance is identified in an employee, supervisors will notify the employee of the deficiency and define actions that should be taken to improve the performance as soon as practicable.

   (a) Notification will be made in person with the employee's supervisor and Chain of Command to the level of Lieutenant in a private setting using form PD0103 Employee Success Plan.

   (b) If the employee has any questions or concerns with the Employee Success Plan, it must be documented in writing on the document.

   (c) The employee and CoC will sign the Employee Success Plan.

(c) Next-level managers shall incorporate the following points into the monthly evaluations and annual SSPR's of the supervisors/raters under their command:

1. Fairness and impartiality of ratings.

2. Participation in counseling employees at time of evaluations.

3. Uniform application of ratings.

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4. Ability to perform the role of evaluator.
5. Adherence to established deadlines for conducting evaluations.
6. Ability to communicate to employees the Department's goals and objectives, business plan.

912.5.1 EVALUATION TRAINING

(a) Field Training Officers and Field Training Supervisors - Training on the evaluation process used for officers enrolled in the Field Training Program (FTP) will be provided through the Field Training Unit.

(b) Sworn Employee Supervisors - Officers promoting to the rank of sergeant will be provided instruction on the evaluation process during the first-line supervisor school. Further training will be provided as needed.

(c) Civilian Employee Supervisors - The City Organizational Development Department conducts on-going training for supervisors on the performance evaluation process. APD-HR will provide training as needed.

912.5.2 MONTHLY EVALUATION REVIEW PROCESS

(a) All sworn employees will receive monthly performance counseling by their immediate supervisor.

1. The supervisor will document ongoing employee performance using their field notes.
    (a) The monthly observations will be used to aggregate comments for the annual SSPR
2. The observations will be discussed with the employee on a monthly basis, with the exception of the month that the annual SSPR is administered.

(b) Employees will be given the opportunity to make written comments to be included with the evaluation.

912.5.3 ANNUAL SSPR REVIEW PROCESS

(a) Prior to administering completed annual SSPR's to employees, evaluations will be forwarded to the rater's chain of command up to the level of commander for review and acknowledgment by signature. Commander evaluations will be forwarded to the Chief of Police or designee with final approval by the Chief of Police.

1. Raters and members of the chain of command that do not agree on the evaluation should attempt to come to an agreement before the SSPR is given to the employee. If an agreement cannot be reached the commander or Chief of Police or designee will determine the final rating or commentary.
2. After chain of command review:
    (a) Sworn Employees - The SSPR will be reviewed with the employee.

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(b) Civilian Employees - The SSPR will be forwarded to APD-HR. APD- HR will analyze the evaluations for compliance with city-wide guidelines. After analysis the evaluations will be returned to the supervisor for review with the employee.

3. Supervisors will review completed SSPR evaluations with their individual employees in a private setting and provide feedback regarding the employee's performance during the evaluation period.

(a) Employees will be given the opportunity to make written comments to the completed SSPR to be included with the evaluation when it is submitted.

(b) Employees will sign their completed SSPR to indicate they have read and understand the evaluation. If the employee refuses to sign, supervisors will have another supervisor witness the employee's refusal and both the rater and the witness will initial the form.

(c) Career counseling will be provided for each employee in regard to training needed for continued improvement in their current position, advancement, specialization, and/ or promotion.

(d) New evaluation criteria for the next rating period will be established and discussed with the employee, including goals for the specified time period and the level of performance expected in each area. The employee will be given a written copy of this information.

(e) Completed and signed evaluations, along with any written comments attached, will be given to each employee once the evaluation review session is completed.

912.5.4 RESPONSES TO EVALUATION RATINGS

(a) Employees who disagree with the monthly performance counseling observations or annual SSPR provided by their supervisor should first speak with the supervisor about the specific reason(s) for the evaluation and provide any information about why they believe this rating is inaccurate.

912.6 EVALUATION RETENTION

(a) Annual SSPR evaluations shall be a permanent part of the employee's personnel file.

(b) Pursuant to Local Government Code, Section 143.089, the annual SSPR's on officers shall be forwarded to the Civil Service office for retention in the officer's Civil Service Personnel File. Retention in this file will be governed by rules in accordance with law and as adopted by the Civil Service Commission.

912.7 EMPLOYEE PERFORMANCE AND CONDUCT REMEDIATION

(a) At any time of employment when unsatisfactory performance or conduct is identified in an employee, supervisors will notify the employee of the deficiency and define actions that should be taken to improve the performance or conduct as soon as practicable.

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1. Employees are expected to make minor errors in the performance of their jobs. These issues are best addressed informally with the employee by their supervisor.
2. When a pattern of unsatisfactory performance is established or when the performance in an individual situation is viewed as substantial enough, notification will be made in person with the employee's supervisor and Chain of Command to the level of Commander in a private setting using form PD0103 Employee Success Plan.
3. If the employee has any questions or concerns with the Employee Success Plan, it must be documented in writing on the document.
4. The employee and CoC will sign the Employee Success Plan.

(b) At any time of employment when an employee has established a pattern of failing to meet conduct expectations or has failed to meet conduct expectations in a single incident or duty that is deemed significant, supervisors may issue the employee a Conduct Counseling Memo (PD0102).

1. The Conduct Counseling Memo will be made in person with the employee's supervisor in a private setting.
2. If the employee has any questions or concerns with the memo it must be documented in writing on the document.
3. The employee and CoC will sign the memo.

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GO
914

Austin Police Department
General Orders

Equal Employment Opportunity and Non-Discrimination

914.1 PURPOSE AND SCOPE

The purpose of this order is to prevent Department employees from being subjected to discrimination, harassment, sexual harassment, or retaliation.

914.2 POLICY

The Austin Police Department is committed to providing a work environment that is free of discrimination, harassment, sexual harassment, and retaliation and that ensures equal employment opportunities for all employees. Discrimination, harassment, sexual harassment, and retaliation based on a protected class, in any form, as defined in federal, state, or local law, will not be tolerated. Protected classes include race, color, religion, creed, sex, gender, pregnancy status, genetic information, sexual orientation, gender identity, national origin, ethnicity, age, disability, and veteran status or other legally protected class.

Every employee is responsible for maintaining a professional environment free of discrimination, harassment, sexual harassment, and retaliation, and for bringing to the City's attention conduct that interferes with providing a work environment free of discrimination, harassment, sexual harassment, and retaliation.

Findings of discrimination, harassment, sexual harassment, or retaliation against an employee may result in discipline up to and including discharge or indefinite suspension.

914.3 PROHIBITED CONDUCT

914.3.1 DISCRIMINATION

Discrimination is the unequal or different treatment of an individual in any employment and/or personnel action based on a protected class, as per section 914.2. The Department will recruit, hire, train, compensate, discipline, provide benefits, and promote without regard to a protected class. The Department will employ positive business and personnel practices designed to ensure equal employment opportunity.

(a) The Department will ensure:

1. equal employment opportunities to all employees and candidates; and
2. that employees covered by these policies are selected and promoted based on merit and fitness and without discrimination, and in accord with the requirements of state civil service laws and any applicable labor contract.

(b) The Department will not discriminate in employment decisions and/or personnel actions on the basis of an individual's AIDS, AIDS Related Complex, or HIV status; nor will the Department discriminate against individuals who are perceived to be at risk of HIV infection, or who associate with individuals who are believed to be at risk.

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(c) Reasonable accommodations shall be provided for all employees and qualified applicants with a disability as defined by the Americans with Disabilities Act Amendments Act (ADAAA), provided that the individual is otherwise qualified to perform the essential functions of the job and such accommodations can be provided without undue hardship for the Department and City of Austin.

914.3.2 HARASSMENT

(a) Harassment is unwelcome verbal or physical conduct toward an individual or a group because of a protected class. Harassment can create a hostile work environment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment opportunities. Examples of prohibited conduct that constitute harassment include, but are not limited to:

1. Use of epithets, innuendos, names, comments, foul language or slurs because of an individual’s protected class;
2. Jokes, pranks or other banter, including stereotyping based on a protected class; or,
3. Distribution, display, viewing, downloading or discussion of any written or graphic material, including online content, voicemail, e-mail, text-messages, calendars, posters and cartoons, that are sexually suggestive or show hostility toward an individual or group based on a protected class.

(b) Employees shall not engage in conduct which could reasonably create a hostile work environment at any time while on duty or on City premises, or even if not on duty, but participating in any work-related setting outside the workplace, such as traveling on City business or attending professional conferences.

914.3.3 SEXUAL HARASSMENT

(a) Sexual harassment is any unwelcome sex or gender-based comments and/or conduct that occurs when:

1. Submission to such conduct is made either openly or by implication a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; or
3. Such conduct unreasonably interferes with the individual's work performance or creates an intimidating, hostile, or offensive working environment.

(b) Sex or gender-based and/or sexually oriented jokes, remarks, gestures, or pictures may be offensive to other employees and will not be tolerated.

914.3.4 RETALIATION

The Department is committed to maintaining a work environment that is free of retaliation and where an employee is free to raise a question or concern involving the terms and conditions of any employee’s employment.

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(a) Retaliation is defined as an action or inaction that adversely affects the terms and conditions of employment, and is taken in response to an employee's good faith complaint, participation in an investigation, proceeding or hearing, or an employee's exercise of rights or benefits authorized under this order. Unacceptable conduct that would likely deter an individual from reporting or supporting a claim may constitute retaliation. Retaliation can occur even if the underlying complaint is not substantiated. An adverse employment action includes, but is not limited to, discharge, indefinite suspension, demotion, and denial of promotional opportunity.

(b) The Department prohibits retaliation against an employee who, in good faith, reports discrimination, harassment, sexual harassment, or retaliation; files a complaint regarding a law, policy, practice, or procedure; testifies, assists or participates in an investigation, proceeding, or hearing; or exercises rights or avails themselves of any benefit authorized under the personnel policies, (such as filing a worker's compensation claim, requesting Family and Medical Leave (FMLA), or requesting military leave).

(c) An adverse action taken against an employee for filing a discrimination charge, testifying or participating in an investigation, proceeding, or lawsuit, or for opposing discriminatory employment practices is retaliation under this order.

914.4 BONA FIDE QUALIFICATIONS AND WORK-RELATED COMMUNICATIONS

Discrimination, harassment, sexual harassment, and retaliation does not include actions that are in accordance with established rules, principles or standards, including the following:

(a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission.

(b) Bona fide requests or demands by a supervisor that an employee improve his work quality or output, that the employee report to the job site on time, that the employee comply with City or Department rules or regulations, or any other appropriate work-related communication between supervisor and employee.

914.5 RESPONSIBILITIES

914.5.1 EMPLOYEE'S RESPONSIBILITY

(a) Employees are expected and encouraged to promptly raise questions and concerns regarding alleged violations of City or Department policy or local, state or federal law. Any employee who believes that they, or another employee, have been subjected to discrimination or harassment based on a protected class, or retaliation based on a protected activity, shall report the matter to any of the following:

1. Any supervisor, manager, Chief, or other member of the Department executive staff,
2. APD Human Resources representative,
3. Integrity Unit in the Office of the City Auditor,

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4. COA Human Resources Director,
5. COA Employee Relations Division,
6. APD Internal Affairs, or
7. Office of Police Oversight for complaints against a sworn employee.

(b) An employee is not required to follow the "chain of command" when reporting harassment, discrimination, sexual harassment, or retaliation.

(c) A complaint can be anonymous or named.

(d) Employees will not be discriminated against, harassed, or retaliated against as a result of making a good faith report of any City or Department policy violation, or for participation in the investigation of a complaint.

(e) If a civilian employee is aware of a work-related threat of imminent physical harm to themselves, another employee, or member of the public, the employee should attempt to remove themselves from the situation and immediately notify appropriate emergency personnel by calling "911". The employee should report this emergency call to their supervisor or management immediately.

(f) If a sworn employee is aware of a threat of imminent physical harm to themselves, another employee, or member of the public, the employee should respond according to General Order 401 (Preliminary Field Investigations).

914.5.2 SUPERVISOR/MANAGER RESPONSIBILITIES

(a) The first supervisor and/or manager who has observed or been notified of circumstances surrounding an allegation of discrimination, harassment, sexual harassment, or retaliation shall, without undue delay, notify APD Human Resources at APDHREmployeeRelations@austintexas.gov and their chain of command as well as the chain of command of the employees reportedly involved in the incident, unless members of the chain of command were identified in the incident.

(b) Failure by a supervisor or manager to notify APD Human Resources may result in discipline up to and including discharge or indefinite suspension.

914.5.3 CHAIN-OF-COMMAND RESPONSIBILITIES

(a) The chain of command receiving allegations against a sworn employee of discrimination, harassment, sexual harassment, or retaliation shall notify APD Internal Affairs.

(b) Continually monitor the work environment and strive to ensure it is free from all types of discrimination, harassment, sexual harassment, and retaliation.

(c) Take prompt, appropriate corrective action within the work units to avoid and eliminate the incidence of any form of discrimination, harassment, or retaliation.

(d) Ensure subordinates attend any required training on discrimination and harassment.

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(e) Ensure that employees who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.

914.5.4 APD HUMAN RESOURCES RESPONSIBILITIES
APD Human Resources shall notify the COA Human Resources Director and/or the Human Resources Department Employee Relations Division for all complaints of discrimination, harassment, sexual harassment, or retaliation.

914.6 SUPERVISOR'S ROLE

Discrimination, harassment, sexual harassment, or retaliation is viewed from the perspective of the victim, not the offender. Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory,harassing, or retaliatory. Supervisors should consider whether a reasonable person in the victims place would consider the conduct to be inappropriate.

Supervisors and managers shall be aware of the following considerations:

(a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.

(b) Supervisors and managers must act responsibly in the handling of such situations.

914.7 INVESTIGATION OF COMPLAINTS

(a) The Chief of Police has the authority to order an investigation alleging discrimination, harassment, sexual harassment, or retaliation regardless of whether the conduct involves sworn or non- sworn employees.

(b) All complaints of discrimination, harassment, and retaliation where a sworn employee is the subject will be investigated according to General Order 902 (Administrative Investigations). APD Human Resources will consult and collaborate as needed to enforce City and Departmental Policy.

(c) All complaints of discrimination, harassment, and retaliation where a civilian is the subject will be investigated according to City Personnel Policy.

(d) All complaints of sexual harassment for both sworn and civilian will be investigated by COA Human Resources and/or according to City Personnel Policy.

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GO
916

Austin Police Department
General Orders

Drug and Alcohol Free Workplace

916.1 PURPOSE AND SCOPE

The Department believes employees have a right to work in a drug and alcohol free environment. Persons under the influence of drugs or alcohol on the job may pose serious safety, health and security risks to the public and to other Department employees. This order provides directives concerning the use or presence of drugs and alcohol in the workplace, the use or possession of drugs while off-duty, and provides procedures for substance abuse testing.

916.1.1 APPLICABILITY

Each applicant and hired employee must agree, as a condition of employment or continued employment, to abide by the terms of this order.

(a) All potential police cadets must submit to a pre-employment drug test.

(b) All sworn employees must submit to:

1. Random drug testing; and
2. Drug and/or alcohol testing if there is a reasonable suspicion the employee has violated this order or after the occurrence of a critical incident (as defined in the Meet and Confer Agreement).

916.1.2 DEFINITIONS

The following definitions apply to this order.

Alcoholic Beverage - Alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted (Tex. Alcoh. Bev. Code § 1.04).

Drug - Includes the following:

(a) Illegal drugs.

(b) Prescription drugs not prescribed to the employee by a physician.

(c) Non-medical Inhalants.

(d) Marijuana (Regardless of legality in location used, consumed, or possessed).

(e) Any product that contains THC (Regardless of legality in location used, consumed, or possessed).

Drug Test - A urine, breath, hair, fingernail, toenail, or blood test for the presence of prohibited drugs or alcohol, conducted at a facility designated by APD management.

Work Day - Includes any time the employee is receiving compensation from the city (e.g., normal work shift, breaks, lunch hour, overtime).

916.2 GENERAL GUIDELINES

(a) This order specifically prohibits employees from:

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1. Reporting to work under the influence of any drug or alcoholic beverage.
2. Reporting to work under the influence of any prescription or over-the-counter drug that would adversely affect their senses or judgment.
3. Reporting to work or driving a City vehicle within four (4) hours after having consumed an alcoholic beverage.
4. Consuming alcoholic beverages or drugs while the employee is on-call.
5. Using, possessing, selling, purchasing, distributing, or being under the influence of any prohibited drug while off-duty.
6. Testing positive for a drug.
7. Using, possessing, selling, purchasing, distributing, or being under the influence of any drug while on-duty unless authorized by the employees' supervisor and part of an employee's official duty.
8. Consuming or possessing alcoholic beverages while on any Department facility or while wearing any part of the APD uniform unless authorized by a supervisor for a legitimate law enforcement purpose.

(b) This order does not prohibit the consumption of alcohol or other drug as necessary in the performance of an employee's duties and as approved by a supervisor. Personnel who consume alcohol as part of their duties shall not do so to the extent of impairing on-duty performance.

916.2.1 RESPONSIBILITY FOR REPORTING LEGAL DRUG USE

Department employees who use prescription or over-the-counter medication during work hours shall not allow such medication to impair their ability to perform their work.

(a) Employees who take any medication with side-effects which might impair their ability to fully and safely perform all requirements of their position shall report the need for such medication to their immediate supervisor.

(b) Supervisors will consult with the next level in the chain-of-command and make a determination whether to limit, suspend, or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect.

(c) Employees may be requested to provide medical documentation of their ability to safely and effectively perform the essential functions of their position.

(d) Employees shall not be permitted to work on or drive a Department-owned or leased vehicle while taking medication that could impair their ability without a written release from their physician.

(e) Any information about an employee's medical condition obtained by a supervisor or manager is confidential, and will be shared only on a need to know basis. Any documentation of such medical information must be kept in the employee's confidential file by the Drug Testing Coordinator.

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916.2.2 RESPONSIBILITY FOR REPORTING PASSIVE DRUG EXPOSURE
Employees subjected to the passive inhalation or exposure of a drug (e.g., marijuana) must immediately notify an on-duty supervisor.

(a) The supervisor should document in a memorandum:
    1. The substance the individual was exposed to; and
    2. The period of exposure; and
    3. A brief statement explaining the circumstances surrounding the exposure.
(b) The memorandum will be forwarded to the Drug Testing Coordinator who will maintain this documentation for use if needed in the drug testing program.

916.2.3 CONSEQUENCES OF VIOLATIONS
APD has a zero tolerance standard for any violation of this order. Employees shall be subject to disciplinary action up to and including indefinite suspension or termination.

916.3 PRE-EMPLOYMENT DRUG TESTING OF POLICE CADETS
Police cadet applicants ("applicant") shall submit to pre-employment drug testing after a conditional offer of employment has been extended. The following procedures will be followed for pre-employment drug testing:

(a) Applicants shall provide a drug test sample to the designated vendor.
(b) Test results shall be forwarded from the analyzing laboratory to the APD Wellness Office.
(c) The Wellness Office shall notify the commander over the Recruiting Unit or designee, in writing, of the test results.
(d) Applicants are not eligible for hire if they:
    1. Refuse to sign the consent form.
    2. Refuse to be tested.
    3. Do not provide an adequate specimen.
    4. Fail the drug test.

916.4 RANDOM TESTING OF SWORN EMPLOYEES
All officers are subject to unannounced and random drug testing at any time. Random tests will occur at unpredictable times and create the possibility any name(s) may be selected one or more times in a year, or not at all.

916.4.1 RANDOM TESTING SELECTION
The City will contract with a qualified and independent firm to operate and certify a non-discriminatory, computerized program, to generate an automated random list of officers to be tested, upon request by the Drug Testing Coordinator (DTC).

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(a) The random list will be delivered to the DTC or designee by FAX, email, or hand delivered letter.

(b) Acting under the authority of the Chief, the DTC will issue a written directive to each officer on the list ordering them to submit to drug testing at the specified date, time, and location.

(c) Except when in actual use, the list of names will be limited to the DTC and employees approved by the Chief.

916.4.2 SWORN EMPLOYEE NOTIFICATION AND REPORTING FOR RANDOM TESTING
The DTC shall coordinate with the testing vendor concerning the date, time, location, and number of officers to be drug tested. The collection dates will not be announced to the affected employee in advance.

(a) The DTC shall provide the respective commanders or a Special Point of Contact (SPOC) with a list of names of those officers selected for testing. The *Notification to Report Form* (PD0101) will be utilized.

(b) The commander or SPOC shall ensure selected officers are ordered both orally, and in writing using the *Notification to Report Form*, to report for testing at the specified time and location. Officers shall consider this directive to be an order from the Chief.

1. The use of the *Notification to Report Form* serves as a direct order by authority of the Chief to provide the necessary sample at the specified location.

2. This notice also instructs the selected personnel to report to the specified collection location within one hour of being served with the notice.

(c) The DTC shall coordinate the testing process to coincide with an officer's regularly scheduled workday.

1. Supervisors shall make every effort to ensure the officer reports to the testing facility immediately upon notification.

2. Officers with a legitimate conflict (e.g., court or training) shall immediately inform their supervisors of the conflict and shall report for testing as soon as practicable.

(d) Supervisors shall complete the *Documented Absence Form* (PD0102) and forward it to the DTC when an officer is on approved leave (e.g., vacation, sick). The form will be routed through the officer's chain-of-command to the DTC.

1. Officers missing a scheduled test due to an approved reason may be rescheduled for testing as soon as possible, irrespective of any random sampling selection.

2. Officers missing a scheduled test due to an unapproved reason or who are unable or fail to provide an adequate specimen shall be placed on administrative leave pending review.

(e) Officers who become involved in an emergency situation or police action while enroute to the testing facility shall notify an on-duty supervisor as soon as practical and request a second officer be dispatched to take over any necessary police functions. When relieved, the officer scheduled for testing shall continue to the testing facility.

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916.4.3 ADDITIONAL DRUG SCREENING DUE TO ASSIGNMENT

(a) The Department has a compelling interest in ensuring that officers assigned to specified organizational levels do not use prohibited drugs or inhalants, abuse controlled substances, or abuse prescription or over-the-counter medications, due to the sensitive nature of their assignments. In these assignments, the strictest precautionary safeguards are necessary to provide for a drug-free working environment, and to ensure that there are no drug abusers or controlled substance abusers who jeopardize the safety of fellow officers and citizens. All sworn members who apply for or are assigned to the following divisions/bureaus will be subject to additional drug testing:

1. Organized Crime Division
2. Special Operations Division
3. Professional Standards Division
4. Any other assignment (s) that the Chief of Police or his designee determines by SOP should be subject to additional random drug testing.

(b) Sworn members assigned to these units may be randomly tested up to a maximum of three times per calendar year. This additional testing is separate and distinct from the random testing that every sworn member of the Department is subject to pursuant to this order and the Meet and Confer Contract.

916.5 REASONABLE SUSPICION TESTING FOR SWORN EMPLOYEES

(a) The Chief, an assistant chief, the Duty Commander, the DTC, and authorized designees have the authority to order officers to submit to a drug test.

(b) The Department may require drug testing of officers when a determination of reasonable suspicion is agreed upon by any two (2) supervisors.

916.5.1 CONDITIONS FOR REASONABLE SUSPICION TESTING

Reasonable suspicion must be based on facts or circumstances that lead a supervisor to believe the employee may:

(a) Be under the influence of drugs or alcohol.

(b) Currently have or had possession of drugs either on- or off-duty, or on or off City premises.

(c) Have been associated with or involved with others who were using or under the influence of drugs, or who were in possession of same. Such association or involvement was not authorized or required in connection with any law enforcement duty, under circumstances which reasonably indicate participation or complicity with, or protection of such other individuals.

(d) Have engaged in any conduct or situation involving alcohol, while on- or off-duty, which results in on-duty impairment.

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916.5.2 PROCEDURES FOR REASONABLE SUSPICION TESTING

(a) Supervisors who reasonably suspect an employee to be under the influence of a drug or alcohol will:

1. Immediately remove the employee from performing regular duties, and, when possible, bring the employee to a private area away from the observation of coworkers and/or the public.
2. Notify the employee's commander, or if after normal office hours the Duty Commander.
3. Document in a memorandum addressed to the Chief detailing factors and any observations leading to the reasonable suspicion.
4. Immediately request another supervisor to witness and record their observations of the employee in a memorandum to the Chief.
5. Place the employee on restricted duty. Arrangements will be made for the employee to be taken home unless a decision is made to immediately conduct a drug test.
    (a) The Chief, an assistant chief, Duty Commander, or DTC may order the employee to take an immediate drug test. If testing is ordered:
        1. Supervisors will be notified and the DTC will arrange for the test.
        2. Supervisors will notify the affected employee of the test and prepare a memorandum instructing the affected employee to submit to the test.
        3. Supervisors will accompany the employee to the testing site and remain at the site until the testing is complete.

(b) If there is probable cause to believe a crime has been committed, appropriate arrest procedures will be followed.

916.6 CRITICAL INCIDENT DRUG TESTING OF SWORN EMPLOYEES

(a) The Department shall require a drug test of any sworn employee within 24 hours after the following critical incidents:

1. Discharge of a firearm, on or off-duty, whereby a person was the intentional or accidental object of the shooting, including when no injury is caused;
2. A vehicular crash while driving an APD vehicle resulting in the death or serious injury of any person.
3. An event in which an officer, on or off-duty, while performing a law enforcement function causes the death or serious injury of another person.

(b) The Chief or his designee may require a drug test of any sworn employee within 24 hours after an event in which an officer, on or off-duty, while performing a law enforcement function suffers serious bodily injury and is hospitalized.

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916.7 SAMPLE COLLECTION AND RESULTS REPORTING PROCEDURES

Collection of the necessary samples and analysis will be conducted by a contracted firm/laboratory certified by the National Institute of Drug Abuse (NIDA). Scientifically accepted screening and confirmation tests will be employed in the analysis of the collected samples. After arriving at the specified collection location, officers will comply with instructions received from screening personnel. Screening will only be done for prohibited drugs and/or alcohol.

(a) When a drug test is required of employees, it will be collected by a vendor contracted with by the City or a person selected by the Chief or DTC who is qualified to administer such a test. Any employee involved in the collection of samples shall be trained in collection and chain of custody protocols.

1. Drug test samples from police cadet applicants will be collected by the contracted vendor. The vendor will deliver the samples to the laboratory for testing.

(b) Collection dates for random testing will not be announced in advance.

(c) Three (3) samples of hair will be collected for hair follicle testing. Samples collected will be:

1. Cut as close to the scalp as possible.
2. Taken from the same body area, preferably the head or face, or if necessary the body. Samples will not be taken from the pubic area.
3. If an employee does not have sufficient head, face, or body hair, then a nail sample from the fingers or toes will be taken for analysis.

(d) Sample collections for all tests administered by the contracting vendor will be taken in accordance with the procedures established by the vendor. Officers will be required to present a valid driver's license and APD identification card at the collection location.

(e) Officers summoned to provide a specimen for analysis will remain at the collection location in view of collection personnel until an adequate sample can be produced. The samples will be provided in feasible privacy.

(f) Drug test results acquired by the DTC as a result of employment are the property of APD and copies will not be made available to employees; however, both positive and negative results will be communicated to the officer who submitted the sample.

916.7.1 POSITIVE TEST RESULTS

(a) If the initial screening indicates a positive test result, a second test of this specimen will be performed.

1. A confirmed positive report will only be made after this second test also comes back positive.
2. A confirmed positive test report will be maintained by the DTC in a secure area.

(b) Once the DTC has received the initial notification from the drug-testing vendor that an officer has a positive test result, the DTC will notify a supervisor in the officer's immediate chain-of-command.

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1. Employees shall be placed on Restricted Duty pending final review and disposition which will be made, if possible, within thirty (30) calendar days of the date the positive test result was reported to the DTC.
2. Within eight (8) hours after receiving notification from their chain-of-command of an initial positive test result, officers will have the opportunity, at their own expense, to provide a urine sample to their private physician.
3. In order to ensure the integrity of the sample and the testing process, personnel from the drug-testing vendor will accompany the officer to the physician's office. The sample must be submitted by the physician for analysis to a firm/laboratory certified by the NIDA.
4. Officers must provide the DTC with a copy of the independent test results, as well as a signed release authorizing the independent firm/laboratory to provide the DTC with a copy of all documents related to the drug test.
5. Verified, confirmed, positive test results in random drug testing are for administrative purposes only and will not be used against officers in any criminal proceeding.

(c) Officers may request the urine sample be stored in case of legal disputes. The urine sample will be submitted to the designated testing facility where a sample will be maintained for a period of one (1) year.

916.8 STORAGE OF TESTING RECORDS

Drug test documentation, other than disciplinary reports, shall be maintained in a secured cabinet in the office of the DTC. A separate, confidential file will be maintained for each employee who submits to drug testing.

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917

Austin Police Department
General Orders

Drug and Alcohol Abuse and Treatment

917.1 PURPOSE AND SCOPE

The Austin Police Department encourages any employee who has an alcohol or other drug problem to seek treatment before the problem manifests itself into a violation of Department General Orders.

917.2 ALCOHOL USE AND ABUSE

The Department recognizes alcoholism as an illness which can be effectively treated. Early recognition of alcohol abuse and problem drinking increases the chances for successful recovery before serious personal or professional problems occur.

(a) Drinking alcohol by adults is a widely practiced social activity which does not violate any law and is often considered a natural part of participating in group recreational activities. As a result, there is more social pressure to drink than to be disciplined in drinking.

(b) Because of its short-term numbing effects, alcohol is also used to relax and to manage mental stress and emotional pain. As a result, people can develop a dependence on alcohol to relax or to avoid the discomfort of stressful living.

917.2.1 IDENTIFICATION OF PROBLEM DRINKING

When employees' drinking interferes with their work responsibilities and/or personal life, they should be encouraged to seek professional assistance. This would be to assess the nature of the drinking habit and to begin practicing the discipline of moderate drinking or abstention.

(a) Some of the early signs of problem drinking include, but are not limited to:

1. Poor attendance at work.
2. Off-duty disturbances involving alcohol.
3. Increased social drinking.
4. Drinking alone or in isolation.
5. Friends or family suggesting to reduce drinking.
6. Looking forward to drinking at certain times or the day or week.
7. A reliance on alcohol to relax or socialize more comfortably.
8. Knowingly make excuses for excessive drinking.
9. Arranging your weekly schedule around partying or drinking so as to have plenty of time to sleep it off or get over the hangover.

917.3 PERSONNEL RESPONSIBILITIES

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0621

917.3.1 AFFECTED EMPLOYEE RESPONSIBILITIES

(a) Employees should recognize a problem with alcohol may exist when their personal attendance, job performance, off-duty behavior, or general conduct falls below normal professional standards.

(b) Employees are expected to perform their job in a consistently professional manner regardless of their status with respect to alcohol issues (e.g., identification of a drinking problem, treatment program, recovery process).

917.3.2 SUPERVISOR RESPONSIBILITIES

(a) Supervisors are expected to be alert to signs that an employee may have a drinking problem. The supervisor will review the problem behavior with the employee, encourage the employee to seek voluntary assistance, and make a mandatory referral for professional assessment when appropriate.

(b) Scheduling arrangements should be made for the employee to utilize accrued sick leave or personal leave to obtain assistance.

(c) Supervisors should avoid accepting chronic excuses for problem drinking.

917.4 VOLUNTARY ASSISTANCE AND TREATMENT

(a) All professional counselors, both within the Department and in private practice, are ethically required to keep confidential the names of people who are receiving voluntary treatment.

(b) All inquiries about assistance by an employee or family member shall be kept confidential.

1. The City-HR maintains information regarding the Employee Assistance Program and other appropriate resources and programs.
2. Employees who suspect they have an alcohol or legal drug problem can obtain assistance from:
    (a) APD employees who are:
        1. Trained Peer Support employees.
        2. Chaplains.
        3. Recovering alcoholics.
    (b) APD Psychological Services staff members.
    (c) The City Employee Assistance Program (EAP).
    (d) Private treatment programs.

(c) An employees voluntary disclosure of an alcohol or legal drug problem before submitting to a drug test or being requested to submit to a drug test may be considered by the Chief as a mitigating factor should the facts warrant the matter being handled as a disciplinary issue.

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917.5 REFERRAL FOR ASSESSMENT AND TREATMENT

(a) Employees who are identified by supervisors because of disciplinary problems or off-duty incidents shall:

1. Be referred to the Department Psychological Services Unit which will coordinate the assessment, treatment and follow-up program with an outside professional treatment center; and
2. Will not have confidentiality because of the Department's responsibility to follow-up on problem behavior.

(b) Upon completion of the recommended treatment program, the affected employee shall obtain a letter from the treatment staff confirming that the employee has completed the recommended treatment. That letter will be forwarded through Psychological Services to the employees' chain-of-command.

917.6 TREATMENT FOLLOW-UP

(a) To prevent relapses into problem drinking, it is often useful to establish new support networks such as joining an Alcoholics Anonymous group, obtaining a sponsor, or meeting regularly with other recovering problem drinkers. In some cases, the treatment center staff will recommend random urine testing to reinforce the habit of not drinking.

(b) The Department will expect employees with drinking problems to complete whatever treatment follow-up is recommended by the outside treatment center staff.

(c) In cases where the employee is referred by a supervisor for problem drinking, completion of any follow-up program will be documented by the treatment center staff and sent to the employee's supervisor.

917.7 VOLUNTARY REHABILITATION PROGRAM

These guidelines apply only to one requested leave of absence. Any request for additional leave of absence under the Voluntary Rehabilitation Program will be handled on a case-by-case basis and granted only at the sole discretion of the Chief or designee, and as required by law. The return to work agreement should be prepared by the affected employee's immediate supervisor, and a copy of this agreement should be sent to the DTC.

(a) An employee who is being treated for a legal drug or alcohol problem may be placed on unpaid medical leave of absence; however, some or all of the leave of absence may be substituted with paid leave accrued by the employee.

(b) While on such leave the employee will be subject to all APD policies and procedures governing such leaves of absence.

(c) Nothing in this order is intended to conflict with the provisions of the Family and Medical Leave Act (FMLA), and in the case of any conflict, the provisions of the FMLA prevail.

917.7.1 PROGRAM AGREEMENT

Employees who seek to participate in the Voluntary Rehabilitation Program must agree to the following:

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(a) Actively participate in an appropriate drug or alcohol treatment program of a licensed, accredited treatment facility, and follow all rules, guidelines, and recommendations of that program or facility, including but not limited to after-care recommendations; and

(b) Complete the treatment program, not reject any treatment or recommendations of the program or facility, and not leave or discontinue the treatment program before being properly discharged; and

(c) Upon completion of the treatment program, agree to unscheduled, periodic drug tests for a period of not less than one (1) year to be administered by the contract vendor. The failure of a subsequent drug test shall result in immediate termination or indefinite suspension of the employee; and

(d) Sign all necessary authorizations and consents to allow the treatment facility to furnish copies of the employee's treatment records to APD's physician so that APD can monitor the employee's treatment program.

917.7.2 RETURN TO WORK

An employee who seeks to return to active employment while undergoing treatment or after completing treatment must sign and fully comply with a written "Return to Work Agreement" containing at least the following provisions:

(a) The employee must submit to a drug test and obtain a negative test result before returning to work; and

(b) APD's physician must determine that the employee is capable of returning to full duty status; and

(c) The employee must comply with all APD policies and procedures; and

(d) The employee must agree to unscheduled, periodic drug tests for a period of not less than one (1) year. The failure of a subsequent drug test shall result in immediate termination or indefinite suspension of the employee.

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GO
918

Austin Police Department
General Orders

Promotion, Transfer, and Vacancy Guidelines for Sworn Employees

918.1 PURPOSE AND SCOPE

The purpose of this order is to set guidelines for promotions, transfers, and the posting and filling of vacancies for all sworn employees up to and including the rank of lieutenant. The intent of allocating personnel to a specific assignment is to establish optimum effectiveness within the Department while considering the needs, abilities, and preferences of the individual employees. Although not mutually exclusive, at times both objectives may not be simultaneously achievable. Occasions will arise when deviations from standard operating procedures will be required in order to meet the needs of the Department.

918.1.1 AUTHORITY

The Chief has ultimate authority over all personnel allocation decisions and reserves the right to bypass provisions of this order if it is in the best interest of the Department. The Chief may delegate the authority for personnel allocation issues to a designee.

All personnel allocation adjustments shall be in accordance with the procedures outlined in this order.

918.1.2 OBJECTIVES

The Department will seek to attain the following objectives in personnel distribution:

(a) Openness, fairness, and objectivity in selecting candidates for posted vacancies.

(b) Increased and impartial transfer opportunities for officers of all ranks.

(c) Maximum advance notice to officers designated for promotion or transfer.

918.1.3 MAINTENANCE OF RECORDS

The Staff Lieutenant will issue, process, and maintain records of all transfer directives, promotional checklists, and Sworn Application Forms. Maintenance of all personnel allocation records will comply with the records retention schedule.

918.2 DEFINITIONS

Promotion- A promotion is the act of moving a candidate from a Civil Service eligibility list into the rank for which they tested; after being approved by the Chief or designee. Promotion eligibility and testing procedures shall comply with Article 13 of the Meet and Confer Agreement.

Transfer- The act or process of moving a person and/or position from one location to another in accordance with established guidelines; after being approved by the affected Division Commanders.

Mutually- Agreed Swaps- The exchange of one officer for another of the same rank, between two units, that is agreed to by both of the affected Division Commanders.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0625

Vacancy- An unoccupied existing or newly created position in the Department.

Anticipated Vacancy- A vacancy which is anticipated within thirty (30) calendar days.

Eligibility List- A ranked list of qualified applicants established, as the result of a selection process, by a unit or shift, to fill vacancies as they occur; may be maintained for a period not to exceed six (6) months.

Hardship - A situation that an employee experiences because of a specific work assignment or a significant personal lifestyle change which causes unusual stress, an uncomfortable working relationship, or causes an employee to be mentally distracted from optimal performance of duty or attention to duty.

28-Day Notice – Except for normal shift rotations, for assignment changes that are determined far enough in advance, the Department will provide a twenty-eight (28) calendar-day notice to the affected Officer. Advance notice of the assignment change is not required if prior notice is not in the best interest of the Department or in any emergency situations. Advance notice of the assignment change may be waived by the Officer.

918.3 GENERAL GUIDELINES

918.3.1 EXEMPT RANKS

Exempt ranks (assistant chief, commander, and lieutenant) are subject to transfer by the Chief at any time.

(a) Assistant Chief and Commander assignments will be at the discretion of the Chief.

(b) Lieutenants will be assigned in accordance with this order unless otherwise assigned by the Chief or designee.

918.3.2 NON-EXEMPT RANKS

(a) Sergeant, corporal, detective, and officer assignments will be governed by this order.

(b) Probationary police officers and officers assigned to the Field Training Program will be assigned to a patrol shift. Probationary Police Officers should not be assigned to the Downtown Area Command.

918.3.3 APPOINTMENTS BY THE CHIEF OF POLICE

The Chief may appoint employees to the following assignments:

(a) Professional Standards

(b) Special Investigations Unit

(c) Recruiting and Training

(d) Executive Protection Unit

(e) Public Information Office

(f) Lieutenant assigned to the Chief's office

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918.3.4 NEWLY PROMOTED EMPLOYEES
A newly promoted employee, other than commander, will not promote and be assigned within their current unit.

(a) A newly promoted employee awaiting an assignment should be placed within their current command with a person of equal rank in order to begin learning the responsibilities of the rank.

918.3.5 STABILIZATION PERIOD

(a) Sergeants and Lieutenants who transferred into or who were placed in a new assignment will serve a minimum of one (1) year in that assignment.

(b) Employees at the rank of Officer, Corporal, and Detective who transferred into or who were placed in a new assignment, will serve a minimum or six (6) months in that assignment.

(c) Employees in the rank of Officer who transfer into or who were placed in DTAC, will serve a minimum of one (1) year in that assignment.

(d) A longer stabilization period may be required for certain units that require specialized training. Stabilization periods for those units shall be listed in the position posting and approved by the respective Assistant Chief.

918.3.6 MAJOR STAFFING ADJUSTMENTS
When a major staffing adjustment is necessary as a result of shift imbalances caused by promotions, transfers, cadet class graduations or reorganizations, all affected commanders or designees will coordinate with the Staff Lieutenant to facilitate the adjustment.

918.4 PROMOTIONS

918.4.1 EFFECTIVE DATE

(a) Normally, the effective date of a promotion will be on a Sunday that coincides with the beginning of a pay period and either the day of or the closest Sunday after, the position becomes available based upon a promotion or by the separation of an employee (e.g. retirement, resignation, or termination).

(b) The candidate will promote into their new rank on their effective date.

918.4.2 PROCEDURES

(a) A candidate on a promotion list may begin applying for posted vacancies of the rank in which they are promoting into, no sooner than thirty (30) days prior to the anticipated effective date of their promotion.

(b) If selected for a position, the candidate may transfer to the position for which they were selected on the effective date of their promotion. The physical transfer date will be determined by the affected Division Commanders.

(c) If the candidate was not selected for a position prior to the effective date of their promotion, the candidate will promote and remain in their current position or the

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candidate may be placed in a vacant, uncontested position of their rank. If, after thirty (30) days of the effective date of their promotion, the candidate has not been selected or has not applied for a position, the candidate may, at the discretion of the Executive Staff, be placed in a vacant position of their rank on the next available date of transfer.

918.4.3 ADMINISTRATIVE PROCEDURES

(a) At the direction of the Staff Lieutenant, APD Human Resources will send the promotion notification letter and physical examination checklist to the candidate(s) no sooner than sixty (60) days prior to their anticipated promotion(s). When the candidate(s) receive the paperwork from HR, they will promptly schedule their physical examination with the APD physician or their private physician. The APD physician must have the candidate's completed physical examination paperwork prior to signing their promotional checklist.

(b) The Staff Lieutenant will obtain the candidate's Promotion Checklist from APD HR and post the checklist(s) on APD Main SharePoint under Staffing/Directives/Pending Promotional checklist(s).

(c) The Staff Lieutenant will send email notifications to the candidate's Division Commander, the IA Commander, the SIU Commander and the APD physician advising them that the candidate's Promotion Checklist is ready for their electronic signatures. The email will include the names of the promotion candidates and a Hyperlink to the Pending Promotion Checklists page in SharePoint.

(d) Once the checklist has been signed by the aforementioned personnel, the Staff Lieutenant will notify the Chief, or designee, via email that the promotion checklist(s) are ready for their approval. The email will provide the names of the promotion candidates and the Hyperlink to the Pending Promotion checklist's page in SharePoint.

(e) With authorization from the Chief, or designee, and no later than the Wednesday prior to the candidate's promotion, the Staff Lieutenant will complete the following:

1. Email the Promotion Checklist to the "APD Personnel Allocation Notification Group" for processing. The affected employee will be copied on this email.
2. Archive the completed Promotion Checklist in the "G" drive.

(f) The Staff Lieutenant shall make the appropriate personnel changes in the Staffing Allocation workbook located on the SharePoint Staffing page.

918.5 VACANCY GUIDELINES

(a) Commanders may fill any vacancy within their Region/Division with an employee currently assigned within their Region/Division without posting said vacancy for the purpose of leveling the staffing of shifts or units or if the internal transfer is for the benefit of the employee or the Region/Division. The employee must meet the stabilization requirement outlined in this order prior to the transfer date.

(b) Vacancy notice postings are maintained on the APD Main SharePoint Staffing page and available for review.

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(c) A reasonable, good faith effort shall be made to post all vacancies.

(d) The posting process shall not apply to vacancies that the Department fills by promotion during Department-wide leveling, involuntary transfers or mutually agreed swaps.

(e) All officers are eligible to submit an application packet for any posted vacancies they qualify for. Applicants must meet the 4 year service time requirement for specialized units as outlined in this order. Application submission guidelines:

1. If an applicant for a specialized unit does not meet the 4 year service time requirement at the time of submission, but will meet the requirement before the listed "start date" on the vacancy notice, the applicant's packet will be accepted for consideration. No applicant may transfer prior to meeting the 4-year service time requirement.
2. If an applicant for a vacant position does not meet the stabilization requirement at the time of submission, but will meet the requirement before the listed 'start date' on the vacancy notice, the applicant's packet will be accepted for consideration.
3. If an applicant for a vacant position does not meet the stabilization requirement at the time of submission AND will not meet the stabilization requirement by the 'start date' on the vacancy notice, the application will be allowed for consideration with the following caveats:
    (a) Commanders and supervisors will first consider the applicants who meet the stabilization requirement.
    (b) If an applicant who does not meet the stabilization requirement is preferred, the Commander must justify the selection to the affected Assistant Chief.
    (c) The affected Assistant Chief may waive the stabilization requirement for the applicant if they agree with the Commander's recommendation.
    (d) The affected Assistant Chief's decision will be final.

(f) Applying for a posted position shall not jeopardize an officer's current assignment.

918.5.1 VACANCY POSTINGS

(a) Supervisors will send an email to their Bureau Administrative Supervisor to request the creation of a vacancy notice. The Bureau Administrative Supervisor will confirm the vacancy or the anticipated vacancy prior to completing the vacancy notice form in SharePoint. (The vacancy notice form is located on the Staffing page in SharePoint).

(b) The supervisor's email will contain the following information which will be used to complete the vacancy notice form:

1. Title of the position;
2. A job description or an attachment containing the job description;
3. Duty hours, although the hours may be listed as "hours vary";
4. Special requirements an applicant must meet;

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5. Special licenses, skills, or abilities (e.g. specialized training, physical abilities) desired or required for the position.
6. The name and contact information of the posting supervisor.

(c) The Administrative Supervisor will complete the vacancy notice form in SharePoint and notify the Staff Lieutenant of the pending vacancy notice.

(d) The Staff Lieutenant will verify the vacancy or anticipated vacancy and ensure the notice has been accurately completed and add the "start date". Once the vacancy has been verified and the notice reviewed, the Staff Lieutenant will approve the posting.

(e) Absent exigent circumstances, a vacancy notice will be posted for ten (10) calendar days in SharePoint on the Staffing page under "Current Vacancies".

1. For any vacancy notice posted prior to noon, day one (1) of the ten (10) day posting period will begin on that day.
2. For any vacancy notice posted after noon, day one (1) of the ten (10) day posting period will begin on the following day.
3. No postings will close on Saturday, Sunday, or an official City holiday.
4. All postings are archived in SharePoint on the Staffing page.

918.5.2 VACANCY APPLICATION PROCESS

Applications for all vacancies shall be made using the Sworn Application Form (SAF) available in the "G" drive at : G:\Public\Public Data for APD Only\Approved APD Forms\HR Forms\Sworn Application Form. An applicant must follow the application process outlined below.

(a) Application Process:

1. Applicants are responsible for electronically submitting the SAF and the required documentation (SA Packet) to their immediate supervisor for their signature.
2. The immediate supervisor will electronically submit the SA packet to the next level supervisor for their signature. This process will continue until the SA packet reaches the Bureau Administrative Supervisor and Division Commander.
3. The Bureau Administrative Supervisor or the Division Commander will electronically submit the SA packet to the Staff Lieutenant, the officer submitting the application, AND the supervisor listed on the posting prior to the posting deadline.
   (a) The timestamp on the email sent from the Division Administrative Supervisor or the Division Commander will be the SA packet submission timestamp.
4. The Staff Lieutenant will archive the SAF in the appropriate location.
5. Any SA packet submissions after the posting deadline will not be eligible for consideration for the vacancy.
   (a) An exception to the deadline may be considered in cases where the applicant has submitted their SA packet to their chain-of-command for

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approval, but the SA packet failed to be submitted to the Staff Lieutenant and the posting supervisor prior to the posting deadline. The applicant is responsible for allowing adequate time for the chain-of-command to process the SA packet.

(b) If the applicant, or anyone in their chain-of-command, believes the SA packet should be eligible for submission for the posted vacancy; an email explaining the circumstances of the late submission may be submitted to the Staff Lieutenant.

(c) The Staff Lieutenant will consider each request on a case-by-case basis.

(d) The affected Bureau Chief will make a final determination on the eligibility of the SA packet submission.

(b) Lieutenant Application Process:

1. Applicants for a lieutenant vacancy are responsible for submitting the Sworn Application Form ONLY to their Division Commander for their signature.

2. The affected Division Commander, or designee, will electronically submit the SAF to the posting Division Commander AND the Staff Lieutenant.

(a) The timestamp on the email sent from the Division Commander, or designee, will be the SAF submission timestamp.

(c) Denied Applications:

1. Division Commanders may deny Sworn Application submissions ONLY when an applicant does not meet the 4 year minimum service time requirement as per General Orders. Staffing shortages shall not be the sole reason for denying an application.

2. Objections to the application may be noted on the SAF.

918.5.3 FILLING VACANCIES

Commanders, or designees, have three (3) business days after the posting closes or interview boards are held, to select an applicant and/or establish an eligibility list for future vacancies.

(a) Commanders shall ensure selection processes are job-related and that all candidates are evaluated fairly. Criteria used in the selection processes will take into consideration any special needs of the Unit(s) and/or the Department.

1. For vacancies at the corporal/detective and sergeant rank, newly promoted applicants looking for their first placement in their new rank will not normally be selected over a candidate who is more senior in that rank and who meets stabilization.

2. If a newly promoted applicant from (a)(1) is preferred over an applicant with rank seniority, the Commander must justify the selection to the affected Assistant Chief.

3. The affected Assistant Chief may waive the requirement outlined in (a)(1) if they agree with the Commander's recommendation.

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(b) The supervisors of the units that hold interview boards will select diverse board members. In this context, diversity includes factors such as varying years of service, gender, age, ethnicity, or professional background. All interview boards will have at least one member from another division.

1. Supervisors will prepare written critiques on each candidate that will provide constructive feedback to the candidate. The critiques will be available to the candidates, upon request, for thirty (30) days after the process is completed. The supervisor shall also inform the candidate who was selected to fill the vacancy and their ranking on the eligibility list, if one was established.

(c) If interview boards are not held, the supervisor making the selection shall contact each candidate and inform them who was selected to fill the vacancy and their ranking on the eligibility list, if one was established. The supervisor shall also provide feedback to the candidates who were not selected to potentially increase the candidate's future opportunities for selection.

(d) Officers selected and placed on a ranked eligibility list will retain their eligibility for a period of time not to exceed six (6) months. The eligibility list will only apply to future vacancies that are of the exact description of the vacancy for which the eligibility list was established.

(e) The Unit Supervisor will prepare a memorandum containing the eligibility list and forward the memorandum to the Bureau Administrative Supervisor and the Staff Lieutenant for retention.

(f) The Staff Lieutenant will post all eligibility lists on the Staffing page located in SharePoint. Eligibility lists are archived in compliance with the records retention schedule.

(g) Any officer declining an assignment when a vacancy exists may be removed from the eligibility list by the affected Division Commander. Officers may also be removed from an eligibility list for misconduct, pending investigations (IA or SIU), or any valid reason; subject to the approval of the affected Division Commander.

(h) Applicants not selected for a vacancy or removed from an eligibility list may request a meeting with the applicable chain of command up to and including the affected Assistant Chief

(i) If no applicants are selected or no applications are received, the Chief may approve an affected Assistant Chief or Division Commander to:

1. Repost the vacancy; or

2. Place the next promotional candidate in the vacant position; or

3. Involuntarily transfer an employee from within their Bureau or Division into the vacant position.

918.6 TRANSFER GUIDELINES

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918.6.1 ADMINISTRATIVE PROCEDURES

(a) All transfers will take place on Sundays that coincide with the beginning of a pay period or shift change.

(b) All transfer dates will be determined by the Staff Lieutenant in coordination with the affected Division Commanders.

(c) When a transfer date has been determined for an employee that was selected for a vacancy posting or for employees who are swapping positions, the employee's current Administrative Supervisor shall email the following information to the Bureau Administrative Supervisor of the command receiving the employee.

1. The name and employee number of the affected employee; and
2. The position the employee is transferring into and the position the employee is transferring out of; and
3. The effective date of the transfer.

(d) The Bureau Administrative Supervisor receiving the employee will confirm transfer logistics with the Bureau Administrative Supervisor losing the employee.

(e) Once the transfer logistics have been confirmed AND the effective date of the transfer is within thirty (30) calendar days, the Bureau Administrative Supervisor receiving the employee will email the aforementioned information to the Staff Lieutenant.

(f) The Staff Lieutenant will create the Transfer Directive (PD0046) and place the Transfer Directive in the "Pending Transfer Directives" folder located on the "Personnel Directive" page which is located on the Staffing page in SharePoint.

(g) The Staff Lieutenant will send an email to each of the affected Division Commanders and Administrative Supervisors advising the Transfer Directive is ready for approval.

1. The Administrative Supervisors will ensure the correct stipend boxes on the form are checked for the employee.

(h) No later than the Wednesday prior to the effective transfer date, the Staff Lieutenant will complete the following:

1. Convert the Transfer Directive to PDF and archive the completed Transfer Directive in the "G" drive and in the "Transfer" folder located on the Personnel Directives page which is located on the SharePoint Staffing page.
2. Send an email notification, with the directive attached, to the "APD Personnel Allocation Notification" Group, the affected supervisor(s), the affected Administrative Supervisor(s) and the affected employee.

(i) The Staff Lieutenant shall make the appropriate personnel changes to the Staffing Allocation workbook located on the SharePoint Staffing page.

(j) Within 10 working days of an employee's transfer, the Bureau Administrative Supervisor (or designee) receiving the employee will complete the APD "Transfer Employee Request" electronic form for CTM.

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918.6.2 HARDSHIP TRANSFERS

(a) The Chief shall create the Hardship Committee. The Hardship Committee will consist of the Professional Standards Commander, the requestor's commander, two additional commanders, and a member of the Wellness Bureau. The Professional Standards Commander will act as the chair of the Committee.

(b) Employees requesting a hardship consideration shall document the request in a memorandum, addressed to the Hardship Committee, sent through their chain-of-command.

1. The memorandum shall contain the following:
   (a) The specific reasons why the current assignment is causing a hardship,
   (b) The specific scheduling request (i.e. day shift, night shift, in-door assignment, etc.) and any other requested adjustments for the assignment, and
   (c) The length or end date for the accommodation.

(c) Upon receipt of a hardship memorandum, the chair of the Committee will coordinate a review of the request by the members of the Committee. Once the request has been reviewed, the Committee will recommend to approve or decline the hardship request and forward the request to the Chief of Police or his designee. The Chief will review the request and make the final decision.

(d) If the hardship request is approved, the officer will be placed on a waiting list by rank for the next available position that meets the requests of the hardship. The staffing lieutenant will maintain the list of hardship eligible officers.

1. When a position meeting the needs of the hardship request comes available, the staffing lieutenant will notify the commander over the identified hardship position that the position will be filled through the hardship process.
2. If the position is determined as one that will be filled through a hardship, the staffing lieutenant will notify the first officer on the eligibility list of the position that meets their hardship request and their selection for the spot.
3. If the selected officer declines the position, then it will be given to the next officer on the eligibility list. The officer declining the position will be removed from the hardship eligibility list.

(e) The Chief may designate certain positions that officers are not eligible to transfer into under a hardship transfer.

(f) The hardship application will not apply to future moves that an affected officer applies for at their current rank or if they choose to enter the promotional process.

(g) The hardship committee is not for disability accommodations, medical leave (FMLA), or religious accommodations. These requests shall be requested and handled through Human Resources.

918.6.3 TRANSFERS WHILE ON LIMITED DUTY

Employees may apply for transfers to full-duty positions while on Limited Duty status.

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(a) An employee's Limited Duty status will not automatically disqualify the employee from consideration for a vacant position.

1. Selections are based upon the qualifications of the individuals applying for the transfer and the operational needs of the Unit in which the vacancy exists.

2. The availability of Limited Duty tasks in the assignment being applied for and the anticipated duration of the employee's Limited Duty status may be considered.

918.6.4 TWENTY-EIGHT (28) DAY NOTICE

Except for normal shift rotations, for assignment changes that are determined far enough in advance, the Department will provide a twenty-eight (28) calendar day notice to the affected officer.

(a) Advanced notice of the assignment change is not required if prior notice is not in the best interest of the Department or in any emergency situation.

(b) Advance notice of the assignment change may be waived by the officer.

(c) The Department reserves the right to transfer an employee without granting a twenty-eight (28) day notice when an operational need exists to make the transfer sooner due to workload, unforeseen vacancies, emergencies, or when it is in the best interest of the Department.

(d) The 28-day Notice requirement does not apply to transfers based off promotions.

(e) Supervisors will complete the 28-Day Notice of Transfer form prior to any applicable assignment change:

1. It is understood that during emergencies, there may not be the opportunity to complete the form prior to the employee's transfer, but the form shall be completed as soon as practical thereafter.

(f) The chain-of-command of the affected employee will place the 28-day Notice of Transfer in the employee's personnel file and retain it in compliance with the records retention schedule.

(g) In cases where the 28-Day Notice of Transfer was denied either because it was in the best interest of the Department or for an emergency situation; the reason for the denial will be notated on the 28-Day Notice of Transfer form and forwarded, through the chain-of-command, to the Chief to be signed.

918.7 APPEAL PROCESS

Employees involuntarily transferred into a position may submit a memorandum through their chain-of-command appealing the decision. The employee will remain in the transferred position while their appeal is considered. The Chief has final authority regarding all transfers.

918.8 SPECIALIZED ASSIGNMENTS

Specialized Assignments are full-time assignments that have primary responsibilities outside of the "Patrol" function.

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(a) **Required Service Time** - The four (4) year "APD Service Time Requirement", is the officer's time of employment as an Austin Police Officer and is required prior to being eligible for application to a Specialized Assignment. Calculation of the required service time begins from the officer's Commission Date as an Austin Police Officer. The required service time must be "uninterrupted service" to be fulfilled immediately prior to the filing date for application. "Uninterrupted service" means continuous service not interrupted by a leave of absence or indefinite suspension.

(b) **Required Service Time Exception** - Graduates of a Modified Academy Class are required to have two (2) years of "uninterrupted service" as an Austin Police Officer prior to being eligible for application to a Specialized Assignment. Graduates of a Regular Academy Class, who had prior law enforcement experience, must have been eligible to attend a Modified Academy Class at the time of their hire to qualify for the two (2) year minimum service time exception. Any graduate of a Regular Academy Class who believes they qualify for the two (2) year minimum service time exception must submit a written request, containing qualifying facts, through their chain of command to their Assistant Chief for consideration. If the affected Assistant Chief approves the exception, the officer is still subject to any entry or testing requirements of the Specialized Assignment for which they are applying. The decision of the affected Assistant Chief shall be final and not subject to further administrative review.

(c) **Specialized Assignments**

1. Public Information Office
2. Citizen Police Academy Coordinator
3. Cadet Training
4. Learned Skills
5. Advanced Education
6. Recruiting
7. Police Activities League
8. Police Explorers
9. Risk Management
10. ARIC
11. Tactical Intelligence Unit
12. Real Time Crime Center
13. Emergency Planning Unit
14. SOAR
15. Crisis Intervention
16. CRASH
17. Nuisance Abatement
18. Property Crimes Task Force

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19. Gangs
20. Criminal Interdiction
21. Criminal Interdiction – K9
22. Street Narcotics
23. Criminal Conspiracy
24. District Representatives
25. Metro Tactical Unit
26. Mounted Patrol
27. Special Events Unit
28. Park Patrol
29. Lake Patrol
30. SWAT
31. Executive Protection
32. Bomb Unit
33. EOD & Patrol K9
34. Court Services
35. Air Support Unit
36. Police Technology Unit
37. Airport Patrol
38. Airport K9 Patrol
39. Highway Response
40. Commercial Motor Vehicle Enforcement Unit
41. DWI
42. Motors
43. Violent Crimes Task Force

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GO
919

Austin Police Department
General Orders

Promotional Bypass of Sworn Employees

919.1 PURPOSE AND SCOPE

This purpose of this order is to outline the process for the Chief of Police to bypass a candidate on a promotional eligibility list.

919.2 POLICY

The Chief of Police may bypass a candidate on a promotional eligibility list with a valid reason. Factors taken into consideration to determine if a valid reason exists include, but are not limited to:

(a) Whether the candidate is subject to any pending administrative or criminal investigation.

(b) Whether the candidate understands his role in the organization as a leader and role model.

(c) Whether the candidate has exhibited behavior which could result in a lack of trust or respect for the candidate by his superiors, his subordinates, and/or the community.

(d) Whether the candidate or his chain-of-command has identified any deficiencies or concerns, and whether the candidate has taken advantage of opportunities available to him to address those deficiencies.

(e) Whether the candidate has been subject to Disciplinary Action.

1. Suspensions that are not eligible to be reduced to a written reprimand as provided for by the Meet and Confer Agreement may be considered for a period of five (5) years from the date the suspension was issued.

2. Written reprimands resulting from a suspension reduction as provided for by the Meet and Confer Agreement may be considered for a period of thirty-six (36) months from the date the initial suspension was issued.

3. All other written reprimands may be considered for a period of thirty-six (36) months from the date the written reprimand was issued.

(f) Whether the candidate is or has been on an Employee Success Plan (ESP).

1. A ESP may be considered for a period of eighteen (18) months from the date of successful completion.

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922

Austin Police Department
General Orders

Awards and Commendations

922.1 PURPOSE AND SCOPE

This document establishes directives regarding the Departmental commendations or awards to APD employees and other individuals outside of the Department.

922.2 COMMENDATION GUIDELINES

Any employee, group of employees, or individual outside of the Department may initiate the creation of a personal commendation to honor an employee or group of employees for exceptional performance.

(a) Accessing Commendations in APD Main SharePoint.

1. The Commendations SharePoint page is located in SharePoint on the Committees page, under the title "Awards and Commendations".

(b) Create and process New Commendations

1. On the Commendations page, click on "New Item" to create a new commendation. Alternatively, from the APDnet home page, click on the yellow star under "Commendations Form" to create a new commendation.
2. Upon completion of the commendation, enter the name of the next person in the COC who needs to sign the commendation in the "Who needs to be notified next?" field at the bottom of the commendation.
3. After entering the name of the next person in the COC, click on "Save". Once the form is saved, an email is automatically sent to the specified person with a link to the commendation; the creator will receive a confirmation email.
4. The next reviewers will add their names, dates, and comments to the commendation. The reviewers will remove their name from the "Who needs to be notified next?" field and place the next reviewer's name in the field and save the document.
5. This process continues until the appropriate Assistant Chief reviews the form.
6. When the Assistant Chief completes his or her review and comments, the Assistant Chief will click the "Complete" check box.
7. Checking the "Complete" check box triggers the next workflow. The commendation will automatically transfer from the "Active" view to the "Archives" view and will be automatically converted to a Word document in the "Commendation Word Documents" view.
8. The Commendations site administrator will email the Commendation, in Word format, to the affected employee(s), file the commendation in the affected employee(s) personnel file, and email the commendation to Civil Service for retention.

922.3 AWARD GUIDELINES

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922.3.1 AWARDS COMMITTEE

(a) Members of the Committee will be selected by the Committee chairperson, with final approval by the Committee coordinator.

1. Five (5) committee members, in addition to the chairperson and Committee Secretary, must be present to vote on nominations.
2. The secretary is a non-voting position.
3. The chairperson votes only in case of a tie.

(b) The Committee may recommend a different award than a nomination recommends to maintain the integrity of the Department's award system.

(c) The Chief reviews and has final approval over all recommendations for awards made by the Committee.

922.3.2 AWARD NOMINATION PROCEDURES

(a) An employee wishing to nominate another employee or a citizen for an award, except Unit of the Year, will:

1. Complete nomination packet consisting of a memorandum (NOT Personal Commendation form) providing detailed information as to why the nomination is being made and attach all necessary documentation (e.g., reports, letters, newspaper articles) to support the nomination.
2. Nomination packets will then be routed up the Chain of Command to the Commander/Division Manager level.
3. The receiving Commander/Division Manager will ensure that the nomination packet, including all supporting documentation, is forwarded to the Committee Secretary at APDAwardsCommittee@austintexas.gov. The Committee will then forward approved award nominations to the Chief of Police or designee.
4. Nominations should be submitted within one year of the event, however an amnesty period will be offered annually to employees for nominations for events that occurred more than 1 year ago.

(b) Nominations for Unit of the Year procedures are as follows:

1. An employee wishing to nominate a unit for Unit of the Year will submit a nomination packet to their respective Commander/Division Manager no later than December 1st. The packet should consist of:
   (a) A two to three page summary memo (NOT Personal Commendation Form) containing an overview of the unit's accomplishments and up to 10 additional pages of supporting documentation (i.e. commendations, press releases, letters of recommendations, etc).
   (b) A list of all personnel who were unit members for at least 6 months during the calendar year and the actual dates each member was assigned to that unit.

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(c) Data used for nominations should run from calendar year start and end dates to ensure consistent time frames.

(d) There will be three awards per year for Unit of the Year. One unit will be recognized from patrol services, one unit will be recognized from non-patrol units, and one civilian unit will be recognized. Nominations can be made for any designation. The nomination should be limited to individual shifts or units and not for entire divisions, sections, or other large groupings.

2. Each Commander/Division Manager will review the nomination packets and forward the packets to the APD Awards Committee email inbox by the deadline designated by the Awards Chairperson. The Awards Committee will meet after the submission deadline and make recommendations to Executive Staff for the Unit of the Year awards.

3. The final decision will be made by the Chief and sent to the Awards Committee Chair by the established deadline designated by the Awards Committee Chairperson.

4. The unit selected must commit to having 80% of their staff attend the Chief's presentation of the award.

922.4 CITIZEN AWARDS

The following awards are authorized for citizens and shall consist of a citation mounted on a plaque or placed in a certificate holder or a crystal desk weight supplied by the department:

(a) Distinguished Service Citation

1. Presented by the Chief or designee to award citizens for providing exceptional service to the Department under emergency or hazardous conditions while displaying uncommon courage and good judgment.

(b) Certificate of Recognition

1. Presented by the Chief or designee to award citizens for providing unexpected and exceptional service, without regard for compensation, to the Department over any period of time. The provided service may include support of the Department, officers or the families of officers.

922.5 EMPLOYEE AWARDS

Medals, ribbons and authorized pins and medallions shall only be worn as specified in Department General Orders. Employees will not receive an award through the below process while under formal investigation for violating a departmental general order without the consent of the Chief.

(a) The following awards, citations, and/or ribbons are for all employees:

1. Medal of Valor
2. Distinguished Command Medal
3. Purple Heart

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4. Life Saving Medal
5. Meritorious Service Medal
6. Unit of Year
7. Meritorious Unit Medal
8. Superior Service Citation
9. Community Service Citation
10. Honorable Conduct Citation
11. Military Service
12. Hazardous Deployment
13. Special Response Team (SRT) Campaign Ribbon
14. Academic Achievement
15. Master Certification Ribbon
16. Safe Driving Ribbon
17. Fitness Award
18. Certificate of Recognition

(b) A medal and device can be awarded for each occurrence unless specifically stated under each description.

(c) To order replacement medals and/or ribbons, the employee shall fill out the approved replacement form signed by their division commander and routed to Awards Secretary APDAwardsCommittee@austintexas.gov for processing.

922.5.1 MEDAL OF VALOR

Conferred for displaying exceptional bravery and courageous action, risking life or serious bodily injury, while in the performance of duty, thereby earning high honor and distinction and bringing favorable recognition to the Department.

(a) Recipient will receive a medal, ribbon, "V" device, and certificate.

(b) Presented by the Chief.

922.5.2 DISTINGUISHED COMMAND MEDAL

(a) Conferred for distinguished command as demonstrated by:

1. Exceptional and courageous command during critical times which required extraordinary police service; or
2. Clearly exceptional command and leadership for an extremely difficult or hazardous project or task which was highly successful or brought great recognition to law enforcement; or
3. Clearly exceptional command and leadership, which have been consistently demonstrated over an extended period of time.

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4. Nominations for this award will be sent by a Commander and/or Division manager to Executive Staff for consideration. This award will not be routed through the Awards Committee for consideration.

(b) Recipient will receive a medal, ribbon, lapel pin and certificate.

(c) Presented by the Chief.

922.5.3 PURPLE HEART

Conferred for sustaining, through no fault of their own, serious bodily injury (bodily injury that involves a substantial risk of death or protracted loss or impairment that continues after medical intervention) or death resulting from a suspect's actions in the line of duty under honorable circumstances, which brought favorable recognition to the Department. In addition, this award may be conferred if injury was averted from a projectile by use of body armor.

(a) Recipient will receive a medal, ribbon, and certificate.

(b) "V" device may be awarded.

(c) Presented by the Chief.

922.5.4 LIFE SAVING MEDAL

Conferred for going above and beyond what is expected to save a human life. The event must have involved specific and direct intervention. The person receiving the life-saving efforts needs to survive for at least 24 hours.

(a) Recipient will receive a medal, ribbon, and certificate.

(b) "V" Device may be awarded.

(c) Presented by the Chief or designee.

922.5.5 MERITORIOUS SERVICE MEDAL

Conferred for meritorious service demonstrated through outstanding performance of duty under clearly hazardous and complicated conditions, or when the service delivered clearly contributed to a high degree of success in a difficult or complicated project or task by an individual.

(a) Recipient will receive a medal, ribbon, and certificate.

(b) "V" Device may be awarded.

(c) Presented by the Chief or designee.

922.5.6 UNIT OF THE YEAR CITATION

Presented to three outstanding units each year, based upon meritorious service as demonstrated through exceptional performance by all members during extremely hazardous duty or exceptional collective outstanding performance which exemplified dedication to the Unit mission or assignment over an extended period of time.One unit will be recognized from patrol services, one unit will be recognized from non-patrol units, and one civilian unit will be recognized.

(a) Recipient will receive a medal, ribbon and certificate for each Unit member.

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(b) Presented by the Chief or designee.

922.5.7 MERITORIOUS UNIT MEDAL

Conferred for meritorious service demonstrated through outstanding performance of duty under clearly hazardous and complicated conditions, or when the service delivered clearly contributed to a high degree of success in a difficult or complicated project or task by a unit.

(a) Recipient will receive a medal, ribbon, and certificate.

(b) "V" Device may be awarded.

(c) Presented by the Chief or designee.

922.5.8 SUPERIOR SERVICE CITATION

(a) Presented to employees for

1. Demonstrating a superior commitment to quality service or caring service within the community or Department; or

2. Exhibiting outstanding problem-solving skills which brings recognition to the individual and Department; or

3. Actions that go beyond the expected duties and responsibilities of the employee’s job description within the department.

(b) Recipient will receive a medal, ribbon and certificate.

(c) Presented by the Chief or designee, or the employee's commander/manager.

922.5.9 SERVANT LEADERSHIP CITATION

(a) Presented to employees for:

1. Regardless of rank or position within the Department, consistently focusing primarily on the growth and well-being of people and the communities to which they serve;

2. Acknowledging other people's perspectives, giving them the support they need to meet their work and personal goals, involving them in decisions where appropriate, and fostering a sense of community within the Department; or

3. Enriching the lives of individuals, building a better organization and ultimately creating a more just and caring community.

(b) Recipient will receive a medal, ribbon and certificate.

(c) Presented by the Chief or designee, or the employee's commander/manager.

922.5.10 COMMUNITY SERVICE CITATION

(a) Presented to employees who engage in the following behavior over an extended or continuous period of time:

1. Demonstrating a voluntary act of donating time and devotion to the community while promoting the safety, health, education or, welfare of the citizens;

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2. Providing volunteer community service which results in favorable recognition of the Department; or

3. Actions that go beyond the required duties and responsibilities of the employee's job description that promote the Department's community policing principles.

(b) Recipient will receive a medal, ribbon, and certificate.

(c) Presented by the Chief or designee, or the employee's commander/manager.

922.5.11 HONORABLE CONDUCT CITATION

(a) Presented to employees for completing 10 years (aggregate) of service, as long as the employee:

1. Is in good standing;

2. Receives a favorable recommendation from their supervisor; and

3. After the formula set out in (b) has been applied.

(b) Calculation of eligibility:

1. Written Reprimand

(a) Loss of 6 months eligibility (other than for a collision or minor traffic infraction)

2. Suspension

(a) One (1) to three (3) days suspension results in a loss of (1) year of eligibility.

(b) Four (4) to fifteen (15) days suspension requires ten (10) years consecutive honorable service starting from the last day of suspension or results in a loss of five (5) years of eligibility from the aggregate amount; whichever period is shorter.

(c) Sixteen (16) or more days suspension requires ten (10) years consecutive honorable service starting from last day of suspension.

(c) A minimum amount of time must pass between a dishonorable event and consideration for the Citation as determined by the Chief or his designee. The purpose is to prevent presenting the award to someone who has recently received discipline, thereby undermining the significance of the Citation.

(d) An employee who remains eligible under the criteria above for 20 and 30 years of honorable service may add the following devices:

1. One authorized bronze star device for 20 years.

2. Two authorized bronze star devices for 30 years.

(e) To apply for the Honorable Conduct Citation:

1. Employees must complete the request form, attach a copy of their complaint history to the form, and submit both to their supervisor.

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2. Supervisors will review the complaint history and make a recommendation concerning the employee's eligibility. Supervisors will sign the form and forward it to the Commander of IAD for sworn employees or APD Human Resources for civilian employees.

3. The request will be reviewed to confirm the criteria of a Honorable Conduct Citation has been met. Once confirmed, the Commander/Supervisor, or their designee, will sign the form and forward it to the Awards Committee Secretary.

(f) Recipient will receive a medal, ribbon and certificate for 10 year award and star device and certificate for 20 year award.

(g) Presented by the employee's commander/manager or designee.

922.5.12 MILITARY SERVICE RIBBON

Issued to personnel honorably discharged from military service in one of the U.S. military branches (e.g., Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or Reserves).

(a) A single star may be added to the ribbon for each foreign combat theater deployment.

(b) To apply for the Military Service Ribbon employees must:

1. complete a request form;

2. provide a copy of their U.S. Department of Defense Form DD214, or equivalent paperwork from the Reserve or National Guard;

3. submit the form to the Committee Secretary for Committee Chair's approval.

(c) Recipient will receive a ribbon and Certificate.

(d) Presented by the employee's commander or designee.

922.5.13 HAZARDOUS DEPLOYMENT RIBBON

(a) Conferred for response and deployment to a natural or man-made disaster in a public safety capacity under hazardous and extended conditions outside the City of Austin.

(b) Only the initial ribbon received will be worn. Subsequent awards will be indicated by an authorized star device placed on the first award ribbon (up to four stars, representing a total of five awards).

(c) Hazardous Deployment Ribbon request forms will be provided by the Emergency Planning and Response Unit who will assist employees in determining their eligibility.

(d) The Hazardous Deployment Ribbon form will be routed to the APD Awards Committee who will make the final recommendation to the Chief

(e) Recipient will receive a ribbon and copy of Hazardous Deployment Ribbon request.

(f) Presented by the Chief or designee.

922.5.14 SPECIAL RESPONSE TEAM (SRT) CAMPAIGN RIBBON

(a) Presented to members of Units which the Chief determines:

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1. Are directly involved in the resolution of a large-scale crowd-control incident which immediately jeopardizes the safety of citizens, or causes great concern to a large segment of the Austin community; and
2. The recipient demonstrated exceptional tactics, team work, courage, and self-discipline under hazardous conditions.

(b) Only the initial ribbon received will be worn. Subsequent awards will be indicated by an authorized star device placed on the first award ribbon (up to four stars, representing a total of five awards).

(c) SRT Campaign Ribbon request forms will be provided by the SRT Command Staff who will ensure officers have met the award's criteria.

(d) Recipient will receive a ribbon and certificate.

(e) Presented by the Chief or designee.

922.5.15 ACADEMIC ACHIEVEMENT RIBBON

(a) Issued to personnel who submit to the Incentive Pay Coordinator a completed request form.

(b) The following devices may be worn on the Ribbon:

1. One silver diamond device for a Bachelor's degree,
2. One single lamp device for a Master's or Doctorate degree.
3. One single "L" device will be worn on the ribbon for the APD Leadership Academy or Department approved long-term management/leadership school.
4. The "L" device may be worn with the Diamond or Lamp device if the employee has been awarded both devices.

(c) The Incentive Pay Coordinator will review the request and approve only if the criteria in General Order 922 (Academic Achievement Ribbon) has been met.

(d) Issued by Awards Committee Secretary.

922.5.16 MASTER CERTIFICATION RIBBON

(a) Issued to officers completing the request form and sending to the Awards Committee Secretary.

(b) Issued by Awards Secretary who will forward the form to the officer's personnel file for archiving.

922.5.17 SAFE DRIVING RIBBON

This award is given at three (3) years, with an authorized star device added at 5, 10, 15 and 20 years of safe driving (up to four stars, representing a total of five awards).

(a) Eligibility is determined by subtracting one (1) year from the officer's total years of service for each preventable collision. After 5 years, a collision will no longer be

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counted against the officer if no other preventable collision has occurred within the period.

(b) Officers must initiate receiving the ribbon by following the instructions on the Safe Driving Award form.

(c) Approved awards are issued by Awards Committee Secretary. Completed forms will be forwarded to the officer's personnel file for archiving.

922.5.18 FITNESS RIBBON
Initial ribbon is approved by Health Services upon meeting established criteria.

(a) Subsequent awards will be indicated by an authorized star device placed on the first award ribbon. The additional star device may be added in five (5) year increments, up to four stars, for a total of five (5) awards.

(b) Issued by Awards Committee Secretary who will forward the completed form to the officer's personnel file for archiving.

922.5.19 CERTIFICATE OF RECOGNITION
Certificate presented by a commander/manager or designee to show recognition for exceptional effort or for a job well done.

922.6 MEMORABILIA
Department personnel who wish to distribute memorabilia (i.e. Challenge Coins, hats, t-shirts and etc.) that represent the Austin Police Department, an Austin Police Department unit or shift, and/or displays the Austin Police Department Badge, and/or other similarity are required to have approval by the Chief of Police or the Chief of Police’s designee. The requestor must submit a memo requesting approval along with a photograph of the memorabilia to their chain of command up to their Assistant Chief. Pre-approved artwork can be found in the Approved APD Forms folder on the G drive.

Memorabilia shall not be offensive or inflammatory

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924

Austin Police Department
General Orders

Personal Appearance Standards

924.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the Department, employees shall maintain their personal hygiene and appearance to project a professional image appropriate for the Department and for their assignment.

924.2 DEFINITIONS

For purposes of this order, the following definitions apply:

(a) Intermittent shaving – Shaving occurring at irregular intervals; not continuous or daily shaving, with no intent to grow a full beard.

(b) Trimmed/Groomed beard – Neatly trimmed or groomed edges along the top and bottom edges of a beard, not to extend above the cheekbone, or below the onset of the upper neckline.

924.3 GROOMING STANDARDS

The following appearance standards shall apply to all employees unless an employee's current assignment would necessitate an approved exception to the standard or the Chief of Police has granted an exception.

924.3.1 HAIR

Hairstyles of all civilian and sworn employees shall be neat in appearance and shall not be extreme (e.g., spiked, dreadlocks, partially shaved to form a design; colored an unnatural shade or sprayed with substances such as glitter, neon, or fluorescent colors). In addition:

(a) **Male Sworn Employees**

1. Hair must not extend below the top edge of the uniform collar while assuming a normal stance and shall not interfere with the wearing of any issued headgear. A medical exemption is required for any deviation from this order. The medical exemption process should follow 924.2.4 (a) 1-3 and also state the reason for the deviation.

(b) **Female Sworn Employees**

1. Hair must not extend below the bottom line of the back yoke of the uniform shirt (or comparable area on a shirt without a yoke) and shall not interfere with the wearing of any issued headgear.
2. Hair must be styled such that it will not contribute to injury or unnecessarily interfere with normal work duties. Hair may be styled:
   (a) In an upward sweep or bun; or
   (b) In braids that are close to the head and secured in a way that does not constitute a safety hazard; or
   (c) To reflect other current conservative hairstyling.

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3. Hair clasps or barrettes may be worn but must correspond with the colors of the uniform, employee's hair color or rank insignia. Ribbons, beads or other decorative items will not be worn in the hair.

924.3.2 MUSTACHES

A short and neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip.

924.3.3 SIDEBURNS

Sideburns shall not extend below the bottom of the outer ear opening (the top of the earlobes) and shall be trimmed and neat.

924.3.4 FACIAL HAIR

(a) Officers may maintain a neat and uniformly-trimmed full beard; no more than one-half inch in length. Beards cut in a pattern are prohibited. Also, shaving, waxing, plucking or otherwise, removal of superfluous hair from the beard for the purpose of aesthetic grooming (shaping, pencil thin, trimming, designer beard, “chin strap" beard, etc.) or other cosmetic effects are prohibited. This section does not prohibit the trimming or grooming required for maintaining a trimmed/groomed beard.

(b) This policy is intended for those officers wishing to grow a full beard and does not allow for intermittent shaving.

(c) Examples are shown below.

924.3.5 FINGERNAILS

Fingernails extending beyond the tip of the finger can pose a safety hazard to officers or others. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger.

924.3.6 JEWELRY AND ACCESSORIES

No jewelry or personal ornaments shall be worn by officers on any part of the uniform or equipment except those authorized within this manual. Jewelry, if worn around the neck, shall not be visible above the shirt collar.

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(a) Ear cuffs shall not be worn.

(b) Wristwatches shall be conservative in design and will not display any offensive design, logo or wording.

(c) Bracelets

1. Employees in a field duty assignment may not wear bracelets, other than medical alert bracelets.
2. Employees not in a field duty type assignment may wear bracelets as long as they do not present a hazard or a distraction in the normal work environment.

(d) Tie Tacks, Tie Bars, and Pins

1. Only issued or authorized tie bars will be worn with the Class A uniform. Tie bars will be worn horizontally on the lower half of the necktie, midway between the third and fourth buttons from the top.
2. Only authorized tie tacks and pins may be worn with any APD uniform. Employees will not wear any tie tack or other pin making a political statement, or displaying any offensive design, logo, or wording.

924.4 TATTOOS

While on-duty or representing the Department in any official capacity, every reasonable effort should be made to conceal tattoos or other body art. At no time while on-duty or representing the Department in any official capacity shall any offensive tattoo or body art be visible. Examples of offensive tattoos would include, but not be limited to, those that depict racial, sexual, discriminatory, gang related or obscene language. No tattoo or body art, regardless of content, located on or above the neck, shall be visible at any time while on-duty or representing the Department in any official capacity.

924.5 BODY PIERCING OR ALTERATION

(a) Earrings

1. Male employees will not wear earrings.
2. Female employees in a field duty assignment may wear one pair of conservative ear studs.
3. Female employees not in a field duty assignment may wear ear studs, hoops or dangle-type earrings as long as they do not present a safety hazard or distraction in the normal work environment due to their design, size, appearance, or number.

(b) Any other body piercing which is not concealed by the employee's clothing is prohibited for wear when the employee is representing the Department.

(c) Body alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and that is not medically required is prohibited. Such body alteration includes, but is not limited to:

1. Tongue splitting or piercing.

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2. The complete or transdermal implantation of any material other than hair replacement.
3. Abnormal shaping of the ears, eyes, nose or teeth.
4. Branding or scarification.

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935

Austin Police Department
General Orders

Court Appearances

935.1 PURPOSE AND SCOPE

This procedure has been established to provide for the acceptance of subpoenas and to ensure that employees appear when subpoenaed, or are available to appear in court when requested and present a professional appearance.

935.2 DUTY RELATED COURT APPEARANCES

Employees who receive a subpoena related to employment with the Department are subject to the provisions of this order. Employees are expected to act in a professional manner to ensure the successful conclusion of a case.

935.2.1 SERVICE OF SUBPOENA OR NOTIFICATION

Service of a subpoena or notification requiring the appearance of any Department employee in connection with a matter arising out of the employee's course and scope of official duties may be accomplished by:

(a) Delivering a copy of the subpoena or notification to the employee.

(b) Reading of the subpoena in the presence of the employee in a hearing.

(c) Electronically transmitting a copy of the subpoena through Versadex to the employee.

935.2.2 GENERAL SUBPOENA AND NOTIFICATION GUIDELINES

Court Liaisons shall maintain a log of all Department subpoenas and notifications.

(a) Employees should be aware that compliance with all served subpoenas and notifications is mandatory.

(b) Employees may be subpoenaed or notified on short notice. If contacted by a Court Liaison, the employee will be required to appear in court regardless of whether the employee received the subpoena or written notification.

(c) Employees are responsible for keeping track of all court dates, times, and locations.

(d) Employees are required to appear in court for all "Must Appear" subpoenas and notifications unless excused by the court.

1. All ALR subpoenas (e.g., court appearance or telephonic hearing) are considered "Must Appear."
2. All Municipal Court notifications are considered "Must Appear."
3. County and District Court subpoenas may be marked as a "Must Appear."

(e) Employees who will be unable to honor any subpoena or notification shall request to be excused by completing the required documentation (e.g., Motion for Continuance) and contacting the appropriate Court Liaison.

1. An employee's regular day off and/or living outside the city limits of Austin are not valid reasons for being unavailable for any subpoena.

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2. Approved leave, in-service training, and/or supervisor approval alone does **not** relieve an employee from attending court; employees must complete the required documentation and request to be excused.
3. Employees are responsible for confirming whether they have been excused from court; this can be done by contacting a Court Liaison.
4. If the employee suffers an illness or injury that prevents appearing in court as directed by a previously served subpoena, the employee shall, at least one hour before the appointed date and time, inform the Court Liaison of the situation. It shall be the responsibility of the Court Liaison to notify the court/prosecutor of the employee's unavailability to appear.

935.2.3 ELECTRONIC VERSADEX SUBPOENAS

Court Liaisons will log electronic subpoenas into the Versadex Subpoena Tracking Module and route them to the employee's Versadex queue.

(a) Employees are required to check the Versadex queue at least once a week during regular duty hours.

(b) Employees will acknowledge all subpoena notifications in the Versadex queue by selecting "Acknowledge" or "Decline."

1. Employees who select "Decline" will be prompted electronically to provide a reason for requesting an absence from court and shall include the applicable date range the employee is unavailable.
    (a) Declining a subpoena notice does not release the employee from complying with the subpoena; it is simply a request made to the court to be excused from appearing on the date indicated in the subpoena.
    (b) Employees are responsible for confirming with a Court Liaison whether they have been excused from court.

(c) If an employee is on leave for two weeks or longer for any reason, the employee's immediate supervisor is responsible for checking the employee's queue and notifying a Court Liaison if the employee has a subpoena. The supervisor, Court Liaison, and, if necessary, the employee will confer before the subpoena is acknowledged or declined.

935.2.4 HARD COPY OF SUBPOENA NOTIFICATIONS

Employees receiving a hard copy subpoena or notification will acknowledge it by initialing and dating the subpoena or notification and placing it in a Court Liaison drop box.

(a) Employees unable to honor a subpoena or notification on the specified date/time shall adhere to the following procedures:

1. ALR, County, or District Court
    (a) Notate the reason for not being able to appear on the notification form; and
    (b) Indicate the date in which the employee will return to duty; and
    (c) Return the form to a Court Liaison drop box within 24 hours of receipt of the subpoena.

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2. Municipal Court

   (a) Complete a Municipal Court Motion for Continuance form.

   (b) Notate the reason for being unable to appear on the Continuance form. Employees will not write the reason for being unable to appear on the subpoena notification form.

   (c) Give the Continuance form to their supervisor to approve and sign.

   (d) Fax, interoffice mail, or hand-deliver supervisor approved Continuance forms to the municipal court prosecutor's office. Faxed forms should be placed in a Court Liaison drop box after faxing.

(b) Employees are responsible for confirming with a Court Liaison whether they have been excused from court.

935.2.5 CIVIL SUBPOENA ACCEPTANCE

(a) Employees will not accept a civil subpoena for another employee.

(b) Employees receiving a civil subpoena or a subpoena duces tecum related to an on-duty incident will:

1. Review the report upon which the incident is based and determine if criminal charges related to the civil case are pending.

2. Notify the chain of command, up to the Lieutenant, of the subpoena and the employee's determination as to whether criminal charges are pending.

3. Contact the APD Legal Advisor via email requesting guidance on the appropriate response to the subpoena. Employees will attach a copy of the subpoena to the email and include the determination of whether criminal charges are pending.

(c) Employees should comply with all other acceptance, appearance, and notification guidelines listed in this section in dealing with civil subpoenas, or as directed by the APD Legal Advisor.

1. Employees will make every reasonable attempt to appear at the date/time listed on the subpoena, even on short notice, or contact the issuing party to make other arrangements.

2. Employees unable to comply with the subpoena shall advise their immediate supervisor and the APD Legal Advisor as soon as possible.

935.2.6 COURT APPEARANCE GUIDELINES AND REQUIREMENTS

(a) Employees will not request personal leave (e.g., vacation, exceptional vacation, compensatory leave, personal holiday), nor will supervisors approve these requests for any date and times the requesting employee has already received and acknowledged a subpoena.

1. Supervisors may approve these leave requests if the requesting employee provides documentation that a Motion for Continuance has been filed and granted for all court cases occurring during the requested leave period.

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(b) When a subpoena or notification indicates "MUST APPEAR," employees shall appear in court on the designated date and time.

(c) When a County or District Court subpoena does not indicate "Must Appear," employees shall:

1. Jury Trials

   (a) Contact the Court Liaison for specific appearance instructions

2. Pre-Trials and Trials Before the Court

   (a) Appear on the designated date and time or be available by phone or pager.

      1. Phone and pager numbers on file with APD-HR will be used to contact employees.

      2. Employees are responsible for ensuring the Court Liaison has the appropriate phone number. Employees may leave a voice mail for the Court Liaison containing alternate phone number(s).

      3. Employees will not be compensated for being available by phone.

(d) The appropriate Court Liaison should be notified as soon as possible when employees will be detained or late.

(e) Officers are required to sign in on the sign in logs and complete overtime sheets (when overtime is earned) while attending court. Location of logs and overtime forms are outside the court liaison's offices, ALR hearing rooms, Gardner Betts, and the Williamson County courthouse.

935.2.7 FAILURE TO APPEAR

Any employee who fails to comply with the terms of any valid and properly served subpoena may be subject to discipline as well as court-imposed civil and/or criminal sanctions (Tex. Code of Crim. Pro. art. 24.05).

935.2.8 COURT OVERTIME

The guidelines on overtime granted to employees who appear in court are outlined in the current Meet and Confer Agreement.

(a) When requesting overtime, each employee is responsible for completing an overtime form and forwarding it to the appropriate Court Liaison. The court subpoena must be attached to the overtime form.

1. If the court assignment is after Court Liaison business hours, the employee may place the overtime form and subpoena in a Court Liaison drop box.

2. If the court assignment is a week-long subpoena and the employee does not appear at court, the overtime form and the subpoena may be interoffice mailed to the Court Liaison.

3. The Court Liaison will confirm the information on the form and forward it to the Court Liaison supervisor for approval and routing to APD-HR.

(b) When a prosecutor requests a meeting with an off-duty employee:

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1. The Court Liaison will determine from the prosecutor if the meeting shall be in person or by phone
2. The Court Liaison will page and email the officer with the prosecutor's request for a meeting
   (a) If the meeting is conducted over the phone, the overtime form will indicate the actual length of the phone consultation rounded up to the nearest quarter hour (e.g.,.25,.50,.75) as the hours worked.
   (b) If the meeting is in person, the officer will sign in and out on the sign-in log. The overtime sheet will include the prosecutor's name and be submitted to the Court Liaison.
3. If a prosecutor contacts an officer directly, the officer shall contact the court liaison prior to any meeting.

(c) Before an employee submits an overtime request two weeks or more past the date of any related subpoena or court overtime, the employee will first submit a memorandum explaining the delay to the chain-of-command. The chain-of-command will review the circumstances described in the memorandum. A copy of the memorandum will be attached to the overtime form sent to Court Liaison.

935.2.9 PARKING CITATIONS WHILE AT COURT

Employees receiving a parking citation at a metered parking spot while honoring a work related subpoena will adhere to General Order 804 (Department Vehicles) for guidelines on how to dismiss the citation. Employees will follow these guidelines in a timely manner to prevent the fine from being doubled, the vehicle being booted, and the ticket not being dismissed.

935.3 NON-DUTY RELATED SUBPOENAS

Employees receiving a valid criminal or civil subpoena for matters not related to employment with the Department will comply with the requirements of the subpoena. Arrangements for time off to honor the subpoena will be coordinated through the employee's immediate supervisor. Employees will be compensated for a subpoena resulting from a law enforcement related case that originated while the employee was employed by another agency. Employees will follow the same general orders as outlined in 935.2.8.

935.4 COURT TESTIMONY AND INTERVIEWS

(a) Employees will notify their supervisor and the appropriate prosecutor if they are subpoenaed or otherwise agree to either testify as a witness or assist the defense in any criminal matter. Supervisors will notify the APD Legal Advisor so that the Legal Adviser can review the matter in a timely manner.

(b) Employees will not receive compensation for testimony as an expert witness without the approval of the Chief or designee. Employees will complete all necessary Secondary Employment documents prior to the testimony being given.

(c) Employees will not solicit themselves or otherwise encourage their appearance as an expert witness as a result of abilities gained through employment with the Department.

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935.4.1 INTERVIEWS WITH ATTORNEYS

Contact with defense attorneys should be limited to those necessary to protect the legal rights of the accused and to speed the prosecution of criminal cases. Defense attorneys wishing to interview employees beyond that scope should be referred to the appropriate section supervisor or the appropriate prosecuting attorney.

(a) When an attorney representing the City or an employee in any work-related civil suit needs to interview an employee about a criminal case, the employee's immediate supervisor will be notified.

1. The supervisor should ensure the interview takes place while the employee is on-duty, if possible.

(b) When an attorney representing residents in litigation against one another, or in litigation against the City of Austin, wishes to interview an employee concerning an incident, the attorney will be referred to the employee's immediate supervisor.

1. The supervisor will contact the APD Legal Advisor.
2. If the Legal Advisor approves an interview, the supervisor should ensure the interview takes place while the employee is on-duty.

935.5 COURT DRESS CODE

(a) Employees will not wear a uniform or other clothing which identifies them as a member of the Department, or represent themselves as speaking on behalf of the Department, in any cases not related to APD.

(b) Employees will wear appropriate attire, but not any part of their uniform, if the employee appears in court for any action the employee has brought against the Department.

(c) Employees appearing in court on a duty related subpoena will adhere to the following dress code:

1. Sworn employees may wear their Class A, B, or C uniform unless testifying in Federal Court. Body armor is not required when appearing in court.
2. Civilian employees, and sworn employees not wearing their uniform, will wear:
   (a) Males:
      1. Business suit and tie; or
      2. Sport coat, slacks and dress shirt with tie.
   (b) Females:
      1. Dress; or
      2. Skirt or dress slacks with blouse or sweater; or
      3. Skirted or Pant suit.
3. When on-duty employees are urgently needed in court and do not have time to obtain suitable dress, they may appear in working attire (e.g., Class D uniform) with the approval of a supervisor.

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4. Casual wear is prohibited for court appearances.
5. Dress code for sworn employees working in undercover operations will be regulated by the appropriate commander and mindful of all provisions of this section.

(d) Weapon guidelines for sworn employees when not in uniform.

1. Plain clothes officers entering a criminal justice center or courthouse with a weapon are required to:
   (a) Prominently keep the badge and APD ID displayed; and
   (b) Allow court security to visually verify the weapon; and
   (c) Notify the bailiff of each court of the officer's presence and the fact that the officer is armed.
2. Employees who fail to comply with these requirements will be directed to secure the weapon elsewhere before being granted access to the facility.

935.6 OUT OF TOWN APPEARANCES

When employees receive a criminal subpoena to testify in a court outside the City jurisdiction, they will notify their commander/manager through the chain-of-command. The commander/manager will help the employee with travel arrangements. When practical, travel within the state will be by City vehicle. When it is not practical to travel by City vehicle, air travel may be used.

(a) Travel and living expenses will be advanced. Any witness fees, travel expenses or per diem fees granted to the employee will be refunded to the City.

(b) Whenever possible, the employee's days off will be changed so that the out of town court appearance and travel will be on-duty. If it is not possible to change the employee's days off, the employee will be given overtime for off-duty court appearances.

935.7 WITNESS FEES

(a) Employees may not accept or solicit fees for testifying before any Municipal, County or State Court within Travis County, except the witness fee attached to civil subpoenas or ALR hearings.

(b) Employees are authorized to accept the witness fee required on subpoenas for the defense in federal court or military installations.

(c) Employees summoned for jury duty while on-duty may keep jury duty fees paid. When an employee is dismissed before the end of the workday, the employee must return to their assignment for the remainder of the workday.

(d) Except as provided in General Order 900 (General Conduct and Responsibilities), any other fees collected by an employee for a court appearance will be turned in to the Office of the Chief of Police. Fees will not be retained by an employee without the express approval of the Chief.

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942

Austin Police Department
General Orders

Training and Career Development

942.1 PURPOSE AND SCOPE

It is the order of the Department to administer a training program that will provide for the professional growth and continued development of its personnel. By doing so, the Department will ensure its personnel possess the knowledge, skills and abilities necessary to provide a professional level of service that meets the needs of the community.

942.1.1 TRAINING APPROVAL

All internal and external training of APD employees shall be coordinated through the APD Training Academy.

(a) Employees attending any training that has not been reviewed and authorized by the Department do so at their own risk.

(b) The Department will not assume any liability for an officer's utilization of information and/or techniques that are not Department sanctioned and which may be contrary to Department orders and procedures.

942.2 PHILOSOPHY

The Department seeks to provide ongoing training and encourages all personnel to participate in advanced training and formal education on a continual basis. Training is provided within the confines of funding, requirements of a given assignment, staffing levels and legal mandates. Whenever possible, the Department will use courses certified by the Texas Commission on Law Enforcement (TCOLE).

942.3 OBJECTIVES

The objectives of the Training Program are to:

(a) Enhance the level of law enforcement service to the public.

(b) Increase the technical expertise and overall effectiveness of our personnel.

(c) Provide for continued professional development of Department personnel.

(d) Comply with TCOLE rules and regulations concerning mandatory law enforcement training.

942.4 TRAINING

It is the responsibility of the Training commander to develop, review, update and maintain a training plan and to ensure that TCOLE mandated training, in-service training, and Department mandated training is completed by all employees.

(a) While updates and revisions may be made to any portion of the training plan at any time it is deemed necessary, the Training commander shall review the entire training plan on an annual basis. The plan shall:

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1. Include a systematic and detailed method for recording and logging all training for all personnel.
2. Include information on curriculum, training material, training facilities, course and student scheduling.
3. Address state required minimum mandated training for the licensing of sworn officers and the training of non-sworn employees.

942.4.1 MANDATED TRAINING
Training requirements include, but are not limited to:

(a) **Cadet Recruits and Sworn Officers**

1. Individuals hired by the Department as a Cadet Recruits shall complete all mandated training in order to be commissioned by the Austin Police Department.
2. Commissioned officers of the Austin Police Department shall complete:
   (a) All mandated TCOLE recertification training to maintain TCOLE licensing.
   (b) All training mandated by department general orders and the Training Division.
      1. All courses sent to an officer's INFORMA queue by the Training Command are considered MANDATORY and shall be completed within 30 working days (excluding vacation, sick, military leave, FMLA, etc.).
      2. During personnel inspections, supervisors shall ensure officers have completed their INFORMA training. This will be documented on form PD0128.

(b) **Civilian**

1. Individuals hired by the Department to work in a civilian capacity shall complete:
   (a) all mandated training in order to perform all duties and functions of their position.
   (b) Civilian employees shall receive additional job-related training as per City of Austin Personnel Policy.

942.4.2 WEB BASED TRAINING
The Training Academy may deliver online courses via web based training. The courses may fulfill mandatory or elective training hours. This order also applies for courses taken through the TCOLE POSEIT website. If TCOLE and APD both offer the same course, officers will register for the APD course as it will include general orders and address APD needs.

(a) Web based courses can be completed through the intranet by utilizing a Department computer or off-site through the internet utilizing a personal computer.
   1. Employees will not give access to the training website or material to anyone without approval of the Training commander or designee.

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2. Courses will consist of training content followed by an exam. To receive credit for the course, employees must successfully pass the exam. Upon completion, course information and exam score will be electronically transmitted to the Training Academy.

942.4.3 SHIFT BRIEFING TRAINING

Shift briefing training is a technique that may supplement other training. Shift briefing training is a useful element of agency training if it is well managed and supervised. The goal of this training should be to keep officers up-to-date between formal training sessions.

(a) This training is usually conducted by the shift sergeant or corporal but may include other personnel from other units (e.g., Communications, Forensics).

(b) This training shall be designed with enough flexibility as to fit into a short and succinct time period.

1. Shift briefing training will generally be less than one hour in duration and will be credited as Department training.

2. At times, the Training Division may supply lesson plans for instruction for shift briefing training. If the training qualifies for TCOLE credit, the instructor shall follow the "Guidelines for Conducting a Continuing Education Course" established in this order.

942.4.4 TRAINING FOR NEWLY PROMOTED EMPLOYEES

All newly promoted employees shall be required to participate in mandated training appropriate for their new position/rank.

(a) Whenever possible, this training will occur prior to promotion. However, if this is not feasible, the training will occur within the first year following the date of promotion.

(b) The training may be provided directly by the Department or through another source.

1. The Training Academy will assist sworn employees and the employees' next-level supervisors in identifying appropriate training and locating sources for instruction applicable to the new rank.

2. APD-HR will assist civilian employees and the employees' next-level supervisors in identifying appropriate training and locating sources for instruction applicable to the new position.

942.4.5 PROFESSIONAL DEVELOPMENT TRAINING REQUIREMENTS

APD's professional development training requirements were established to provide incumbent and future lieutenants and commanders with a specific curriculum that must be completed during their tenure in a rank. The following mandatory training specifies the requirements that must be achieved at both levels during an officer's tenure as a lieutenant and commander.

(a) Within three years of being promoted to the rank of lieutenant or commander, an officer must be enrolled in an APD approved long-term management school. The Training Academy will maintain a list of approved courses. Assistant chief approval is required

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for any substitutions including attendance to a management school that is not on the approval list.

(b) Lieutenants and commanders must also attend and successfully complete additional APD sponsored courses as determined by Executive Staff and the Training Academy.

(c) The Chief's Office will determine which employees are selected each year to attend approved management courses. Selections will be based upon consideration of all of the following factors:

1. The individual's development needs.
2. The individual's span of control.
3. Previous management training.
4. Tenure in position.
5. Plans for the individual to assume more leadership responsibility.
6. Budgetary constraints.

942.5 GUIDELINES FOR CONDUCTING A CONTINUING EDUCATION COURSE

All internal and external training must be coordinated through the Training Academy. These guidelines shall be followed when any APD instructor or outside source instructor is providing Department approved training to APD personnel, regardless of whether TCOLE credit is being requested. For additional information contact the Continuing Education Unit (CEU).

(a) Thirty (30) days prior to the start of any training course provided to APD personnel, the CEU supervisor or designee needs the following items electronically (e.g., CD, DVD, email):

1. Course Lesson Plan.
2. Course Agenda/Schedule/Outline.
3. Power Point presentation. If there are any audio or video clips embedded in the Power Point, a CD/DVD must be made of the entire presentation and sent to the CEU.
4. Any course handouts (e.g., pamphlets, diagrams, instructor evaluations).
5. A VITA/bio for each person providing any instruction as part of the class/course.
6. TCOLE or other roster.

(b) Within 5 days after completion of a course, an instructor must:

1. Email the completed roster to the CEU; and
2. Send the original roster with signatures to the APD Training Academy.

(c) If TCOLE credit is being requested for the course and an instructor cannot provide any of the required materials due to intellectual property or proprietary interest reasons (e.g., copyright), the instructor must provide written documentation on company letterhead to the CEU supervisor or designee thirty (30) days prior to the start of any training course to include:

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1. The reason why the required materials cannot be provided to APD; and
2. A guarantee the instructor shall provide the materials to TCOLE upon request by TCOLE.

942.6 TRAINING ADVISORY BOARD

The Training Advisory Board serves to review the training practices of the Department and to make recommendations to the Chief of Police regarding needed changes in curriculum, general orders and direction, and meeting the guidelines for procedure, purpose and reporting, as directed by TCOLE.

942.7 EMPLOYEE TRAINING RECORDS

The Training Division is responsible for the creation, filing and storage of all training records in compliance with TCOLE standards using the Texas Commission on Law Enforcement Data Distribution System for sworn peace officer records. Training records shall be retained as long as the employee's personnel file is retained.

942.8 TRAINING PROCEDURES

For purposes of attendance, all training is considered on-duty and thus falls within compliance for time and attendance.

(a) Employees assigned to attend training shall attend unless excused by their immediate supervisor. Excused absences from mandatory training should be limited to:
   1. Court appearances.
   2. Approved personal leave.
   3. Sick leave.
   4. Physical limitations preventing the employee's participation.
   5. Emergency situations.

(b) Employees unable to attend a mandatory training shall:
   1. Notify their supervisor as soon as possible, but no later than one hour prior to the start of training.
   2. Notify the course instructor or Training Academy/APD-HR, if possible.
   3. Make arrangements through their supervisor and the Training Division/APD-HR to attend an alternate date.
   4. Update their attendance status for any missed training.

942.8.1 ADDITIONAL GUIDELINES

(a) Approval for special assignment to attend a school, conference or seminar at the employee's own expense may be given provided the appropriate selection procedures have been followed. The supervisor approving the school may also authorize the special assignment.

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(b) Prior approval must be given by the employee's assistant chief/director for any training that includes one or more of the following elements:

1. Department funds are to be expended for travel, tuition, and meals.
2. More than two (2) City vehicles are to be used for transportation.
3. There is reason to believe that the training may conflict with established orders.

(c) Employees will be compensated in accordance with current Department General Orders when the duration of the actual training hours, including travel for out-of-town trips, exceeds forty (40) hours in one week.

1. Training conducted locally will not be eligible for travel/per diem expenses.
2. Training conducted out-of-town may be eligible for travel/per diem reimbursement but only with prior approval.

(d) If prior approval is obtained from the employee's commander/manager to use a privately owned vehicle, mileage will be paid at the current City rate.

(e) Employees wanting to receive cash advances must submit the request to Financial Management at least four (4) weeks in advance of departure.

1. Monies advanced for travel will be on an individual basis.
2. Each person will be responsible for submission of his own travel vouchers upon completion of the travel and/or training.

942.8.2 DRESS CODE

Employees will attend training, conferences, and seminars in uniform or authorized plain clothes attire.

(a) A polo-type shirt is considered part of the authorized plain clothes attire while attending training.

(b) The coordinator or sponsor of the training may direct an employee to wear other attire that is more appropriate to unusual training activities or conditions (e.g., tactical courses, physical training, maintenance/repair course).

(c) APD Training may allow employees to wear casual attire (e.g., denim jeans, athletic shoes) for training conducted at APD facilities.

942.8.3 LODGING

All requests must be submitted on form PD0224 and approved by the APD Budget Committee.

(a) All employees attending approved out-of-town training and/or required travel will be authorized their own single occupancy room.

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946

Austin Police Department
General Orders

Smoking/Tobacco Use

946.1 PURPOSE AND SCOPE

The U.S. Surgeon General has determined that second-hand smoke is hazardous to one's health. Tobacco products may also be offensive to employees and the public.

946.2 POLICY

(a) Employees shall not use tobacco products (e.g., cigarettes, chewing tobacco, electronic cigarettes) while engaged in official police business with the public or in any City building or City vehicle.

1. This provision does not apply when conducting a custodial interrogation in an interview room, which is designated as a smoking area in accordance with the City ordinance and when the person being interrogated is also a user of tobacco.

(b) Employees who smoke or use electronic cigarettes on-duty while working at a Department facility must do so during authorized breaks and in designated smoking areas.

(c) Employees shall not use tobacco products in the sally port and shall not carry tobacco products into the booking area of any jail facility.

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Rodriguez/Talley v COA et al
Rodriguez/Talley
(Consolidated Cases)
COA 0666

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949

Austin Police Department
General Orders

Secondary Employment

949.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for employees who work overtime. Secondary employment is a privilege, not a right. While allowing employees to pursue legitimate sources of supplemental income, it is imperative to maintain an agency in which its employees are physically fit and mentally alert. Additionally, the appearance of impropriety must be avoided. The Chief, or designee, reserves the right to approve, deny, revoke, add restrictions or allow exemptions to any provision of this order.

949.1.1 DEFINITIONS

For purposes of this order, the following definitions apply:

(a) Department Overtime - As defined in General Order 955.1.1; which by definition does not include court overtime, late calls, overtime related to workload, or emergency holdovers.

(b) Secondary Employment - Any employment where the employee works directly for an individual or business other than the Austin Police Department, either law enforcement related or non-law enforcement related.

1. Law Enforcement Related Employment (LERE) - Any secondary employment that is conditioned on the actual or potential use of law enforcement powers by the officer (e.g., private security contracts).
2. Non-Law Enforcement Related Employment (Non-LERE) - Any secondary employment that is not conditioned on the actual or potential use of law enforcement powers by the off-duty employee (e.g., lawn care business, real estate agent).

(c) Special Event - is an event that:

1. Involves an assembly of 100 or more individuals at a city facility, other than the Austin Convention Center, Long Center, or Palmer Events Center;
2. Impedes, obstructs, impairs, or interferes with normal vehicular or pedestrian traffic on a city street, sidewalk, alley, walkway, or other city public right-of-way other than as permitted under Austin Code of Ordinances Chapter 14-8 (Temporary Closure for a Right-of-Way Event); or
3. Is temporary, involves an assembly of 100 or more individuals, and is inconsistent with the permanent use to which the property may legally be put, or the occupancy levels permitted on the property, and includes one of the following:
   (a) Set up of temporary structures including, but not limited to, tents, stages, or fences;
   (b) Sound equipment as defined in Austin Code of Ordinances Section 9-2-1 (Definitions); or
   (c) Consumption of food and/or alcohol.

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(d) Supervisor - Includes the rank of Sergeant and above.

(e) Manager - Includes the rank of Lieutenant and above.

949.2 SPECIAL EVENTS

The Special Events Commander will have discretion on whether a special event as defined in this order will be required to be coordinated by APD Special Events or whether an employee may hold the contract.

(a) All sworn employees who are authorized to work secondary employment and who meet the tenure requirements outlined in this order may be allowed to work any secondary employment that has an approved contract on file with the APD Special Events Unit.

1. It is the individual employee's responsibility to confirm that there is a valid contract on file with APD Special Events.

(b) Employees applying to be the contract holder on special events approved by the Special Events Commander as employee held contracts must meet the requirements outlined in this order and follow the application approval process.

(c) Employees who are current contract holders for special events that would no longer be approved as employee held contracts may continue to hold the contract as long as they maintain ownership of the contract. These types of contracts will be turned over to the APD Special Events Unit when the employee holding the contract no longer wishes to be the contract holder, no longer works for the Department, or at the discretion of the Chief or designee.

949.3 SECONDARY EMPLOYMENT QUALIFICATION REQUIREMENTS

All LERE secondary employment must be within the city limits of Austin.

949.3.1 TENURE REQUIREMENTS FOR SECONDARY EMPLOYMENT

The following tenure requirements apply to individuals who wish to work secondary employment unless otherwise approved by the Chief or designee.

(a) Police Cadets will not engage in any type of secondary employment or department overtime as defined by General Order 955.1.1.

(b) Sworn employees must have the following tenure requirements prior to working secondary employment:

1. Non-LERE - At least six (6) months from the date of commissioning with APD.

2. LERE - At least one (1) year from the date of commissioning with APD unless the employee graduated from a modified academy in which case he may engage in LERE after six (6) months from the date of commissioning with APD.

3. Probationary Police Officers or officers assigned to the Field Training Program will not engage in department overtime as defined by General Order 955.1.1 unless they are in Solo Phase.

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(c) Sworn employees with less than two (2) years of being commissioned with APD will not hold a secondary employment contract for LERE unless:

1. The contract is for a courtesy officer at an apartment complex which the applicant resides; and
2. The applicant is the sole employee for that contract.

(d) Civilian employees do not have a City tenure requirement to apply for secondary employment.

949.3.2 CONTRACT HOLDER RANK REQUIREMENTS

Any sworn employee that is approved to work secondary employment and who meets the requirements of this order may be the contract holder of an approved secondary LERE contract with the following exceptions:

(a) A supervisor shall be the contract holder when four (4) or more officers are likely to have to work simultaneously at the same location. A corporal or detective may not function as a supervisor for this requirement.

(b) A manager, as defined in this order, shall be the contract holder when 20 or more officers are likely to work simultaneously at the same location.

949.3.3 SECONDARY EMPLOYMENT AS A COURTESY OFFICER FOR APARTMENT COMPLEX

(a) Officers receiving discounted rent in exchange for service as a courtesy officer are considered to be working an LERE assignment. Officers are prohibited from accepting discounted rent or reduced rental rates in exchange for these services unless all secondary employment paperwork has been submitted and approved.

(b) Courtesy officers shall confine their duties to those of a law enforcement nature. Notifications of evictions, collection of rent, bad checks, and enforcement of complex rules, regulations or policies that are not violations of the law are strictly prohibited.

(c) All officers working as a courtesy officer are required to complete a full secondary employment packet even when multiple officers work at the same location.

949.4 SECONDARY EMPLOYMENT APPLICATION PACKETS

949.4.1 SECONDARY EMPLOYMENT APPLICATION FORMS

All forms associated with this order can be found in electronic form at G:\Public\Public Data for APD Only\Approved APD Forms\Secondary Employment Forms.

(a) **Application for Secondary Employment (PD0036)** – This form shall be completed for each new business or prospective employer that wishes to hire an APD employee. All secondary employment contracts are valid for a maximum of two (2) years from the effective date.

1. Only one individual employee shall complete the Application for Secondary Employment contract as the contract holder when attempting to establish a new secondary employment agreement with a business or prospective employer,

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when renewing an existing secondary employment contract, or when taking over as the primary officer of the contract.

2. A contract must be on file for each business or event an APD employees wishes to work.

3. For events permitted by the City of Austin, the Application for Secondary Employment will be completed with the primary promoter of each event, not a sub-contractor, as the business name.

(b) **Secondary Employment Cancellation Form (PD0036A)** – This form should be completed when an employee wishes to cancel a secondary employment contract prior to the expiration date.

(c) **Master Liability Agreement for LERE Secondary Employment (PD0036B)** – This additional form is required for all secondary LERE employment, other than Department overtime.

(d) **Apartment Complex Courtesy Officer (PD0036C)** – This form is required to be completed by the property owner/manager when an employee is engaged in secondary employment as a courtesy officer.

(e) **Overtime Log (PD0036D)** – This is a log of all overtime worked by sworn employees. The log will be maintained by unit supervisors and saved in a network group folder.

(f) **Secondary Employment Revocation Form (PD0036E)** – This form may be submitted by any supervisor in the officer's chain-of-command that believes revocation of a secondary employment contract is in the best interest of the Department.

(g) **Secondary Employment Exemption Request (PD0295)** – This form is used when an employee wishes to work for a nationally known or recognized organization, such as, Wal-Mart or Best Buy, and the hiring manager/supervisor refuses to provide their personal information for the background check through RTCC. This form takes the place of the Secondary Employment Application Request and must be sent through the chain-of-command to the Chief of Police for approval.

(h) **COA Secondary Employment Acknowledgement Form (PD0301)** – This form shall be completed and submitted to APD Human Resources by civilian employees after receiving chain-of-command approval to work secondary employment.

949.4.2 SECONDARY EMPLOYMENT APPLICATION PACKETS

The following forms are required for each application packet listed below.

(a) Law Enforcement Related Employment (LERE) Application Packet:

1. Application for Secondary Employment (PD0036); and

2. Master Liability Agreement for LERE Secondary Employment (PD0036B).

(b) Courtesy Officer Secondary Employment Packet:

1. Application for Secondary Employment (PD0036);

2. Master Liability Agreement for LERE Secondary Employment (PD0036B); and

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3. Apartment Complex Courtesy Officer (PD0036C).

(c) Sworn Non-Law Enforcement Related Employment (Non-LERE) Application Packet without Exemption Request:

1. Application for Secondary Employment (PD0036).

(d) Sworn Non-Law Enforcement Related Employment (Non-LERE) with Exemption Request:

1. Secondary Employment Exemption Request (PD0295).

(e) Civilian Secondary Employment Application Packet without Exemption Request:

1. Application for Secondary Employment (PD0036); and
2. Civilian Secondary Employment Acknowledgement Form (PD0301).

(f) Civilian Secondary Employment Application Packet with Exemption Request:

1. Secondary Employment Exemption Request (PD0295); and
2. Civilian Secondary Employment Acknowledgement Form (PD0301).

949.5 SECONDARY EMPLOYMENT APPLICATION PACKET PROCESS

Secondary employment requests must be approved by the Department. All applications must first be sent to the Real Time Crime Center (RTCC) for a background check unless an APD Secondary Employment Exemption Request (PD0295) has been completed and approved.

Secondary employment requests originating from the Austin Police Association (APA) will be handled by the APA president and approved by the Staffing Lieutenant. Officers working secondary employment through the APA will not need to submit an application.

Denied applications may be grieved according to General Order 904 Grievance Procedures. The Chief of Police has final authority in decisions to accept or deny any prospective employer/ business.

Secondary Employment Application Packets will be processed in the following order:

(a) APD Real Time Crime Center (RTCC):

1. The applicant will email the Secondary Employment Application Packet to the RTCC at APDWatchCommander@austintexas.gov. The RTCC will confirm the location of the secondary employment is within the city limits of Austin. Additionally, the RTCC will conduct a background investigation for the business, owner(s), and/or prospective employer(s) to identify if they are found to have been:
   (a) Convicted of any felony;
   (b) Affiliated with persons known to have a criminal record; or
   (c) Engaged, or planning to engage in, criminal activity.
2. The RTCC will electronically process the application in the following manner:

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(a) Properly completed applications that were denied will be emailed to:

1. APDSpecialEvents@austintexas.gov for sworn employees. The applicant and their supervisor will be copied on the email; or
2. The applicant and their supervisor for civilian employees.

(b) Properly completed applications that were approved will be returned to the applicant by email.

(b) Applicant Chain of Command:

1. Applicants are responsible for emailing the approved application packets or exemption requests to their immediate supervisor for review.
   (a) Supervisors should not sign any Secondary Employment Application unless it has been reviewed and approved by the RTCC.
   (b) Supervisors will ensure the type of secondary employment falls within the guidelines of Department General Orders.
2. Supervisors will email approved application packets or exemption requests to the next level supervisor and up the chain-of-command as follows:
   (a) For officer, detective, corporal, or sergeant applicants, as well as non-sworn equivalents, approval must proceed up to the appropriate commander or non-sworn equivalent.
   (b) For lieutenant and commander applicants, as well as non-sworn equivalents, approval must proceed up to an assistant chief or assistant department director.
   (c) Secondary Employment Exemption Request form (PD0295) must proceed up to the Chief of Police.
3. Applications and exemption requests approved by the applicant's chain of command are handled as follows:
   (a) The highest-ranking member of the chain of command will forward the application packet or exemption request to the employee's immediate supervisor.
   (b) Immediate supervisors shall retain a copy of all paperwork and :
      1. Email sworn application packets and exemption requests to APD Special Events at APDSpecialEvents@austintexas.gov.The applicant will be copied on the email.
      2. Email civilian application packets and exemption requests to Human Resources at APDHR@austintexas.gov. The applicant will be copied on this email.
4. Applications denied by anyone in the chain-of-command will be handled by the immediate supervisor as follows:
   (a) Ensure that the paperwork is clearly marked as "DENIED" with an explanation as to the reason;

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(b) Retain an electronic copy of all paperwork; and

1. Email sworn application packets and exemption requests to APD Special Events at APDSpecialEvents@austintexas.gov.The applicant will be copied on this email.

2. Email civilian application packets and exemption requests to the applicant.

(c) APD Special Events Unit

1. The APD Special Events Unit will confirm that the secondary employment application packet has all the necessary documentation filled out accurately, and:

(a) Email the approved application to the employee and give the employee the effective date; or

(b) Return the application to the chain-of-command if an issue is found with the application.

2. All secondary employment packets will be retained for the contract length plus one year.

949.5.1 SECONDARY EMPLOYMENT ORIGINATING FROM THE AUSTIN POLICE ASSOCIATION (APA)

There are instances in which requests for LERE originate from the APA. In emergency situations, the Commander of Special Events may grant interim approval for LERE requests originating from the APA.

(a) APA representatives will adhere to the following procedure when requesting LERE interim approval in emergency situations.

1. APA representatives will contact the Commander of Special Events and explain the circumstances surrounding the emergency situation that requires LERE.

2. If the Commander of Special Events determines the situation is an emergency that requires LERE, he or she will contact the RTCC and request that the required background investigation be expedited to meet the needs of the emergency situation that requires LERE.

3. The APA representative will then complete a Secondary Employment Application and deliver it to the RTCC in order to conduct the background investigation.

4. Once the background investigation is completed, the APA representative will contact the Commander of Special Events and inform him or her that the application was approved by the RTCC.

5. The Commander of Special Events will then give verbal approval to the APA representative granting interim approval for the emergency situation requiring LERE.

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6. The Commander of Special Events will then send an email to the APA representative giving him or her two (2) work days to complete and turn in the required paperwork found in section 949.3.4 of this order.

(b) Interim approval will not be granted for any application denied by the RTCC. Any applications denied by the RTCC will be processed in accordance with this order.

(c) The Commander of Special Events is ultimately accountable for granting interim approval for LERE in emergency situations; however, he or she may delegate this authority to his or her designee.

(d) For purposes of this order and procedure, an emergency is any situation that is a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to or theft of property, and/or interference with the normal activities of any entity (real or perceived) and which, therefore, requires an immediate law enforcement presence. Examples of emergency situations include, but are not limited to, the following:

1. The bank manager of a bank that was robbed is requesting to hire officers in an LERE capacity.
2. A business is requesting to hire officers in an LERE capacity to provide security after a recently terminated employee has threatened violence in retaliation.
3. A business is requesting to hire officers in an LERE capacity to provide security after a power failure has left hundreds of thousands of dollars in property vulnerable to theft.

949.5.2 CANCELLING A SECONDARY EMPLOYMENT APPLICATION

Employees who wish to cancel any secondary employment contract they are on prior to the expiration date of the contract must complete the required Secondary Employment Cancellation form (PD0036a).

(a) The effective date of cancellation shall not be prior to the date the employee is submitting the cancellation form.

(b) Cancellation forms shall be retained by APD Special Events Unit for one year from the date of cancellation.

949.6 SECONDARY EMPLOYMENT GUIDELINES AND RULES

All employees shall abide by the following guidelines when working secondary employment:

(a) An employee's first duty is to the City and the Department. An employee will respond to any order to return to duty when issued by a supervisor, even if the employee is working secondary employment when called.

(b) A sworn employee's primary responsibility is the enforcement of state laws and city ordinances. Sworn employees are reminded of the Code of Ethics and Oath of Office which shall not be circumvented by any secondary employment agreement.

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1. Sworn employees engaged in secondary employment work will not refuse to assist any resident requesting reasonable law enforcement assistance. Officers are expected to take any necessary action to assist residents in this capacity.

(c) Employees performing secondary employment are subject to the same rules and regulations as if they were on-duty.

(d) Employees performing secondary employment are required to notify their immediate supervisor regarding any acts of potential misconduct and/or disciplinary actions taken against them related to their secondary employment.

(e) Employees shall honor all subpoenas, even when the subpoenas create a scheduling conflict with the secondary employment assignment.

1. Employees shall be required to take personal leave for any civil trial resulting from secondary employment that is held during the employee's regularly scheduled workday; However, sworn employees may be placed on Special Assignment by their supervisor if the civil trial is a result of a police related matter.

(f) Only the secondary employer is allowed to pay an employee for secondary employment. Cash payments from an employer are prohibited. All payments will be made by check, PayPal, electronic transfer, direct deposit, or other electronic method approved by the Special Events Commander, and must be executed from the employer to individual employees. One employee may pick up and distribute all checks but under NO circumstances shall any employee accept cash payments.

(g) Employees serving as coordinators of secondary employment assignments shall act only as an administrative liaison between the secondary employer and the other employees working for the employer.

1. Coordinators shall not exercise hiring or firing authority over other employees working for the secondary employer. Only employers may hire or terminate employees.

2. Coordinators shall not receive any fee or other remuneration from other employees for any action as the coordinator.

3. Coordinators shall maintain schedules of dates/times worked by officers for a minimum of 6 months.

(h) Employees will report any alleged act of potentially significant misconduct by another employee engaged in secondary employment to that employee's chain-of-command or Internal Affairs.

949.6.1 UNIFORM AND EQUIPMENT REQUIREMENTS

(a) Unless approved by Special Events Commander, sworn employees will work special event LERE assignments in their patrol uniform (no specialized unit uniforms allowed)

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and carry department issued equipment that is normally worn with the officer's patrol uniform (e.g., radio, baton, OC, handcuffs).

1. Officers will carry the necessary forms and citations reasonably required for the assignment.

(b) Employees working non-LERE assignments will not use any department issued equipment or uniform.

(c) Employees will not wear any part of an APD uniform, or uniform of similar appearance, while engaged in any secondary employment outside the corporate city limits of Austin unless approved by the Chief or designee.

(d) Commanders may approve plain clothes LERE assignments:

1. If at least two (2) officers are assigned when police enforcement or intervention is likely (e.g., focus is targeting criminal behavior, at a congested public place where crime is likely); or

2. If one (1) officer is assigned when police enforcement or intervention is not likely (e.g., weddings, apartment courtesy officer).

(e) Police vehicles will not normally be used for secondary employment unless assigned through the Special Events Unit as department overtime.

1. If a police vehicle is needed:

(a) Approval for the police vehicle(s) to be used for secondary employment must be obtained from the Chief of Police or designee; and

(b) The police vehicle must be equipped with emergency lights and siren.

2. In situations where use of a police vehicle by an employee has been approved, the secondary employer must agree to:

(a) Pay applicable vehicle rental fees as outlined in the City of Austin's currently adopted fee schedule; and

(b) Obtain and show proof of "hired and non-owned" vehicle coverage in the amount not less than One Million Dollars ($1,000,000) per accident.

949.6.2 RESTRICTIONS AND PROHIBITIONS

The following section contains the restrictions and prohibitions on secondary employment.

(a) Unless approved by the employee's assistant chief, employees are restricted from the following:

1. All employees are prohibited from working LERE secondary employment while on Limited Duty, Extended Limited Duty, Restricted Duty, Administrative Duty, Suspension, or Extended Leave.

(a) Employees on Restricted Duty, Administrative Duty, or Suspension who observe conduct that requires a police response will call for an on-duty unit to handle the situation.

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(b) Employees that work as a courtesy officer may be exempted from this with the permission of the assistant chief or designee.

2. All employees are prohibited from working Non-LERE secondary employment that is inconsistent with any limitations or restrictions placed on the employee while on Limited Duty, Extended Limited Duty, Restricted Duty, or Extended Leave.

   (a) Sworn employees may request to work Non-LERE secondary employment by following the procedures outlined in General Order 958 (Limited Duty, Return to Work, and Pregnancy).

3. All employees are prohibited from working any secondary employment the same day the employee has failed to report for regular duty due to an illness or injury.

4. Employees are prohibited from performing any secondary employment during on-duty hours.

5. Prohibition to work secondary employment will be determined by the employee's commander or civilian manager.

(b) Employees are prohibited from accepting or engaging in any secondary employment that might conflict or interfere with an employee's duty and responsibility to the Department.

(c) Employees cannot recruit or solicit persons or organizations for, nor advertise for or accept, any secondary employment while on-duty or in uniform.

(d) No one above the rank of commander will work LERE, or coordinate or schedule the work of other employees involved in LERE work.

(e) Employees may not engage in any type of secondary employment which may:

1. Render the employee unavailable to respond during an unanticipated emergency; or

2. Physically or mentally exhaust the employee to the point that the employee's performance is affected; or

3. Require any special consideration for scheduling the employee's regular duty hours; or

4. Bring the Department into disrepute or impair the operation and/or efficiency of the Department; or

5. Bring the employee into disrepute or impair the employee's effectiveness.

(f) Confidential information obtained by the Department or in an employee's official capacity with the Department may not be used in any secondary employment unless the information is used in connection with law enforcement duties. This provision does not constitute an exception to any confidentiality requirements contained in law or other Department orders and regulations.

(g) Sworn employees will not perform LERE outside the corporate city limits of Austin unless approved by the Chief or designee.

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(h) Employees shall not be permitted to obtain a permit or license from the Texas Board of Private Investigators and Private Security Agencies.

(i) Sworn employees shall not be permitted to be a deputy or hold a commission from any other law enforcement agency (e.g., local, state, federal).

(j) APD employees working secondary employment will not impound or tow vehicles from Special Event Temporary No Parking Zones.

(k) Employees acting as landlords, property owners, or property managers will limit any civil process to the filing of and responding to court process.

1. An employee may not personally take any further action including, but not limited to the following:
   (a) Enter a property to seize an item
   (b) Change a lock to deny tenant access, or
   (c) Participate in an eviction.
2. An employee may hire another non-APD employee to perform any action allowed under an agreement or by law.

(l) Patrol Officers, while on-duty, shall not self-initiate or self-assign a response to any property for which they are employed as a courtesy officer unless dispatched to that location by Communications, authorized by an APD supervisor, or the call is a Priority 1 or Hot Shot.

1. Nothing in this section prohibits an employee from taking action when required by law or departmental general orders.

(m) Authorization for secondary employment privileges of any employee may be revoked at any time by any supervisor in the employee's chain-of-command when an APD Secondary Employment Revocation Form (PD0036e) is completed documenting specific evidence that such action is in the best interest of the Department.

1. After the employee initials the notice of revocation, a copy of the Revocation Form will be given to the officer. A copy of the Revocation Form will be maintained by the immediate supervisor and the original forwarded to the APD Special Events Unit.
2. APD Special Events Unit will log this info into the Special Event Unit Secondary Employment Database. Any supervisor wishing to obtain information regarding a revoked application, may call or email the Special Event Unit sergeant and obtain that information.

(n) The following are examples of some grounds for revocation of secondary employment privileges. This list is for example purposes only, and is not intended to be all inclusive:

1. Apparent abuse of sick leave.
2. Sleeping or being inattentive on-duty.
3. Tardiness due to conflicts in work schedules.
4. Damage to the reputation of the Department.

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5. Acts of misconduct associated with the secondary employment.
6. Repeated physical injuries incurred during secondary employment.
7. Evidence of debilitating stress from the secondary employment.
8. Any conflict of interest that may develop or become known after approval of the employment was granted.
9. Failure to comply with the TCOLE's firearm's qualification standards will result in suspension of secondary employment privileges until the standards are met.

(o) Officers will not inquire into the immigration status of a person while the officer is engaged in a secondary employment contract with:

1. A hospital or hospital district.
2. A school district or open-enrollment charter school.

(p) Officers working secondary employment for a hospital, school district or open-enrollment charter school shall not provide assistance to ICE for operations unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

(q) Officers working any secondary employment shall not provide assistance to ICE for operations at a place of worship unless exigent circumstances exist which require an immediate intervention of law enforcement to protect public safety.

949.6.3 PROHIBITED TYPES OF SECONDARY EMPLOYMENT

Employees shall not work for, or engage in, the following types of secondary employment:

(a) A bad check or bill collector.

(b) A repossession agent or agency.

(c) A wrecker company.

(d) Any other employment in which law enforcement authority might be used to collect money or merchandise for private purposes.

(e) Where it is expected the employee will enforce company policies or rules (commonly known as "house rules").

(f) A bouncer.

(g) A bar or other establishment or event where liquor, beer, or other alcoholic beverages are sold and consumed on premises and the sale of alcohol is the principal source of income.

1. The Department shall have the absolute discretion to determine which businesses, establishments or events fall within this section.
2. This includes contracting with a leasing company for "strip centers" where a bar or other such drinking establishment is a tenant, and the obvious reason for the need of officers is due to that tenant.

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3. This section does not normally apply to businesses (e.g., restaurants, bowling alleys) whose primary source of income is not from the sale of alcohol.

4. This section does not apply to City owned facilities, City sponsored events, or APD coordinated assignments.

(h) Any employment which involves the manufacture or transportation of alcoholic beverages as the principal business.

(i) A courier of monies, jewels, bonds, securities, or other things of value, except as additional security for such a person or business.

(j) A pawnshop.

(k) A sexually oriented business.

(l) Protection of management, employees, or property during a strike or labor dispute.

(m) For a business or labor organization that is on strike (e.g., "strike buster").

(n) For any person or organization which advocates hatred, prejudice, or oppression of any racial, ethnic, gender or religious group, or which disseminates defamatory materials.

(o) By political parties or employment that favors one candidate over another.

(p) Any business or establishment in which gambling is the principal business.

(q) By an employer known to engage in criminal activity.

(r) Any individual, firm, association, company, partnership, corporation or other entity which holds a license or permit from the Texas Board of Private Investigators and Private Security Agencies. Exceptions to this will be reviewed on a case-by-case basis by the Chief or designee.

949.7 SPECIFIC SECONDARY LERE GUIDELINES

(a) While working a LERE assignment, employees will notify APD Communications of:

1. The LERE assignment location; and

2. Hours of the assignment (on-duty and off-duty times); and

3. Immediate contact information (e.g., mobile and/or radio number); and

4. If the assignment is in uniform or plain clothes. Employees in plainclothes will provide a description of their attire and the nature of the assignment.

(b) LERE contract holders will be held responsible for ensuring the guidelines of this order are followed and the event is properly managed and supervised.

1. Secondary employment contract holders are responsible for sending a copy of their assignment rosters and security plan that have been approved by the APD Special Events Unit for any City Permitted assignment to the APD Watch Lieutenants and to APD Communications.

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949.7.1 SAFETY PLAN REQUIREMENTS FOR EVENTS PERMITTED BY THE CITY OF AUSTIN

(a) Employees holding an approved Application for Secondary Employment contract for any event permitted by the City of Austin will coordinate the assignments with the APD Special Events Unit.

1. Unless approved by the Special Events Commander, the APD contract holder will provide a security plan, using the APD ICS 208A Safety Message/Plan for Secondary Employment During Special Events, for review and approval by the Special Events Unit with all of the following no later than seven (7) days prior to the event:

   (a) An outline of the date, times, and location of the event.

   (b) The number of LERE assignment officers and supervisors working the event, including the length of the shifts.

   (c) A description of the duties and responsibilities of the LERE officers.

   (d) The name of the APD point-of-contact for the officers working the event.

   (e) The communication plan for officers assigned to the event.

   (f) Evacuation plan for attendees and event staff (in the event of a critical incident, or weather related incident.)

   (g) Any additional information requested by the Special Events Commander.

2. Should an APD contract holder fail to turn in a valid security plan within seven (7) days prior to the event, the event will be staffed by overtime officers hired through the Special Events Unit.

3. Within ten (10) days after the conclusion of the event, the contract holder will provide the Special Events Unit with a detailed after action report concerning the event using the APD After Action Report form. The report will include any issues or incidents that occurred.

4. The Special Events Unit will retain the security plan and after action report for one year.

5. Contract holders who work for promoters that manage simultaneous events at multiple sites must complete an APD ICS 208A for each site. Completing one safety plan for multiple locations is prohibited.

(b) APD officers working LERE assignments at road closures or officer-controlled intersections will be hired through the City of Austin. However, small events that do not require more than one block of a single-road closure, excluding bridges and multiple-lane roads with 3 or more lanes, may be worked through an employee held contract.

(c) This section does not include escorts. Refer to the "Motor Vehicle Escort Guides" as outlined in this order.

(d) APD contract holders may be required to attend any and/or all applicable event planning meetings, along with Special Events Unit coordinators, as deemed necessary by the Commander of the Special Events Unit or his or her designee.

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949.7.2 MINIMUM REQUIRED NUMBER OF EMPLOYEES AND SUPERVISORS

(a) Required number of officers:

1. The number of officers and supervisors required for any City Permitted event will be determined by the Special Events Unit.
2. A minimum of two (2) officers must be present at all times for any City Permitted assignment where alcohol is sold or served.

(b) Supervisor requirements are as follows:

1. When more than three (3) APD officers are simultaneously engaged in LERE at the same location, a supervisor must be one of those additional employees.
   (a) No supervisor will supervise more than fifteen (15) officers.
   (b) Supervisors must be present at the job site at all times.
   (c) When multiple supervisors are required, one will be specifically designated as the supervisor-in-charge and be responsible for the actions of all officers working at that time. Designation of the supervisor in charge can be as assigned by the person scheduling the event or by agreement among those supervisors involved.
   (d) When more than twenty (20) officers, along with the required number of supervisors, are needed simultaneously at the same location for a LERE assignment, a manager is required to be present at the job site at all times.
2. The Chief or designee may assign up to five (5) officers for a LERE assignment related to traffic control (e.g., road closure) without utilizing a supervisor; However, when more than five (5) officers are simultaneously engaged in LERE at the same location, regardless of the event, a supervisor must be one of the officers.
3. Corporals/Detectives may not be hired to work LERE in a supervisory role.
4. Supervisors will not work any secondary employment where a subordinate employee in their direct chain-of-command holds the contract.
5. Supervisors will not work any secondary employment where they function in a subordinate role to an officer of a lower rank without prior approval of the Chief or designee.
6. The coordinator will work with the supervisor (designated supervisor-in-charge) on placement of employees at the LERE site. At no time should supervisors (designated supervisor-in-charge) be placed in a position where they are unable to monitor the operation of the assignment of all officers.

949.7.3 LIMITATION ON LERE HOURS WORKED

(a) Employees shall not work more than 16 hours of any combination of regular duty, department overtime, or LERE hours within a consecutive 24-hour period without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/ manager for civilian employees.

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1. A 24-hour period is any consecutive 24-hours, regardless of the time the work started.
2. The employee is responsible for notifying the appropriate supervisor two (2) hours prior to the 16th hour of the 24-hour period. The name of the approving supervisor will be noted on the employee's overtime assignment form.

(b) Employees shall not work in excess of 76 hours of any combination of regular duty, department overtime, or LERE hours within a work-week without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.

949.7.4 REQUIRED REPORTING OF OVERTIME AND LERE HOURS WORKED

(a) An electronic copy of from PD0036D Overtime Log will be maintained by the employee's supervisor in a network group folder designated by their chain of command. When an employee works overtime (this does not include mandatory/ emergency holdovers, late calls, and overtime related to workload), they will complete an overtime log on form PD0036D and save it to the network location within one week of the assignment to include actual locations, dates, and times of LERE hours worked each week. The employee's supervisor will maintain the overtime log according to the City's retention policy. The logs will include all LERE hours worked by the employee that week including actual court overtime (time reported on court sign in/out log) and estimated hours worked as a courtesy officer.

1. This log will be reviewed and approved by the employee's immediate supervisor on a weekly basis by electronically initialing the form.
2. Changes to LERE hours worked subsequent to having been reviewed by the supervisor will require the employee notifying their supervisor and an additional electronic initial by the supervisor.

949.7.5 MOTOR VEHICLE ESCORT GUIDES

This section applies to officers working LERE assignments as Motor Vehicle Escort Guides. Supervisory requirements outlined in 949.5.2(b)(2) apply to this section. This section does not apply to motor vehicle escorts provided by on-duty personnel. If a city owned motorcycle is to be used for an off-duty escort, permission from a Motors Unit Supervisor is first required.

(a) Officers working as a Motor Vehicle Escort Guide will:

1. Use personally owned motorcycles that are equipped as follows:
   (a) In compliance with City Code
   (b) Equipped with a siren.
   (c) Equipped with an ABS braking system.
   (d) Equipped with any additional equipment as directed by the Chief of Police.
2. Submit the personally owned motorcycle for inspection and approval to the Chief of Police, or his designee. Inspections will be done at the renewal of the LERE contract, or whenever a new motorcycle is placed in service.

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3. Maintain the motorcycle in proper working order with current registration and Motor Vehicle Inspection. If any safety equipment is not functioning as intended, the motorcycle will not be used.
4. Maintain Auto Liability insurance covering the operation of the motorcycle with minimum limits of $100,000 bodily injury per person/$300,000 bodily injury per accident and $100,000 property damage.
5. Wear an APD patrol or motor officers' uniform.
6. Have completed the Escort Training Class from the Austin Police Department.

(b) The use of amplified electronic horns and sirens are authorized for officer safety purposes.

(c) Oversize load escorts will utilize a minimum of two (2) APD officers. This includes but is not limited to wide loads, oversized loads, house moves, and industrial equipment. When conducting escorts for oversized loads the officer will ensure that all necessary permits have been obtained from the Texas Department of Transportation and will abide by the route set out in the permit. The officer will not escort any vehicle if the officer has reason to believe it is not in a safe operating condition.

(d) All other escorts will utilize a minimum of 3 APD officers. APD officers are not allowed to work off-duty escorts with officers from other agencies. On occasion the size or route of a funeral procession may require additional officers to be utilized to provide a safe escort. In the interest of safety, off-duty officers may request assistance from the on-duty patrol or HEC supervisor to assist with an escort. HEC supervisors shall be responsive to such requests and provide on-duty motor units if available. Any officer conducting an off-duty escort has the discretion to limit the number of vehicles allowed for safety reasons. A request to use on-duty patrol will be made through the Watch Lieutenant.

(e) The route the procession travels will be determined by the officers conducting the escort. It will be chosen based on the safest route. Prior to leaving, the route will be discussed with the lead car driver for the funeral home. Officers will not enter intersections on red lights, however once they are in the intersection, they can control the intersection for as many light cycles as needed to clear the procession.

(f) The Department understands that there are occasions where the escort officers need to travel beyond the city limits of Austin to provide for the safety of those in or around the vehicle procession or oversize load vehicles. Officers acting as motor vehicle escorts will be permitted to travel outside of the City of Austin as follows:

1. Officers engaging in motor vehicle escorts will be allowed to conduct the escorts within the boundaries of Hays, Travis, Bastrop and Williamson Counties.
2. If the escort begins within 10 miles of the city limits of Austin, the escort must terminate inside the city limits.
3. Officers will obey the laws of the State of Texas and any ordinances of any city they may pass through while providing an escort.

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949.7.6 LAW ENFORCEMENT ACTIONS TAKEN WHILE WORKING LERE ASSIGNMENTS

(a) Law Enforcement Action

1. Incidents that originate off the property of the LERE work location.

(a) Officers will provide reasonable assistance (e.g., take immediate action to protect life and property, assist the citizen in contacting 911 for an on-duty officer) to any citizen requesting assistance for incidents that have occurred, or that are occurring, off the property of the LERE assignment.

1. The responding on-duty officer will write an incident report.

2. The LERE officer will write a supplemental report to the on-duty officer's incident report, if needed.

2. Incidents originating on the property of the LERE work location.

(a) Officers will immediately report any incident or situation arising from or connected with the LERE assignment in the same regard as if on-duty. This includes completing all paperwork related to an incident (e.g., original and/or supplementary reports, associated forms and documents, evidence tags, impound forms).

(b) When an officer is the victim of an incident or the incident is of such a nature that an immediate extensive investigation would be required (e.g., murder, rape, robbery), an on-duty unit will be called.

(b) Arrest Guidelines

1. LERE officers making arrests for incidents connected with the LERE assignment will complete an incident report and, if necessary, a probable cause affidavit following normal arrest reporting procedures and will:

(a) Contact Communications to request an incident number for the arrest report before turning it over to another officer; and

(b) Request a unit for prisoner transport.

2. Transporting officers will write a supplement to the original report, sign any evidence tags or chain-of-custody documentation, and book the prisoner.

(c) Reporting Guidelines

1. Incident reports initiated by the LERE officer not pertaining to custody arrests will be turned in by the LERE officer at any substation within 24 hours.

2. Officers writing an incident report that requires immediate entry, such as a misdemeanor citation or custody arrest, shall ensure the report is entered into Versadex before the end of their LERE assignment.

(d) Nothing in this document prohibits an officer working a LERE assignment from calling for assistance from on-duty personnel.

(e) If prior to the end of the LERE assignment it becomes apparent to the officer that he will not be able to complete all duties required by the Department in connection with the use of his law enforcement powers (e.g. completing reports, transporting persons or

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property), the officer will immediately contact the on-duty patrol lieutenant responsible for the area where the LERE assignment is located. The officer will be required to provide the lieutenant with an explanation regarding why they are unable to complete the required duties prior to the end of the LERE assignment.

1. If the patrol lieutenant determines the duties can wait until the officer's next regularly scheduled shift, the officer will be released. It is the officer's responsibility to ensure the required duties are completed prior to the end of their next shift when released by a lieutenant.
2. If the patrol lieutenant determines that the duties must be completed without delay at the conclusion of the LERE assignment, the lieutenant will authorize overtime and the time spent completing the required duties will be counted as productive hours during that work week.

(f) If an officer is working a LERE assignment and takes law enforcement action during the time he is being compensated by the LERE employer, the officer will not be compensated by the City for those hours, nor will those hours be included as productive hours during the officer's work week.

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Austin Police Department
General Orders

Overtime and Compensatory Time

950.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt employees who work authorized overtime either by payment of wages or by allowing the accrual of compensatory time off. In order to qualify for either, the employee must complete and submit a Request for Overtime Payment as soon as practicable after overtime is worked.

950.1.1 DEFINITIONS

Callback - Employees in non-exempt positions may receive compensation as established by the Meet and Confer Agreement and City Personnel policy when they are off-duty and receive notification to return to duty status.

Compensatory Time - Employees in non-exempt positions may receive compensatory time in lieu of overtime pay. The maximum amount of compensatory time that an employee may accumulate is 120 hours.

Exempt Employee - An employee exempt from the overtime provisions of the Fair Labor Standards Act. Employees in these positions are "salaried" and are not eligible for overtime pay or compensatory time.

Non-exempt Employee - An employee that meets the overtime requirements of the Fair Labor Standards Act. Non-exempt employees will receive overtime pay or compensatory time for productive hours worked in excess of 40 in a workweek.

On-Call - A period of time outside of normally scheduled working hours during which an employee must remain fit for duty and available to return to work.

Productive Time (Civilian Personnel) - Established by City Personnel Policy.

Productive Time (Sworn Personnel) - Established by the Meet and Confer Agreement. For the purposes of computing overtime or compensatory time, all approved paid leave other than sick leave and vacation time shall be calculated as hours worked.

950.2 DEPARTMENT POLICY

(a) Employees may be required to work beyond regularly scheduled hours or be called back to active duty at any time in order to meet the operational needs of the Department.

(b) Employees who refuse to work overtime or fail to report back to work when ordered to do so will be subject to disciplinary action.

(c) Supervisors may adjust an employee's regularly scheduled hours so that no more than 40 productive hours are worked in a particular week.

(d) Unless otherwise specified by the assignment, employees in non-exempt positions may choose overtime pay or compensatory time for productive hours in excess of 40 in a workweek.

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Rodriguez/Talley
(Consolidated Cases)
COA 0687

1. Overtime will be paid at a rate of 1.5 times the regular rate of pay.
2. Compensatory time will be accrued at a rate of 1.5 hours for each hour worked.
3. Overtime pay and compensatory time will be calculated by computing time worked to the nearest quarter hour, rounding either up or down.
4. The assignment of elective City and mandatory overtime should be allocated in a fair and equitable manner and utilized only when necessary to meet the operational needs of the Department.

(e) Specific assignments contracted for by a source outside the “City”, excluding assignments reimbursed by Federal and State partners, will be compensated at the individual officer’s overtime rate of pay regardless of the number of productive hours the officer has worked in that work week.

(f) Employees will not be compensated by the Department for work performed during the course and scope of a secondary employment contract.

950.2.1 ELECTIVE CITY OVERTIME/SECONDARY EMPLOYMENT

Employees will follow General Order 949 (Secondary Employment) on the limitations and reporting responsibilities for overtime assignments classified as elective city overtime or secondary employment.

950.3 OVERTIME ASSIGNMENT GUIDELINES

Employees may be eligible for overtime pay and/or compensatory time as outlined in this section for:

(a) Employee Call-Back.

(b) On-Call Assignments.

(c) Court Time.

950.3.1 EMPLOYEE CALL-BACK

(a) Non-Exempt officers who are off-duty and receive notification to return to duty status one hour or less before the start of the employee's regularly scheduled shift shall receive one (1) full hour of compensation at time and one half.

(b) Non-exempt officers who are off-duty and receive notification to return to duty status shall receive a minimum of (3) full hours of compensation at time and one half when notified to return to duty status:

1. More than one (1) hour before the employee's regularly scheduled shift; or
2. After the conclusion of their regularly scheduled shift.

(c) Supervisors may authorize up to three (3) hours of overtime pay for an employee called into work for an official reason (e.g., IA/SIU interview, special investigation) while on approved leave that would coincide with the employees regular duty hours. Any amount in excess of three (3) hours must be approved by the appropriate commander/ manager.

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(d) Non-exempt officers who are off-duty and receive notification to return to duty status will receive only fifteen (15) minutes of compensation at time and one half should the call-back be canceled within fifteen (15) minutes of the notification, or the actual time spent completing the assignment lasts no more than (15) minutes.

(e) Non-exempt civilian employees will be paid for call-back time according to current City policy.

950.3.2 ON-CALL ASSIGNMENT

On-call assignments may be established to meet the operational needs of the Department. Non-exempt officers will receive compensatory time in accordance with the current Meet and Confer Agreement. Non-exempt civilian employees will be compensated as determined by the Department Head and/or City policy. Employees assigned to be on-call will:

(a) Accept an on-call assignment that might result in a call back to work.

(b) Maintain any necessary equipment when in an on-call status (e.g., radio, pagers, mobile phone).

(c) Respond when called back to work.

(d) Maintain the physical and mental fitness standards that are regularly required for performing job tasks when in an on-call status.

(e) Notify their supervisor if, due to illness, injury or other circumstances, the employee is unable to be on-call.

950.3.3 COURT TIME

Court time will be paid as outlined in General Order 935 (Court Appearances) and the Meet and Confer Agreement.

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Austin Police Department
General Orders

Pay Differential

951.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for handling temporary assignments in a higher rank classification and the associated pay differential for such assignments.

951.2 STATUTORY AUTHORITY

(a) The Chief of Police may authorize the designation of a person from the next lower classification to temporarily fill a position in a higher classification (Tex. Local Gov't Code § 143.038).

(b) The designated person is entitled to the base salary of the higher position plus the person's own longevity or seniority pay, educational incentive pay, and certification pay during the time the person performs the duties, even if the temporary position lasts only one (1) day.

(c) Temporary designations will not be made for periods of less than one day unless approved by a Commander or above.

951.3 PROCEDURES

If a sworn supervisor will be absent for an entire day or longer (e.g., vacation, sick leave, FMLA leave, injury leave, training), the next higher supervisor in the chain-of-command is authorized to designate an officer to temporarily serve as an acting supervisor.

(a) The consideration should be based on the following criteria:

1. If it is in the best interests of the Department for an acting supervisor to be temporarily assigned.
2. If there is another on-duty supervisor who can assume the supervisory duties within the Department's established span of control.

(b) In order to initiate pay differential, a "Pay Differential Assignment Form" must be completed by the employee's supervisor and submitted to the APD-HR office.

(c) The calculation for pay differential is based on years of service with the Department.

1. Employees will be compensated as if they were at the higher rank with the same years of service.
2. If years of service do not equal the minimum number of years required before attaining the higher rank, the base salary of that rank will be used for the calculations.

(d) A sworn officer who works overtime while temporarily filling in for a higher classification, and who is eligible for overtime pay, shall be paid overtime at the appropriate rate as calculated by APD HR.

(e) The temporary performance of the duties of a higher position by an employee who has not been promoted as prescribed by this chapter may not be construed as a promotion.

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All promotions must meet the requirements of the Civil Service Act and the Meet and Confer Contract.

951.4 LIMITATIONS

(a) Orders related to compensation that are not required by Chapter 143 are dependent upon City Council's approval of the budget. Budget approval is determined annually. For current information, contact APD-HR.

(b) The Chief or designee may set limitations on the duties and responsibilities on the person assuming the higher rank.

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Austin Police Department
General Orders

Incentive Pay

953.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for compensation for designated skills and education. Officers who have demonstrated their proficiency in designated skills and who are subsequently authorized may receive assignment pay in amounts provided by the current Meet and Confer Agreement.

953.2 BILINGUAL PAY

In order to be eligible for bilingual pay, officers must successfully pass an established bilingual test reflecting the types of bilingual communication in which officers would normally be required to engage during the course and scope of duty.

(a) Eligible officers accepting bilingual pay will be required to utilize their bilingual communication skills when requested by the Department.

(b) Officers who fail to utilize their bilingual skills when required may be deemed ineligible to receive bilingual pay. In these circumstances and on a case by case basis, the officer's commander will make a recommendation to the appropriate assistant chief. The Chief or designee will make the final decision on eligibility.

953.2.1 BILINGUAL TESTING PROCEDURES

(a) APD-HR will schedule bilingual tests as needed with a professional consultant or organization selected by the Department. A test will be given for each requested compensable language.

(b) Any officer may take a bilingual test. Officers interested in testing for a language must submit an application for bilingual testing to their immediate supervisor to be forwarded through the chain-of-command to APD-HR.

(c) The bilingual test is a voluntary test. Officers must take the test on their own time, with no compensatory time or overtime pay allowed.

(d) APD-HR will notify officers taking a bilingual test of the test results by mail. Those officers who pass the bilingual test will begin earning bilingual pay during the pay period following the date the Department received notice of their successful completion of the test. Officers not passing the authorized proficiency test may retest after six (6) months.

(e) Officers passing the proficiency test may be required to be reassessed.

953.3 MENTAL HEALTH CERTIFICATION PAY

Eligible officers shall be compensated for mental health certification as identified in the Meet and Confer Agreement. The Department identifies these officers as part of the Crisis Intervention Team (CIT).

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(a) In order to be eligible for CIT pay, officers must attend the forty (40) hour TCOLE mental health certification class and pass the course test and meet the following requirements:

1. Regularly assigned to a Patrol shift.
2. Designated by the commander to receive CIT pay based on the needs of the Command (e.g., appropriate shift distribution of stipends).
3. Attend required mental health/crisis intervention update training.

(b) Officers above the rank of police officer are ineligible to receive CIT pay.

(c) CIT officers will be required to utilize their intervention skills when requested or needed during the course and scope of their patrol duties.

(d) CIT officers who fail to utilize their intervention skills when required or needed may be deemed ineligible to receive the stipend. The officer's commander will decide this on a case-by-case basis and/or documented mental health report activity and make a recommendation to the appropriate assistant chief. The Chief of Police will make the final decision.

953.4 EDUCATION AND CERTIFICATE PAY

An officer shall be entitled to either Certificate pay or Education pay as outlined in the Meet and Confer Agreement but shall not be entitled to both. Education pay shall only be payable for degrees or college credit from an accredited college or university as defined by the Meet and Confer Agreement.

(a) Only officers hired before March 25, 2001 are eligible for certificate pay if they have been awarded the TCOLE Intermediate or Advanced Certificate.

(b) An officer holding at least 60 hours of college credit, an Associates, Bachelors, or Masters degree from a nationally accredited college or university may receive education pay as authorized by the Meet and Confer Agreement.

953.5 FIELD TRAINING OFFICER PAY

Field Training Officer (FTO) pay is eligible for officers assigned to the Field Training Unit as a Field Training Officer and who meet the requirements outlined in the FTP SOP.

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Austin Police Department
General Orders

Attendance and Leave

955.1 PURPOSE AND SCOPE

This order outlines employee attendance requirements, leave benefits, and the basic procedures to be followed when using leave time. The types of leave covered in this order include vacation leave, exception vacation leave, personal holiday, sick leave, Family Medical Leave Act (FMLA), compensatory time, emergency leave, leave without pay, leave of absence, administrative leave, and military leave.

(a) Guidelines for on-duty injury, illness, and crash incidents are outlined in General Order 956 (On-Duty Injury and Illness).

(b) Guidelines for Limited Duty status, Extended Limited Duty status, and the Return to Work Programs are outlined in General Order 958 (Limited Duty, Extended Limited Duty, Return to Work and Pregnancy).

955.1.1 DEFINITIONS

Exempt Positions - Positions exempt from the overtime provisions of the Fair Labor Standards Act. Employees in these positions are "salaried" and are not eligible for overtime pay or compensatory time.

Non-exempt Positions - Positions that meet the overtime requirements of the Fair Labor Standards Act. Employees in these positions will receive overtime pay or compensatory time for productive hours worked in excess of forty (40) in a work week.

Productive Time (Civilian Personnel) - Established by City of Austin Personnel Policy.

Productive Time (Sworn Personnel) - For the purposes of computing overtime all approved paid leave, other than sick and vacation leave, shall be calculated as hours worked as established by the Meet and Confer Agreement.

Law Enforcement Related Employment (LERE) - Defined in General Order 949.1.1

Non - Law Enforcement related Employment (Non-LERE) - Defined in General Order 949.1.1

Department Overtime - Voluntary participation in job or duty related assignments originating from within the Department, which are outside an employee's regularly scheduled 40 hours of work per week, and for which the employee normally, but not necessarily, receives overtime compensation from the City of Austin. Compensation either can be at the expense of the Department or reimbursed through outside funding (e.g. grants). This does not include Court Overtime, late calls, overtime related to workload or emergency holdovers.

955.2 GENERAL ATTENDANCE GUIDELINES

(a) Employees will not be absent from work without prior approval from an immediate supervisor.

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Rodriguez/Talley
(Consolidated Cases)
COA 0694

1. Unless a different notification is required by a Unit SOP, employees have the responsibility of notifying an immediate supervisor at least one (1) hour prior to the scheduled work start time if they are going to be absent.
2. Employees who fail to report to work at the assigned place and time, or who leave work or an assignment without proper authorization will be subject to disciplinary action.
3. Employees shall not work in excess of 76 hours of any combination of regular duty, department overtime, or LERE hours within a work-week without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.
4. Employees shall not work more than 16 hours of any combination of regular duty, department overtime, or LERE hours within a consecutive 24-hour period without the approval of a lieutenant or above for sworn employees, or the employee's supervisor/manager for civilian employees.
   (a) A 24 -hour period is any consecutive 24 -hours, regardless of the time the work started.
   (b) The employee is responsible for notifying the appropriate supervisor two (2) hours prior to the 16th hour of the 24-hour period. The name of the approving supervisor will be noted on the employee's overtime assignment form.

955.2.1 TIMESHEETS

In order for the Department's payroll records to be properly and accurately maintained it is necessary that weekly timesheets be submitted to APD HR for each employee. Employees are responsible for the accurate recording of their own time on the weekly timesheet.

(a) Attendance records will be based on a work week that begins at 12:00 am on Sunday and ends at midnight on Saturday.

(b) Within each section, an employee may be designated as timekeeper to ensure completion and proper submission of weekly timesheets.

(c) All timesheets shall be:
   1. Completed in ink; and
   2. Signed and dated by the employee to attest to accuracy; and
   3. Signed by a supervisor to indicate timesheet approval.

(d) Completed and signed timesheets must be turned in to APD HR no later than 4:00 pm on Thursday of each week. In the event the City calls for an earlier payroll deadline, APD HR will send notification to all sections on the deadline to turn in timesheets.

(e) Employees are responsible for submitting a corrected timesheet to the immediate supervisor if work hours or leave type changes after a signed timesheet has been submitted. Failure to do so may be considered falsification of an official City document. Any corrections to a timesheet must be initialed by an employee's supervisor.

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955.2.2 FLEX TIME
Flex time is an adjustment of work hours on an hour-for-hour basis within a work week or pay week, as authorized.

(a) All flex time adjustments must be approved in advance by the employee's supervisor; employees may not make his own decisions pertaining to scheduled work hours or adjustments to them.

(b) The weekly timesheet should reflect the actual hours worked each day to ensure accurate attendance records.

(c) For non-exempt civilian and sworn personnel, flex time must be used within the same work week they are accrued. Flex hours cannot be carried over to another week. Productive hours that exceed the 40-hour work week are required to be recorded as authorized overtime or compensatory time.

(d) For exempt civilian and sworn personnel, flex time must be used within the same pay period it was accrued. Flex hours cannot be carried over to another pay period.

955.3 GENERAL LEAVE GUIDELINES
When reviewing leave requests, supervisors will consider the needs of the Department and availability of other personnel before approving the requests.

(a) Employees requesting to use any personal leave (e.g., vacation, exception, compensatory, personal holiday) shall submit the appropriate leave request form to their immediate supervisor for approval.

1. Leave requests will not be approved when the leave will create the need for backfill unless exigent circumstances exist.

2. Sworn employees may not use any personal leave (e.g., vacation, exception, compensatory, personal holiday) to work department overtime, that coincides with their normal shift schedule (i.e., day shift, evening shift, night shift), unless approved by the Chief of Police, or his designee or under one of the following situations.

    (a) Personal leave may be taken to work events staffed by APD Special Events and the HEC Grants Coordinator if doing so will not create a need for backfill of their regular assignment.

    (b) In order to ensure adequate patrol staffing, officers and detectives/ corporals in non-patrol assignments may take vacation to fill a patrol vacancy if doing so does not create a need for their position to be backfilled.

3. Sworn employees must submit an *APD Leave Request Form* (PD0069A or E) for:

    (a) paid continuous leave of 60 days (320 hours) or less for non-medical purposes, or

    (b) pre-approved use of non-FMLA sick leave.

4. *APD Leave of Absence Form* (PD0069C) for:

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(a) Any unpaid leave, regardless of length

(b) Any leave exceeding more than 60 days, other than FMLA qualified

(c) Any leave of 30 days or more, if extending leave after FMLA approved leave has been exhausted

(b) It is the intent of this order to provide a guideline about how vacation days are granted when two or more employees are seeking the same vacation days and not all requests can be granted. First and foremost, all attempts should be made to resolve the situation through mutual agreement as facilitated by the supervisor. A healthy workplace is one where employees work with each other to create a fair and equitable process for resolving internal differences. However, if a voluntary, mutual agreement cannot be reached to resolve conflicts over vacation days, then the following seniority guidelines will be followed:

1. When the number of employees requesting personal leave exceeds the limit allowed in a unit or shift, the supervisor will consider the employee's time in the unit and seniority in the department. Additionally, the supervisor should consider the reasons for the competing requests when determining priority.

(c) Non-Sworn employees must submit a:

1. HRD/ Leave Request Form, effective 10/1/2004, updated 11/1/2010 any time an employee is absent regardless of the length of time or FMLA status, except when submitting the form in b) below.

2. *APD Leave of Absence Form* (PD0069C) to request leave time of:

(a) Any additional leave after exhaustion of FMLA approved leave

(b) Any leave of 30 days or more that:

1. Is not FMLA qualified; or,

2. The employee is not FMLA eligible; or,

3. For non-medical reasons such as e.g. sabbaticals or extended vacation.

(c) Any leave of 30 days or more, if extending leave after FMLA approved leave has been exhausted

3. The APD Court Liaison Unit will be notified when the following employees are on approved leave:

(a) Sworn

(b) Non-sworn who are subject to subpoenas

4. Supervisors shall complete the appropriate leave request form on behalf of the employee if the employee is unable or unavailable to do so.

(d) Employees requesting to use sick leave shall follow the guidelines outlined in the sick leave section of this order.

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(e) Supervisors and employees are responsible for ensuring that employees have sufficient leave time accrued prior to approving any leave request.

1. Employees shall not schedule leave time for use in the same pay period in which it is earned.

2. Leave time may not be taken in periods of less than a quarter (1/4) hour.

955.3.1 LEAVE ACCRUAL AND LONGEVITY WHILE ON APPROVED LEAVE

(a) Employees continue to accrue vacation leave, sick leave, and longevity while the employee is absent on approved vacation, exception vacation, personal holiday, sick, injury, compensatory, short-tour paid military leave, leave without pay, and FMLA.

(b) Employees continue to accrue longevity while the employee is absent on long-tour military leave of absence (without pay), but ceases to accrue vacation and sick leave.

(c) Employees will not accrue vacation, exception vacation, personal holiday, sick leave, or longevity while on leave of absence.

955.3.2 LEAVE PAYOUT UPON SEPARATION

(a) Employees who separate from the Department may be paid up to the following maximum allowable amounts (which may be different than the maximum allowable *accrual* amount):

1. **Vacation Leave**

(a) Civilian employees may be paid up to 240 hours provided the employee has completed their probationary period and given a 10 day notice of intent to separate as required by City of Austin policy.

(b) Sworn employees may be paid up to 240 hours.

2. **Exception Vacation Leave** - Up to 160 hours.

3. **Compensatory Time** - Up to 120 hours.

4. **Sick Leave**

(a) Sworn employees with sixteen (16) or more years of continuous service and who leave in good standing may be paid for accumulated sick leave hours as outlined in the Meet and Confer Agreement.

(b) Civilian employees hired prior to October 1, 1986 that have been employed on a continuous basis and leave in good standing may be paid up to 720 accumulated sick leave hours.

(c) Civilian employees hired on or after October 1, 1986 will not be paid sick leave hours.

(b) Employees who separate from the Department will not receive a payout for:

1. Any hours in excess of the maximum allowable amounts for each type of leave; and

2. Accrued personal holiday, administrative leave, or military leave.

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(c) Sworn employees who have been indefinitely suspended from the Department are eligible for leave payout as outlined in the Meet and Confer Agreement.

(d) An employee's estate will receive payment for all maximum allowable leave amounts accrued by the employee in the event of an employee's death while:

1. Still a member of the Department; or
2. On military leave, for leave accrued up to the employee's last day of active duty with the Department prior to entering military leave.

955.3.3 SWORN EMPLOYEE USE OF LEAVE TIME IN LIEU OF SUSPENSION
The Chief may authorize a sworn employee to use vacation leave, exception vacation leave, compensatory time, or personal holiday when the employee has been temporarily suspended without pay in accordance with the Meet and Confer Agreement.

955.4 VACATION LEAVE

Employees start to accrue vacation leave immediately upon employment with the City; however, a civilian employee is not eligible to use it until completing at least six (6) months of service and a cadet is not eligible to use it until after graduating from the police academy.

(a) Employees accrue vacation leave for 24 pay periods in a calendar year as regulated by City Personnel Policies (civilian) and the Meet and Confer Agreement (sworn).

(b) The maximum allowable amount of vacation leave an employee may accrue and retain at any time is 400 hours.

955.5 EXCEPTION VACATION LEAVE

Employees may accrue exception vacation leave for City-observed holidays as outlined below. As many employees as possible will be given each City-observed holiday off.

(a) Civilian employees:

1. Accrue up to eight (8) hours of exception vacation for each City-observed holiday when:
   (a) The employee works on the holiday; or
   (b) The holiday falls on an employee's regularly scheduled day off.
2. Do not accrue exception vacation when taking off on a City-observed holiday the employee is normally scheduled to work.

(b) Sworn employees accrue up to eight (8) hours of exception vacation for each official City-observed holiday regardless of whether or not the employee works on the holiday.

(c) The maximum allowable amount of exception vacation any civilian employee may accrue is 160 hours.

(d) Effective January 1, 2019, sworn employees may accrue up to 200 hours of exception vacation. This provision shall expire on December 31, 2020 and the maximum hours of exception vacation accrual shall revert to 160 hours.

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(e) Employees desiring to observe an official holiday that falls on a regularly scheduled workday must submit the appropriate leave request form to their immediate supervisor for approval.

(f) Employees who work on December 25 will be paid according to City Personnel Policies (civilian) and the Meet and Confer Agreement (sworn).

(g) Supervisors will schedule employees to use exception vacation when balances approach the 160-hour limit. Exception vacation should be used before the pay period in which the next holiday occurs.

  (a) Civilian employees will be paid for any exception vacation hours accrued in excess of the 160 hour limit.

  (b) Sworn employees are subject to the Meet and Confer Agreement in regards to exception vacation hours accrued in excess of 160 hours.

955.6 PERSONAL HOLIDAY

An employee in a regularly budgeted position who has completed six months of service is eligible for sixteen (16) hours of personal holiday per calendar year. A part-time employee in a regularly budgeted position is allowed personal holiday hours on a prorated basis. Failure to utilize any part of these hours by December 31st of the year accrued will result in forfeiture of the accrued personal holiday hours.

955.7 SICK LEAVE

Employees start to accrue sick leave immediately upon employment and may take it once hours have been actually accrued. Sick leave may be used for doctor appointments, personal illness, maternity purposes, physical incapacity of an employee, or when an employee is required to care for a family member who is ill or incapacitated.

(a) Employees accrue sick leave for 24 pay periods in a calendar year as regulated by City Personnel Policies (civilian) and the Meet and Confer Agreement (sworn).

(b) Sick leave may be accumulated without limit.

(c) Employees who have a serious health condition, or are caring for a parent, spouse, or child with a serious health condition may apply for FMLA by contacting APD HR and/ or request a medical leave of absence in accordance with City Personnel Policy.

(d) Supervisors may, with discretion, visit an employee that is unable to report for duty or has left duty because of illness to determine the extent of the illness and decide whether or not any assistance is needed. Supervisors need to be aware of employees on FMLA as contacting them may violate their privacy rights.

(e) Supervisors may require satisfactory proof of the proper use of sick leave and may disallow sick leave in the absence of such proof.

(f) The Chief may require sworn employees using sick leave to submit to an examination by a physician named by the Chief at the City's expense.

(g) Employees who misuse sick leave are subject to disciplinary action.

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955.7.1 EMPLOYEE RESPONSIBILITIES WHEN USING SICK LEAVE

(a) Employees shall notify their immediate supervisor:

1. Unless otherwise specified in the employee's Unit SOP, at least one (1) hour prior to the employee's work start time if the employee is going to be out sick; or

2. If the employee becomes sick while on-duty to the extent the assignment must be terminated.

(b) Employees who become sick during approved personal leave may change their personal leave to sick leave while ill. It is the responsibility of the employee to contact his immediate supervisor to have the changes made on the timesheet and *Leave Request Form*.

(c) Employees shall contact APD HR to obtain information on employee rights, responsibilities, eligibility and qualifying conditions under the Family and Medical Leave Act (FMLA) when meeting the criteria outlined in the "General Leave Guidelines" section of this order.

(d) Employees who have taken sick leave for 40 or more consecutive work hours for their own medical condition/injury are required to submit a completed *Medical Release to Return to Work, Off the Job Illness/ Injury Form* (PD0119) to their immediate supervisor and APD Risk Management (sworn).

(e) If an employee has taken sick leave for five or more consecutive work days, for a non-qualifying FMLA event, to care for a family member who is ill or incapacitated they should submit a memorandum to their immediate supervisor upon returning to work.

955.7.2 SUPERVISOR RESPONSIBILITIES WHEN EMPLOYEES USE SICK LEAVE

(a) Supervisors will notify the chain-of-command and APD HR when an employee:

1. Has taken sick leave for three (3) consecutive work days and the reason is unknown or the reason indicates that the employee or employee's family member may be experiencing a serious health condition of themselves or a family member; or

2. Has taken sick leave for 40 or more consecutive work hours; or

3. Has an overnight stay in the hospital.

955.7.3 WHEN MEDICAL RELEASE TO RETURN TO WORK IS REQUIRED

An employee may be required to provide a completed *Medical Release to Return to Work Off the Job Illness or Injury Form* (PD0119) in either of the following situations:

(a) Whenever an employee is out for five or more consecutive work days for their own health condition.

(b) Anytime (regardless of length of absence) an employee has an injury/illness that requires medical treatment that would lead the employer (supervisor/manager) to believe the employee may have a serious medical situation such as when the employer becomes aware that:

1. the employee was transported to the hospital,

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2. admitted into the hospital, or
3. had surgery, whether in or out patient.

(c) The employee may be required to submit the completed *Medical Release to Return to Work Off the Job Illness or Injury Form* (PD0119) prior to or upon return to work to one of the following

1. immediate supervisor (Sworn) and
2. APD HR (Civilians) or
3. APD Risk Management (Sworn)

(d) If the Medical Release to Return to Work Form indicates the employee may return to work in a Limited Duty capacity, the employee may be placed on Limited Duty as outlined in General Order 958 (Limited Duty, Extended Limited Duty, and Pregnancy).

955.7.4 EXHAUSTION OF SICK LEAVE

(a) Employees who have exhausted their accrued sick leave may request their personal leave be substituted for sick leave by completing the appropriate leave request form for approval.

(b) Employees may request leave without pay or leave of absence as outlined in this order. Approval must be received prior to the last day personal leave is used.

(c) Employees with an off-duty or non-occupational injury or illness may be terminated when:

1. The employee has exhausted all personal leave, sick leave hours, and FMLA; and
   (a) The employee has exhausted or is not approved for leave without pay or leave of absence as outlined in this order; or
   (b) No Limited Duty or Return to Work assignment is available.

955.8 FAMILY AND MEDICAL LEAVE ACT

(a) Employees shall contact APD HR as soon as practicable to obtain information on employee rights, responsibilities, eligibility, and qualifying conditions under the Family and Medical Leave Act (FMLA) when the employee:

1. Is absent or going to be absent from work on an intermittent basis due to a qualifying personal or family medical condition; or
2. Has taken sick leave for *three (3) or more consecutive days* and is unsure if they will immediately return to work; or
3. Is going to have ongoing treatment for a medical condition; or
4. Has had an overnight stay in the hospital and is unsure if they will immediately return to work.

(b) Guidelines for FMLA eligibility are outlined in City Personnel Policy. Employees may also contact APD HR for information on the Family and Medical Leave Act (FMLA).

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955.9 EMERGENCY LEAVE

Emergency leave is for the purpose of attending funerals, making funeral arrangements, or otherwise attending to the affairs of the deceased for a death in an employee's immediate family. Immediate family includes a parent, spouse, domestic partner, child, sister, brother, grandparent, parent or grandparent of a spouse or domestic partner, or any relative who has been living in your house.

(a) An employee may be requested to provide information to document the necessity of the absence.

(b) The leave request form should indicate the relation of the deceased on the form and be approved by the employee's supervisor.

1. Regular and probationary civilian employees may use up to three consecutive days of emergency leave.
2. Temporary civilian employees may be granted unpaid emergency leave.
3. Commissioned personnel may utilize up to forty (40) hours of emergency leave.
4. Additional time off, if approved, must be taken as vacation, exception vacation, compensatory, personal holiday, or unpaid leave.

955.10 LEAVE WITHOUT PAY

Employees may be granted leave without pay when the employee has exhausted all other leave balances.

(a) The Chief or designee may grant up to one week (40 hours) of leave without pay to an employee.

(b) An employee on leave without pay who exceeds the 40 hour allowance may be granted a leave of absence.

955.11 EXTENDED LEAVE (NON-FMLA)

Employees may be granted an extended leave (leave approved without pay or with pay via use of accrued leave) for a legitimate purpose (e.g., illness, disability, pregnancy, political activity, educational purposes, military duty).

(a) Employee must request an extended leave using *APD Leave of Absence Form* (PD0069C) in accordance with General Order 955.3 (General Leave Guidelines). The completed form must be routed through the chain-of-command for appropriate approval and must include:

1. The reason or need for the leave; and
2. Duration of the leave; and
3. Anticipated date to return to work; and
4. Whether the approval being sought is for paid or unpaid leave; and,
5. Any additional documentation to support the need for the request (e.g., medical).

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(a) Medical documentation can be submitted to APD HR in lieu of sending it through the chain-of-command.

(b) The employee's immediate supervisor is responsible for routing the completed request form through the chain-of-command for review and the forwarding of the original form, with appropriate signatures, to APD-HR for final disposition.

(c) The Chief, or his designee, may grant extended leave to any employee for a period not to exceed thirty (30) days.

(d) All requests for more than 30 days (up to one year) will be delivered to APD-HR to be forwarded to the City Manager's office for review. APD-HR will communicate the City Managers decision on whether the request for leave was approved to the employee's immediate supervisor, who will be responsible for notifying his/her chain of command.

955.12 ADMINISTRATIVE LEAVE

A Department director may grant an employee administrative leave at full pay and benefits for a purpose approved by the City Manager (e.g., blood bank donations, pre-termination hearings, power failure, reduced work day by administrative directive).

(a) Employees may be placed on administrative leave/duty pending an internal investigation (e.g., IA, SIU).

1. Employees placed on administrative leave/duty pending an internal investigation are required to remain available for court appearances.

(b) Time off, when necessary, to vote in national, state, county and municipal elections shall be considered administrative leave.

(c) Employees who refer an applicant who successfully attends at least the first full day of the police academy will be given one (1) day of administrative leave.

1. Employees assigned to the Training or Recruiting Divisions, and all assistant chiefs, are excluded from receiving administrative leave for recruiting an applicant.

2. No more than two (2) days of administrative leave for recruiting an applicant may be accrued or used in a calendar year.

3. The Recruiting Unit will be responsible for maintaining the necessary information for implementation of the program.

955.13 COMPENSATORY TIME

When a non-exempt employee is required to work in excess of a normal 40-hour work week, the employee may be entitled to receive compensatory time in lieu of overtime pay for those extra hours worked.

(a) Guidelines for compensatory time accrual are outlined in General Order 950 (Overtime and Compensatory Time).

(b) The maximum allowable amount of compensatory time which an employee can accrue is 120 hours.

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(c) Supervisors will review compensatory time balances prior to approving an employee to accrue additional compensatory time.

955.14 MILITARY LEAVE

An employee who is responding to orders of the US Armed Forces will be granted up to fifteen (15) working days of paid military leave per federal fiscal year (October 1 through September 30).

(a) Military leave is used for time in which the employee is required to attend military functions during regularly scheduled work hours. Authorized military functions include regularly scheduled "weekend drills" and meetings, physical examinations for selection or admission into the military, physical examinations to maintain a selective service rating or reserve status, travel time, etc.

1. Employees shall provide notice to the Department prior to the dates when military leave, with or without pay, or any other approved leave method is used to attend required military drills or training.

2. The appropriate leave request form will be completed, designating the type of leave to be used. It is not required that copies of written training orders be attached before approval may be given. Copies should be attached or forwarded to the immediate supervisor as soon as possible.

(b) Military Leave will not be used for:

1. Hours before or after regularly scheduled work hours; or

2. Regularly scheduled days off; or

3. Scheduled overtime.

(c) Whenever possible, employees required to attend short Reserve or Guard training sessions that conflict with regular work hours will, at the employee's request, have their schedule adjusted so they may work a full 40-hour week.

(d) Military leave will not be granted for diagnosis or treatment of any service related sickness or disability, for obtaining or sustaining any disability rating, or for treatment in any government facility.

(e) When tours cumulatively exceed the total of 15 days of military Leave, City Personnel Policy allows employees called to active duty to continue receiving pay while their active military duty continues.

955.14.1 ACTIVE DUTY CALL-UP

Although reservists called to active duty are not required to request leave or even notify the employer prior to responding to a call-up, notification should be given to the Department as soon as practical.

(a) Notification of active call-up of less than 30 days may be done verbally to the employee's immediate supervisor and to APD HR. Employees who are scheduled to be activated for more than thirty (30) days will be required to meet with APD HR.

(b) The immediate supervisor shall complete any needed paperwork and make the proper notations on weekly timesheets.

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(c) When a copy of the orders becomes available, a set should be sent to the immediate supervisor and APD HR to retain with other paperwork relating to the absence.

(d) Employees called to active duty may qualify for a military pay supplement in accordance with City Personnel Policy.

(e) Upon release from military orders and pending return to the Department, the employee must contact APD HR.

955.14.2 MILITARY ENLISTMENT

The Department shall grant a military leave of absence (without pay) to employees who desire to enter a military service of the United States.

(a) The leave of absence will continue during the period of active military service of the officer.

(b) Upon receiving an honorable discharge from the military, the employee may make an application for reinstatement in accordance with applicable federal and state law.

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Austin Police Department
General Orders

On-Duty Injury and Illness

956.1 PURPOSE AND SCOPE

The purpose of this order is to provide guidelines for reporting on-duty injuries, illnesses, and deaths to the APD Workers' Compensation Office to ensure proper medical attention is received when appropriate and to document the circumstances of the incident.

Provisions contained herein shall apply to both sworn and civilian employees but only to injuries and illnesses that occur in the authorized course and scope of employment on or after the effective date of this order.

(a) Guidelines for off-duty or non-occupational injury and illness incidents are outlined in General Order 955 (Attendance and Leave).

(b) Guidelines for Limited Duty status, Extended Limited Duty status and the Return to Work Programs are outlined in General Order 958 (Limited Duty, Extended Limited Duty, and Pregnancy).

956.2 DEFINITIONS

Compensable Injury/Illness - An injury or illness suffered by an employee in the course and scope of his employment as determined by the City of Austin's Third Party Administrator. This may include an injury or illness suffered:

(a) During an employee's regular duty hours.

(b) During authorized Department overtime.

(c) Taking law enforcement action as a peace officer while off-duty.

Full Duty - A medical determination that an employee can safely perform all of the essential functions of his job with no limitations or restrictions.

Injury Leave - Leave that is provided to eligible employees who are unable to work due to a compensable injury or illness.

Limited Duty - A medical designation that an employee may return to work with specific and detailed limitations or restrictions.

Extended Limited Duty - An extension of Limited Duty status for non-probationary, sworn employees who have been on Limited Duty in excess of a cumulative total of 1,040 hours as a result of an on-duty or off-duty injury or illness.

No Duty - A medical determination that an employee is unable to return to work.

956.3 REQUIRED REPORT OF ON-DUTY INJURY/ILLNESS

(a) Employees shall report all injuries, illnesses, and vehicle crashes that occur on-duty or qualify as a compensable injury to their supervisor within 24 hours of the occurrence or prior to the start of their next shift.

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(b) Employees who fail to report an injury, illness, or crash as outlined in this order may fail to qualify for wage continuation benefits.

956.3.1 INITIAL MEDICAL TREATMENT

Employees shall seek immediate medical attention when necessary and as required by the nature of the injury or illness. Employees who do not seek medical attention shall be considered on Full Duty status until otherwise determined by a physician as outlined in this order.

(a) At the time of initial treatment, the employee shall have the attending physician complete a Texas Workers' Compensation Work Status Report (DWC-73).

1. The DWC-73 shall include the following information:

(a) Whether the employee should be placed on a No Duty, Limited Duty, or Full Duty status; and

1. If the employee is not cleared to return to work, a follow-up appointment date or return to work date.

2. If the employee is cleared to return to work, any medical restrictions or limitations, and a follow-up appointment date.

2. In the event the employee is seen at a hospital ER and the attending physician will not complete the DWC-73, the employee shall obtain all medical discharge paperwork.

(b) It is the employee's responsibility to ensure the DWC-73 form (or medical discharge paperwork if a DWC-73 is not completed) is received by the APD Workers' Compensation office no later than 24 hours after the initial treatment.

1. Forms or paperwork can be scanned and emailed to "APD Workers' Compensation" or faxed directly to the Workers' Compensation Office (974-6647).

956.4 SUPERVISOR RESPONSIBILITIES

Supervisors learning of any work-related injury or illness, or any crash involving injury or a complaint/statement of injury or pain, shall adhere to the following guidelines:

(a) Ensure the following Workers' Compensation forms are completed:

1. Employer's First Report of Injury/Illness Form (DWC-1).

2. Job Related Injury/Illness Supervisor Investigation Report.

3. City of Austin Workers' Compensation Employee Letter of Rights.

4. Employees Request for Wage Continuation (WC-800).

(b) Completed forms shall be scanned and emailed to "APD Workers' Compensation," or faxed directly to the APD Workers' Compensation Office (974-6647), within 24 hours.

1. All original forms shall be forwarded to the APD Workers' Compensation Office via inter-office mail.

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956.5 INJURY LEAVE GUIDELINES

Injury leave for Department employees shall be granted as follows:

(a) Sworn employees shall receive up to 2,080 hours of injury leave per compensable injury or illness.

(b) Civilian employees may receive up to 80 hours of injury leave per compensable injury or illness that qualifies for wage continuation benefits.

956.5.1 EMPLOYEE RESPONSIBILITIES WHILE ON INJURY LEAVE

All employees placed on injury leave for a compensable injury or illness shall adhere to the following guidelines:

(a) Employees shall be placed on FMLA, if eligible. Employees shall be notified of their FMLA status by APD-HR.

(b) Employees shall attend all doctor appointments as scheduled by their physician. Employees shall be required to schedule a monthly medical appointment if no follow-up appointment is scheduled by the physician.

(c) Employees shall obtain a copy of the completed *Texas Workers' Compensation Work Status Report* (DWC-73) for each doctor appointment and submit it to the APD Workers' Compensation Office within 24 hours of an appointment.

1. It is the employee's responsibility to ensure each DWC-73 is received by the APD Workers' Compensation Office.
2. Completed forms can be scanned and emailed to "APD Workers' Compensation" or faxed directly to the Workers' Compensation Office (974-6647).
3. No employee shall return to work or change their duty status until the DWC-73 form has been received by the APD Workers' Compensation Office indicating the employee can return to work.
4. Employees on a no-duty status must contact APD Risk Management for guidance if they receive a subpoena directing them to appear in court.

(d) Employees shall update their supervisor after each doctor appointment.

(e) Employees shall be assigned to their residence and available Monday-Friday, 8am to 4pm, unless otherwise notified by Risk Management.

1. Employees shall report to their supervisor before leaving their residence except in cases where they are attending physician appointments, physical therapy appointments, or pharmacy visits.
2. Employees wishing to take personal leave (e.g., extended time away from home, go out of town) while on injury leave shall contact Risk Management for instructions.

956.5.2 SWORN EMPLOYEE EXHAUSTION OF INJURY LEAVE

Sworn employees not able to return to work in a Limited Duty or Full Duty capacity after the expiration of the 2,080 hours of injury leave have the following options:

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(a) Sworn employees may submit a written request to the Chief to request an injury leave extension:

1. At least 30 days prior to exhausting their 2,080 hours of injury leave, employees must submit a memorandum to the Chief requesting the extension.
2. The memorandum must be accompanied by a written report (DWC-73) from the employees' physician that indicates an anticipated date to return to work in a Limited Duty or Full Duty capacity.
3. The Chief shall review the request and, at his discretion, may forward the request to City Council for approval or deny the request.

(b) After exhausting any injury leave extension, or if an extension is not granted, sworn employees may:

1. Exhaust all available personal leave hours.
2. Exhaust any remaining FMLA, if applicable.
3. Submit a written request for leave donations pursuant to City of Austin policies.
4. Submit a written request for a medical leave of absence pursuant to City of Austin policies.

(c) Sworn employees still unable to return to work in a Limited Duty or Full Duty capacity after exhausting all the above options may have their employment with the Department terminated.

956.5.3 CIVILIAN EMPLOYEE EXHAUSTION OF INJURY LEAVE

(a) Civilian employees unable to return to work in a Limited Duty or Full Duty capacity after exhausting the 80 hours of injury leave may:

1. Exhaust all available personal leave hours.
2. Exhaust any remaining FMLA, if applicable.
3. Submit a written request for leave donations pursuant to City of Austin policies
4. Submit a written request for a medical leave of absence pursuant to City of Austin policies.

(b) Civilian employees still unable to return to work in a Limited Duty or Full Duty capacity after exhausting all the above options may have their employment with the Department terminated.

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956.6 RESTRICTIONS WHILE ON INJURY LEAVE

Employees on injury leave have the same restrictions as employees on Limited Duty. Employees must know and comply with General order 958.9 Restrictions While on Limited Duty and Extended Limited Duty.

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Austin Police Department
General Orders

Communicable Disease Exposures and Response Protocols

957.1 PURPOSE AND SCOPE

The purpose of this order is to provide reporting guidelines for employees who believe they have been exposed to any communicable disease during the normal course of their work. This order covers the most prevalent types of reported exposures which are Tuberculosis (TB) and Blood Exposures (HIV, Hepatitis B & C).

957.1.1 DEFINITION OF A COMMUNICABLE DISEASE EXPOSURE

When an external source of blood, body fluid or bacteria/virus from an infected person comes into contact with an employees' mucous membranes (eyes, mouth, or nose), an opening in the officers' skin or is inhaled by the officer.

957.1.2 DEFINITION OF DESIGNATED INFECTION CONTROL OFFICER (DICO)

Person serving as an agency's designated infection control officer under section 81.012 of the Health and Safety code. Austin Police Departments designated DICO will be the APD physician.

957.1.3 DICO RESPONSIBILITIES

(a) DICO responsibilities shall include the following:

1. Serve as the point of contact for possible communicable disease exposure reporting and post exposure notification;
2. Evaluate possible exposure events and required responses;
3. Document the exposure follow up process;
4. Interact and communicate with medical facilities involved in exposure testing, and counseling for officers;
5. Monitor state and federal laws, regulations and guidelines for department compliance;
6. Educate department members on current and new guidelines, laws and best practices related to exposures;
7. Collect and maintain data related to exposure statistics and exposure rates for monthly or year-end reports.

957.2 PREVENTION OF EXPOSURE

Each communicable disease has its own methods of causing infection. Each employee can limit the risk involved with any method by simply using the tools that are available to each of them. Use your (PPE's) personnel protection equipment i.e.: Rubber gloves, safety goggles and disposable filter masks to decrease the risk of exposure and becoming infected with any disease/illness.

957.2.1 SUGGESTED EMPLOYEE ACTIONS IN ALL EXPOSURES

Employees believing they have been involved in a blood exposure should:

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Rodriguez/Talley v COA et al
Rodriguez/Talley (Consolidated Cases)
COA 0712

(a) Thoroughly flush mucous membranes with water and thoroughly wash skin with soap and water or hand sanitizer.

(b) It may be appropriate for the exposed employee who has been exposed to release care & custody of the suspect or delegate other tasks to a fellow employee so that the exposed employee may take more immediate decontamination or sanitization measures.

957.3 BLOOD EXPOSURES

A blood exposure can occur when an external source of blood comes into contact with another person's mucous membranes (eyes, mouth, or nose) or an opening in the skin. The highest risk for contamination is with hepatitis.

(a) Notify a supervisor and proceed immediately to any hospital. It is recommended, but not required, to use a hospital that is familiar with blood exposure protocol (e.g., Brackenridge, Seton Main, St. David's).

(b) Upon arriving at the hospital employees should:

1. Explain to the intake nurse that they have been exposed to blood.
2. Review the circumstances of how the exposure occurred with the doctor. The ER doctor will make an initial determination on whether a blood exposure has occurred.

957.3.1 REPORTING REQUIREMENTS FOR ALL EXPOSURES

An employee who believes that he/she has been exposed to any communicable disease shall notify his/her immediate supervisor (at least within 24 hours) or at the start of the next shift in order to be eligible for wage continuation benefits. To safeguard the employee's rights to workers' compensation, any required blood test should be done within 10 days to test for HIV and Hepatitis.

(a) The employee's supervisor shall ensure the following forms are completely filled out. These forms are located in the Workers' Compensation Packet or can be printed from the "Workers' Comp Folder" in the public drive.

1. Employers First Report of Injury or Illness (DWC-1)
2. Supervisor's investigation report
3. Letter of Rights for Employees
4. Employees Request for Wage Continuation (WC-800)
5. Texas Workers Compensation Work Status Report (DWC-73)
   (a) This is filled out completely by the treating physician; however emergency room physicians are not required by law to complete the DWC-73. In these cases the discharge paperwork will suffice.
6. Fax only the signed and notarized Sworn Affidavit Requesting Testing Following an Exposure and addendum to the following: (For All and any type of exposures Blood, TB, Hepatitis, etc) to: The HHSD Surveillance Program at (512) 972-5772 and The APD Physician/DICO at (512) 974-6655.

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7. Fax all the above forms and discharge paperwork to the APD Workers' Compensation Office or scan and email the forms from any XEROX network printer to apdworkerscompensation@austintexas.gov.
8. Forward all original documentation to the APD Workers' Compensation Office via interoffice mail.

(b) With all suspected exposure incidents, the employee will also complete an exposure packet which also must be submitted any time that an exposure is reported. The packet will include the exposure affidavit.

1. If the exposure involves a sworn employee they must sign the sworn affidavit requesting testing following an exposure in the presence of another licensed Texas peace officer. The form can be notarized by another peace officer provided that the notarizing peace officer has no relation to the incident and cannot testify to any fact or circumstance surrounding the incident. The notarizing officer and involved employee (exposed officer) cannot be the same person.
   (a) The exposed officer shall complete in 1st person only one of the following exposure packets:
      1. The Non-Needle and/or Sharps Exposure Packet; or
      2. The Needle and/or Sharps Exposure Packet.
   (b) The notarizing peace officer SHALL follow the instructions provided in the packet.
   (c) The employee's supervisor must fax the completed exposure affidavit to the HHSD Surveillance Program at (512) 972-5772 and the APD Physician/DICO at (512) 974-6655.
2. If the employee is a civilian, they will complete the exposure packet titled "Civilian Only Exposure Packet" found in the same folder location; Public/APD approved Forms/Workers comp/exposure packets/Civilian only.
   (a) This exposure packet uses a sworn notary page instead of the Peace Officer addendum form.
   (b) The exposure packet will then be submitted in the same manner as the sworn exposure affidavit.

957.3.2 SUPERVISOR RESPONSIBILITIES

Regardless of whether an ER doctor makes an initial determination that a blood exposure has occurred, supervisors will:

(a) Make direct phone contact with the on-duty Watch Lieutenant via (512) 974-7822. If no answer, have APD Communications facilitate direct phone contact. Brief the Watch Lieutenant on the circumstances of the exposure.

(b) Notify the Austin Travis County Health and Human Services Department (HHSD) at (512) 972-5555 of any potential employee blood exposure incident. Only the HHSD

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doctor can make a final determination on whether a blood exposure has occurred. If it is after hours, supervisors will leave a short message with the employee's name, incident number, and whether the ER doctor made an initial determination of blood exposure.

(c) Fax the affidavit and addendum to HHSD and the APD physician/DICO. Then fax all the above forms and discharge paperwork to the APD Workers' Compensation Office or scan and email the forms from any XEROX network printer to apdworkerscompensation@austintexas.gov

957.4 POST EXPOSURE INFORMATION

Lab results from source blood draws completed by the Austin Travis County Health and Human Services will be faxed to the Austin Police Department Physician/DICO.

(a) The Department physician/DICO will contact the employee within 72 hours and inform the employee of the results.

(b) Employees who have not heard from the Department physician/DICO within 72 hours of the incident should contact the physician directly.

957.5 FILING OF CRIMINAL CHARGES

If criminal charges are to be filed against an individual for attempting to expose an officer to blood, or to cause alarm or harass an officer by putting them in fear of being infected, regardless if the individual is carrying a communicable disease, the officer should proceed with the filing of Harassment of a Public Servant (Tex. Penal Code § 22.11).

(a) The individual need not be infected with a communicable disease to meet the elements of Harassment of a Public Servant and therefore no blood draw from the individual will be performed for the purpose of filing criminal charges.

(b) Under no circumstances will any suspect or person be requested to submit to any blood and/or saliva sample for testing. Only the Travis County Health and Human Services has such authority.

957.6 TUBERCULOSIS (TB) EXPOSURES

Tuberculosis is a disease that is spread from person to person through the air. It must be inhaled by the victim for it to be contracted. Almost all TB can be cured. Becoming infected with TB is more difficult than previously believed. TB is almost always contracted while indoors with an infected person for long periods of time; the suns' UV (ultra violet) light kills active TB germs including drug resistant strains.

(a) The employee who suspects that they have been exposed to TB shall notify their supervisor and complete the workers' compensation packet and the exposure affidavit packet. There is no need to report to any Emergency room for possible TB exposures.

(b) The exposed employee shall contact the TB Surveillance team at the Travis County Health and Human Services Department (HHSD) during normal business hours. Their

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offices and clinic are located at 15 Waller street, Austin TX. This is the only location where testing for the COA is conducted. The Number is (512) 972-5460.

(c) The exposed employee will review the circumstances with the team and may arrange an appointment time for their TB testing. Employees are reminded to contact the TB surveillance team by phone prior to any testing/treatment. Prior calling will help in arranging the most convenient and expedited testing for the employee.

(d) It is suggested that TB testing be completed by the HHSD team for they have the most advanced experience dealing with TB and utilize the more advanced blood testing procedures. The blood test is more accurate, less subjective and requires only one visit, unlike the skin test which requires a subsequent interpretation visit.

(e) If an exposed employee desires that their personal physician perform the test, the employee MUST ensure that their personal physician accepts workers' compensation claims. Otherwise, tests conducted will be at the employees' expense.

957.7 EVIDENCE /PROPERTY HANDLING PROCEDURES

Evidence or other materials coming into the custody of the Police Department and suspected of being contaminated should be treated with extraordinary care.

(a) General procedures:

1. All materials contaminated with blood or other body fluids, whether wet or dry, will be handled with disposable rubber gloves.

2. Hypodermic needles and other sharp objects will be packaged in puncture resistant containers.

   (a) To prevent needle stick injuries; employees SHOULD NOT cap, bend, break, or remove needles from the syringe, or otherwise manipulate the needle by hand. The needles placement in the protective container is of more importance.

3. Blood or body fluid contaminated equipment

   (a) Any Non-disposable item, when contaminated with blood/body fluid, will be treated as if the item has been exposed to a communicable disease. It should be cleaned with a disinfectant agent (i.e. Chlorine bleach-water solution of 1:10; as recommended by the CDC- Center for Disease Control) followed by a thorough washing with soap and water. Metal items, such as handcuffs or service weapons, require drying and lubrication/oil treatment afterwards to prevent rust.

   (b) Officer's Clothing contaminated with blood or body fluid should be removed evaluated by EMS or AFD and decontaminated at the scene or bagged as hazardous materials and disposed of per AFD Hazardous Materials policy or EMS Biohazard policy.

4. Evidence with blood or body fluids should be packaged in accordance with methods outlined in evidence handling procedures available at evidence drop off locations. Items with blood or body fluid must be packaged to prevent any

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cross contamination of other evidence/property and must be clearly marked as "Biohazard". (General Order 618.4.3 (Submitting Biohazard Material)).

957.8 QUARANTINE RESPONSE

The Center for Disease Control (CDC), Department of State Health Services (DSHS) and the Austin/Travis County Health and Human Services Department (ATCHHS) have authority to establish quarantine areas. The ATCHHS is the local health authority. The Austin Police Department will not establish a quarantine area.

(a) General Procedures:

1. Quarantine orders will be obtained by the local health authority (HA).
    (a) In exigent circumstances a verbal notification from the HA to law enforcement at the scene is acceptable as an official order.
    (b) A written or verbal notice is similar to an arrest warrant. This is not an arrest, but a detention under an Order of Protective Custody as issued under HSC 81.162.
2. Persons who try to enter or leave quarantine may be guilty of a 3rd Degree Felony under HSC 81.085.
    (a) HSC 81.085 authorizes “reasonable force” to secure a quarantine area and except as directed by the department (DSHS) or HA, to prevent an individual from entering or leaving the quarantine area.
    (b) Officers will follow the Department’s Response to Resistance general order.
3. The initial officers at the site of quarantine may not have full Personal Protective Equipment, or PPE.
    (a) These officers shall remain outside of the quarantine area as much as possible, avoiding the “hot zone” unless needed by AFD/EMS. They will remain on scene until relieved by better equipped and trained units. The officers may contact AFD/EMS to obtain PPE.

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GO
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Austin Police Department
General Orders

Limited Duty, Extended Limited Duty, Return to Work, and Pregnancy

958.1 PURPOSE AND SCOPE

The purpose of this order is to establish procedures for assigning employees to Limited Duty or Extended Limited Duty. These assignments may be available to an employee who has an on-duty, off-duty, or non-occupational injury or illness, or is pregnant.

(a) Guidelines for on-duty injury, illness, and crash incidents can be found in General Order 956 (On-Duty Injury and Illness).

(b) Guidelines for off-duty or non-occupational injury and illness incidents can be found in General Order 955 (Attendance and Leave).

958.2 DEFINITIONS

Limited Duty Status - A temporary, limited term assignment not requiring performance of the full range of duties associated with the regular job classification due to medical limitations or restrictions.

Extended Limited Duty - An extension of Limited Duty status for non-probationary, sworn employees who have been on Limited Duty in excess of a cumulative total of 1,040 hours as a result of an on-duty or off-duty injury or illness.

Return to Work Program (RTW) - A City of Austin program that attempts to locate alternate job placement within the Department or City for employees who can no longer perform the essential functions of their job due to:

(a) A compensable injury or illness; or

(b) An off-duty injury or illness that is designated as meeting the definition of a disability under ADA and,

1. The employee is non-sworn (as per City policy); or,
2. The employee is sworn and has been designated not physically or mentally fit by the process set forth in Texas Local Government Code 143.081.

958.3 LIMITED DUTY GUIDELINES

Limited Duty assignments are a management prerogative and not an employee right. These assignments are intended to provide employees with the ability to continue working within the limits of their restrictions and limitations on a temporary basis while providing the Department with productive employees during the interim period. The Department will engage in a good faith interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability.

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(a) The Chief has the ultimate authority to determine whether it is in the best interest of the Department to place an employee on Limited Duty status and, if so, in what position within the Department.

(b) For sworn employees, the Chief may at any time invoke the fitness for duty process as outlined in Texas Local Government Code 143.081.

(c) If a sworn employee is designated not physically or mentally fit to perform the essential job functions by the process outlined in Texas Local Government Code 143.081, the procedure outlined in General Order 958.3.1(d) 2(a) shall apply.

(d) Limited Duty assignments shall be subject to continuous reassessment dependent upon:

1. Department need; and
2. The estimated length of time the employee is expected to remain on Limited Duty; and
3. The employee's current medical limitations and restrictions as dictated by a physician; and
4. The employee's ability to perform in a Limited Duty capacity.

(e) At the Department's discretion, employees with a compensable injury or illness may be assigned to a Limited Duty position outside of their normal assignment or duties if it becomes available and is consistent with any medical restrictions.

1. If offered, employees shall be required to take the offered assignment; failure to accept the assignment may result in the employee forfeiting their workers' compensation indemnity benefits and may be subject to disciplinary actions.
2. If an assignment meeting the required restrictions and limitations is unavailable, employees may be eligible for FMLA or Worker's Compensation indemnity benefits until an assignment becomes available.
3. Employees who disagree as to whether their bona fide job offer is within the parameters of their medical limitations will be required to submit a memo along with an updated DWC-73 which supports their new limitations and/or work status change. This documentation will be submitted to Risk Management within 48 hours of receiving a bona fide job offer. Failure to provide this updated information may subject an employee to disciplinary actions.

(f) Employees on a Limited Duty assignment shall be required to:

1. Undergo a medical re-evaluation, as directed by a physician; or,
2. Submit an updated DWC-73 or a Medical Release to Return to Work Form (PD0119) when directed by a Risk Management supervisor; and,
3. Attend Designated Doctor appointments set by the Texas Department of Insurance, Division of Worker's Compensation.

(g) Employees with an off-duty injury or illness may be offered a Limited Duty position. If a position is offered, the employee may either accept the position or continue to draw on personal leave balances (e.g., sick, vacation).

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(h) Employees that cannot adequately perform in a Limited Duty assignment may have such assignment modified or discontinued.

(i) The lack of Department need or a change in priorities may result in the employee's removal from or modification of a Limited Duty assignment.

(j) The Department may place conditions as deemed appropriate upon any Limited Duty assignment.

958.3.1 SWORN EMPLOYEES

All Limited Duty assignments for sworn personnel shall be coordinated through the APD Risk Management Unit and adhere to the following guidelines:

(a) Sworn employees shall be notified in writing by APD Risk Management of any approved, modified or canceled Limited Duty assignment.

(b) Sworn employees wishing to be assigned to a Limited Duty assignment different than that identified by Risk Management must receive prior approval from the employee's chain-of-command and APD Risk Management.

1. Consideration for any special Limited Duty assignments, including requests to keep a sworn employee in his current work assignment, shall be based on written justification by the sworn employee's supervisor.

2. The sworn employee's supervisor shall complete a *Request to Keep Limited Duty Employee* (PD0061) and forward it up the chain-of-command for approval.

3. Upon approval by the sworn employee's chain-of-command, completed forms shall be forwarded to the APD Risk Management sergeant for final approval, with the following exception:

(a) Sworn employees expected to remain on Limited Duty for no more than two (2) consecutive weeks shall be allowed to stay in their current work assignment with the approval of their commander.

(c) The supervisor to whom the Limited Duty sworn employee is assigned shall complete a *Limited Duty Assignment Evaluation* to document the employee's performance and forward it to the employee's regular duty supervisor and APD Risk Management.

(d) Sworn employees may remain on Limited Duty status for no more than a cumulative total of 1,040 hours (including, but not limited to, vacation, exception vacation, sick time, comp time, personal holidays, LTD, POD, and PFS hours) per incident of injury or illness.

1. Prior to returning to full duty, sworn employees shall coordinate with APD Risk Management and may be required to provide a Medical Release to Return to Work Form (PD0119) completed by their physician.

2. At least thirty (30) days before the expiration of a cumulative total of 1,040 hours of Limited Duty, the employee's physician must submit a written report to APD Risk Management indicating an anticipated return to work date, identifying the duration of any restrictions on the ability to return to full duty, and supporting the need for any additional limited duty time.

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3. If a sworn employee's physician determines that the employee cannot return to Full Duty after the initial 1,040 hours, sworn employees may request an Extended Limited Duty assignment as outlined in this order. The Chief may approve the Extended Limited Duty assignment or invoke the fitness for duty process outlined in Texas Local Government Code 143.081.

    (a) If a sworn employee is not approved for a Limited Duty or Extended Limited Duty assignment and is designated not physically or mentally fit for duty by the process outlined in Texas Local Government Code 143.081, employment may be terminated. Prior to termination the employee can be referred to the Return to Work (RTW) Program if the below conditions are met:

        1. **Compensable on-duty injury or illness** will automatically qualify the employee for the RTW program. If the sworn employee elects to participate and is enrolled into the City of Austin RTW Program, the first 90 days shall be for placement within the Department. If no Departmental placement is found, the second 90 days shall be for placement in other city departments. If no placement is found, employment may be terminated

        2. **Off-duty injury or illness** requires an ADA Committee review - If the sworn employee is eligible and elects to participate in the City of Austin RTW Program, enrollment will be for the designated days allowed by the COA RTW policy for this classification of injury/illness. If no placement is found, employment may be terminated.

958.3.2 CIVILIAN EMPLOYEES

All Limited Duty assignments for civilian personnel shall adhere to the following guidelines:

(a) Civilian employees shall be notified in writing of any approved, modified or canceled Limited Duty assignment.

(b) **On-Duty Injury and Illness**

1. All Limited Duty assignments for on-duty injury and illness shall be coordinated through the APD Workers' Compensation Office.

    (a) Civilian employees may be entered into the Return to Work Program for an on-duty injury and illness for a total of 180 days.

        1. The first 90 days shall be under the APD Return to Work Program for placement within the Department.

        2. If no placement is found, the second 90 days shall be under the City of Austin Return to Work Program for placement within the City of Austin.

    (b) If no placement is found in APD or the City of Austin after 180 days, employment may be terminated.

(c) **Off-Duty Injury and Illness**

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1. All Limited Duty assignments for off-duty injury and illness shall be coordinated through APD-HR.
    (a) Assignments shall only be accommodated if one is available in the employee's current work unit and the assignment is within the medical restrictions determined by the physician.
    (b) Civilian employees may remain on Limited Duty status for no more than a cumulative total of 520 hours per off-duty injury and illness.
    (c) Reduced work schedules shall be considered as a Limited Duty assignment for no more than 30 days. Employees unable to return to Full Duty status after 30 days will be placed on No Duty status. Employees on a reduced work schedule may be eligible for FMLA.
    (d) As soon as APD-HR becomes aware that the employee will be unable to return to Full Duty after 8 weeks of being on a Limited Duty status, the employee will be informed of his rights under FMLA, ADA and the City of Austin Return to Work Program as appropriate.
2. If a Limited Duty assignment is not available, employees shall be placed on a No Duty status using their own personal leave (e.g., sick, vacation).
    (a) Employees shall be informed of their rights under ADA and the City of Austin Return to Work Program, as appropriate.
    (b) Employees may be eligible for FMLA.
    (c) Employees are subject to leave restrictions and limitations as outlined in General Order 955 (Attendance and Leave).

958.4 EXTENDED LIMITED DUTY ASSIGNMENTS

This section applies only to non-probationary, civil service employees. There is no constitutional or statutory entitlement to an Extended Limited Duty assignment. The Chief of Police has created this order in recognition of the fact that in many instances, an injured officer may still make a significant contribution to the Department's mission.

(a) The intention of this order is to place injured employees in temporary positions with the understanding and expectation that they will return to Full Duty at some future date.
    1. Extended Limited Duty assignments are not intended to create a permanent Limited Duty career path.
    2. While Extended Limited Duty assignments have no specified time limit, the Chief of Police retains the right to impose one at any time.

(b) Two (2) essential job functions of every Austin Police Officer are the ability to make a forcible arrest and qualify with a firearm. Extended Limited Duty positions waive these specific essential functions as long as the following requirements are met:
    1. The employee obtains an exemption from TCOLE waiving any State mandated requirements for certification that the employee cannot comply with due to his injury or illness.

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2. A copy of the exemption is on file with the Department.

(c) While on Extended Limited Duty, employees are required to have a quarterly medical examination by their own physician to determine whether the employee is physically and mentally capable of returning to Full Duty.

1. For on-duty injuries or illnesses, the employee is responsible for submitting a completed DWC-73 form to the APD Workers' Compensation Office within 24 hours of the appointment.

2. For off-duty injuries or illnesses, the employee is responsible for submitting in a completed *Medical Release to Return to Work* form to the APD Workers' Compensation Office within 24 hours of the appointment.

3. If the Chief of Police questions a physician's report, the Chief may formally invoke the fitness for duty process outlined in Texas Local Government Code Section 143.081.

(d) Extended Limited Duty assignments will be evaluated every six (6) months. The Chief of Police has the authority to invoke the fitness for duty process at any time if a question arises as to whether the employee is sufficiently physically and mentally fit to continue his duties.

(e) The assignment to Extended Limited Duty does not affect an employees entitlement to:

1. A paid leave of absence for an injury or illness that is sustained in the line of duty pursuant to Texas Local Government Code Section 143.073; or

2. Any other form of leave that the employee may be entitled to under Chapter B of the City of Austin Personnel Policies, the Meet and Confer Agreement, and State or Federal law. (e.g., FMLA).

958.4.1 APPLYING FOR AN EXTENDED LIMITED DUTY ASSIGNMENT

A sworn employee who has been on Limited Duty status a cumulative total in excess of 1,040 hours may be placed on Extended Limited Duty as provided for in this order and only with the approval of the Chief or an assistant chief.

(a) At least thirty (30) days before the expiration of a cumulative total of 1,040 hours of Limited Duty, the employees' physician must submit a written report to the APD Workers' Compensation Office indicating a reasonable anticipated date to return to Full Duty.

1. If the physician determines the employee will not be able to return to Full Duty by the expiration of a cumulative total of 1040 hours of Limited Duty, the officer may, within ten (10) days of the expiration of the 1040 hours, submit a written request for an Extended Limited Duty assignment to the Chief of Police through the APD Workers' Compensation office.

2. The Chief of Police has the authority to deny an officer placement in an Extended Limited Duty assignment if the Chief determines that such placement is not in the best interest of the Department.

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(b) Preferences for Extended Limited Duty assignments shall be given to employees with a compensable on-duty injury or illness, as well as employees with a qualifying disability as outlined below.

958.4.2 QUALIFYING DISABILITY

(a) If a condition qualifies as a disability under State or Federal law, the employee with the qualifying disability shall have preference for an Extended Limited Duty assignment provided:

1. The employee can perform the essential functions of the Extended Limited Duty assignment; and
2. The Chief of Police determines it is in the best interest of the Department to place the employee in that assignment.

(b) Employees claiming to have a qualifying disability must submit sufficient supporting medical documentation from their physician in order to have preference in the selection process.

958.4.3 REVISION OR REVOCATION OF THIS ORDER

The Chief of Police has the authority to discontinue or amend any part of this order at any time when it is determined to be in the best interest of the Department.

(a) In the event the Chief of Police should rescind or amend this order, employees in Extended Limited Duty assignments must obtain a release to Full Duty from their physician within 90 days of being notified the assignment will be eliminated.

(b) If any or all Extended Limited Duty positions are eliminated and an employee is unable to return to Full Duty within 90 days, every effort will be made to locate alternate placement within the Department.

(c) If alternative placement within the Department is not successful, employees who have suffered a compensable injury or illness shall be referred to the City of Austin Return to Work Program. If placement through this program is not successful, employment shall be terminated.

958.5 PREGNANCY

This section outlines:

(a) The method of reporting pregnancy.

(b) The guidelines for reassignment to a Limited Duty assignment.

(c) The type of leave available to pregnant employees.

(d) The guidelines for returning to Full Duty.

958.5.1 NOTIFICATION OF PREGNANCY AND REASSIGNMENT

(a) An employee should notify her commander/manager that she is pregnant when she feels she can no longer perform one or more of the essential functions of her normal duties.

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1. Upon receiving such notification from an employee, a commander/manager has the discretion to place the employee on Special Assignment to an appropriate position without the documentation of a physician.
2. The employee shall not be considered on Limited Duty due to the lack of medical documentation.

(b) An employee shall notify her commander/manager if her physician believes she can no longer perform one or more of the essential functions of her normal duties.

1. The employee shall submit to her commander/manager a written request for reassignment to a Limited Duty position within the Department.
2. The physician's opinion shall be attached to such request, together with the physician's recommendation on restrictions and limitations of duties.
3. The commander/manager shall forward a copy of the request to the APD Risk Management Unit for the employee's confidential medical file.
4. Reassignment to a Limited Duty position shall be handled by the APD Risk Management Unit and should be made in accordance with a physician's recommended restrictions and limitations necessitated by the employee's changing physical condition.
5. The duration of such reassignment shall include the time prescribed by the physician.

(c) A supervisor in an employee's chain-of-command may place the employee on Special Assignment if reasons can be articulated as to why the employee is no longer able to perform one or more of the essential functions of her duties.

1. The supervisor may request the employee to provide medical documentation from her physician regarding her ability or inability to perform the essential functions of her job.
2. If the medical documentation indicates the employee has:
   (a) No restrictions and/or limitations, the employee shall only be placed on Special Assignment if requested as outlined in (a).
   (b) Restrictions and/or limitations, the chain-of-command shall follow the procedures for placing the employee on Limited Duty as outlined in (b).

958.5.2 GRIEVANCE PROCEDURES

If an employee's physician has requested the employee be assigned to a Limited Duty position and the physician feels that the Department is not providing proper reassignment, the employee may file a grievance in writing to her commander/manager.

(a) The employee shall be required to present a copy of the following:

1. The physician's original request for reassignment; and
2. The recommended restrictions and limitations of the employee; and

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3. A written statement listing the reason(s) the employee believes the assignment is inappropriate.

958.5.3 REQUESTING FMLA OR LEAVE OF ABSENCE WHILE PREGNANT

(a) Employees eligible for Family Medical Leave (FMLA) shall be granted up to 12 weeks each calendar year for the birth of a child.

1. Employees who request FMLA must submit a completed *Request for Family and Medical Leave* form and *Certification of Health Care Provider* form to APD-HR at least thirty (30) days prior to the estimated delivery date.

(b) Employees not eligible for FMLA, or who have exhausted FMLA leave, may request a leave of absence as outlined in City of Austin Policies.

1. Employees requesting a leave of absence must make the request in writing.
2. The request shall include the anticipated date of return and any other documentation the employee feels is necessary to support the request.
3. The request shall be submitted to APD-HR.

(c) While on leave, employees may be paid by using approved personal leave time in accordance with City Personnel Policies.

958.5.4 RETURNING TO DUTY

Before returning to work the employee must provide a *Medical Release to Return to Work* form to their supervisor indicating the anticipated return to a Limited Duty or Full Duty status.

(a) If the employee returns on a Limited Duty status, the form shall include any restrictions and either an anticipated date the employee will return to Full Duty or the employee's next anticipated medical evaluation appointment.

(b) If the employee requires an extension of their Limited Duty status beyond the anticipated return to Full Duty date, the employee must obtain an additional *Medical Release to Return to Work* form. The form shall include any restrictions and a new anticipated date to return to Full Duty or the employee's next anticipated medical evaluation appointment.

(c) The employee is expected to maintain a current Medical Release to Return to Work form on file with their supervisor and APD Risk Management with either an anticipated return to Full Duty date or employee's next anticipated medical evaluation appointment date until they have been released to Full Duty status by their treating doctor.

958.6 SWORN PROBATIONARY EMPLOYEES

A sworn employee's probationary period begins on the date of commission with APD and ends after 15 months. Employees who are assigned to a temporary Limited Duty assignment or who take leave (other than non-FMLA vacation), shall have their probation extended by a period of time equal to the assignment or leave taken.

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958.6.1 OFFICERS ENROLLED IN THE FIELD TRAINING PROGRAM

(a) An Officer is automatically enrolled in the Field Training Program upon commission as a police officer and must complete a minimum of 15 months of Field Training assigned to a uniformed patrol shift.

(b) Officers who are assigned to a non-patrol uniformed shift (including DTAC), will have their Field Training enrollment extended by a period of time equal to the assignment.

(c) Completion of the program is defined as having trained the minimum number of training days with a Field Training Officer as determined by the SOP (e.g., Modified, Standard, or Returning Officer) and upon successful completion of all FTP assignments.

(d) Upon completion of the FTP, the Field Training Coordinator will submit the records to be entered into TCOLE.

958.7 MAINTENANCE OF CERTIFICATION AND TRAINING

(a) Employees assigned to any Limited Duty assignment shall maintain all certification, training, and qualifications appropriate to both their regular and temporary duties provided the certification, training, or qualifications are not in conflict with any limitations or restrictions.

(b) Employees assigned to a Limited Duty assignment shall inform their supervisor of any inability to maintain any certification, training, or qualifications.

958.8 PROMOTION OF CIVIL SERVICE EMPLOYEES

Provided the Chief of Police does not have a valid reason for a promotional bypass, sworn employees on Limited Duty or Extended Limited Duty are eligible for promotion under the following circumstances:

(a) The employee obtains a release to Full Duty from his personal physician prior to the effective date of the promotion; or

(b) An Extended Limited Duty assignment is approved and available in the rank the employee would be promoting to.

958.9 RESTRICTIONS WHILE ON LIMITED DUTY AND EXTENDED LIMITED DUTY

While on Limited Duty or Extended Limited Duty, employees shall not engage in conduct that could possibly hinder their own recovery or safety or the safety of others.

(a) No sworn or civilian employees shall:

1. Drive a City-owned vehicle without supervisor approval.
2. Utilize a take home vehicle without supervisor approval.
3. Participate in any firearms training, practice, or qualifications.
4. Participate in activities that could possibly hinder recovery (e.g., strenuous athletic activity).

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5. Work any secondary employment that is inconsistent with any medical limitations or restrictions.
6. Work any secondary law enforcement related employment (LERE).

(b) Sworn employees may request to work Department Overtime and Non-LERE secondary employment by completing the *Limited Duty Request for Departmental Overtime and Non-LERE Employment* form (PD0143) and submitting it to the Professional Standards commander at least 7 days prior to the assignment.

1. The form shall specify the duration and duties being performed during the overtime assignment; and
2. The Professional Standards commander shall determine if the duties of the assignment are within the medical limitations or restrictions; and, submit a written response to the requesting employee granting approval or denial of the overtime assignment.

(c) In addition to the above guidelines, sworn employees shall not:

1. Wear any part of the APD police uniform.
2. Enforce any laws of the United States, State of Texas, or Ordinances of the City of Austin.
3. Take law enforcement action or make arrests.
4. Carry a firearm unless:
   (a) It is concealed; and
   (b) There are no medical limitations or restrictions which would prevent employees from using the weapon in an authorized manner.
5. Display their police badge or identification card, either on-duty or off-duty, in a manner that may identify them as a police officer.
   (a) This provision does not supersede the requirement that all Department employees must display Department issued identification while on Department premises.

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GO
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Austin Police Department
General Orders

Restricted and Administrative Duty

959.1 PURPOSE AND SCOPE

The purpose of this order is to outline when and how an employee is placed on restricted duty or administrative leave/duty.

959.2 RESTRICTED DUTY OR ADMINISTRATIVE LEAVE/DUTY

Employees involved in serious, critical, or traumatic incidents, not limited to shootings or fatality crashes, may be placed on restricted duty or administrative leave/duty status to restrict their authorities and/or work functions. This may be done at any point during an investigation when maintaining regular duties may compromise the integrity or general order of the Department.

(a) Employees will be placed on restricted duty or administrative leave/duty when their actions or use of force in an official capacity result in death or serious bodily injury to another person.

(b) Employees may be placed on restricted duty or administrative leave/duty based on any of the following factors:

1. A compelling reason to believe the employee poses a threat to someone; or
2. An allegation of serious misconduct; or
3. The employee represents an increased potential liability to the Department; or
4. Physical violence was involved in a violation; or
5. The employee is pending physical, drug or psychological testing.

959.3 DUTY RESTRICTIONS

(a) Officers placed on restricted duty or administrative leave/duty may be assigned to clerical duties at an APD site or at their residence and may have full, limited, or no police authority.

(b) Civilian employees may be placed on administrative leave.

(c) Any restriction placed upon an employee on restricted duty or administrative leave/duty status will be listed on the written direct order given placing the employee on restricted duty or administrative leave/duty.

1. A restricted duty or administrative leave/duty order may restrict employees from:
   (a) Enforcing any laws or ordinances.
   (b) Working any Law Enforcement Related Secondary Employment.
   (c) Accessing information contained in APD files or computer systems.
   (d) Carrying any firearm on City or APD facilities.
   (e) Carrying any firearm off-duty unless the employee holds a Handgun License (HL).

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2. In addition, a restricted duty or administrative leave/duty order may require employees to:
    (a) Report to a designated supervisor at specified times.
    (b) Remain available for court appearances.
    (c) Remain at their designated work station (e.g., on-site, at home) during duty hours unless on approved leave. Employees must report to their designated supervisor if they leave the designated work station for more than reasonable breaks.
    (d) Furnish a phone number where they can be reached at 24 hours a day to their designated supervisor and Internal Affairs.

959.4 PLACEMENT PROCEDURES

An employee's commander/manager or, in the event of an emergency, the Duty Commander, may place an employee on restricted duty or administrative leave/duty status. When practical, these procedures will take place in private with only the employee, the employee's supervisor, and, if requested, IA present. Upon request, IA will assist supervisors with completing the proper paperwork to place an employee on restricted duty or administrative leave/duty.

(a) The following steps are used to place employees on restricted duty or administrative leave/duty:
    1. Employees will be issued a written direct order immediately placing them on restricted duty or administrative leave/duty and listing all restrictions being placed upon the employee.
    2. Employees will acknowledge the order by signing their name.
    3. Employees should be assigned to daytime hours to maintain accessibility for the investigator.
    4. Supervisors may request the employee's APD computer access be suspended.
    5. If required to do so, employees will turn in to their supervisor any Department issued equipment (e.g., badge, APD identification, building access cards, and Department issued firearms).
        (a) Employees will receive a receipt for all property turned in.
        (b) The property may be retained by the employee's supervisor or stored in Police Equipment.

(b) The Chief will be notified of the placement as soon as practical.

(c) The restricted duty or administrative leave/duty status and related paperwork will become part of the IA investigative file.

(d) While on any type of restricted duty or administrative leave/duty status or suspension, other than an indefinite suspension, employees must maintain TCOLE licensing requirements for annual qualification and mandatory training.

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1. When employees are suspended or restricted from carrying their firearm on police facilities and the TCOLE annual weapon's qualification requirement might be violated, they will notify their supervisor so approved arrangements might be made for weapons qualification.
2. Employees are ultimately responsible for ensuring their compliance with all TCOLE mandated licensing requirements.

959.5 RETURN TO FULL DUTY STATUS

(a) Employees may be returned to full duty status only upon:

1. The conclusion of the investigation or suspension.
2. By order of a court or Civil Service Proceeding.
3. By order of the Chief or designee.
4. When applicable for civilian employees by order of the City Manager.

(b) Employees will be returned to full duty status by their commander/manager, with concurrence of the appropriate assistant chief.

(c) Employees will be given written documentation to reflect the change in status which will be made part of the IA investigative file. Employees will acknowledge the documentation with their signature and will be given a copy of the signed form.

(d) Supervisors will:

1. Ensure any APD equipment and property is returned to the employee; and
2. Request the employee's access to APD computer systems be reinstated if it was restricted.

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Austin Police Department
General Orders

Mother Friendly Workplace

960.1 PURPOSE AND SCOPE

The purpose of this order is to provide reasonable accommodations to employees desiring to express breast milk for the employee's infant child (Tex. Gov't Code § 619.003).

960.2 POLICY

It is the policy of the Austin Police Department to provide, in compliance with the Fair Labor Standards Act (FLSA) and the City of Austin's Mother Friendly Workplace Policy, reasonable break time and appropriate facilities to accommodate any employee desiring to express breast milk for her infant nursing child (29 USC § 207; 25 Tex. Admin. Code § 31.1).

960.3 LACTATION BREAK TIME

A rest period should be permitted each time the employee has the need to express breast milk (29 USC § 207; Tex. Gov't Code § 619.00 4). In general, lactation breaks that cumulatively total 30 minutes or less during any four-hour work period or major portion of a four-hour work period would be considered reasonable. However, individual circumstances may require more or less time.

Lactation breaks, if feasible, should be taken at the same time as the employee's regularly scheduled rest or meal periods. While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding regularly scheduled and paid break time may be unpaid, depending on the circumstances.

Employees desiring to take a lactation break shall notify Communications or a supervisor prior to taking such a break. The Department may require employees to reasonably delay lactation breaks if taking the break immediately would seriously disrupt the Department's operations.

Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

960.4 PRIVATE LOCATION

The Department will make reasonable efforts to accommodate employees with the use of an appropriate room or other location to express milk in private. Such room or place should be in proximity to the employee's work area and shall be other than a bathroom or toilet stall. The location must be shielded from view and free from intrusion from co-workers and the public (29 USC § 207; Tex. Health & Safety Code § 165.003; Tex. Gov't Code § 619.00 4).

Employees occupying such private areas shall either secure the door or otherwise make it clear to others that the area is occupied with a need for privacy. All other employees should avoid interrupting an employee during an authorized break, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

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960.5 STORAGE OF EXPRESSED MILK

An employee shall be provided with access to a hygienic storage area for her expressed milk. Any employee storing expressed milk in any authorized refrigerated area within the Department shall clearly label it as such and shall remove it when the employee's shift ends (Tex. Health and Safety Code § 165.003).

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972

Austin Police Department
General Orders

Employee Speech, Expression, and Social Networking

972.1 PURPOSE AND SCOPE

This order is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the legitimate needs of the Department.

Nothing in this order is intended to prohibit or infringe upon any employee's communication, speech or expression that has been clearly established as protected or privileged.

972.1.1 APPLICABILITY

This order applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

972.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the orders and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Austin Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

972.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Austin Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be expected to compromise the safety or privacy of any employee, an employee's family or associates.

972.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the Department's safety, performance, and public-trust needs, the following is prohibited:

(a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.

(b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Austin Police Department and tends to compromise or

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damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.

(c) Speech or expression that could reasonably be foreseen as creating a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.

(d) Speech or expression of any form that could reasonably be foreseen as creating a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.

(e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Austin Police Department.

(f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the expressed authorization of the Chief of Police or designee (Tex. Penal Code § 39.06(a)(1)).

(g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Austin Police Department on any personal or social networking or other website or web page, without the express written permission of the Chief of Police.

(h) Failure to take reasonable and prompt action to remove any content that is in violation of this order and/or posted by others from any web page or website maintained by the employee (e.g., social or personal website).

972.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, employees may not represent the Austin Police Department or identify themselves in any way as being affiliated with the Austin Police Department in order to do any of the following (Tex. Local Gov't Code § 556.004(c) and (d)):

(a) Endorse, support, oppose or contradict any political campaign or initiative.

(b) Endorse, support, oppose or contradict any social issue, cause or religion.

(c) Endorse, support or oppose any product, service, company or other commercial entity.

(d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his individual capacity or through some unofficial group or organization (e.g. bargaining group), is affiliated with this department the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Austin Police Department.

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Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions on political subjects and candidates at all times while off-duty. However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 U.S.C. § 1502)).

972.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to anything published or maintained through file-sharing software or any Internet site open to public view (e.g., Facebook, MySpace).

Additional guidelines on privacy expectations are outlined in:

(a) General Order 1000 (Department Technology Use); and

(b) General Order 1002 (Electronic Mail (Email) Communications).

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Chapter 10 - General Policies

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1000

Austin Police Department
General Orders

Department Technology Use

1000.1 PURPOSE AND SCOPE
Operation of all Department computers, software, and systems will be in accordance with City of Austin Communications and Technology (CTM) policies. This order provides guidance on the use of Department computers, software, and systems and is not meant to supersede established CTM policies. Questions on this order should be referred to a supervisor or the Police Technology Unit.

1000.1.1 PRIVACY POLICY
Any employee utilizing any computer, electronic storage device or media, Internet service, phone service, information conduit, system or other wireless service provided by or funded by the Department expressly acknowledges and agrees that the use of such service, whether for business or personal use, shall remove any expectation of privacy the employee, sender, and recipient of any communication utilizing such service might otherwise have, including as to the content of any such communication.

(a) The Department expressly reserves the right to access and audit any and all data, communications, and Internet usage, including content that is sent, received, and stored through the use of Department systems. Periodic audits may be conducted by the:

1. Police Technology Unit (PTU).
2. CTM.
3. Internal Affairs/Risk Management Division.

(b) All data, communications, and Internet usage by employees may be saved for an indefinite period and may be retrieved and reviewed without notice as needed.

1000.2 DEFINITIONS
The following definitions relate to terms used within this order:

Department Technology - Includes all computers (on-site and portable), Internet, email, hardware, software, and resources owned, leased, rented or licensed by the Austin Police Department or City of Austin which are provided for official use by employees.

Hardware - Includes, but is not limited to, computers, computer terminals, network equipment, modems, or any other tangible computer device generally understood to comprise hardware.

Software - Includes, but is not limited to, all computer programs and applications including "shareware." This does not include files created by the individual user.

(a) **Freeware Software** - Software freely obtained from public sources.

(b) **Shareware Software** - Proprietary software that is provided to users without payment on a trial basis and is often limited by a combination of functionality, availability, or convenience.

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1000.3 GENERAL DEPARTMENT TECHNOLOGY GUIDELINES

These orders apply to all employees of the Austin Police Department using any Department Technology. Use of these systems implies that employees agree to comply with all applicable laws, guidelines, and Department and CTM policies.

(a) The Police Technology Unit is responsible for maintaining and approving new technology.

(b) Employees are responsible for their own network account regardless of who actually uses it. Employees will log off the network upon completion of computer activity or take reasonable precautions (e.g., lock the computer screen) when stepping away from a computer.

(c) Employees must use their own login and password to access the network. Disclosure of login and password, access codes, or other authentication devices to others must be kept to an absolute minimum and done only when approved by a supervisor.

(d) Employees are responsible for taking reasonable precautions to avoid introducing viruses to Department computer systems.

1. Files obtained from any source outside the Department (e.g., computers, thumb drives, CD's, Internet, email attachments) may contain dangerous computer viruses.

2. Employees should never use non-Department devices/sources, download Internet files, or accept email attachments from unknown sources without first scanning the material with Department-installed virus software.

3. If a user suspects that a virus has been introduced into the Department network, the user should notify their supervisor and CTM through the Help Desk.

4. Employees should regularly scan their Department computer for viruses. Report any viruses that the computer is not able to repair itself to CTM through the Help Desk. CTM has scheduled a virus scan for all networked computers on a regular basis.

(e) Employees who become aware of any computer system security breach, whether internal or external, will immediately notify their supervisor, the Help Desk, and the Police Technology Unit.

(f) Employees will notify their supervisor if they observe someone using Department Technology inappropriately. The supervisor receiving such information will review it and take appropriate action.

1000.3.1 PROHIBITED USES OF DEPARTMENT TECHNOLOGY

Prohibited uses of any Department Technology include, but are not limited to, the following:

(a) Use for private gain or profit, or to solicit for political, religious, or other non-business purposes.

(b) Engaging in discriminatory or harassing behavior, including sexual harassment.

(c) Downloading or installing any hardware or software without approval from the Police Technology Unit.

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(d) Creating an unauthorized copy of Department software.

(e) Violating or invading the privacy of others by posting information on the Internet about another employee or unnecessarily viewing another employee's files or email. Employees must be sensitive to the fact that Internet news group postings, email messages, web sites, and various other communications on the Internet may be public information.

(f) Placing any Department material (e.g., internal memos, bulletins) onto the Internet without prior approval of the Chief of Police or designee.

(g) Interfering with or disrupting any Department network, Internet user, program, or equipment.

1. Disruptions include but are not limited to:

(a) Propagation of computer worms, viruses, or other debilitating programs;

(b) Using the Department network to make unauthorized entry to any other machine accessible by the network or Internet.

2. Deliberate attempts to degrade or disrupt system performance may be considered criminal activity with possible prosecution under applicable state and federal laws.

(h) Deliberately accessing pornographic or Internet gambling web sites without prior authorization from a supervisor.

(i) Streaming of audio/video media from the Internet for non-business related purposes without approval of a supervisor.

1000.4 EMPLOYEE COMPUTER ACCESS GUIDELINES

(a) **New Employee, Employee Transfers, Employee Separation from Department**

1. Supervisors are responsible for completing the appropriate request form to create, transfer, or delete computer access for new employees, employee transfers, and when an employee separates from the Department.

2. Forms can be found in the *Approved APD Forms* folder under *Computer Security Access Related Forms* or the web based forms located on APD net.

(a) Completed forms will be sent to the Help Desk.

(b) A help ticket will be generated and sent to the Police Technology Unit for approval.

(b) **Employee Suspensions**

1. Supervisors needing to have an employee's computer access suspended or deleted should send an email to the Police Technology Unit Lieutenant or Sergeant.

2. The Police Technology Unit will not suspend or delete an account for employee suspensions of five (5) days or less. This does not prevent the employee's chain-of-command from ordering the employee not to access the APD computer system during the suspension period.

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1000.4.1 SUPPORT PERSONNEL REMOTE ACCESS
CTM personnel may have to access employee computers from time to time for support reasons.

(a) When CTM personnel remotely connect into a computer, a small square notification announcement will pop up in the bottom right of the computer screen to indicate that someone has connected to the computer. This notice will contain that person's user name and the remote computer they are using.

(b) It is the employee's responsibility to close down any applications or documents that contain confidential or sensitive data prior to allowing any support personnel to connect to the computer.

(c) Employees who observe a remote session and believe it is not appropriate or authorized will report this session to the Police Technology Unit immediately.

(d) If a virus or other potentially harmful program is detected and CTM personnel are required to shut down a computer, they are authorized to remote into that computer immediately without first contacting the user. This can occur when time is a factor or when the primary computer user is not known. Employees should keep this in mind when leaving work at the end of the day and should shut down all sensitive or confidential software applications.

1000.5 DEPARTMENT HARDWARE AND SOFTWARE

Employees wishing to have any piece of hardware or software installed on a Department computer will get approval from the Police Technology Unit prior to it being installed.

(a) Upon approval of any hardware/software request or change, the Police Technology Unit will notify CTM for installation.

(b) When required for legal compliance, all software installed on Department computers will be registered or licensed with the software manufacturer. Copies of the registration and/or license agreement will be forwarded and maintained by CTM or designee.

(c) Shareware software will not be used on Department computers for a time period in excess of that allowed by the manufacturer for trial purposes unless it has been purchased and properly registered.

(d) Freeware software will only be installed on Department computers when it has been ascertained that such software is usable by government organizations free of charge.

1000.5.1 PRIVATELY OWNED COMPUTER USE
Employees with proper authorization may utilize privately owned personal computer equipment for Department business.

(a) Employees will adhere to Department and CTM policies when using privately owned computers for Department business.

(b) Privately owned computers will not be connected directly to the Department network.

(c) Personal hardware components (e.g., printers, external modems, external drives) will not be connected to Department equipment.

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(d) Technical support on privately owned computers for Department business will be considered on a case by case basis.

1000.6 REMOTE ACCESS GUIDELINES

The Austin Police Department has the capability to grant remote access to APD and City of Austin computer systems for employees that need access when not at a normal work location.

Mobile Office is one form of remote access that enables employees to access a remote computer from any computer (i.e., Tough book, Home PC, or another department computer.) This remote computer includes the employees group folders, Versadex, Paging, Printers and other services only accessible from a city computer. Remote access users shall comply with CJIS requirements to ensure that CJIS data cannot be viewed by the general public.

1000.6.1 REQUESTING AND GAINING REMOTE ACCESS

(a) All employees have been granted remote access to APD Citrix. Employees needing other types of remote access such as GoToMyPC or VPN must have approval from the employee's Lieutenant or equivalent civilian manager.

(b) Some factors that should be considered when granting remote access to GoToMyPC or a VPN:

1. The necessity for remote access
    (a) Can the employee use Mobile Office instead?
    (b) Is the employee on Emergency call back or when an employee is home sick for an extended period of time?
    (c) Is the unit budgeted to pay for the licenses needed for GoToMyPc or VPN access?
2. Is the employee a non-exempt employee?
    (a) Non-exempt employee access must be in the City's best interest. Work done while using remote access is considered productive time
    (b) Non-exempt employees working remotely should be compensated for any time that is beyond their normal 40 hours.

(c) The supervisor approving any remote access request except Mobile Office will open a Help Desk ticket that will be routed to APD Data Control to determine if a license is required and available.

1. If a license is required but not available, the employee will be placed on a "stand by" list for the next available license. This list will be used during budget planning to determine whether to purchase more licenses.
2. The requesting employee must then complete the CTM Telework Request Form. The completed form must be faxed to the Help Desk. The Help Desk will generate a Help Desk ticket and send it to APD Data Control to verify authorization. Once confirmed, the Help Desk will contact the requester to complete the set up process.

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1000.6.2 COMPLIANCE WITH CTM POLICIES AND REMOTE ACCESS TRAINING
As part of the APD readiness program all employees will complete Securing the Humans Cyber-Security Awareness Training for Police. This will ensure that during an unplanned event, employees will be able to access a city computer from home or other remote location if directed by a supervisor. It will also ensure that that employees and supervisors are aware of the requirements for tele-working (i.e., reporting for time and attendance, overtime usage, computer security etc.)

(a) Cadets will complete the training during the Police Academy and prior to any ride out.

(b) Civilian personnel will complete the training within the first 90 days of being hired.

(c) Employees will not access any computer remotely, including Mobile Office without having completed the CTM Telework Training.

1000.6.3 HOME ACCESS

(a) Employees that remotely access a City Computer, including Mobile Office from Home or another personal computer are considered to be "tele-working":

1. CTM requires that virus and firewall protection be installed an employee's personal computer. It is the responsibility of the employee to keep this software up to date on security patches (The City provides free downloads of Antivirus and Firewall software)

2. Employees will comply with the City of Austin Tele-work Personnel Procedures and agrees to the duties, obligations, responsibilities and conditions for remote access described in that document.

3. Tele-work access must be scheduled in advance and approved by the employee's immediate supervisor (lieutenants are exempt from this requirement.)

4. If technical difficulties occur employees must report those issues to the Help Desk (974 HELP)

5. If employees cannot access the COA network, and do not have sufficient work tasks to accomplish without this access, they may be required to come into the office to complete the workday.

6. Employees will code their time sheet with TLC for hours worked while tele-working.

7. Employees will not use COA equipment for personal use as outlined in the Prohibited Uses of Department Technology section of APD General Orders.

(b) Accessing Mobile Office from home requires supervisor and APD Data Control approval.

(c) The department is limited on the number of concurrent users logged on at any one time Once that limit is reached, additional user access requests will be denied. Patrol personnel have priority, and to insure access all personnel using the system should log off as immediately upon task completion.

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(d) Personnel should not use the system to simply check their email. Employees should check email via pswebmail.com

1000.7 INTERNET USAGE

Internet access is only authorized for official Department business and users are expected to know the tools, rules, and etiquette of the Internet.

Employees must use the Internet in accordance with all applicable laws and regulations. This includes compliance with copyright and license laws governing programs, as well as data and written materials accessed, obtained, or provided to others via the Internet.

1000.8 MANAGEMENT OF STORAGE AND BACKUPS

Electronic storage space limits are set by CTM based on allocated resources and the ability to maintain and back up these files, along with budget constraints.

(a) Employees are allocated limited storage space and are responsible for managing the amount of data collected and stored.

(b) Group folders have similar constraints set by CTM. Employees should avoid storing electronic data that is already stored elsewhere in another group folder. Employees should use alternate solutions such as links or Sharepoint to share the data.

(c) Employees are reminded that digital media relating to police cases should be stored according to General Order 618.5 (Digital Evidence Collection and Storage). Personally allocated storage space (H Drive) will not be used to permanently store any case related data.

(d) Employees are reminded that the Department has Records and Retention orders that must be followed when deleting or removing any files.

(e) Data saved on a networked computer drive (Digital Case Folder) is automatically backed-up (copied); therefore, it is not normally necessary for employees to keep additional copies. If there is a business need, any additional copies shall only be stored on another source, (e.g., thumb drive, external drive) and maintained and stored according to Department policy and retention.

(f) Employees needing to share large amounts of data may use the Officer to Officer Daily Shared Folder located on the Public Data for APD Only drive. This folder is authorized for the temporary storage of large files and storage time should not exceed 5 days. Items in this folder 7 days or older will be automatically purged.

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1002

Austin Police Department
General Orders

Electronic Mail (Email) Communications

1002.1 PURPOSE AND SCOPE

The purpose of this order is to establish guidelines for the proper use and application of the Department's electronic mail system (email), by employees of this department. Email is a communication tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., Texas Public Information Act). Messages transmitted over the email system must only involve official business activities and contain information essential to the business, administration, or practices of the Department.

1002.1.1 ADMINISTRATIVE GUIDELINES

Use of the email system by any employee implies both understanding and compliance with this order.

(a) Employees using the email system will do so in an appropriate and professional manner.

1. Employees observing someone using email inappropriately, or who receives unusual or inappropriate material, will notify their supervisor.
2. The supervisor receiving such information will review it and take appropriate action.

1002.2 EMAIL PROCEDURES

(a) Employees will check email on a regular basis to ensure timely acknowledgment of information.

1. Employees who are scheduled to be out of the office for more than four (4) work days should use the "Out of Office" reply feature in Outlook to indicate their expected return to work date and alternative contact information such as a coworker or supervisor.

(b) Department employees are encouraged to use email for, but are not limited to:

1. Routine messages, announcements, notices, or other information that previously would have been disseminated by memorandum through the chain-of-command or by inter-department mail.
2. Any message currently being sent by facsimile, telephone, or a paging system.
3. Drafts of reports, projects, or proposals.
4. Certain non-confidential Department documents such as job vacancies, Department memoranda, or Special Orders.

1002.2.1 EMAIL RIGHT OF PRIVACY

All email messages, including any attachments, that are transmitted over Department networks are considered Department records and therefore are the property of the Department.

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(a) Employees using Department email shall have no expectation of privacy concerning communications transmitted over the system.

(b) The Department reserves the right to access, audit, or disclose, for any lawful reason, any email, including any attachment that is transmitted and/or stored on any Department networking system, server, or other storage technology without notification to the employee. However, it is a violation of this order for any user, including the system administrator or supervisor, to access the email of another employee merely to satisfy curiosity about the affairs of others.

(c) The email system is not a confidential system and therefore is not appropriate for confidential communications. If a communication must be confidential, an alternative method to communicate the message should be used instead of email.

1002.3 PROHIBITED USE OF EMAIL

(a) Unless approved by the Chief of Police or designee, email will not be used for:

1. Disseminating confidential materials or Department sensitive information, official documents that must be retained in their physical form, or documents that require a physical signature to certify receipt.
2. Charitable endeavors.
3. Private business activities.
4. Inappropriate entertainment purposes.

(b) Employees are prohibited from sending derogatory, defamatory, obscene, disrespectful, racist, sexually suggestive and harassing, or any other inappropriate email messages.

(c) Employees are prohibited from sending out email messages addressed to the entire Department or all City employees, or selecting "Reply All" to such messages. Department or City-wide email messages should only be for business-related items that are of particular interest to all users and, as such, are restricted to Command Personnel or designee.

(d) Employees will not send out an email message under another user's name without authorization. Email users that have a need to delegate this function will use email program settings to give access to authorized employees.

1002.4 STANDARDIZED EMAIL SETTINGS

1002.4.1 STANDARDIZED EMAIL SIGNATURE

(a) Employees are encouraged to set up an electronic signature block for all new email messages. If an employee chooses to use an electronic signature block for their emails it shall be the one designated for Sworn or Civilian, as applicable. Personally customized email signature blocks are not authorized.

(b) Replies do not need to have an electronic signature; however, if an electronic signature is used it can be shortened from the example below.

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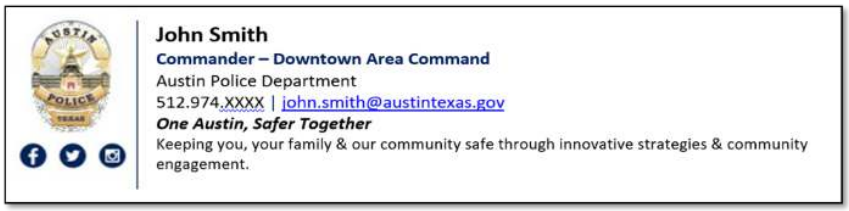
(c) Employees are prohibited from adding content such as, mottos, scriptures, quotes, etc.

(d) Sample signature blocks can be copied from the original which is stored in the APD Approved Forms Memos & Letterheads Folder at G:\Public\Public Data for APD Only \Approved APD Forms\Memos & Letterheads. The two approved examples are shown below.

SWORN



CIVILIAN

1002.4.2 STANDARDIZED EMAIL PROFILE PHOTO

Employees who choose to use a profile photo must use an official Department photo of themselves. Cartoon characters, emojis, team logos, etc. are prohibited.

1002.5 MANAGEMENT OF EMAIL

The email system is not designed for long-term retention of messages.

(a) Employees are solely responsible for the management of their email mailbox.

(b) Employees shall adhere to General Order 1002.5 Management of Email when dealing with the storage of emails.

(c) Employees should purge messages on a regular basis.

(d) Emails that employees desire to save or that become part of an official record should be printed or stored in another database.

(e) Archive emails (personnel folders inside Outlook) are stored on the employee's network drive and can impact server space that is set up for the employee.

(f) Employees are reminded that the Department has Records and Retention orders that must be followed when deleting or removing any files.

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GO
1003

Austin Police Department
General Orders

Telephone and Mail Protocol

1003.1 PURPOSE AND SCOPE

This order establishes uniform procedures for dealing with telephone inquiries and the use of Department telephone and mail systems.

1003.2 TELEPHONE GUIDELINES

Employees should adhere to the following guidelines when using the Department telephone system:

(a) Employees will be professional, polite, civil, and orderly when speaking on the telephone and treat all persons with fairness, dignity and respect.

(b) Telephone calls to Department phones will be answered promptly (within three (3) rings).

(c) Employees should answer the phone with the name of the Department, the work location, and employee name.

(d) When making phone calls on Department business, employees will identify themselves as members of the Department and clearly state the purpose of the call.

(e) Collect telephone calls should not be accepted by employees except in an emergency or with the approval of a supervisor.

1003.2.1 HANDLING TELEPHONE CALLS

(a) Depending upon the nature and subject of the request, employees will:

1. Answer the person's request for information or service.
2. Refer persons requesting information outside of the employee's area of responsibility to the best known source within the Department.
3. Route all media requests for information to the Public Information Office (PIO) in accordance with Department General Orders on Public Information and Media Relations.

(b) If the caller asks for a specific person who is not available, employees will:

1. Ask if they or someone else can help the caller.
2. Ask if the caller wishes to be forwarded to the specific person's voice mail.
3. Ask if the caller wishes to leave a message.

(c) When transferring a call, employees will:

1. Inform the caller of the person and extension number to which the person is being transferred to in case a disconnect occurs.
2. Ensure that someone is on the other end of the line before completing the transfer.

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3. Brief the employee on the other end of the line on the nature of the call and the identity of the caller.

(d) Before placing a caller on hold, employees should ask the caller if he is able to hold.

(e) Angry callers will not be hung up on without warning. When dealing with an angry caller employees should:

1. Keep control of the call by asking appropriate questions.
2. Sympathize with the caller's experience.
3. Offer help where they are able.

(f) Abusive callers using profanity will be dealt with in the following manner:

1. Politely interject (e.g., "Excuse me").
2. Advise the caller you can deal with the problem but abusive language will not be tolerated.
3. Maintain control of the call by immediately asking follow-up questions.

1003.2.2 VOICE MAIL

(a) Employees should answer the telephone when at their desk.

(b) If you are on the phone or away from your desk when you receive a phone call, retrieve the message(s) and return calls immediately upon your return.

(c) Employee voice mail greetings should contain:

1. The employees name and assignment; and
2. When callers can expect the employee to return the call; and
3. If the employee is going to be gone for an extended period of time (e.g., vacation), give specific information as to when the employee will be returning to work.

1003.2.3 PERSONAL USE OF DEPARTMENT PHONES

(a) Department phones are to be used for Department business, and personal calls should be limited.

(b) Department long-distance phone service should be used for Department business only.

(c) Personal long-distance calls on Department phones should be made only with the use of a personal calling card, if possible.

(d) All personal calls should be limited to breaks and authorized mealtimes unless an emergency exists.

(e) Employees who use Department phones for personal use will reimburse the City for expenses incurred.

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(f) Employees will determine the amount of charges for which they are liable and bring cash or a to the Financial Management Division by the tenth day of the month following the month in which the personal call was made. Checks should be made out to City of Austin.

(g) Employees will not make collect phone calls from Department phones except in an emergency or with the approval of a supervisor.

1003.3 MAIL GUIDELINES

This section deals with the handling of Department and personal mail.

(a) Intra-office mail envelopes are used for mail staying within the Department.

(b) Inter-office envelopes should be used for correspondence to other City departments.

(c) Both types of envelopes will be clearly labeled with the:

1. Date sent.
2. Name of the recipient.
3. Physical location of the recipient (e.g., North Substation, Robbery Unit, City of Austin Human Resources).

(d) Employees' personal correspondence received at a police facility will be sorted and delivered to the addressee's Department mailbox.

(e) Employees wishing to mail personal correspondence through the Department's mail system will pay all applicable postage.

1003.3.1 PICKUP AND DELIVERY OF DEPARTMENT MAIL

(a) Mail pick-up points have been designated throughout the Department for pickup and delivery.

(b) Personnel receiving mail will determine if the mail pertains to the receiver's Unit or assignment. If it does not, employees are responsible for ensuring it is directed to the appropriate Unit or person.

(c) If the mail is a request for information that could be considered an open records request, the document will be immediately delivered to the APD Legal Advisor or APD PIO.

1003.3.2 SPECIAL MAIL SERVICES

Personnel requiring overnight delivery service for documents or other items will:

(a) Contact the Mail Room and have a determination made as to which type of overnight delivery service is to be used.

(b) Obtain necessary forms and packaging from the Mail Room.

(c) Complete forms, including the complete physical address of recipient.

(d) Return packaged item and forms to Mail Room before 2:00 p.m., Monday through Friday.

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GO
1004

Austin Police Department
General Orders

Department Owned Cell Phones

1004.1 PURPOSE AND SCOPE

This order establishes uniform procedures for the use of Department issued cell phones. Cell phones and the associated telephone numbers provided by the Department are City-owned resources. They are provided to enable Department employees to work more efficiently and effectively.

1004.2 CELL PHONE GUIDELINES

Employees shall adhere to the following guidelines when using any Department issued cell phone:

(a) Employees issued a Department cell phone will ensure the device is operational and in their possession at all times while on duty or working law enforcement related secondary employment. The Department cell phone shall remain within the United States.

1. On-duty non-exempt employees shall respond to any Departmental phone calls, texts, and voicemails which require a response, as soon as practicable.
2. Off-Duty non-exempt employees will respond to Departmental phone calls, texts, and voicemails once they return to work.
3. Exempt employees shall respond to any Departmental phone calls, texts, and voicemails which require a response, as soon as practicable.
4. Cell phones are not the primary source for urgent communications as they can be unreliable during large events where technology usage is high. Messages requiring an immediate response or that are urgent in nature (e.g., SWAT call out) should be sent using a designated City of Austin messaging system (e.g., Wireless Office, SPOK, CAD).

(b) Employee use of the cell phone shall be professional, polite, civil, and orderly, treating all persons with fairness, dignity and respect.

(c) Employees shall select ring tones and audible alerts from factory-provided options on the cell phone and shall not download or install other ringtones or audible alerts.

(d) When making phone calls or texts for Department business, employees should identify themselves as members of the Austin Police Department and clearly state the purpose of the call unless doing so would compromise the integrity of a criminal investigation.

(e) In general, employees should not give out Department issued cell phone numbers unless:

1. Immediate contact between a police employee and a victim, witness, or other person may be critical;
2. The employee to whom the cell phone is assigned has granted authorization; or
3. Release of the number was authorized by a supervisor.

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(f) Telephones shall be placed in a vibration or silent mode while attending court and may be placed in a vibration or silent mode while attending training, meetings, and any other time needed to prevent interruption or annoyance.

(g) All cellular telephone calls, text messages, emails, and other communications may be subject to discovery in criminal or civil matters, may be subject to release to a member of the public in response to a public information request, or may be used in internal investigations.All communications, unless an emergency, should be related to Department business.

1. Employees should consider these communications a public record and should have no expectation of privacy.

   (a) Text messages of evidentiary value shall be screenshot and processed according to General Order 618.5 (Digital Evidence Collection and Storage).

   (b) Voicemails of evidentiary value shall be played with the speakerphone activated and recorded with the BWC recording system.

   (c) Photos and videos of evidentiary value shall be processed according to General Order 618.5 (Digital Evidence Collection and Storage).

2. Employees must not delete any items of evidentiary value from the cell phone.

(h) For safety and accountability, employees shall ensure that location services (GPS) are enabled while on duty, including any LERE secondary employment.

(i) The Department reserves the right to access any information on Department-issued cell phones. Supervisors will refer to 902.6.1(c) for guidance.

(j) Upon separation from Department employment, all Department-issued cell phones shall be returned to Police Equipment or the employee's supervisor.

1004.3 HANDLING PHONE CALLS/TEXTS

All communications on a Department-issued phone shall be conducted in an appropriate and professional manner, according to the following guidelines:

(a) Employees shall make their best effort to:

1. Answer the caller's request for information or service;

2. Refer persons requesting information outside of the employee's area of responsibility to the best known source within the Department; or

3. Route media requests for information to the Public Information Office (PIO) in accordance with Department General Orders on Public Information and Media Relations.

(b) If the caller asks for a specific person who is not available, employees should ask if they or someone else can help the caller.

(c) Verbally abusive callers should not be hung up on without warning. When dealing with an abusive caller employees should:

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1. Keep control of the call/text by asking appropriate questions;
2. Listen to the caller;
3. Offer appropriate help;
4. Politely interject (e.g., "Excuse me");
5. Advise the caller that abusive language will not be tolerated; and
6. As a final measure, advise the person that you are ending the call and notify your immediate supervisor.

(d) Employees may block phone numbers when they receive abusive, harassing, or repeated calls. Employees receiving these calls should ensure that the caller has all relevant information they need or are directed to the appropriate person before blocking the number.

1004.4 VOICEMAIL

Voicemail is a communication tool attached to Department-issued cellphones to facilitate accurate telephone messaging. It is intended to enhance service to the public and not to replace direct personal contact with the caller.

(a) If a call goes to voicemail, employees shall:
1. Retrieve the message(s);
2. Return calls as soon as practicable, or;
3. Return calls upon return to duty as appropriate.

(b) Employee voicemail greetings, if changed from the default, shall be short and professional in nature.

(c) Employees shall place an out-of-office message on their voicemail when on extended leave greater than 4 days.

1004.5 USE OF DEPARTMENT CELL PHONE WHILE DRIVING/RIDING

Employees shall adhere to State law and City ordinances governing use of cell phones while driving. When available, employees are encouraged to use hands-free technology to make or receive calls and texts while operating a vehicle.

1004.6 PROHIBITED USES

Employees shall adhere to all guidelines outlined in section 1000.3.1 in APD General Orders (Prohibited Uses of Department Technology) in addition to the following:

(a) The cell phone shall not be used to record images or videos of crime scenes except for evidentiary purposes in accordance with General Order 618 Property and Evidence Collection Procedures.

(b) Officers shall adhere to APD General Order 317.6 Handling of Juveniles: Fingerprints and Photographs.

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(c) The cell phone shall not be used to take or send inappropriate photographic or video images, emails, or texts unless they can be clearly linked to official police business.

(d) If the phone has a sim card, the sim card shall not be removed from the Department issued cell phone unless done so by authorized personnel.Authorized personnel includes Police Technology and CTM support staff (Enterprise Services Group and Wireless Communication Services Division).

(e) If the phone sim card must be removed for an authorized investigation, the removal will be done in coordination with the entities listed in 1004.6.(d).

(f) Employees shall not install any applications on their Department-issued cell phone except for the pre-approved applications provided in the Mobile Device Management catalog.

(g) Employees shall not jail break, root, or attempt to circumvent security on the phones in any way.

1004.7 CARE AND MAINTENANCE OF DEPARTMENT-ISSUED CELL PHONE AND ACCESSORIES

Employees shall make all reasonable attempts to prevent loss, theft, and breakage of the cell phone and accessories. If the phone and/or accessories are broken, stolen, or lost due to negligence the officer may be held responsible for replacement or repair cost.

(a) Phones shall be issued with a protective case and tempered glass screen protector.No employee shall modify, change, or replace either the case or the screen protector.

(b) Any employee experiencing issues with software on the cell phone (applications, device login, connectivity, etc.) shall contact the CTM Help Desk.

(c) Any cell phone or accessory that needs to be replaced due to being lost, stolen, defective, or damaged shall immediately be reported to the employee's immediate supervisor. The employee shall follow General Order 800.4 Handling Damaged, Lost, and Stolen City Property.

(d) Any loss or theft of a cell phone shall be reported to the Police Technology Unit by the employee that was issued the phone as soon as possible.

(e) Cell phones and accessories shall not be reassigned or loaned to another person. Any new issues or reassignments shall be completed through the Wireless Communication Services Division (Radio Shop).

(f) All service and repair of Department-issued cell phones shall be performed by the Wireless Communication Services Division.Employees shall not make any attempt to repair a cell phone or use a third party service to perform repairs.

1004.8 CITY MOBILE DEVICE USAGE POLICY

Employees shall adhere to the guidelines outlined in the City's Mobile Device Policy found at the listed link: http://cityspace.ci.austin.tx.us/departments/hrm/policies-procedures/bulletins/AB-13-02.pdf.

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1004.9 SUPERVISOR INSPECTION

In conjunction with personnel inspections, General Order 801.8, supervisors shall conduct inspections of Department owned cell phones to ensure officers are complying with APD General Orders. Supervisors shall ensure all assigned officers are reviewed in a fair and equitable manner. Additionally, supervisors shall ensure officers do not have inappropriate or unapproved videos, images, emails, texts, or applications on the device per section 1004.6 (Prohibited Uses).

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GO
1007

Austin Police Department
General Orders

Funeral Procedures

1007.1 PURPOSE AND SCOPE
This order outlines the Department procedures for handling employee deaths, funerals, and the Department Funeral Committee.

1007.1.1 EMPLOYEE DEATHS

(a) Upon the death of an employee it will be the responsibility of the employee's Commander/Manager to notify the chairperson of the Funeral Committee.

(b) After receiving notification, the Funeral Committee chairperson will:

1. If practical, have a member of the Funeral Committee accompany the person going to notify the survivors.
2. Contact the Special Events Lieutenant to coordinate the Motorcycle Unit for escort purposes.

1007.1.2 BADGE MOURNING BAND
Guidelines for the wearing of a badge mourning band are outlined in General Order 801 (Equipment and Uniform Regulations).

1007.2 FUNERAL COMMITTEE

(a) The Department has established a funeral committee composed of a chairperson and additional personnel from units in the department essential to the department's mission in the event of the death of an Austin Police Department Employee.

1. Honor Guard Commander - Chairperson
2. Honor Guard Operations Supervisor
3. Senior Chaplain
4. Victim Services Manager
5. Human Resources Director
6. Highway Enforcement Commander
7. Austin Police Association President
8. Austin Cops for Charities Chairperson
9. Representative from the Austin Police Retired Officers Association

(b) When requested by the survivors of a deceased employee, a committee member will be appointed as Survivors' Assistance Officer (SAO) to assist members of the family. They shall also help as needed until any responsibility of the Department to the surviving family members has been met. This liaison shall coordinate with and work through the committee chairperson. The SAO will be the primary liaison between the survivors and the concerned City, state and/or federal agencies.

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(c) In certain instances, when the decedent's family requests assistance in making funeral arrangements from an employee who is not a Funeral Committee member, that employee will work in conjunction with the Funeral Committee's SAO. When under these stressful conditions employees are reminded to be cautious of making statements which might obligate the Department, its resources, or its personnel to family members. Funeral Committee members are authorized by the Department to make these decisions and should be consulted prior to making any commitments to the decedent's family.

1007.2.1 RESPONSIBILITIES OF FUNERAL COMMITTEE

Whenever applicable, the Funeral Committee shall have the following responsibilities:

(a) Prepare a notice for Department-wide distribution informing all employees of the death and pending arrangements.

(b) Contact departmental services for assistance to the family (e.g., Victim Services, Staff Psychological Services).

(c) Assist family of the deceased in making burial arrangements through the funeral director and/or church of choice.

(d) Contact members of the Honor Guard to prepare for any pending memorial services.

(e) Serve as point of contact for Department employees who desire participation in memorial services.

(f) For the death of an officer under honorable conditions:

1. Ensure that Department flags at all Austin police facilities are flown at half-staff from the time of death through the day of burial.

2. In instances where out-of-Austin arrangements are needed, the chairperson of the Funeral Committee will contact the law enforcement agency in the jurisdiction where the APD officer is to be buried to determine if ceremonial or other arrangements will be available. The chairperson will work with the local law enforcement agency to assist with any arrangements.

3. Assist family with obtaining available City, state and federal benefits.

(g) During off-duty hours, members of the Funeral Committee will serve as concerned friends of the family and will not charge overtime or expect compensation except actual, reasonable expenses incurred. However, at times and at the discretion of the Chief of Police, compensation for reasonable amounts of time spent in preparation for services may be approved.

1007.3 OFFICER'S DEATH IN THE LINE-OF-DUTY

For purposes of this order, "under honorable conditions" denotes a status, no matter the cause of death, in which the officer's service before his death has been of good and respectable repute, and the officer was not under the cloud of criminal prosecution at the time of death.

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1007.3.1 IN-STATE AND LOCAL SERVICES PROVIDED BY THE DEPARTMENT

(a) In cases of a line-of-duty death under honorable conditions, the wishes of the officer's family will hold priority over all other considerations. When the funeral is within the state, subject to the approval of the Chief of Police, the Department will be prepared to provide the following if desired by the family of the deceased:

1. A reasonable number of marked or unmarked police cars to provide transportation for members of the family and/or the Funeral Committee.
2. Motorcycle units for escorts.
    (a) Four (4) police motorcycles. (These units will be trailered when the distance to be traveled is determined to be excessive for the equipment and operator.)
    (b) The number of motorcycle units for funeral services conducted locally or within a reasonable distance of Austin will be determined by the Motorcycle supervisor overseeing the escort requirement, with approval by the affected Commander(s).
3. The officer's duty breast badge and a burial badge, Dress/Ceremonial Uniform (Class A) for the deceased's burial attire, and an entire set of decorations earned during the officer's career.
    (a) In cases of an in-the-line-of-duty death under honorable conditions, a Purple Heart will be presented to the family by the Chief of Police or designee.
    (b) The duty badge will be awarded to the survivors.
4. Ceremonial flag to drape the casket.
    (a) The ceremonial flag will be the National colors.
        1. In cases of non-veterans, the ceremonial flag will be provided by the Funeral Committee.
        2. For officers who were veterans, the ceremonial flag will be provided by the United States Government, through the U.S. Postal Service.
5. A detail to serve as pall bearers.
    (a) Honor Guard; or
    (b) Officer's co-workers and/or friends, designated by the family.
        1. Officers selected as pall bearers will wear only the Dress/Ceremonial Uniform (Class A).
6. Volunteer honor guards at the pall when lying in state coordinated through the Honor Guard.
7. Special uniform items for ceremonial details within the funeral.
    (a) Aigulettes (shoulder cords).
    (b) White gloves.

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(c) Ascots.

(d) Dress buttons.

8. An eight-person firing party, coordinated by the Funeral Committee chairperson.

9. A bugler to sound taps and/or a bagpiper.

10. Actual expenses incurred for food, lodging, and vehicle expenses for personnel assigned to attend the funeral as representatives of the Department.

11. Special assignment to members of the Funeral Committee when reasonably needed to help the family and to make arrangements.

12. During off-duty hours, members of the Funeral Committee will serve as concerned friends of the family, and will not charge overtime or expect compensation except actual, reasonable expenses incurred. However, at times and at the discretion of the Chief of Police, compensation for reasonable amounts of time spent in preparation for services may be approved.

1007.3.2 OUT OF STATE OR OUT OF COUNTRY SERVICES PROVIDED BY THE DEPARTMENT

When the funeral is to be out of the State of Texas, a memorial service with all honors will be held in Austin up to the time of departure of the body.

(a) Vehicle and motorcycle escorts may be approved for out-of-state services by the Chief of Police (e.g., marked/un-marked police vehicles and police motorcycles could be used if traveling within a reasonable distance across the state border).

(b) The Committee chairperson will determine the minimum number of Honor Guard members required for the out-of-state service.

1. These officers will be placed on special assignment.

2. Travel and per-diem will be authorized by the Chief of Police.

(c) At the Department's expense, a member of Command Staff and the deceased officer's immediate supervisory chain-of-command will travel to the out-of-area service.

(d) Any other Department personnel who wish to attend are responsible for their own expenses and for obtaining approved leave.

1007.4 OFFICER'S DEATH NOT IN THE LINE-OF-DUTY

Retired and active officers who die under honorable conditions other than while in the actual performance of police duties may be entitled to the following subject to approval of the Chief:

(a) In-state services.

1. Same as outlined for in the line-of-duty deaths except that no firing party is provided.

(b) Out-of-state services.

1. Two assigned Department representatives may attend an officer's funeral on special assignment, at their own expense.

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1007.5 DEATH OF AUSTIN POLICE DEPARTMENT CADET

For an in-the-line-of-duty death of a police cadet, the Department will provide the same services as for a commissioned officer who died under honorable conditions.

1007.6 DEATH UNDER LESS THAN HONORABLE CONDITIONS

In cases of death of a retired officer, active officer, or police cadet under less than honorable conditions, the Department is under no obligation to furnish or provide any assistance or honors for the service, or pay any expenses for any officer desiring to attend the services.

1007.7 FUNERAL ATTENDANCE

Employees are reminded that their attendance at functions of this nature is a direct reflection on the Department and should conduct themselves in a professional manner.

(a) Employees desiring to attend any funeral or memorial service are required to obtain authorized special assignment or approved leave before attending.

(b) Employees will adhere to the following dress and decorum at funerals:

1. Sworn Employees

   (a) If a uniform is worn, only the Dress/Ceremonial Uniform (Class A) with the military-style hat is authorized.

   (b) Employees in uniform will render appropriate salutes as directed by the Honor Guard Commander.

   (c) Plainclothes conforming with General Order 801 (Equipment and Uniform Regulations) may be worn in lieu of Class A uniform.

2. Non-Sworn Employees

   (a) Plainclothes conforming with General Order 801 (Equipment and Uniform Regulations) will be worn.

1007.7.1 VISITING OFFICERS ATTENDING APD FUNERALS

In cases where out-of-town officers would be coming to Austin to pay respects to a deceased APD officer, the Austin Police Association shall maintain a sign-up sheet listing the names of APD personnel willing to room and/or board visiting officers.

1007.8 OUTSIDE AGENCY FUNERALS

(a) In cases where several officers from this Department wish to represent Austin at the funeral of an out-of-town officer within Texas, the Department will provide a reasonable number of marked police vehicles for the trip.

1. Normally be a maximum of two marked units will be provided.

2. All officers making the trip will do so on their own time unless special assignment has been approved by the appropriate Commander.

3. The Department shall furnish vehicle expenses and per diem for meals.

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(b) The number of Motorcycle officers attending will be determined by the Commander of each Motorcycle Unit.

1007.8.1 OFFICERS FROM OUTSIDE AGENCIES BEING BURIED IN AUSTIN

The Funeral Committee chairperson will assist and coordinate with APD's Honor Guard and representatives from the outside agency regarding memorial services.

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GO
1009

Austin Police Department
General Orders

Building Security

1009.1 PURPOSE AND SCOPE

The size and complexity of APD facilities and the need for visitor access to numerous departmental areas mandate the establishment of a visible visitor and employee recognition system for the security and protection of persons and property. Employees share the responsibility for maintaining standards and attitudes which are conducive to this end. A prerequisite to the success of Department facility security is the total cooperation and commitment of employees and their determination to enforce the required control measures.

1009.2 GENERAL SECURITY GUIDELINES

Security of APD facilities is each employee's responsibility. Access cards and keys provide controlled entry to Department facilities and to certain areas within them.

(a) For the purpose of security, areas within Department facilities will be designated as one of the following:

1. **Restricted Access Area** - An area where only authorized personnel or persons under escort are granted access due to the sensitive nature of the work.
2. **Controlled Access Area** - An area where the public is allowed to be after receiving authorization from facility security personnel.
3. **Public Access Area** - An area where the public is authorized to be.

(b) Employees will be issued identification cards (APD ID), access cards, and keys to open doorways into areas for which they have been authorized access.

1. APD ID's are white in color.
2. Officers will have an image of the APD badge adjacent to the officer's photo and their rank preceding the officer's name.
3. Civilian employees will have their photo and will state 'EMPLOYEE' on the front of the ID.
4. Retired employees will state 'RETIRED' in red uppercase text.
5. Temporary, contract, and interns for the Department will display a diagonal red field behind their photo and the APD ID will contain an expiration date.

(c) Visitors having legitimate business at a Department facility will check in with the front desk of the facility and be required to:

1. State the nature of their business or the name of the APD employee or unit with whom they have business.
2. Present picture identification.
3. Sign the appropriate visitor log.
4. Visibly wear the issued visitor ID at all times.
5. Be escorted and under observation while inside a Department facility at all times.

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1009.2.1 EMPLOYEE RESPONSIBILITIES

(a) Employees shall not:

1. Change, or cause to be changed, the authorization for their own or another's access card unless the change(s) has been properly authorized; or
2. Loan their access cards or keys to any other person for any reason.

(b) Employees or pre-authorized persons may enter an authorized area by any door which their access card or key opens.

(c) Employees not in uniform will wear their APD ID when on the premises of any APD facility unless working in an official undercover capacity. This applies whether the employee is on or off-duty.

(d) The APD ID will be clipped on the collar, shirt or blouse pocket, attached to a neck chain or neck cord, or displayed in some other conspicuous place on the outermost garment so that it is readily visible.

(e) All packages, parcels and/or briefcases coming into any APD facility shall be subject to inspection for hazardous material and/or weapons at the discretion of the personnel assigned to facility security, or at any time by any employee who becomes suspicious of the item(s).

(f) Any person not visibly displaying an APD ID, badge or a valid visitor's pass will be stopped and an inquiry made as to the nature of their business. Unless authorized, the person will be escorted to the nearest public area and presented to security personnel and interviewed for proper clearance.

(g) Employees shall not access any door or elevator for another person unless they recognize the person to be an APD employee, or the person is displaying an APD ID or APD badge or a valid visitor's pass allowing access to the area.

(h) Employees shall not "prop open" any door, disengage or damage any locking or security mechanisms, or by any means bypass the locking or security mechanisms on any door for the purpose of circumventing the security arrangements of Department facilities.

(i) Stairwells will be utilized during emergency situations which mandate immediate exit from the building, or when the elevator system ceases to function.

(j) Exterior doors shall remain secured at all times and entry will be by card or key access only, except for public access doorways into each facility.

(k) Security procedures may be subject to change with the approval of the Commander responsible for security at each facility.

1009.2.2 COMMANDER RESPONSIBILITIES

(a) Responsibility for security plans and authorized access at each Department facility shall belong to the Commander in charge of security at each facility. Other off-site facilities will be the responsibility of the Commander over the units assigned to the facility. Primarily APD facility assignments are:

1. Main Headquarters (Main)- Downtown Area Command Commander

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2. North Substation (N-Sub)- North West Area Commander
3. Central East Substation (E-Sub)- Central East Area Commander
4. South Substation (S-Sub)- South West Area Commander
5. Rutherford Complex (OCD Building)- Organized Crime Division Commander
6. Rutherford Complex (IAD/Recruiting Building)-IAD Commander
7. Training Academy- Training Division Commander

(b) For purposes of security, areas within the department facilities will be designated as one of the following:

1. Restricted Access Area- An area where only authorized personnel or persons under escort are granted access due to the sensitive nature of the work.
2. Controlled Access Area- An area where the public is allowed to be after receiving authorization from facility security personnel.
3. Public Access Area- An area where the public is authorized to be.

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GO
1011

Austin Police Department
General Orders

Purchasing

1011.1 PURPOSE AND SCOPE

This document outlines basic information concerning policies and procedures to be followed in procuring goods and services for Department use. It also contains general instructions and descriptions of the solicitation process and is intended to provide procedures to help employees make purchases. The Financial Services Division (FSD) should be contacted for specific information.

1011.2 PURCHASING GUIDELINES

The authority to enter into a purchase agreement or contract for the City rests with the City Manager and designee(s). The City Central Purchasing Office has authorized selected departmental personnel to make limited departmental purchases. A properly completed Purchase Order is a legally binding contract and should be treated accordingly.

(a) No individual may obligate the City of Austin to procurement indebtedness, for any goods or services, without prior approval from either APD Procurement & Contract Services or the City Central Purchasing Office.

(b) Purchase Orders are created in APD Procurement & Contract Services or the City Central Purchasing Office following submission of a Purchase Requisition Form (PRF) by the end user or requestor.

(c) Unauthorized personnel who attempt to contract in the name of the City may be subject to disciplinary and legal action, and civil liability.

1011.2.1 PURCHASING PROCESS

The single biggest concern expressed about the purchasing process is Processing Time. The single best way to minimize processing time is to contact a buyer at the earliest point in the project that there may be reason to believe that approval will be given for the purchase. The earlier in the process that APD Procurement & Contract Services is involved, the easier it is to cope with constraints within our system and/or the manufacturer's or vendor's supply chain. APD Procurement & Contract Services must be involved in every phase of the project; planning, pre-bid, vendor correspondence, kick off meetings, etc. Our common purpose in the purchasing process should be to maximize our options with vendors in a cooperative effort between the user/ requisitioner and the buyer.

(a) All APD purchases require an authorized Purchase Request Form (PRF) be completed and submitted to APD Procurement & Contract Services prior to making a purchase; no purchase will be made without a completed PRF.

1. The end user is responsible for providing and developing all aspects of the specifications or scope of work and ensuring they are correct and appropriate prior to solicitation.

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2. APD Procurement & Contract Services' is responsible for pointing out any questionable or unusual specifications, as well as to provide support and guidance to procure products and/or services properly.

(b) A mandatory meeting will be arranged with APD Procurement & Contract Services to discuss the project, scope of work, and specification before a solicitation or order is placed.

(c) PRFs shall be approved by the appropriate authorizer and will contain all required information; incomplete PRFs will be returned to the requestor.

1011.2.2 PURCHASE APPROVAL REQUIREMENTS

Specific approval is required depending on the amount of the purchase and the source of the funds as outlined below. The listed budgetary limits may be changed periodically when increased budget review is required. Purchases made as Sole/Single Source, Professional Services Agreement, GAX exceptions, or through Cooperative Purchasing Agreements are not included in these guidelines.

(a) Purchases may not be made with appropriated City funds without the prior approval of both the appropriate commander/manager/assistant chief and the FSD-Budget Section.

(b) Purchases totaling $2,500 or less must be approved by the commander/manager and do not require solicitation.

(c) Purchases of $2,500.01 to $4,999.99 must be approved by the commander/manager and require a formal solicitation.

(d) Purchases of $5,000.00 or greater must be approved by an assistant chief or the Chief and require formal solicitation.

(e) Purchases requiring City Council approval must be reviewed and approved by the Chief.

(f) Regardless of dollar amount, purchases made using Forfeited Funds require approval of the Chief and City Legal.

1011.3 EQUIPMENT DISPOSITIONS

APD equipment will not be loaned, traded, sold, disposed of, or otherwise transferred without the prior written approval of the appropriate commander/manager and the Financial Manager. Equipment will be disposed of in accordance with City policies.

1011.4 SALES TAX EXEMPTIONS

The City is not subject to Texas sales tax.

(a) The Tax ID Number is 1-74-6000085-8.

(b) Employees making purchases will assure that vendors do not apply sales tax.

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1. It is the employee's responsibility to provide the vendor a tax exemption certificate and ensure that the vendor does not include tax at the time of purchase. Tax exemption certificates are available at the FSD.
2. No reimbursement will be made to employees who pay sales tax when making petty cash purchases.

1011.5 PETTY CASH PURCHASES

APD maintains a petty cash fund, which may be utilized for purchases not exceeding $150.

(a) All petty cash transactions will be made in accordance with Administrative Bulletin: Policies and Procedures for Petty Cash No. 93-01.

(b) The purchase must be approved in accordance with this document.

(c) When monies are advanced from petty cash, receipts and overages must be returned to the petty cash custodian within three (3) working days.

(d) No reimbursement greater than $150 will be made to employees who purchase items in excess of the petty cash limit.

1011.6 INVOICES

(a) Invoices should not be sent to the receiving unit's attention. Any invoices received by the requester shall immediately be forwarded to FMD.

(b) Vendors should be instructed to list the purchase order number on their invoice.

(c) Requesters are required to submit all packing slips to FMD and provide authorization to pay upon satisfactory receipt of goods or service.

(d) Employees shall instruct vendors to send all invoices to:

Austin Police Department
Attn: Financial Management
P.O. Box 1629
Austin, Texas 78767-1629

1011.7 BIDDING REQUIREMENTS

(a) Purchases totaling more than $2,500 will require APD Procurement & Contract Services to obtain a minimum of three (3) competitive bids.

(b) Purchases under $2,500 will require the requestor to provide or obtain a written quote from the vendor, which will be attached to the Purchase Request Form.

1011.7.1 BID SPLITTING PROHIBITED

(a) Purchases should be logically grouped together on a single purchase request.

(b) Purchases are not to be subdivided, staggered, or otherwise separated in order to circumvent approval/purchasing requirements.

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(c) Circumventing purchasing procedures is classified as a Class B misdemeanor.

1011.8 SOLE/SINGLE SOURCE PURCHASES

(a) A sole source exists if an item or service meeting the following criteria is the only item or service capable of meeting the Department's requirement, and that item or service is only available from the source recommended, based on:

1. Compatibility of equipment, accessories, or replacement parts is an overriding consideration and the goods can only be supplies by one source; or
2. Competition is precluded because the required purchase involves goods that are:
    (a) Patented, copyrighted, that use secret processes, or involve natural monopolies; or
    (b) A purchase of films, manuscripts, or rare books, sole expertise, or purchases of electricity, gas, and water as well as other utility services; or
    (c) A purchase of captive replacement parts or components for equipment.

(b) A single source is the one source among others in a competitive marketplace, which for specific justifiable reasons has predominant qualifications for selection for contract award. A single source situation exists if one or more of the following situations prevail:

1. Warranty will be voided if service is provided by other contract vendor.
2. Replacement parts to an existing City owned item.
3. An inter-local agreement or contract exists in which the partner or sub-recipient is willing to bear some of the costs if a specific vendor or contractor is utilized.
4. Time restraints for the urgency for service or repairs to be completed dictate that a particular vendor must be utilized.

(c) When an item is under consideration of a sole or single source for a particular purchase, the requestor must:

1. Prepare a memorandum documenting the reasons that the item or service requested is the only one capable of meeting the business need and/or explaining that no other source exists; and
2. Submit the memo with the approved PRF to the Financial Manager for approval.

(d) If the item/service requested is determined to be a sole or single source by the Financial Manager, sole source documents will be prepared and submitted to Central Purchasing for final review and approval.

1011.9 EMERGENCY PURCHASES

Emergency purchase and purchases necessary because of public calamity are defined as emergency purchases that are those procurements which must be made immediately in order to avoid imminent threat or danger to the citizens or to preserve the City's property. City policy outlines specific procedures for making emergency purchases.

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(a) Emergency purchases may be made in order to quickly procure material and/or services when required for one of the following conditions:

1. A public calamity such as a tornado, flood, riot, war, etc. to act at once to protect citizens or to preserve the property of the City; or
2. Immediate action is necessary to preserve or protect public health or safety of the citizens; or
3. Immediate repair is necessary because of unforeseen damage to city machinery, equipment, or other property.

(b) When the Department is faced with any of the above conditions:

1. Commanders/managers will advise their assistant chief.
2. Assistant chiefs will advise the Chief of the necessity for an immediate purchase.
3. If the Chief or designee believes that an emergency condition exists, the Financial Manager and City Purchasing Officer (CPO) must be contacted to either assist with the procurement or be advised of steps taken by the Department.
   (a) If an emergency purchase is required outside normal working hours, an attempt must be made to contact the CPO. In the event the CPO cannot be contacted, the Chief should act for the CPO.
4. The procurement process to locate the required item(s) should commence immediately.
   (a) The CPO or designee will insure that the purchase is made in the most expeditious manner.
   (b) If the Department already has located and obtained prices, CPO may defer involvement except for processing paperwork.
5. For purchases requiring City Council approval, the CPO will advise the City Manager of recommend award and action taken.
   (a) The Chief or designee will be required to sign and submit an affidavit which describes the nature of the emergency as well a memo that describes the events that led to this emergency.
   (b) The affidavit can be obtained from the Financial Manager.

1011.10 URGENT PURCHASES

An urgent purchase is a purchase made after normal working hours of the Procurement and Contract Services Office or Central Purchasing Office which justifiably requires immediate purchase, and which cannot be telephoned in or emailed to the Procurement and Contract Services Office or Central Purchasing Office to obtain a purchase order number prior to the purchase being made.

(a) All urgent purchase requisitions shall be approved by an assistant chief or Chief.

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(b) All urgent expenditures shall be approved by the completion of an *Urgent Purchase Memorandum* which includes a written justification for the purchase and must be completed within 24 hours of the urgent situation.

(c) When the *Urgent Purchase Memorandum* is completed and signed by an assistant chief or Chief, a purchase order or credit card payment will be issued to pay the vendor for the items obtained or services performed. This memorandum must be attached to the PRF as documentation for the expenditure.

(d) Urgent purchases are not to exceed the Department limit of $4,999.99.

1011.11 RUSH PURCHASES

Rush purchases are purchases that require immediate attention but do not align with an urgent or emergency purchase. These expenditures are to be expedited as quickly as possible but still must follow standard procurement processes.

(a) A rush purchase is utilized to expedite a purchase that is considered necessary for a special project or program in which the requestor was unable to secure the proper planning.

(b) This method requires that the requestor walk the PRF through the procurement process.

(c) The requestor will be responsible for obtaining the proper authorizations to include chain-of-command, budget, and purchasing approvals, as well as the PRF must be clearly marked as a "RUSH" purchase.

1011.12 OFFICE SUPPLIES

Office supplies, business cards and forms are obtained from APD Procurement & Contract Services.

(a) Employees may be set up as requestors to request office supplies through the City's Office Supply contractor; however, APD Procurement & Contract Services will review and release orders in order to maintain compliance with the City's Office Supply Contract.

(b) Employees that do not have personnel authorized to issue office supply requests electronically can obtain their supplies through submitting a PRF.

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Austin Police Department
General Orders

Budget

1013.1 PURPOSE AND SCOPE
This document establishes fiscal management responsibilities within the Department.

1013.2 RESPONSIBILITIES AND AUTHORITY
The Chief has the ultimate authority and responsibility for the fiscal management of the Department.

(a) The Chief has delegated financial administration responsibilities to the financial manager who is responsible for final budget preparation and fiscal management functions of the Department.

(b) The Financial Management Division (FMD) has the responsibilities and authority for the following areas:

1. Budget preparation.
2. Accounting.
3. Accounts receivable.
4. Accounts payable.
5. CIP project management.
6. Purchasing.
7. Revenue collection.
8. Requests for Council action (RCA's).
9. Seized asset management.

(c) The FMD shall:

1. Review all purchases and expenditures to ensure compliance with published purchasing policies and procedures.
2. Process all cash receipts.

(d) The financial manager will:

1. Govern procedures for the conduct of internal audits of the Department's fiscal activities.
2. Review and recommend supplemental or emergency appropriations and fund transfers.
   (a) Requests for the above shall be made in writing to the financial manager by the requesting Commander.
   (b) Additional appropriations or transfers between divisions must be approved by the Chief.
3. Establish an accounting system that includes approval by the Chief of each account and provides for monthly status reports showing:

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(a) Initial appropriation for each account or program; and

(b) Balances at the beginning of the monthly period; and

(c) Expenditures and encumbrances made during the period; and

(d) Unencumbered balances.

4. Make available financial information requested by commanders/managers.

5. Participate in the annual audit of funds as required by the City Controller's office.

(e) Assistant chiefs, commanders, and section supervisors are required to participate in the Department's budget preparation process and are responsible for the efficient utilization of budget appropriations.

(f) Commanders and managers will prepare written budget recommendations annually for the respective units and forward those recommendations to the FMD.

1013.3 CASH HANDLING POLICY

Employees and supervisors in units designated to handle cash disbursements or accepting payments on behalf of the Department must follow the cash handling policy contained in City Administrative Bulletin 92-02.

(a) Copies of City and Department policies and procedures will be maintained in each cash handling unit.

(b) The current list of designated cash handling units is available in Financial Management.

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Austin Police Department
General Orders

Grants Management

1015.1 PURPOSE AND SCOPE

The processes of applying for and administering grant funded programs require the coordination of personnel and resources in the Department. There are three groups involved in the administration of grants: Research and Planning, Financial Management, and the project-specific administrators. This order outlines the process for grants management.

1015.2 INITIATING A GRANT PROPOSAL

Initiating a grant proposal involves the following steps:

(a) The Grants Coordinator (currently assigned to the Research and Planning Unit):

1. Monitors funding announcements and online publications that outline available grant funding.
2. Meets with personnel interested in applying for new or renewal grant funds.
3. Assists personnel with the completion of a required "Request for Grant Funds" form (RGF).
4. Confirms chain-of-command approval of all RGFs.
5. Works with Financial Management to develop a draft project budget.
6. Presents RGFs and grant renewal information to the APD Budget Committee for approval.

(b) Following RGF approval, Research and Planning:

1. Counsels prospective project administrators on the initiation of grant-funded projects and
2. Establishes project-specific workgroups, consisting of the Grant Coordinator, Financial Consultant, the chain-of-command seeking funds, and any additional subject matter experts.

1015.3 SUBMITTING A GRANT APPLICATION

Submitting an application for new or renewal grant funds involves the Grants Coordinator/ Research and Planning:

(a) Alerting City Hall personnel to upcoming grant application submissions and, in certain instances, submitting requests for City Council action.

(b) Collaborating with the project workgroups to draft all required grant application documents (narratives, timelines, budget, resumes, etc).

(c) Finalizing and submitting the grant proposal to the granting agency.

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1015.4 MAINTENANCE OF GRANT COMPLIANCE

Maintenance of grant compliance involves the Grants Coordinator/Research and Planning, and Financial Management:

(a) Drafting additional request for Council action paperwork and securing time on the City Council docket.

(b) Maintaining contact with the workgroup to ensure that timelines are followed and special conditions are met.

(c) Working with the project administrator to ensure the timely purchase of equipment, hiring of personnel, and establishing contracts that meet the rules and requirements of the grant.

(d) Working with the project administrator to ensure successful site visits/audits, as well as the timely submission of progress/financial reports and grant adjustment notices.

1015.5 ROLES AND RESPONSIBILITIES

(a) Project administrators will:

1. Serve as the manager for individual grants thereby directing and controlling grant program activity.
2. Work with their chain-of-command to ensure open communication about program activity and sustainability.
3. Work with the Financial Consultant to ensure grant funds are spent in accordance with the grantor-approved budget.
4. Maintain grant performance measure files and forward copies of all correspondence (program and financial) to the Grant Coordinator and Financial Consultant.
5. Timely preparation and submission of data and program information to the Grants Coordinator and Financial Consultant.

(b) Financial Management is the administrative unit responsible for maintaining a full set of copies of all grant materials.

(c) The Grants Coordinator/Research and Planning supervises the administration of Department-wide grants that do not have a designated project administrator.

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Austin Police Department
General Orders

Gifts and Donations

1017.1 PURPOSE AND SCOPE

The guidelines set out in this document establish procedures concerning the solicitation and acceptance of gifts and donations made to the Department.

This order does not apply to:

(a) Funds, property or services received from the City, through a grant, from another governmental entity under an inter-local agreement or an inter-agency contract, or other lawful method, or for the loan of items from vendors in use for evaluation and testing.

(b) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

(c) "Employee discount" programs afforded to all employees of a business where an APD employee happens to have a secondary employment relationship.

1017.2 GIFTS AND DONATIONS

(a) Except as noted, the Chief or designee may only accept donations or gifts to the Department if:

1. The gift or donation will further the accomplishment of the Department's goals and duties; and
2. The donor is not a party to a pending criminal or civil case brought by an officer or employee of the Department; and
3. The donor is not subject to Department licensing or regulation, or interested in any contract, purchase, payment, or claim with or against the Department.

(b) The Chief or designee may approve the acceptance of a gift or donation on behalf of the Department notwithstanding the above provisions if he determines that acceptance would provide a significant public benefit and that the acceptance would not influence, or reasonably appear to influence, the Department in the performance of its duties.

1017.3 ACCEPTANCE AND SOLICITATION OF GIFTS AND DONATIONS

(a) If a person or entity proposes to make a donation to the Department, that person or entity will be referred to the:

1. APD Liaison for the Greater Austin Crime Commission (GACC), a non-profit organization; or
2. A non-profit corporation administered by the APD Office of Community Liaison (OCL)if the donation or gift is valued at $5000.00 or less.

(b) The Chief or designee may contact the GACC or the OCL non-profit corporation about the Department's needs relating to donations. Unless approved in writing by the Chief

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or designee, employees will not directly contact the GACC or its members regarding a donation or potential donation.

(c) An employee who is aware of a need that could be met by a donation to the Department is encouraged to bring the matter to the attention of the employee's chain-of-command, and, if approved, the matter will be submitted to the Chief or designee.

1017.4 PROHIBITED ACCEPTANCE AND SOLICITATION OF GIFTS AND DONATIONS

(a) No employee will solicit or accept donations or loans of property, funds, or services for use by the Department, or in carrying out its duties, except as otherwise provided in this order.

(b) Employees will not be permitted to use their affiliation with the Department to solicit funds for any purpose without the express approval of the Chief or designee.

(c) Employees shall not accept or solicit any gift or favor that might reasonably tend to influence that individual in the performance of official duties, or that the employee knows or should know has been offered with the intent to influence or reward official conduct.

(d) No employee shall knowingly borrow money, purchase any article, or accept gifts or favors from any person known or reasonably believed to be a habitual violator of the law or anyone who is under arrest, detention or suspected of a crime under investigation by any employee.

1. Employees shall not receive any article whatsoever, either as a gift or as the result of purchase or trade, from suspects, prisoners, persons recently arrested, known gamblers, prostitutes, or other persons of bad character, or professional bondsmen or other persons whose vocation may profit from information obtained from the police or from relatives, employees or associates of any of these persons.

2. Employees will not buy anything from or sell anything to any complainant, suspect, witness, defendant, prisoner, or other person involved in any case which has come to their attention through their employment with the Department, nor can they act as an intermediary in the payment of a reward for the return of stolen property.

3. Employees shall not accept any gift, favor or reward in money for services rendered in the line of duty.

(e) No person shall be allowed on the premises of the Department to sell goods or offer them for sale, or to canvass or solicit for any purpose, without permission from the appropriate Commander/Manager in charge of the premises.

(f) No employee shall participate, either directly or indirectly, in sales promotions, solicitations, fund-raising campaigns, or similar activities, while representing themselves as employees of the Department. Employees shall not authorize others to conduct themselves in a manner that would leave the impression the employee is representing the Department.

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(g) Employees shall not solicit the aid of any individual or group outside the Department for assistance in procuring or preventing a duty assignment, promotion, or to mitigate discipline. Nor shall they permit any petition to be circulated for the same on their behalf. Should an employee learn of such a petition being circulated, the employee should immediately bring the matter to his immediate supervisor.

1017.5 DISPOSITION OF ACCEPTED GIFTS AND DONATIONS

(a) The donor's request as to the use of the donation will be honored to the extent possible

(b) Any property donated to the Department will be inventoried through APD's Property Management.

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Austin Police Department
General Orders

Bulletin Boards

1019.1 PURPOSE AND SCOPE

In order for the Department to encourage and support the exchange of general information, glass enclosed bulletin boards are installed at strategic locations within APD facilities.

1019.2 TYPES OF BULLETIN BOARDS:

The two types of bulletin boards are:

(a) **Department Bulletin Boards** - For posting APD information.

(b) **Austin Police Association (APA) Bulletin Boards** - For posting APA information.

1019.2.1 DEPARTMENT BULLETIN BOARDS

Information posted on Department Bulletin Boards is considered important for all employees. Employees should check these Bulletin Boards regularly for new postings.

(a) Department Bulletin Boards will be located at various locations at the Main Headquarters, the Training Academy, and substations, and remote offices.

(b) Control of Posted Materials:

1. The Commander over each facility where the Bulletin Board is located will designate a specific person to post/purge information on Department Bulletin Boards.
2. Each Department Bulletin Board will remain locked to control the materials posted.

(c) Only authorized Department information will be posted on Department Bulletin Boards.

(d) Personal notices are not to be placed in, on, or affixed to Department Bulletin Boards.

1019.2.2 APA BULLETIN BOARDS

Pursuant to terms in the Meet and Confer Agreement, the APA may have a bulletin board installed at designated APD facilities. The design and placement of APA Bulletin Boards will be approved by the Chief or designee.

(a) The Agreement includes the following guidelines concerning APA Bulletin Boards:

1. There shall be no personal attacks or inflammatory statements.
2. All materials shall be directed toward dissemination of APA information.
3. Any concerns about the content of posted material shall be brought to the attention of the APA's Executive Board for review and adjustment as soon as the concerns are noticed.
4. The Chief retains the final decision as to whether APA material may be posted on APA Bulletin Boards. At no time shall the APA Bulletin Boards contain any political endorsement, whether at the local, state or federal level.

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Austin Police Department
General Orders

Severe Weather

1021.1 PURPOSE AND SCOPE

On occasion, Austin experiences severe weather conditions impacting all or a majority of the city. This includes flooding, icy conditions, or high winds and possible tornado activity. Severe weather conditions create hazards for employees as well as other members of the public.

1021.2 ESSENTIAL PERSONNEL

Essential personnel are employees who provide emergency police services to the public.

(a) First Responders are essential personnel.

(b) Personnel assigned to Communications are considered essential personnel unless otherwise designated as nonessential by the Communications SOP.

(c) Supervisors will designate all other officer and civilian employees as either essential or non-essential personnel.

1021.3 SEVERE WEATHER SITUATIONS

The provisions of this order will be invoked only after specific authorization of the City Manager under the City of Austin Bad Weather Policy.

(a) In the event a decision is made by the City Manager that an emergency situation has created hazardous conditions, only essential Department personnel should report for duty or remain on-duty.

(b) All essential personnel will report for duty as normal, or as directed, if an emergency mobilization is declared unless the employee's absence is authorized by a supervisor.

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General Orders

Courtesies to the Flag

1022.1 PURPOSE AND SCOPE

Employees will render proper respect to the National Colors and the National Anthem when it is both practical and safe to do so. This order explains how to render the proper courtesy and when it should be rendered.

1022.2 MANNER OF EXECUTING A COURTESY TO THE FLAG

There are three (3) distinct manners in which courtesies may be extended, depending upon circumstances.

(a) When in civilian attire, including wearing a non-police uniform, employees will place their right hand over their heart. Employees wearing a hat will remove their hat and hold them at the left shoulder with the hand over the heart.

(b) When in a police uniform and a hand salute is appropriate:

1. Stand at attention, with eyes facing forward.
2. Raise the right hand smartly until the tip of the forefinger touches the lower edge of the brim of the headgear, or, if not wearing a hat/cap, until the forefinger touches the forehead above and slightly to the right of the right eye.
3. The thumb and fingers are held straight and joined, with the palm facing to the left.
4. The upper arm is horizontal, the forearm inclined at 45 degrees, and the hand and wrist are held straight.
5. Complete the salute by returning the arm to its normal position at the side, using a smooth motion.

(c) When in a police uniform and standing at attention is appropriate:

1. Stand erect, with eyes facing forward.
2. Let arms hang by the sides with the thumbs touching the outer trouser seams.

1022.3 WHEN COURTESIES ARE RENDERED

When practical and safe to do so personnel will render the proper courtesy, as designated during:

(a) Parade Situations.

(b) Posting of Colors.

(c) Flag Raising/Lowering (Reveille and Retreat).

(d) Playing of the National Anthem.

1022.3.1 PARADE SITUATIONS

Render the courtesy when the flag approaches within six paces from the viewer and hold it until the flag has passed two paces beyond.

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(a) Officers in uniform come to attention and render the hand salute.

(b) Employees in civilian attire will render courtesy as outlined in this order.

1022.3.2 POSTING OF THE COLORS

(a) If outdoors, officers in uniform will render the hand salute. Begin the salute when the command "present arms" is given and hold until the command "order arms" is given.

(b) If indoors, officers in uniform will stand at attention. Come to attention as the honor guard begins its entry, and remain at attention until the honor guard exits the posting area (generally the stage or dais area).

(c) Employees in civilian attire will render courtesy as outlined in this order from entry of the honor guard until it leaves the posting area.

1022.3.3 FLAG RAISING/LOWERING (REVEILLE AND RETREAT)

The ceremony of raising or lowering the national flag at police facilities constitutes a dignified homage to it. Begin to render the courtesy when the flag starts its ascent/descent, and end it when the flag has been fully raised/lowered.

(a) Officers in uniform will render the hand salute.

(b) Employees in civilian attire will render courtesy as outlined in this order.

1022.3.4 PLAYING OF THE NATIONAL ANTHEM

Render the courtesy beginning with the first note of the National Anthem and hold until the last note is played.

(a) If outdoors, officers in uniform will render the hand salute.

(b) If indoors, officers in uniform will stand at attention.

(c) Employees in civilian attire will render courtesy as outlined in this order.

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GO
1023

Austin Police Department
General Orders

Honorably Retired Photo Identification and Range Qualification

1023.1 PURPOSE AND SCOPE

This order sets guidelines on officers who retire from the Department and who wish to:

(a) Receive a Honorably Retired Photo Identification, and/or

(b) Qualify for a handgun license under 18 USC (LEOSA Federal Law) or Tex. Occ. Code Ann. § 1701.357.

1023.2 IDENTIFICATION

Officers who have retired or who have given notice to the department of their retirement date may receive a retiree photo identification.

(a) The individual will fill out the Identification Card Honorably Retired Peace Officers (PD0041b) and deliver the completed form to the control booth, headquarters.

(b) After two weeks, the individual may call the control booth to determine if the form has been approved. Upon approval, the retiree shall schedule a time for the photo and identification card.

(c) If an identification card issued under this order is lost or stolen, the retiree shall submit an affidavit stating such upon receiving a replacement card.

1023.3 QUALIFICATION

Retirees who possess a retiree photo identification may qualify at the Department's range.

(a) The retiree shall call the range and schedule a time to qualify.

(b) The retiree shall sign a Department waiver and a signed and notarized Certificate of Weapons Proficiency (PD0206 or PD0206a) before being allowed to shoot on the range. Sworn range personnel may notarize the waiver.

(c) Upon successful qualification, the range officer shall issue the retiree a Certificate of Weapons Proficiency (PD0206 or PD0206a).

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GO
1024

Austin Police Department
General Orders

Emergency Notification System (ENS)

1024.1 EMERGENCY NOTIFICATION SYSTEM (ENS)

The Emergency Notification System (ENS) is an automated emergency notification tool which enables authorized public safety personnel the ability to notify citizens of emergency situations where human life or property are potentially in jeopardy.

The Emergency Notification System may also be recognized as the Regional Notification System (RNS) and/or Reverse 911. This system is accessible through APD Emergency Communications. This system is not the primary system for statewide AMBER, SILVER, or BLUE Alerts; but, can be utilized to support those statewide alerts.

(a) When sworn personnel request an ENS activation through Emergency Communication personnel, the request must:

1. Be approved by a supervisor with the rank of Sergeant or higher;
2. Include some general geo-graphical identifiers for the boundaries of the message (radius distance and/or perimeter roadways); and
3. Include the content of the message to be delivered

(b) Examples of potential activation scenarios include, but are not limited to:

1. Warning residences of severe weather events and providing instructions (usually handled by the EOC).
2. Broadcasting the description of an endangered missing child or elderly person to residents in an area where the individual was last seen;
3. Providing information concerning hazardous areas to avoid due to an imminent threat (chemical spills, fires, floods, etc.).

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Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MODESTO RODRIGUEZ, *Plaintiff,*	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-01087-RP**
CITY OF AUSTIN AND JOHN DOES, *Defendants.*	§	

DECLARATION OF WADE LYONS

STATE OF TEXAS
COUNTY OF TRAVIS

I, Wade Lyons, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. My name is Wade Lyons, I am over the age of eighteen years, and I am authorized to make this declaration in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as a Commander of the Training Division of the City of Austin Police Department (APD). Prior to becoming a Commander, I held numerous patrol, investigative, supervisory, and management positions with APD.

3. As a Commander of the Recruiting and Training Division of the City of Austin Police Department, I have personal knowledge of APD hiring and training standards. Once an individual is hired by APD, he or she becomes a cadet in APD's training academy. Every APD cadet must successfully complete a 32-week training course at the APD training academy before becoming an APD officer. At the academy, all APD officers receive over 800 Texas Commission

on Officer Standards and Education (TCOLE) approved hours of training. (TCOLE is the Texas state agency responsible for certifying and licensing law enforcement officers in Texas). APD's training requirements far exceed the minimum 720 TCOLE hours required by the State of Texas for TCOLE certification. All APD cadets must be certified by TCOLE before they become APD officers. All APD officers must maintain their TCOLE certification to remain APD officers.

4. All APD cadets receive comprehensive training at the academy on topics including, but not limited to: arrest, search, and seizure; Penal Code; use of force; firearms training; less-lethal weapons; defensive tactics; crowd control during protests and demonstrations: communication and interactions with persons with disabilities. This training includes numerous practical skills tests, including exercises where cadets are trained on how to make the decision whether to use force, and choose the appropriate level of force, in simulated situations.

5. In particular, for at least the last several years, APD has required all cadets to undergo at least 190 hours of TCOLE approved training related to use of force and arrest techniques. This vastly exceeds the 24 hours required by TCOLE. In general, APD trains its officers and cadets using the "Dynamic Response to Resistance Model." This model and philosophy supports progressive and reasonable escalation and de-escalation of officer applied force in response to the actions and resistance posed by the subject. Officers and cadets are trained that the level of their response should correspond to the situation encountered on the scene and the actions of the subject in response to the officer's commands. This philosophy is taught through practical and classroom exercises.

6. I also know that the APD training academy includes classroom training on use of force law and policy. I know that cadets are instructed, based at least in part on the Supreme Court's decisions in *Graham v. Connor* and *Tennessee v. Garner*, that they are only permitted to

use the amount of force that is reasonable under the circumstances, judged from the perspective of a reasonable officer on the scene.

7. APD officers also receive considerable training on interacting with the public. APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public, including members of the public with disabilities.

8. After officers are commissioned, TCOLE requires officers to undergo at least 40 hours of continuing education and training every two years. To ensure that its officers remain TCOLE certified, and to make sure that its officers receive the latest training, APD offers a number of continuing educational and training opportunities for its officers. This training and instruction covers the policies in effect at the time of this incident (Austin Police Department General Orders valid 4/21/2020 to 5/31/2020), including, among others, the policies set out by APD General Order 200.1 Purpose and Scope, GO 200.1.1 Philosophy, GO 200.1.2 Definitions, GO 200.1.3 Duty to Intercede, GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, GO 206 Control Devices including kinetic projectiles and shot placement, GO 300.3 Crowds, GO 407 Emergency Management, GO Mobile Field Force, and GO 609 Interpreter Services.

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 26 day of July, 2023.

Wade Lyons 5956

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants.	§	

DEFENDANTS' COMBINED MOTION TO DISMISS AND,
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT
AS TO CLAIMS PREMISED UPON ACTIONS BY JOHN DOE(S)

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendants, John Doe(s) and the City of Austin, jointly file this combined Motion to Dismiss and, in the alternative, Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, with regard to Plaintiff's claims premised upon the alleged actions by unidentified police officers.

I. Introduction

Plaintiff Tyree Talley brings §1983 claims for First Amendment retaliation and excessive force against Officer John Doe(s) and the City of Austin arising out of an incident which occurred on May 30, 2022 during protests near the Austin Police Department. Plaintiff also asserts ADA claims that Defendants failed to provide reasonable accommodations for people with disabilities. Plaintiff threw a bottle at police officers and in response was struck by less lethal beanbags allegedly fired by one or more police officers. The Plaintiff does not have a viable claim against the City of Austin or any John Doe(s) defendants arising from the allegations against the unidentified officers. As a result, dismissal with prejudice of the following claims is appropriate.

II. Facts

On May 30, 2020, Austin Police officers responded to widespread protests along the I-35 corridor near downtown Austin and in front of the Austin Police Department headquarters. Although many among the crowd were peaceful, many others were not. In fact, as soon as officers arrived on I-35 that afternoon, non-peaceful protestors were throwing rocks at semi-trucks that had come to a standstill on I-35. (Ex. 1, Depo. of Wright, pp.40-41; 44) Additionally, when APD officers arrived at the I-35 overpass, non-peaceful protestors threw rocks, bottles, sticks and other objects at the officers while the officers attempted to move protestors from I-35. (Ex. 2, Depo. of Cantu-Harkless, p. 20)

This unlawful activity continued the rest of the afternoon and throughout the night. Non-peaceful protestors also targeted APD officers on the overpass and in front of APD headquarters with thrown objects, including rocks, broken pieces of concrete, broken bricks, frozen water bottles, water bottles filled with water and urine, Molotov cocktails, fireworks and lit a car on fire. (Ex. 1, Depo. of Wright, pp. 46-47; Ex. 3, Depo. of Hethershaw, p. 54; Ex. 2, Depo. of Cantu-Harkless, p. 22; Ex.2: Ex. 4, Depo. of Cobaugh, pp. 51-52)) The fireworks exploded at officers' feet, and often objects struck the officers. (Ex. 1, Depo. of Wright, p. 47; Ex. 3, Depo. of Hethershaw, p. 56) Officer Hethershaw, who was on the I-35 overpass providing overwatch on APD headquarters, was struck in the groin by a bottle, and Officer Lynch was struck by rocks and bottles. (Ex. 3, Depo. of Hethershaw, pp. 54-56; Ex.5, Depo. of Lynch, p. 25))

In fact, the protests were of an unprecedented scale and scope for the City of Austin and the Austin Police Department. (Ex. 6, Decl. of Henderson, ¶ 16) Although the Austin Police Department had handled many peaceful protests and demonstrations over the years, the department had not encountered protests and demonstrations with the degree of unlawful behavior including

throwing projectiles at officers and blocking and taking over roadways, that was demonstrated on May 30, 2020. *Id.*

Plaintiff Tyree Talley was one of the non-peaceful participants. Remarkably, Talley alleges in his Complaint that "[o]fficers shot Tyree Talley without warning **and even though he was doing nothing wrong."** (Doc. 1, p. 3)(emphasis added) Yet, video taken from APD headquarters clearly shows Talley throw an object in the direction of officers standing in front of APD headquarters. (Ex. 7, COA 37537 at 21:16:31) Talley, wearing a white shirt, runs from underneath the I-35 overpass toward APD headquarters and throws the object in the direction of the officers. (Ex. 7, COA 37537 at 21:16:20 to 21:16:34) As he threw the object and began running back toward the overpass, he was impacted by less-lethal beanbags deployed by APD officers. (Ex. 7, COA37537 at 21:16:35) Although Talley had been at the protest for three to four hours, officers did not use any force on him until he threw the bottle. (Ex. 8, Depo. of Talley, p. 10) Two years after filing his complaint which alleged that he had done nothing wrong, Talley admitted in his deposition that he had in fact thrown the water bottle. (Ex. 8, Depo. of Talley, p. 12) Talley's own expert, Michael S. Maloney, acknowledged in his deposition that Talley's act of throwing the bottle was unwarranted, inappropriate, non-peaceful and unlawful conduct. (Ex. 9, Depo. of Maloney, pp. 54-57)

Notably, less than a minute before Talley threw the bottle, a non-peaceful protestor threw an incendiary device which landed at the feet of officers in front of APD headquarters which caused the crowd to scatter. (Ex. 1, Depo. of Wright, pp. 82-85) As Officer Wright explained in his deposition, he recalled someone throwing an incendiary device, and his bodycam video shows flashes of light and a bright red flame near the steps and then a pillar of smoke above the steps while the crowd scatters. (Ex. 1, Depo. of Wright, pp. 82-85; Ex. 10, Wright BWC, COA4621 at

18:10 to 18:20; Ex. 11, Video of Wright Depo., JW7212023e.mp4 at 0:07:28 to 0:10:55))[1]

As Talley threw the bottle and began to run toward the I-35 overpass, Officer Wright and other officers deployed less-lethal beanbags in an effort to stop Talley and deter him. (Ex. 1, p. 107; 110-114) Wright explained that Talley was following a pattern of other non-peaceful protestors that Wright had observed: the non-peaceful protestors would run out from under the overpass, throw objects at officers, run back under the overpass and then repeat the process. (Ex. 1, pp. 110-113; see also Ex. 2, Cantu-Harkless Depo. pp. 34-35) Officers deployed the less-lethal munitions as a result of the imminent threat of harm to officers and protestors presented by the thrown projectiles. (Ex. 1, pp. 40; 70; 114; Ex. 2, pp. 61; 64-65) Talley's expert Maloney agrees that Talley's act of throwing the water bottle posed a threat of injury or bodily harm to anyone who was in the direction that Talley threw the bottle. (Ex. 9, p. 71)

III. Argument and Authorities

A. Motion to Dismiss pursuant to Rule 12(c) of the Federal Rules of Civil Procedure

Plaintiff's allegations against the respective defendants are unclear in that he incorporates all of the claims and allegations against all possible defendants. (see Document 1, p. 16, paragraph 52, which states in part "section I through VI above into this section on damages.") Consequently, Defendants, John Doe(s) and the City of Austin, jointly assert that "'A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6).' Thus, the inquiry focuses on the allegations in the pleadings' and not on whether the 'plaintiff actually has sufficient evidence to succeed on the merits.'" *Ackerson v. Bean Dredging LLC,* 589 F.3d 196, 209 (5th Cir. 2009). In reviewing a motion to dismiss, the "court accepts all

[1] Reference is to timestamp on lower left corner of video player. Also note that the date of 2020-05-31 in upper right corner is incorrect. Correct date is 2020-05-30.

well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotes and citations omitted). To overcome a motion to dismiss, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *see also Culberson v. Lykos*, 790 F.3d 608, 616 (5th Cir. 2015). A plaintiff's lawsuit will not survive a motion to dismiss if the facts pleaded do not raise the right to relief "above the speculative level," even if the facts are viewed in the light most favorable to the plaintiff. *Twombly,* 550 U.S. at 555. "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Taylor v. Books A Million*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *Fernandez–Montes v. Allied Pilots Ass'n,* 987 F.2d 278, 284 (5th Cir. 1993)).

1. Plaintiff has failed to amend his pleadings to substitute an identified defendant for John Doe.

Plaintiff's Complaint names "John Doe(s)" as a defendant and asserts that "Defendant John Doe(s) are one or more as-yet unidentified (to Tyree or the Austin community, anyway) Austin police officer(s)." (Doc. 1, ¶ 3) Plaintiff filed his Complaint on March 15, 2021, over two years ago. The consolidated scheduling order states that the parties shall file all motions to amend or supplement pleadings by November 4, 2022 and file motions to join additional parties on or before February 10, 2023. (Doc. 22) Plaintiff has not moved to amend his pleadings or to substitute a named defendant in place of John Doe prior to these deadlines.

2. The claims asserted against John Doe should be dismissed.

To state a claim under 42 U.S.C §1983, a plaintiff must allege, first, that he has been deprived of a constitutional right, and second, that the deprivation was caused by a person acting under color of law. *Flagg Bros., Inc. v. Brooks,* 436 U.S. 149, 155, 98 S.Ct. 1729, 1733 (1978). While it has long been an accepted practice to allow claims against an unknown defendant to be amended to identify the defendant when his identity is discovered, the amendment must be made within the applicable limitations period or must relate back to the date of the original complaint, otherwise, it will be time-barred. *Taylor v. City of Winnfield,* 191 F.R.D. 511, 513 (W.D. Louisiana 2000), citing *Pullman Co. v. Jenkins,* 305 U.S. 534, 536-37, 59 S.Ct. 347, 348-49 (1939).

In determining the applicable limitations period in a §1983 action, the court looks to the forum state's personal injury limitations period. *Taylor,* 191 F.R.D. at 513. In Texas, the personal injury limitations period is two years. *Tex. Civ. Prac. & Rem. Code* §16.003. As a result, since this action accrued on May 30, 2020, the statute of limitations ran on May 30, 2022.

Moreover, any attempt to amend the complaint to identify and substitute a named defendant in place of John Doe would not relate back to the date of the original complaint. Rule 15(c) of the Federal Rules of Civil Procedure provides in relevant part:

> An amendment of a pleading relates back to the date of the original pleading when…within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party."

Fed. R. Civ. P. 15(c). Rule 15(c) is meant to allow an amendment changing the name of a party to relate back to the original complaint only if the change is the result of error, such as misnomer or misidentification. *Taylor,* 191 F.R.D. at 513, citing *Jacobsen v. Osborne,* 133 F.3d 315, 320 (5th

Cir. 1998. Here, Plaintiff has not moved to amend to substitute a named defendant. Even if he did so move, the motion would be futile, since the statute of limitations has run. Moreover, the amendment would not relate back since the change would not be the result of a misnomer or misidentification.

The court in *Taylor* addressed this issue in a §1983 action for failure to provide medical attention brought against a City and an unnamed officer identified as John Doe. There, the court granted the defendants' motion to dismiss the claims against John Doe on the grounds that any claim against an identified officer was time-barred and any amendment would not relate back to the original complaint. *Taylor,* 191 F.R.D at 51; see also *Jacobsen,* 133 F.3d at 320-21.

For the reasons set forth above, Plaintiff has no viable claim against John Doe. As a result, the Court should dismiss the Plaintiff's claims against Defendant John Doe and the City of Austin, at least to the extent that, as noted above, Plaintiff has incorporated all claims and allegations against all possible defendants, including the City of Austin. (see Document 1, p. 16, paragraph 52, which states in part "section I through VI above into this section on damages.")

B. Motion for Summary Judgment

Alternatively, Defendants John Doe and the City of Austin move for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id*., at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325.

Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n,* 79 F.3d 1415, 1429 (5th Cir. 1996).

1. First Amendment Retaliation

Plaintiff alleges that Officer Doe (and, as noted above perhaps the City of Austin) violated Plaintiff's First Amendment rights when Doe shot Plaintiff in retribution for Plaintiff exercising his First Amendment rights. (Doc. 1, ¶¶ 26-30) To prove a First Amendment retaliation claim, a plaintiff must show (1) they were engaged in constitutionally protected activity, (2) the defendant's actions caused them to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendant's adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct. *Keenan v. Tejeda,* 290 F.3d 252, 258 (5th Cir. 2002).

First, Plaintiff was not engaged in constitutionally protected activity. Here, the video clearly shows the Plaintiff throwing a bottle in the direction of police officers, and Plaintiff was struck by the less lethal beanbags immediately thereafter. (Ex. 7, COA37537 at 21:16:20 to 21:16:34) Plaintiff admits that he threw the bottle in the direction of officers. (Ex.8, Depo of Talley at 12-13) The First Amendment does not entitle a citizen to throw objects at police officers or others, whether the citizen is participating in a protest or not. See Texas Penal Code §42.02 (person commits an offense if he knowingly participates in a riot, defined as the assemblage of seven or more persons resulting in conduct which creates an immediate danger of damage to property or injury to persons or substantially obstructs law enforcement or other governmental functions or services); see also *N.A.A.C.P. v. Claiborne Hardware Co.,* 458 U.S. 886, 916, 102 S.Ct. 3409 (1982)("The First Amendment does not protect violence."). As a result, Plaintiff cannot meet the

first or second element of his First Amendment retaliation claim.

Plaintiff also fails to meet the third element: that Doe's actions were substantially motivated against Plaintiff's exercise of constitutionally protected conduct. A First Amendment retaliation claim requires a but-for causal connection between the government defendant's "retaliatory animus" and the plaintiff's subsequent injury. *Batyukova v. Doege,* 994 F.3d 717, 730 (5th Cir. 2021) Again, the video clearly shows that Plaintiff was struck by the beanbags immediately after he threw the bottle in the officers' direction. (Ex. 7, COA37537 at 21:16:35) Plaintiff testified that he had been at the scene for three or four hours prior to the bottle-throwing/beanbag incident, but he was not shot with beanbags until he threw the bottle. (Ex. 5, p. 10) See *Batyukova,* 994 F.3d at 731 (5th Cir. 2021)(temporal gap between the protected activity and being shot as well as suspect's reach toward waistband, supports conclusion that her protected activity was not a but-for cause of being shot). Moreover, Plaintiff admitted in his deposition that his understanding of why he was shot with the beanbags is "because I threw that thing in the air and I was there with my friend [Modesto Rodriguez, who also was shot with beanbags after he threw an object at police officers]" (Ex. 8, p. 50)

The Fifth Circuit's decision in *Singleton v. Darby*, 609 Fed. Appx. 190 (5th Cir. 2015) is instructive. There, an officer pepper-sprayed the plaintiff and other protestors who were protesting and blocking traffic on a public road. *Id.* at 192-193. The plaintiff filed suit, alleging excessive force and First Amendment retaliation claims against the officer. *Id.* The Fifth Circuit affirmed the district court's grant of summary judgment on the plaintiff's excessive force and First Amendment retaliation claims. *Id.* at 196. The Fifth Circuit noted that the First Amendment did not entitle the plaintiff, or any other citizen, to obstruct traffic or create hazards for others, and as a result, the plaintiff was not engaging in constitutionally protected activity. *Id.* at 193. The Court stated that a

state may enforce its traffic obstruction laws without violating the First Amendment, even when the suspect is blocking traffic as an act of political protest. *Id.* The Court also found that the plaintiff failed to meet the motivation element of the First Amendment retaliation claim since the record failed to show that the officer pepper sprayed the plaintiff for any reason other than to clear the road. *Id.* at 194. As a result, the Court affirmed the district court's dismissal of the First Amendment retaliation claim. *Id.*

Similarly, in this case, Plaintiff was not engaging in constitutionally protected activity when he threw the bottle at the police. Texas law prohibits this conduct, and the video evidence and Plaintiff's own testimony establish that Plaintiff was shot with the bean bags because he engaged in this illegal conduct, not because he was participating in the protest. As a result, Doe is entitled to summary judgment on Plaintiff's First Amendment retaliation claim (and the City of Austin is too, at least to the extent that, as noted above, Plaintiff has incorporated all claims and allegations against all possible defendants, including the City of Austin).

2. Excessive Force

Plaintiff alleges that Doe violated Plaintiff's constitutional rights by using excessive force when Doe impacted Plaintiff with the less lethal munitions. (Doc. 1, pp. 12-13) If officers had actually been named as parties to the lawsuit, it is clear that Qualified Immunity would have barred all claims against them. To succeed on an excessive force claim under 42 U.S.C. § 1983 and overcome qualified immunity, a plaintiff bears the burden of showing "(1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the excessiveness of which was clearly unreasonable." *Manis v. Lawson*, 585 F.3d 835, 843 (5th Cir. 2009). "In gauging the objective reasonableness of the force used," the court "must balance the amount of force used against the need for the force." *Ikerd v. Blair*, 101 F.3d 430, 434 (5th Cir.

1996). This objective standard requires a court to focus on the facts and circumstances confronting the officer, without regard to the officer's subjective intent or motivation. *Ramirez v. Knoulton*, 542 F.3d 124, 128-29 (5th Cir. 2008). When looking at the facts of the case, courts should focus on "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Lytle v. Bexar County, Tex.*, 560 F.3d 404, 411 (5th Cir. 2009).[2]

In all cases, the reasonableness of a particular use of force "must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Courts should also recognize that police officers must make split-second decisions in stressful and unpredictable circumstances. *Id.* "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-397.

The first factor weighs against Plaintiff. The totality of the circumstances would lead a reasonable officer on the scene to believe that Plaintiff attempted an assault by throwing the bottle in the direction of the police officers or others in the crowd. Additionally, Plaintiff engaged in riotous behavior which is also a crime under Texas law. *Tex. Penal Code §42.02.* As explained by Officer Wright, Plaintiff's actions met the elements of riotous behavior under the statute. (Ex. 1, Depo of Wright, pp.69; 90-91) Both assault and riotous behavior are obviously serious offenses under Texas law. Plaintiff's own expert Michael Maloney testified that Plaintiff's act of throwing the bottle in the direction of the officers and others was unwarranted, inappropriate, non-peaceful

[2] Not all of these factors must be present for an officer's use of force to be reasonable. It is usually sufficient to justify a use of force that the officer reasonably believed that the suspect posed a threat to the officer or others. *Rockwell v. Brown*, 664 F.3d 985, 992 (5th Cir. 2011).

and unlawful conduct. (Ex. 9, Depo. of Maloney, pp. 54-57)

The second factor also weighs against Plaintiff. Although Plaintiff curiously omits in his Complaint the undisputed fact that he threw the bottle toward the police and crowd, a reasonable officer on the scene would interpret that action as a threat against the officers and crowd in front of APD headquarters. As detailed in the officers' deposition testimony, throughout the day and night officers had been struck by bottles, rocks, fireworks and other objects thrown by non-peaceful protestors. (Ex.1, Depo. of Wright, pp.46-47; Ex.3, Depo. of Hethershaw, p. 54) Numerous objects can be seen flying through the air near officers on the video from APD headquarters. (Ex.7 at 21:07:27 to 21:08:01) As explained by Officer Wright, less than a minute before Talley threw the bottle, someone threw an incendiary device onto the steps of APD headquarters in the middle of the officers and crowd. (Ex.1, Depo. of Wright, pp.82-85) As this happens, the crowd scatters from the front of APD headquarters. Ex. 10, Wright BWC, COA4621 at 18:10 to 18:20); Ex. 11, Video of Wright Depo., JW7212023e.mp4 at 0:07:28 to 0:10:55) A reasonable officer viewing this scene, and then viewing Talley throw an object towards APD headquarters, would understandably believe that Talley's actions presented an immediate threat against the officers and others at the scene. Plaintiff will likely argue that a water bottle is not dangerous and presents no threat to police officers. Yet, as explained by Officer Wright, non-peaceful protestors in the crowd throughout the day had thrown water bottles containing frozen water as well as urine at officers. (Ex.1, Depo. of Wright, pp.46) Additionally, incendiary devices had also been thrown at officers, and these devices could be made with otherwise innocuous plastic water bottles. (Ex.1, pp. 64-65) Simply put, thrown objects of any kind presented a threat of injury to anyone in the crowd, and officers were justified in attempting to stop this threat.

The third factor also weighs against Plaintiff. The video clearly shows Plaintiff attempting to run after he threw the bottle. (Ex. 7, COA37537 at 21:16:35). Officer Wright testified that he had seen non-peaceful protestors throw objects toward officers and then run under the I-35 overpass to avoid being caught or struck by less-lethal beanbags, only to run back toward APD headquarters to throw additional objects at the officers. (Ex. 1, pp. 110-113; see also Ex. 2, Depo. of Cantu-Harkless, pp. 34-35)

In light of the active threat posed by Plaintiff throwing an object towards officers, as well as the events throughout the day, it was objectively reasonable for the officers to use force via less-lethal beanbag rounds to stop Plaintiff. Additionally, Plaintiff cannot meet his burden of overcoming qualified immunity by demonstrating that the officers' conduct violated clearly established law. Although the Fifth Circuit has not addressed a similar protest claim, the Eighth Circuit addressed an excessive force claim in a similar protest setting in *Bernini v. City of St. Paul,* 665 F.3d 997 (8th Cir. 2012). There, police officers used less-lethal munitions in the form of "stinger blast balls," chemical irritants and smoke against a large group of protestors who had thrown numerous objects—including rocks and bags containing feces—at officers and had refused to clear roadways. *Bernini,* 665 F.3d at 1001-1002. On appeal, the Eighth Circuit affirmed the district court's grant of summary judgment on the plaintiffs' excessive force claim against the officers as well as their Monell claim against the City of St. Paul. *Id.* at 1008. The Court found that the use of less-lethal munitions by officers in an effort to control a non-compliant crowd was not objectively unreasonable. *Id.* at 1006.

Similarly, in this case, the officers' use of less-lethal force against Plaintiff in an effort to stop him from throwing objects at officers is objectively reasonable. As a result, Plaintiff's excessive force claim fails, and Doe is entitled to summary judgment. The City of Austin is too, at

least to the extent that, as noted above, Plaintiff has incorporated all claims and allegations against all possible defendants, including the City of Austin. Further, the City asserts that it may not be held liable if the court finds that the Plaintiff's constitutional rights were not violated. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). Even if a city employee or police officer violated a plaintiff's constitutional rights, a city may not be found liable under §1983 under a theory of *respondeat superior*. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978). This is more fully explained in the City's separate Motion for Summary Judgment, which is incorporated by reference [filed July 31, 2023].

3. The Plaintiff's ADA and RA Claims Should Be Dismissed

In section F of the Complaint [Doc. 1], the Plaintiff alleges that Austin Police and Austin Police Officers violated Plaintiff's rights under the ADA and "Section 504", presumably of Rehabilitation Act ("RA"), and failed to provide reasonable accommodations when they did not provide communications aids and services. Plaintiff alleges that officers failed to follow "the best practices for officers who are in ***emergency situations*** who are unable to obtain an interpreter quickly." (Id. at #50 and 51, P.16) (emphasis added). The claims against the Defendant John Doe(s) must be dismissed because individual employees cannot be held liable for violations of the ADA.

Further, all claims against the City of Austin must also be dismissed. Title II of the ADA creates a private right of action for monetary and equitable relief, allowing individuals to sue local governments for disability discrimination committed by police in ***non-exigent circumstances***. *Windham v. Harris Cnty., Texas,* 875 F.3d 229, 234–35 (5th Cir. 2017) (emphasis added; citing *Hainze v. Richards,* 207 F.3d 795, 802 (5th Cir. 2000); *Delano-Pyle v. Victoria Cty.,* 302 F.3d 567, 570–71, 574–76 (5th Cir. 2002). In *Hainze v. Richards*, the Fifth Circuit held that "Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents

prior to the officer's securing the scene and ensuring that there is no threat to human life."

Hainze v. Richards, 207 F.3d 795, 801 (5th Cir. 2000)(emphasis added).

> Law enforcement personnel conducting in-the-field investigations already face the onerous task of frequently having to instantaneously identify, assess, and react to potentially life-threatening situations. To require the officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents. While the purpose of the ADA is to prevent the discrimination of disabled individuals, we do not think Congress intended that the fulfillment of that objective be attained at the expense of the safety of the general public.
>
> * * *
>
> [In this case the Officer's] actions were the result of a quick discretionary decision made in self-defense and for the safety of those at the scene. We are not persuaded that requiring Allison and other similarly situated officers to use ***less than reasonable force*** in defending themselves and others, or to hesitate to *802 consider other possible actions in the course of making such split-second decisions, is the type of "reasonable accommodation" contemplated by Title II.

Hainze, 207 F.3d at 801-802.

As in *Hainze*, a claim under the ADA is not available to the Plaintiff under the circumstances presented herein. For the reasons set forth above, it is clear that the beanbag munitions deployed by the unnamed officers were objectively reasonable. This incident occurred on a public street during a riot, thus presenting a danger to the APD officers on the scene as well as the public at large. The decision to stop the Plaintiff was obviously made for the safety of those at the scene. Requiring or training officers to use less than reasonable force in defending themselves and others, or to hesitate to consider other possible actions in the course of making such split-second decisions, is not the type of "reasonable accommodation" contemplated by Title II of the ADA. *Hainze*, 207 F.3d at 801-02. It is clear that the limited use of force was not by reason of Plaintiff's alleged disability, but only in response to his objectively verifiable criminal

misconduct. Reasonable police behavior is not discrimination. As a result, there has been no violation of the ADA and those claims must be dismissed.

Further, all ADA claims require a prima facie showing of disability discrimination. A plaintiff must show: "(1) that he is a qualified individual within the meaning of the ADA; (2) that he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of his disability," *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669, 671-72 (5th Cir. 2004). Plaintiff has failed to meet this burden. The bald allegations of the complaint are insufficient.

To recover compensatory damages, a plaintiff must also prove that the discrimination was intentional. *Delano-Pyle v. Victoria County,* 302 F.3d 567, 574 (5th Cir. 2002). This court has hesitated to "delineate the precise contours" of the standard for showing intentionality. *Miraglia v. Bd. of Supervisors of La. State Museum*, 901 F.3d 565, 575 (5th Cir. 2018). But the cases to have touched on the issue require "something more than 'deliberate indifference."

The alleged discrimination must be in response to the alleged disability in order to recover compensatory damages for a private cause of action. *Windham v. Harris County Texas*, 2016 WL 4939563, at *7 (S.D. Tex. Sept. 13, 2016) (citing *Delano-Pyle v. Vict. Cnty*., 302 F.3d 567, 574 (5th Cir. 2002) (citing *Carter v. Orleans Parish Pub. Sch.*, 725 F.2d 261, 264 (5th Cir. 1984)) ("A plaintiff asserting a private cause of action for violations of the ADA or the RA may only recover compensatory damages upon a showing of intentional discrimination."); See also *Windham v. Harris Cty.*, 875 F.3d 229, 235 n.5 (5th Cir.2017) ("To recover compensatory damages for disability discrimination under Title II of the ADA, a plaintiff must also show that the discrimination was 'intentional' in the sense that it was more than disparate impact.") (affirming

summary judgment but also discussing *Windham v. Harris County Texas*, 2016 WL 4939563, at *7, "Here, the district court appears to have relied on the intentionality requirement to resolve Windham's failure-to-accommodate claim. ... but because we conclude [plaintiff] fails to establish a prima facie case, we need not reach the issue.") *see also Smith v. Harris Cnty.*, 956 F.3d 311, 319 (5th Cir. 2020) ("In the context of a failure-to-accommodate claim, intentional discrimination requires at least actual knowledge that an accommodation is necessary."). There is no evidence in this case to suggest that Plaintiff directly requested a specific accommodation or that the defendants knew that an accommodation was needed. Consequently, Plaintiffs must demonstrate that "the disability, resulting limitation, and necessary reasonable accommodation were open, obvious, and apparent to the entity's relevant agents." *Windham*, 875 F.3d at 237 (internal quotation marks omitted). Plaintiff has not met this requirement.

4. The Plaintiff's State Law Tort Claims Should Be Dismissed

Plaintiff also makes vague negligence claims against the unknown officers and the City of Austin about ammunition. In section E of the Complaint, Plaintiff once again incorporates all of the previous allegations and asserts them against the defendants. Plaintiff alleges, in part, that "*the **City knowingly armed its police** with expired munitions on May 30, 2020 and thus breached its duty... Upon information and belief, the City's failure to maintain unexpired munitions stores and the **deliberate decision** to use expired munitions against Tyree Talley ... directly and proximately caused Tyree's injuries.*" [Doc #1 at p. 15, Para. 47-48] (emphasis added).

Plaintiff's allegations are nothing more than bald allegations of negligence for the sake of window dressing. Specifically, Plaintiff's Complaint is devoid of any factual allegations that, if true, would entitle Plaintiff to relief. Plaintiff "complains he is entitled to relief. But [Plaintiff's] complaint does not show it." *Shaw v. Villanueva*, 918 F.3d 14, 415 (5th Cir. 2019). A plaintiff's

lawsuit will not survive a motion to dismiss if the facts pleaded do not raise the right to relief "above the speculative level," even if the facts are viewed in the light most favorable to the plaintiff. *Twombly,* 550 U.S. at 555. "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Taylor v. Books A Million*, 296 F.3d 376, 378 (5th Cir. 2002). Accordingly, the Court should dismiss all of Plaintiff's negligence based claims. Plaintiff has the burden to prove duty, breach of duty and proximate cause, but he has not met that burden. There is absolutely no evidence to support the bald negligence claim.

The City is immune from this claim as a "Governmental Unit" pursuant to the Texas Tort Claims Act ("TTCA"). Sec. 101.001(3)(B) of Title 5 "Governmental Liability" of the Civil Practice and Remedies Code, Chapter 101 Tort Claims, Subchapter A. Specifically, there has not been a waiver of governmental immunity for this situation. Section 101.055 and Section 101.057 expressly keep and maintain governmental immunity for the actions of an employee while ***responding to an emergency call or reacting to an emergency situation,*** and for injury or death connected with any act or omission ***arising out of civil disobedience, riot, insurrection, or rebellion*** as follows:

> * * *
> Sec. 101.055. CERTAIN GOVERNMENTAL FUNCTIONS. This chapter does not apply to a claim arising:
> (1) in connection with the assessment or collection of taxes by a governmental unit;
> (2) from the action of an employee while ***responding to an emergency call or reacting to an emergency situation*** if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others; or
> (3) from the ***failure to provide or the method of providing police or fire protection***.
>
> Sec. 101.057. CIVIL DISOBEDIENCE AND CERTAIN INTENTIONAL TORTS. This chapter does not apply to a claim:
> (1) based on an injury or death connected with any act or omission ***arising out of civil disobedience, riot, insurrection, or rebellion***; or

(2) arising ***out of assault, battery, false imprisonment, or any other intentional tort***, including a tort involving disciplinary action by school authorities.
* * *

(emphasis added)

Further, the Texas Tort Claims Act does not waive a governmental unit's immunity for a claim arising from assault, battery or any other intentional tort. Tex. Civ. Prac. & Rem. Code §101.057(2). Although Plaintiff couches his claim as a negligence claim, the facts as alleged in the complaint all describe intentional torts. Plaintiff alleges that defendant[s] John Doe(s) and other APD officers shot him, which is an intentional tort. Here, the gravamen of Plaintiff's complaint is that police officers wrongfully shot him, which is clearly an intentional tort, and thus Plaintiff's claim against the City is barred by governmental immunity. See *Harris County, Tex. v. Cabazos*, 177 S.W.3d 105, 111 (Tex. App.—Houston [1st Dist.] 2005, no pet.)(immunity not waived for claim arising out of deliberate shooting by deputy sheriff). As the Court of Appeals in *Harris County, Tex. v. Cabazos* explained: "[i]f a plaintiff pleads facts which amount to an intentional tort, no matter if the claim is framed as negligence, the claim generally is for an intentional tort and is barred by the TTCA." *Harris County*, 177 S.W.3d at 111; citing *Texas Department of Public Safety v. Petta*, 44 S.W.3d 575, 580 (Tex. 2001); *City of Laredo v. Nuno*, 94 S.W.3d 786, 789 (Tex.App.-San Antonio 2002, no pet.); *Tarrant County Hosp. Dist. v. Henry*, 52 S.W.3d 434, 450 (Tex.App.-Fort Worth 2001, no pet.); *Medrano v. City of Pearsall*, 989 S.W.2d 141, 144 (Tex.App.-San Antonio 1999, no pet.). A plaintiff cannot circumvent the intentional tort exception by couching her claims in terms of negligence. *See Huong v. City of Port Arthur*, 961 F.Supp.1003, 1008–09 (E.D.Tex.1997) (plaintiffs cannot circumvent intentional tort exception to waiver of liability by simply pleading negligence when the shooting event upon which they base their claims is actually an intentional tort); *City of Watauga v. Gordon*, 434 S.W.3d 586, 589 (Tex. 2014)

(Texas Tort Claims Act waives governmental immunity for certain negligent conduct, but it does not waive immunity for claims arising out of intentional torts, such as battery. Tex. Civ. Prac. & Rem.Code § 101.057(2)).

A plaintiff cannot circumvent the intentional tort exception by couching his claims in terms of negligence. But that is exactly what the Plaintiff in this case attempts to do. Plaintiff in the present lawsuit alleges excessive force and that the City and police officers purposefully, knowingly, and deliberately used the munitions against him, a claim that arises out of a battery. Consequently, his pleadings do not state a claim for which governmental immunity has been waived under the Tort Claims Act. As a result, the City and unnamed police officers are immune from Plaintiff's personal injury claim. The City cannot be held liable and these claims should be dismissed.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants City of Austin and John Doe(s) respectfully request that the Court grant this Motion to Dismiss and, in the alternative, Motion for Summary Judgment and dismiss the Plaintiff's claims against them with prejudice with all costs assessed to the Plaintiff. Defendants further request any additional relief to which they may be entitled.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 31st day of July, 2023.

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYREE TALLEY §
Plaintiff, §
§
v. § CASE No. 1:21-cv-249-RP
§ Lead Case
CITY OF AUSTIN AND JOHN DOES §
Defendants. §

****

MODESTO RODRIGUEZ §
Plaintiff, §
§
v. § CASE No. 1:21-cv-1087-RP
§
CITY OF AUSTIN AND JOHN DOES §
Defendants. §

****

REMOTE ORAL AND VIDEO DEPOSITION OF

JUSTIN WRIGHT

JULY 21, 2023

****

REMOTE ORAL AND VIDEO DEPOSITION OF JUSTIN WRIGHT, produced as a witness at the instance of Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on JULY 21, 2023, from 10:08 a.m. to 2:47 p.m., before Lilia W. Walters, Certified Shorthand Reporter in and for the State of Texas, reported by oral stenography, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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(Appeared Remotely)
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ALSO PRESENT: Jason Fifield, Videographer
Lilia Walters, Texas CSR No. 12390
Alexis Lopez, Paralegal
Priscilla Chavez, Paralegal

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REQUESTED DOCUMENTS/INFORMATION
NONE

CERTIFIED QUESTIONS
NONE

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record. This begins video No. 1 in the deposition of Justin Wright in the matter of Tyree Talley versus the City of Austin and John Does in the United States District Court for the Western District of Texas, Austin Division, Case No. 121-cv-249-RP and also in the matter of Modesto Rodriguez versus City of Austin and John Does, Case No. 121-cv-1087-RB.

Today is Friday July 21st, 2023. The time is 10:08 a.m. This deposition is being taken virtually via Zoom at the request of Hendler Law.

I'm Jason Fifield the videographer of Magna Legal Services and the court reporter is Lilia Walters also of Magnum.

Counsel will be -- appearances will be noted on the stenographic record. And will the court reporter please swear in the witness.

COURT REPORTER: Thank you. Officer Wright, I will now be swearing you in. Would you please raise your right hand?

Do you solemnly swear or affirm that you are, Justin Wright, located in Austin, Texas and that the testimony you are about to give in the pending matter will be the truth, the whole truth, and nothing but the truth, so

help you God?

THE WITNESS: I do.

COURT REPORTER: Thank you. Counsel, you may now proceed.

JUSTIN WRIGHT,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. JOSEPH:

Q. Good morning, Officer Wright, my name is Leigh Joseph and I represent Tyree Talley and Modesto Rodriguez in these cases. I want to start off by thanking you for being here to allow us to ask you some questions about the events of May 30th, 2020.

A. Thank you, ma'am.

Q. Yeah. Have you ever given a deposition before?

A. No, ma'am.

Q. Okay. Just a couple of tips or pieces of insight before we get started. First, you're allowed to take breaks. This may take a while just kind of depending on how it goes. And if you need a comfort break, please ask me for one.

If I'm right in the middle of a train of thought I may ask you to let me ask the next question or two before we stop. But I'm -- I'm -- certainly want you to be comfortable while we're here, okay?

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Also, I can -- I think a lot of us lawyers can ask pretty complicated and convoluted questions sometimes. So if you ever don't understand what I'm trying to ask you, please tell me. And I'll -- I'll try to rephrase it, okay?

A. Okay.

Q. If you do answer my question though, can we have an agreement that that means you understood it?

A. Yes.

Q. Okay. And you're doing great at this so far. I will point out that since Ms. Walters is taking down everything we say, there are a couple of things that we need to do to help her do that.

The first one is, to give verbal answers. And I see that you're doing that and appreciate that.

The second, is to try not to talk over each other.

A. Yes, ma'am.

Q. So -- yeah so, so far so good, but I'll try to -- to let you finish answering before I ask another question. And -- and I know that you'll do the same for me, okay?

A. Yes, ma'am.

Q. Now, I asked you before we went on the record if Mr. Laird was in the room with you. And you said, no, he's down the hall. Is anybody in the room with you right now?

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A. Not right now. Priscilla Lopez is in and out. She's the paralegal.

Q. Okay. Okay. And how did you prepare for this deposition today? Before you answer, let me tell you that I'm not -- if -- I'm not allowed to know private conversations between you and your counsel. So I don't want you to tell me details of those conversations. But just kind of generally, how did you prepare?

A. I came in a couple of days ago to Austin City Hall and met with Mr. Laird and Ms. Priscilla. Just to kind of go over what this would be like and some things to expect.

Q. Okay. Did -- did you watch any videos?

A. Yes. I reviewed one or two segments of my body camera.

Q. Okay. Did you watch any other video, HALO footage, or anything like that?

A. No, ma'am.

Q. Okay. Just body camera from your own camera?

A. Yes, ma'am.

Q. Okay. Did you review any documents?

A. Yes, ma'am. I reviewed my supplements that were written after. Yes, ma'am.

Q. Okay. How many supplements did you -- did you write?

A. It looks like five, however, the -- the first one

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I don't know if it was just a -- if I wrote the first supplement and then went in afterwards to add something to it. 'Cause I have end of original supplements towards the middle of the -- of this supplement. So I don't know if that counts as a new supplement or not.

Q. Okay. And --

A. So I think 5.

Q. Okay. And you have those in front of you right now?

A. Yes, ma'am. They're -- they're right here.

Q. And I see that confidential label which makes me think that document probably also has a Bates label on it. Which is a little set of numbers and letters. Usually in the bottom right hand side. It may say COA and then four numbers?

A. Yes, ma'am.

Q. Would you tell me the Bates label on first and last page of each of set? Each kind of separate document you have. Just so that I can make sure I have those documents. And I know they pertain to you.

A. Yeah. Just as clarification, it -- I have -- I have four different sheets. And it looks like a supplement is on each one.

Q. Okay.

A. Like, would you like each sheet? Or just the

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first and the last?

Q. Each sheet.

A. Okay.

Q. Thank you for the clarification. Yeah.

A. Okay. So the first one I'm looking at is COA2292 -- 2292. The second is -- I'm gonna -- I'm not gonna say COA each time if that's okay?

Q. That's fine.

A. All right.

Q. Sure.

A. 2313. The third sheet that I have is 2469 and the -- make sure I'm not skipping any on accident -- the -- the last one I have is 39441. Is it okay --

Q. Okay.

A. -- that that has more numbers than the others?

Q. It is okay.

A. Okay.

Q. Yes, thank you -- thank you, officer. Do you have anything else in front of you today? Other than those supplements?

A. I have two blank pieces of paper just to take my own notes in case I do need clarification. Or I don't -- or like when you discussed you might two questions just to finish your train of thought.

Q. Mm-hmm.

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A. It's going help me not -- try not to forget or leave out one of those questions.
Q. Okay. Okay. And I should clarify that I'm not -- I'm not going to purposely ask you a number of questions at a time.
A. Understand.
Q. It's -- it's my intent to give you a chance to answer before I ask you another. So we'll see how I do.
And one other thing before we kind of get into it. I want to make sure we know what we're talking about when we use certain language today. If we talk about a kinetic projectile or a shotgun equipped with a beanbag round, do we kind of understand each other? That we're talking about the so-called less-lethal weapons that you guys had out there at the protest May 30th, 2022 [sic]?
A. Yes, ma'am.
Q. Okay. And if I say "firearm" does that mean something different?
A. It would be semantics. So the less-lethal shotgun is a firearm.
Q. Mm-hmm.
A. We do not call it a firearm, specifically so that whether it be in reports or whether it be in communication, there is no misunderstandings that we are talking about the less-lethal shotgun or our -- our pistols or a rifle.

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Q. Okay. So I'm going to try -- I may ask you question or two about what I -- you know, a gun that shoots standard bullets. And I'm going to try to use the word firearm when I do that.
A. That's fine.
Q. But if -- if you ever don't know what I'm talking about -- what type of weapon I'm talking about, let's clarify it, okay?
A. Okay.
Q. Okay. So I want to talk about kind of some of the rules that were in place on May 30th, 2020, when you were out there responding to the protest event. And -- and then we can get into some of the specifics of the event.
I've looked at some of APD's general orders from that time. I just want to confirm that certain things were -- were in place. So I'm going to ask you about those.
I read in one of the general orders that, "It could be an appropriate circumstance to shoot the shotgun equipped with kinetic impact projectiles if the subject is engaged in riotous behavior or is throwing rock, bottles, or other dangerous projectiles at people and/or officers, creating a risk of injury."
And I'm quoting from something that's been given to me labeled, GO206.5.3. Does -- is that a policy or a rule that was in place governing your conduct as of

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May 30th, 2020?
A. As far as I know, it was.
Q. Okay. I've also read in a -- a neighboring general order that using a shotgun equipped with a kinetic impact projectile has to be reasonable. Was that a rule or a policy in place as of May 30th, 2020?
A. I believe so.
Q. Okay. Similarly, I believe it was a APD rule or policy that an officer was not required to use a kinetic impact projectile. Is -- is that also, correct?
A. In -- in what -- in what circumstance do you mean required, ma'am?
Q. I thought you would ask that. So let me try to get to the place where I read that. Okay, so this is what I'm reading.
"Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officers determine that deployment of these munitions cannot be deployed safely."
Did you understand that to be a rule or policy governing you guys at -- at the time?
A. Yes, ma'am.
Q. Okay. Now another -- another one that I read is, "The safety of hostages, innocent subjects, and officers takes priority over the safety of subjects engaged in

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perceived criminal or suicidal behavior."
I read that in 206.5.1. Did you understand that to be a rule or policy governing your -- your conduct at the time?
A. Yes, ma'am.
Q. Okay. I'm saying at the time, instead of saying as of May 30th, 2020, and -- and we both know what I'm talking about, right?
A. Yes, ma'am. Understandable.
Q. Okay. Now, let me ask you specifically about Modesto Rodriguez and Tyree Talley for a moment. Are you familiar with who each of them is?
A. I am not.
Q. Okay.
A. Other than -- other than their name as being attached to this lawsuit and deposition.
Q. Okay. I'm going to show you some photographs just so that we know what -- who we're talking about today, as were talking. Let me share my screen.
Okay. Can you see a photograph on your screen? It's labeled Rodriguez, five zeros and then the number five. And it has a gentleman on the ground with his orange or red shirt pulled up?
A. Yes, ma'am.
Q. Okay. Let me introduce you to Modesto Rodriguez.

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So when we're talking about Modesto Rodriguez I'll just represent to you that that's who he is, okay?
A. If you don't mind just giving me one more second. I'm just getting writing down a little bit of the description so that I can remember as we --
Q. Sure.
A. -- as we move through this.
Q. And, Officer Wright, this isn't a test. So I don't want you to be worried about you know, if -- if you don't remember the difference between the two plaintiffs or something like that, just -- just tell me. And we'll straighten it out, okay?
A. Yes, ma'am.
Q. Okay. This photograph labeled as Talley 001153 has a gentleman lying on his side on the ground with his hand over his face and that is Tyree Talley.
A. Yes, ma'am.
Q. And I'll -- okay -- I'll turn the page here 'cause you can see him a little better on Talley 1136. And it -- he's kind of in a partial seated position. It looks like some people might be helping him up. Are you able to see him there?
A. Yes, ma'am.
Q. Okay. So that's Tyree Talley. In the photograph that I showed you of Modesto Rodriguez you're able to see a

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couple of places where he's injured. And I'm going to click back to that one and just show you this injury here on his torso. And this injury down here around his ankle.
Those will be the injuries that we're talking about today when were talking about Modesto, okay? And --
A. So Modesto is Rodriguez, correct?
Q. Correct.
A. Okay.
Q. Yes. Mr. Talley has -- was injured more times than he's alleging as a result of the shotgun rounds on this event. And I don't have photographs here of every single one of them. But just to give you a general idea of what we're talking about here are some photographs that are depicting some of Tyree Talley's injuries.
MR. LAIRD: And Leigh, would you mind just stating the Bates number? I -- I can't tell what it is down at the bottom. It's a little small.
MS. JOSEPH: Sure. No problem. So I said the first two. And then I'm also showing Talley 1150 and this compilation photo is Talley 1154.
MR. LAIRD: Great, thanks.
Q. (BY MS. JOSEPH) And I'll zoom in on that just a little bit, Officer Wright, so that you can kind of see some of the injuries that Mr. Talley's complaining of.
Okay, so -- make myself a note real quick.

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Now, that we've seen the plaintiffs and -- and you've been introduced to them by -- by virtue of some photographs, let's talk about May 30th, 2020. So tell me what time you came on duty that day.
A. I don't know the exact time that I came on duty that day. We got a page toward -- around lunch time, if I believe -- if I remember correctly -- that all available APD officers needed to come in for mobile field force.
Q. Were you already working when you got that page?
A. I was not. I was --
Q. Okay.
A. -- near home.
Q. Was this your scheduled day off?
A. I honestly don't remember.
Q. Okay. But you know you weren't on when you got the call?
A. Yes. I -- I don't remember if -- if -- if I was supposed to be going in already later that day. 'Cause my shift starts later in the day or if that was my -- my day off.
Q. Okay. And you said you were near home. Do you remember where you were when you got the page?
A. Yes, I was on the 35 service road northbound in Georgetown near I think it was Williams Drive -- trying to get something to eat from Chipotle. Or about -- about to

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pull into Chipotle rather.
Q. Okay. And do you remember where you were coming from?
A. I do not.
Q. Okay. So you --
MR. LAIRD: Leigh. Leigh, I'm sorry. Would you mind taking -- I mean, if you're finished asking about the photographs can you take those down so --
MS. JOSEPH: Sure.
MR. LAIRD: -- I can see.
MS. JOSEPH: Yeah, no problem.
MR. LAIRD: And focus on the speakers. Thank you.
MS. JOSEPH: There we go. I've got two screens. So sometimes if I'm not looking at that one.
MR. LAIRD: Oh.
MS. JOSEPH: I -- yeah.
MR. LAIRD: No, that's fine.
Q. (BY MS. JOSEPH) All right. So you get the page around lunchtime. Were you able to -- to get the Chipotle and eat it?
A. No, ma'am. I immediately drove home, dropped my husband off, grabbed my gear, and drove to work.
Q. Okay. So you skipped lunch?
A. Yes, ma'am.

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Q. Okay. I guess all officer -- all available officers then is a fairly urgent call I would expect?
A. Yes. And I -- I would like to say that I -- I -- I don't know if that was the exact verbatim language of the page.
Q. Mm-hmm.
A. But that was the generalized message of the page that any -- anybody who was available, whether you're working or not, needs to mobilize.
Q. Okay. So you drop off, you head down, where do you report?
A. I report to the North Sub -- sorry -- the North Substation off of Lamplight Boulevard [sic].
Q. And who do you report to when you get there?
A. At the time my sergeant was Sergeant Reid. I don't -- I -- I can't remember if I directly reported to him as soon as I got there. Once we got there the -- the -- we'll call it the standing order was to collect a car, double up. So ride two officers in -- in each car. And head to the staging point which was in downtown Austin.
Q. Okay. And is that what you did?
A. Yes, ma'am.
Q. Are you at this point wearing a police uniform?
A. Yes, ma'am. I'm wearing my -- my police uniform, yes.

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Q. Okay. Does it have long sleeves or short sleeves?
A. I don't remember. I -- I think I had short sleeves that day because if I remember correctly, in my body camera you -- my -- my arm is exposed in front of my body camera.
So I think I was wearing short sleeves or I had possibly rolled up my -- my long sleeves, but I -- I'm am fairly certain I was actually wearing short sleeves because we were supposed to bring long sleeves and I accidentally forgot it. If I remember correctly.
Q. Okay. And at this point, heading out of the North Substation are you wearing any additional tactical gear or anything beyond your -- your standard uniform?
A. I do not believe so. I -- I believe that that day I was wearing my standard outer carry vest. At the time, we did not have "police" written across the back. I had my gas mask with me, as well as, my helmet. But I had not put my helmet with the face shield on yet. It was just with me.
Q. Okay.
A. And -- and I'm sorry. I have also had the -- the less-lethal shotgun.
Q. Okay. So that was distributed to you at the North Substation?
A. Yes. When I got to the North Substation I -- I checked one out.

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Q. Okay. Were you directed to do that by someone?
A. Not directly. It was -- it was you know, if they're available, check them out. If they're not that -- then -- then you'll be without. And I --
Q. Okay.
A. -- I happen to get there early enough that they had -- they had one available.
Q. Okay. I want to have a whole separate conversation about training, but just while I'm thinking about it, are you trained in MFF? Mobile field force?
A. Yes.
Q. Okay. And are you -- I may be asking this in a strange way, but are you also a part of that team or group? Are you a member of the mobile field force? If there is such a thing?
A. So the mobile field force is -- sorry -- I'm -- I'm trying to think of the best way to explain this.
Q. Mm-hmm.
A. So the -- the mobile field force is not a -- is not the directed team.
Q. Okay.
A. That would be the SRT team. The special response team, if I remember their acronym correctly.
Q. Okay.
A. They are the main kind of -- we'll call it large

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event kind of security. So they -- they're there for -- they're -- they're the ones who -- who are -- are at all the protests.
Q. Mm-hmm.
A. Mobile field force is when a situation is larger than they can handle. Mobile field force is patrol officers and detectives. Everybody else on the department who's been trained to come and assist them in crowd control.
Q. Okay. Thank you for explaining that. Is -- and so you're not part of SRT?
A. No, ma'am.
Q. Okay. And you weren't then?
A. No, ma'am.
Q. Is mobile field force training part of the curriculum at the Academy?
A. Yes, ma'am.
Q. In your first -- okay. So if you're an APD officer you should have taken mobile field force training as part of your academy curriculum?
A. As far as I know, yes. My academy got it. And as far as I'm aware the academy's before after me got it, but --
Q. Mm-hmm.
A. -- that I -- I -- I can't say for sure if every single academy got it.

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Q. Okay. Okay. So you have checked out the less -- so-called less-lethal or the shotgun, do you have some of the beanbag ammunitions with you there at the substation? Do you get those too?
A. Yes.
Q. Okay.
A. So were given enough to load the wea -- load the weapon system to its capacity; however, I do not remember if at the substation I was given additional less-lethal rounds or not.
Q. Okay. And the shotgun holds five rounds; is that correct?
A. I think so, but I -- I cannot remember for sure.
Q. Okay. Okay. So now you have the shotgun loaded with beanbag rounds?
A. Yes.
Q. Okay. And you are checking out a car with another officer. Who is the other officer?
A. Officer Christopher Williams.
Q. Okay. So where do you and Officer Williams go?
A. We drive downtown to the staging area. I believe it was called -- it was the parking lot across the street from Revolutionary Park. I think that's the name of the park.
Q. Okay.

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A. I don't remember the address. It was a fairly large parking lot in downtown. And I believe it's around Fourth Street, but I cannot be sure.
Q. Okay. And this is where -- this was kind of the gathering point. You call it the staging area?
A. Yes.
Q. Okay. What are you feeling in the car? Are you driving? Or are you in the passenger seat?
A. I'm in the passenger seat because at this time I was still fairly new to the department and the city. So I knew -- I knew my sector well and the surrounding areas of my normal work area. But I still was not -- and even to this day I'm not very versed -- especially, with downtown. So --
Q. Okay.
A. Officer Williams is a senior officer to me and he asked if I didn't mind him driving. And I said, you know how to get places better -- you know downtown better than I do. Something along those lines.
Q. Okay. Okay. So I'm actually gonna interrupt myself for a second because I didn't ask you this yet. When did you join APD?
A. I -- my hire date is October 1st, 2018. I graduated the Academy I believe it's May 10th, 2019.
Q. Does it typically take -- what is that -- about

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seven months to graduate from the Academy?
A. Yes, ma'am. The Academy is roughly eight months long.
Q. Okay.
A. And there is three months of field training where after you graduate the Academy you are with -- you are considered what's called a PPO, a probationary police officer. And you ride with what is known as an FTO or a field training officer.
And for roughly three months -- just a little over three months, you ride with different FTOs so that they can teach you more in -- you know more in-depth -- actually doing the job. Policies and procedures, reports, and stuff like that.
Q. Okay. So you -- have you worked for another police department or law enforcement agency prior to coming on with APD?
A. No, ma'am.
Q. Okay. In your time at APD -- in the -- maybe about seven months that you had been driving on your own and well -- so even including those months when you were riding along with an F -- FTO -- have you ever been called to respond to a crowd protest event?
A. One other time. And I believe it was the night before.

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Q. Okay. Have you ever been called or heard one of these you know, all officers we need you whether you're working or not calls prior to May 30th, 2020?
A. No. Not the all officers whether you're working or not. I do believe the night before they mobilized a mobile field force as well. A little bit more of a condensed version because it was an unplanned protest so SRT was not on standby.
Q. Okay.
A. If I remember correctly. And so they asked for patrol officers to come and assist with crowd control outside of the Main.
Q. Okay. Okay. So on May 30th SRT was on standby and APD was expecting the protest?
A. I believe so.
Q. Okay. Tell me just kind of generally about your experience the night before. And I'll ask first, were you armed with a shotgun equipped with kinetic impact projectiles then?
A. I honestly do not remember.
Q. Okay.
A. 'Cause the -- as the rookie on the shift, I usually did check out the less-lethal shotgun. However, I do not remember if I had it that night or not.
Q. Okay. Do you remember what the scene was like

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that night? And if it all blurs together that's something I can understand too so just tell me you know, what you remember.
A. I remember -- I remember there being a decent size crowd in front of the Main that was upset and very loud. And we were standing on the steps of the Main where they were screaming and yelling at us.
Q. Were they throwing things at you?
A. I don't remember.
Q. Okay.
A. A few objects may have been thrown, but I -- I -- I don't remember.
Q. Okay. And how long were you out there the night before?
A. I -- I can't recall.
Q. Would it be hours? Some number of hours?
A. I think so. It was -- it was at least an hour probably.
Q. Okay. Okay. So approximately how much time passes between when you leave the steps of Main the night before and when you're in line at Chipotle with your husband the next day?
A. I -- I can't say for sure and I -- I don't necessarily want to guess.
Q. Yeah, and I don't -- I don't want to pin you down

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by the minute.
A. Sure.
Q. I'm more looking for was it 12 hours or two hours?
A. It was -- it was more than 2 hours. It was at least -- it was at least six, if not more --
Q. Mm-hmm.
A. But I -- I -- I can't recall exactly.
Q. Did you sleep?
A. Yes, ma'am.
Q. Okay. Did you get what you consider a typical amount of sleep? For you?
A. I believe -- I believe so.
Q. Okay. Okay. So now we're going to go back to you and Officer Williams in the car heading down on May 30th.
Having been out there the night before, having been called in for the first time, hearing this all available officers we need you. What are you feeling as you're headed downtown with Officer Williams, sitting in the passenger seat?
MR. LAIRD: I object to the form, but you can answer officer.
THE WITNESS: I would say that I was feeling nervous and tense because I didn't know what to expect. I had watched you know, unruly crowds and protests that got out of hand both in training and in my -- in my private

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time.
And just was -- was nervous and worried on what -- what the next couple hours were going to bring. It was -- it was more of the anxiety of the unknown.
Q. Do you remember saying anything specific to your husband as you -- as you left him to go report in that day?
A. I don't remember anything specific, but my usual go to for -- if I have the time for higher intense inci -- incidences is I -- I tell them that I love him and that I will try to stay in contact as much as I can throughout my shift that day or the -- the incident.
Q. Mm-hmm.
A. And that currently I'm okay. Obviously, he knew that because we were together.
Q. Mm-hmm.
A. And that I will -- I will let him know when I'm on my way home.
Q. Mm-hmm. Were you guys able to stay in contact during the afternoon and evening of May 30th?
A. I believe I possibly -- I -- I possibly text [verbatim] him a couple of times throughout the day when we -- when we did get a break.
Q. Mm-hmm.
A. And we were relieved for a short period of time.
Q. What kind of messages were you sending to him?

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A. Just I love you messages and that I'm okay.
Q. Mm-hmm.
A. And that things are chaotic.
Q. Mm-hmm. You mentioned being aware of some of the other protest events that had been going on in the country around that time. Were you aware that -- I think it was El Paso -- a police station had been vandalized the night before?
A. I don't believe so.
Q. Okay. I think another -- another police station headquarters around the country had been set on fire the night before. Did you know about that?
A. I that there had been attacks on police stations throughout the country.
Q. Mm-hmm.
A. I -- I don't remember any specific ones, at that time, because throughout the next couple of months there was a lot. So all of that is kind of bleeding together.
Q. Mm-hmm. Where do you get your news?
A. I don't watch a ton of news. So a lot of it is in passing or just YouTube videos of what's going on.
Q. Mm-hmm.
A. Fox News. I try to watch CNN on occasion just so I can get a different perspective of things. And -- and then just stuff on Facebook feeds and Instagram feeds.

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Q. Okay. Okay. So if you do turn it on, it's probably going to be Fox, the occasional CNN?
A. Yes.
Q. Okay. And then whatever the -- the algorithm sends you in your socials?
A. Yes, ma'am.
Q. Okay. Okay. So you're downtown with Officer Williams, you've reported to the staging area. Who do you report to?
A. We reported to a lieutenant, but I do not remember his name.
Q. Okay. And what orders did that lieutenant give?
A. I believe he said that we were going to -- we were going to wait until we had more people and then we were going to go to the Capitol and assist DPS. Because DPS was having trouble securing the Capitol.
Q. Is that what happened?
A. Yes, ma'am.
Q. Okay. Approximately what time did you head over to the Capitol?
A. Oh, I -- I don't know. I -- I -- it was around lunchtime. Probably between maybe 1:00 and 3:00.
Q. Okay.
A. Somebody brought us pizza. And so we -- we each got like two slices of pizza before we went out.

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Q. Was that a member of the public or -- or --
A. No. I -- I -- I think it was an -- I believe was an officer. It might have even been that lieutenant.
Q. Mm-hmm.
A. But I don't remember for sure.
Q. Okay. How many -- how many did you have in the group? Or how many did you wait for before you guys headed to the Capitol?
A. I -- I don't know.
Q. Okay. And what happened when you got there?
A. When we arrived at the Capitol we lined up along the front gate. In front of Congress and we -- we -- my understanding was we were there to give DPS a little break because they had an incident.
Q. Did you -- did you all kind of march over there? Or drive over there?
A. We drove to parking garage on San Jac [verbatim], I believe.
Q. Mm-hmm.
A. And from there we formed up into smaller groups and -- and -- and semi-formally marched to the -- to the Capitol.
Q. How many in your group?
A. I don't remember.
Q. Okay. More than five?

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A. Yes, I believe so.
Q. Okay. Do you think more than ten?
A. Maybe it was -- it could've been groups of ten.
Q. Okay. And you had, I'm assuming, the shotgun with you and your -- well, did you have the shotgun with you?
A. Yes, ma'am.
Q. Did you have your helmet at this point?
A. I don't know if I had my helmet on, at that time. I know that I put my helmet on once we got -- it might -- I know that my helmet was on once we got to the Capitol. I don't remember where I actually doffed -- or donned my helmet.
Q. Okay. So it was with you?
A. Yes.
Q. Okay. Okay. So you all march to the Capitol, lineup to help relieve DPS. What was the incident that had occurred that -- that caused them to need backup?
A. I think -- if I remember correctly one of the DPS troopers got overwhelmed and got into a fight and it became an officer needed assistance situation.
Q. Okay. Like got into a fight with a protester?
A. With -- if I -- if I remember correctly it was multiple protesters.
Q. Mm-hmm.
A. And they didn't have enough people at the Capitol

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at the time. So we -- we came to help to -- so that we could keep the Capitol grounds clear.
Q. Wow, okay. Do you know who instigated it? Like kind of threw the first punch, so to speak?
A. No, ma'am.
Q. If it was a protester or the officer?
A. No, ma'am.
Q. Okay. Do you know who the officer was?
A. No, ma'am. I don't know who the trooper was.
Q. Okay. Okay. So you're there sometime between 1:00 and 3:00. You're lined up on Congress. How long do you stay?
A. I don't know. It could've been an hour. It could've been slightly less. It could've pushed past an hour. I -- I don't believe we were there more than two hours though.
Q. Okay. And when you're lined up on Congress what are you doing?
A. So I -- I -- I would like to clarify. So we're lined up in front of Congress. Across the front gate of the Capitol.
Q. Okay. On the side -- sidewalk there?
A. Yeah, yeah, yeah. So --
Q. You're not in the street. Okay.
A. I'm not in the street. And -- and I want to say

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that that's 11th. So we're lined up --
Q. Mm-hmm.
A. -- on the Capitol grounds. I cannot remember if we were in front or behind the fence. And we are lined up so that we are standing in front of the Capitol like this not like this (indicating.) I'm sorry I just did -- I did hand motions even though we're -- the recording and I apologize.
Q. That's okay. So I think you are expressing that you were kind horizontal going across the front of the Capitol --
A. Yeah.
Q. -- as opposed to -- okay.
A. In line with the fence.
Q. Okay. Now, are -- I know sometimes people rally right there at the Capitol steps inside the fence right by the entrance of the Capitol. Were there protesters or ralliers there?
A. Yes. So DPS had pushed them -- pushed all of the protesters off Capitol grounds.
Q. Mm-hmm.
A. And so they had gathered in front of the Capitol, at the sidewalk street-level outside of the gate.
Q. Okay. So is it accurate to say that you are part of kind of a physical barrier to prevent these individuals

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from reentering the Capitol grounds?
A. Yes.
Q. Okay. And that's kind of what your role was?
A. Yes.
Q. Okay. Did you fire the shotgun or discharge the shotgun at any point while you were at the Capitol?
A. No.
Q. Okay. Okay. So you stay there maybe an hour or so. And then what happens?
A. It -- we walked -- we cleared out, we walked back the way that we came. And there were large vans waiting for us. So we went to the east side of the Capitol towards where we had parked. And there were vans waiting for us. The large kind of taller, like Sprinter-style vans. And we filled them up and we were driven to the 35 service road, near the Main.
Q. Okay. Okay. And then what?
A. And then we lined up again and started moving towards the 35 proper to facilitate the removal of protesters on the highway.
Q. Okay. Have you been told that people are attempting to block traffic at this point?
A. I believe so.
Q. Okay. So everybody in your van went up on the I-35 overpass?

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A. I believe so. Some others could've been pulled to go other places, but I believe for the most part everybody in my van moved forward onto the 35.
Q. Okay. Do you know the names of any of the other officers that were with you?
A. No. I --
Q. Are you -- I'm sorry, go --
A. I can't be sure.
Q. Are you still with Williams?
A. No. We had gotten separated at that point.
Q. Mm-hmm.
A. So I was -- I was just in a van with a whole bunch of other people. I may have recognized some, but --
Q. Mm-hmm.
A. I saw a lot of people that day that I recognized and I -- I can't definitively say you know, if it was this person at this time. Or if -- if it was that person at a different time.
Q. What's the atmosphere in the van going from the Capitol over to the 35 service road? Is it tense? Is it jovial? What's -- what's going on in the van?
A. It's -- tensions are high so we're doing what first responders do and we're -- we're -- you know we're trying to you know, make light of the situation so that we -- we don't get too stressed. You know maybe some --

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some light jokes. You know like, oh, well at least it's not too hot today. You know, being sarcastic because it was very hot that day.
Q. Mm-hmm.
A. Stuff like that.
Q. Yeah.
A. You know or --
Q. So while --
A. -- it's supposed to be my day off. You know, something -- you know, stuff like that.
Q. Mm-hmm. So y'all aren't just uncomfortable because of the situation. You're -- you're physically uncomfortable too?
A. Yes.
Q. Okay. Now, who ordered you to go up to the bridge? The overpass.
A. I don't remember. When we got out of the van I believe it was a corporal who said you know, line up and we're going to -- we're going to push up to the 35.
Q. Okay.
A. We -- we might have actually -- I believe we were dropped off on the proper -- the southbound proper. Or on a -- on an onramp and we're very close to the southbound proper.
Q. Okay. And your current title is SPO, senior

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patrol officer?
A. My current title now is --
Q. Mm-hmm.
A. -- senior police officer.
Q. Police, okay.
A. At the time I was just police officer because I had not had two years on yet.
Q. Okay. It didn't have a "P" or an "F" in front of it. It was police officer?
A. Yes.
Q. Okay. We've been talking for almost an hour. Not quite. I think it might be a good time to take a comfort break, if that works for you. Just about five minutes?
A. Perfect. That would be great.
Q. Okay.
VIDEOGRAPHER: All right. The time is 10:58 a.m. and we are off the record.
(Recess was taken.)
VIDEOGRAPHER: Okay. We're back on the record. The time is 11:07 a.m.
Q. (BY MS. JOSEPH) Officer Wright, we took a short break. You understand that you're still under oath?
A. Yes, ma'am.
Q. And I didn't talk to you about this before, but you probably know that your testimony today is just as if

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you were in a courtroom. Even though we're not in that formal of setting right now?
A. Yes, ma'am.
Q. Did you speak to anybody during the break?
A. Yes, ma'am. I spoke to Mr. Laird.
Q. Did you guys have any conversation -- don't tell me what it was -- about the deposition?
A. Yes, ma'am.
Q. Okay. Can you hear that awful sound coming from my end?
A. No, ma'am.
Q. Okay. Good. All right. So let's -- let's get back to it. I -- we've kind of been walking through your day on May 30th and we had gotten to the bridge -- the overpass.
Who is in command on the overpass when you arrive?
A. I do not recall.
Q. Okay. Is it multiple people or one person?
A. I -- I don't recall. I don't know --
Q. Okay.
A. -- if there was one person there directing the entire line or if they had multiple supervisors out there.
Q. Okay. Are you taking orders specifically from someone -- a high -- who is a higher rank than you are?

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A. Yes, ma'am.
Q. Okay. And what are you directed to do?
A. If I remember correctly, when we exited the van a corporal instructed us that if someone is throwing objects, that they are participating in riotous behavior. And should be impacted to stop that riotous behavior.
Q. Okay. So the criterion given was throwing an object?
A. Yes. Because thrown objects can hurt the people who are trying to peacefully protest or us.
Q. Okay. Was there any specification about what the object -- like what objects they're throwing? Or throwing anything?
A. Throwing anything, ma'am.
Q. Okay. And what about the direction that it's being thrown? Was there any -- anything specified about that?
A. No, ma'am. Not --
Q. Okay.
A. -- that I recall.
Q. Okay. Okay. So you received the instruction to target anyone who is throwing something. And what do you do next?
A. We begin walking up to the 35 service road southbound. There is a line of semi-trucks that has come to

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a standstill. I hear numerous -- very numerous amounts of objects peppering the sides of the semi's. It was loud enough that I could hear it over the shouting. I could hear it over the semi engines. And it -- it reminded me of what it sounds like when you know, you're in an armored vehicle and it gets shot at.
Q. Have you had that experience before? Being an armored vehicle and -- and it was shot at?
A. I have had the experience of being in armored vehicles. And my vehicle was -- was not hit. But I have heard armored -- armored vehicles be hit by rounds.
Q. Do you have a military background?
A. Yes, ma'am. I was a US Navy Corpsman which is a medic. I spent roughly two years working in a Naval Hospital. And then I spent roughly two years with the Marine Corps as a combat medic.
I was assigned to a field hospital in Afghanistan for eight months in Helmand Province where we were Second Echelon Medical Care which just means that we had ER and surgical capabilities that were limited to neurology.
We -- we did not have a neurologist on -- on our site. I participated in roughly 400 major trauma situations where I participated in both ER and OR operations. So that's emergency room and operating room

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operations where we had roughly a 98 percent survival rate.
Q. Wow, okay. When did you get back from Afghanistan?
A. September of 2012.
Q. Okay. And are you still in the reserves or did you remain in the military in some capacity?
A. No, ma'am.
Q. And when did you -- when did you completely discharge?
A. I discharged from active service in 2013. My contract specified, inactive reserve. Which is fairly common.
Q. Mm-hmm.
A. For another four years, I believe. And what inactive reserve means, is that I'm not checking in with anybody. I'm not doing anything military. It's essentially if World War III were to pop off they could pull me back in. And I am out that now so ...
Q. Okay. So you were still in inactive reserve maybe for the first year or so you were on -- a member of the APD force?
A. No.
Q. Do I have the timing right?
A. No.
Q. No?

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A. I believe that -- I believe that my discharge date from the inactive reserve was in 2017.
Q. Okay. Oh, and you -- I -- I had the wrong date in my head. I was thinking you started 2016. But you started in 2018 at APD?
A. Yes.
Q. Okay. Okay. Does anything else on the overpass or at the scene -- it -- on May 30th remind you of -- I'm gonna just kind of use the phrase -- of just kind of a war zone like you had experienced?
A. Yes. So to an extent somewhat even more than when I was in Afghanistan. Because I was in a --
Q. Mm-hmm.
A. -- medical unit. We were fairly sheltered from active attacks.
Q. Mm-hmm.
A. And so our -- our main thing was the medical side. This incident -- this riot felt -- felt like I had entered somewhat of a war zone.
Q. Mm-hmm. And in what ways?
A. We were mobilized to protect people who were attempting to exercise their legal rights to a grievance in a -- in a protest form. And a large group came out and chose violence in the form of throwing dangerous objects at us that had the potential to cause serious injury to us.

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And that felt like kind of being back in a war zone where we're there to protect people and there is this group that is tr -- actively attacking us for trying to protect that aspect of life.
Q. So you're there to protect people and you feel at risk?
A. Yes.
Q. I imagine if it was tense before, at this point when you're on the bridge and you're hearing the bullets hit the semi-trucks and -- and things like that --
A. That -- they were rocks hitting the semi-trucks --
Q. I'm sorry not bullets. You said it sounded like bullets.
A. Yes.
Q. It reminded you of bullets. I'm sorry. Let me try that again.
Yeah, if it was tense before when you're here on the overpass and you're hearing the rocks hit the semi-trucks and -- and seeing the crowd and kind of the way that some of them are interacting, I imagine there's an element of fear at this point for you of what's going to happen next?
A. Absolutely.
Q. Yeah, yeah, okay. The groups -- you kind of referenced some groups of protesters who decided to throw

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things or poss -- you know, in danger people I think were some of your words -- did that appear to be -- when you say "group" are you -- did it appear to be kind of an organized group that was out there to take a different, more violent approach?
A. I would say that there was some level of organization to it. I -- I cannot -- I -- I -- I can only speculate on how organized it was. But we witnessed multiple occasions where you would have a group of people who were peacefully protesting and you would have one or two of them come out, agitate by throwing things, and then jump back into that group so we couldn't intervene.
And from my perspective it -- it looked planned out. Like you had the small of group of people who were doing it the right way. And they were kind of that shield so that somebody could run out, try to hurt us or other people, and then run back in and intermingle with that group and -- and they were essentially protecting those people.
Q. Talking about throwing things, we kind of talked about this a little bit earlier when we were talking about people throwing objects, and that really that meant any objects. What kinds of things were people throwing?
A. Pardon me.
Q. Like to -- actually, just -- no, let me be more

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specific and direct. Tell me everything that you remember seeing thro -- be thrown.
A. Throughout the whole day? Or just at -- at that time?
Q. If you can, tell me throughout the day from the time that you were on the overpass. But I don't need to know like there was a rock 2:31. There was a -- you know, just like what types of objects can you remember?
A. Mostly rocks and broken pieces of concrete. Broken bricks, bottles filled with water, frozen water bottles, water bottles filled with urine, fireworks were thrown. It seemed like any hard object that could be thrown with force, was thrown. That -- that was either at their feet or staged.
Q. And per direction from command, you guys were tasked with basically responding in the same way with the shotgun regardless of what was being thrown. Whether it was a rock, a water bottle filled with urine, a firework, a water bottle filled with water?
A. Yes, ma'am. Because it is almost impossible to know what is being thrown and the level danger that it could -- sorry -- I just -- I lost the word that I was going to use. The level of danger that it could possibly possess.
Q. And you say it's almost impossible to know what's being thrown, but you were able to distinguish things enough

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that you could give me a list just now.
A. So the -- the list I gave you is because of what we discovered later. So when I -- I only know that there were bottles of piss because we found them after they had been thrown. You know, I -- I -- I know that there was fireworks because I witnessed the fireworks explode at officer's feet.
Q. Mm-hmm.
A. Obviously the rocks are -- are self-explanatory and the broken bricks and stuff like that. You know the frozen water bottles, once they land we can -- you know, we can see that they were frozen water bottles.
Q. Mm-hmm.
A. So what I'm trying to get across is in the moment, we -- we have no idea what that object is until it lands at -- or until it hurts somebody. So we have to assume based on that that everything that is thrown is dangerous. Because if we wait for it to land and then in -- investigate it and inspect it, at that point it could be too late.
Q. Mm-hmm. Assume that everything that is thrown is dangerous. That was the kind of operating --
A. Yes, ma'am.
Q. Okay. I'm going to show you some video. Let me get my screen share on.
A. Yes, ma'am.

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Q. So this has been Bates labeled as COA 4621 and identified to me as your body worn camera. If at any point during the video you determine that that's not what this is, please tell me. But I'm going to assume unless you tell me otherwise that this is correctly labeled as your -- your body cam, okay?
A. Yes, ma'am.
Q. Okay. And I'm going to jump around a little bit within the video. So what I'm going to try to show you is some of the time surrounding when Modesto Rodriguez and Tyree Talley were impacted. At this point I think that it's getting to be close to 9:00 p.m.
A. Okay.
Q. And I think based on the timeline that we've talked about, that you've probably been on the overpass for at least five hours. Does that -- does that sound right?
A. That -- that's very poss -- that's very probable. I -- we sat on the -- I'm sorry. We sat on the north side of the proper for a while facing a row of -- an apartment complex. So we weren't -- we were on the 35 for a long time. It wasn't the -- the entirety wasn't on the -- the -- the bridge overpass.
Q. Okay.
A. I -- I don't exactly which one it is. I apologize.

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Q. Okay. Once you were stationed on the bridge overpass with the -- the shotgun kind of looking out for people throwing objects, did you take breaks?
A. In -- in what sense do you mean? Are you saying did we take collective breaks? Like did we switch out huge groups? Or individually, did we step back and -- and -- and rest for a couple minutes at a time?
Q. Okay. More specifically about you. Whether that happened because a group was relieved or you stepped back, you can tell me. But did you personally take breaks?
A. If I remember correctly, we -- there was one break where we went from the north side of the 35 down to the 250 building. Which is where a lot of our maintenance is done.
Q. Mm-hmm.
A. And we were sat in the shade for a short period of time before we moved back onto the bridge. However, with that being said, we did this for a couple of days in a row. And that was one of the typical spots where we were -- we were given time to take breaks. So that could kind of be meshing together.
Q. Okay.
A. If that makes sense. So I --
Q. Like what specific day that happened or --
A. Yes. So I -- I -- I can't remember if -- if we took a break in -- at 250 that day. Or if it was the next

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day or if it was both.
Q. Mm-hmm.
A. I know that there were multiple days where we would be on line and after a couple of hours we would come in and we'd -- we'd sit down and we'd rest at least in the shade for you know, 45 minutes or so.
Q. Okay. What if -- like what if you needed to go to the bathroom? Did you just hold it? Or what -- what did you do?
A. I honestly -- I don't remember. I know -- I -- I think when we -- when we -- when we took our break at 250 I used the bathroom in there.
Q. Mm-hmm.
A. I remember because -- I remember -- I -- I -- I at least took a break in that bath -- and used that bathroom --
Q. Mm-hmm.
A. At some point throughout the multiple days of protesting because it was so hot and they had one of those old-fashioned like round sinks where you'd press the foot pedal --
Q. Mm-hmm.
A. -- and it put water out all around. And I remember thinking to myself, it's hot enough that part of me wants to climb into this sink and just soak myself so I can cool off. And you know, face the judgment of my coworkers

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for climbing into a bathroom sink.
Q. Yeah, yeah, okay. What about water or Gatorade or something. Did you have access to something to drink?
A. I believe that officers were coming up in vans or patrol cars with bottles of water and -- and maybe Gatorades to -- to keep us somewhat hydrated.
Q. Mm-hmm. I wonder who got to have that role?
A. I wish -- I wish it would've been me.
Q. Yeah. Now, you ate some pizza when you first got to the staging area. Did you eat again before you went off duty?
A. I don't recall. I don't believe so. I -- I remember being --
Q. Mm-hmm.
A. -- incredibly hungry that night when we finally did get off.
Q. Mm-hmm. Okay. So here we are around nine o'clock. I'm going to scroll to about the 10:20 mark, if I can get there. So I'll start at 10:15 and I think that the incident involving Modesto is going to happen pretty quickly. I can replay this more than once for you, but if we can try to pay attention to what we see and what we hear.
A. Okay.
Q. Okay.
(Video playing.)

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Q. (BY MS. JOSEPH) I think I just heard someone say "red shirt." Did you hear that?
A. I actually don't have audio on my side.
Q. Because I probably didn't turn on audio. Let me try this share again. I'm sorry about that -- sound.
Okay. Thank you, for telling me that. Let me try this one more time. Okay, starting again at 10:15. Do you hear the noise?
A. Yes, ma'am.
Q. Okay. Did you hear the "red shirt" that time?
A. Yes, ma'am.
Q. Was that you or someone else?
A. I honestly don't know. It kind of sounded like me, but I'm not sure.
Q. Okay. It seems like somebody is saying that to kind of say to the officers, that's somebody that I'm targeting, I want draw your attention to this person. Do you think that's what's happening?
MR. LAIRD: Object to the form.
Q. (BY MS. JOSEPH) Let me ask you a different way. Why would be somebody identifying a specific individual here in the line?
MR. LAIRD: Object to the form. You can answer it if you can.
THE WITNESS: It is common practice for us

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when we have you know, even one or two individuals, if any officer sees somebody doing something that we believe might need some sort of police action to be taken, for us to call out some sort of identifiable marker so that the officers around us can -- can all get eyes on. And so that we're seeing the same thing.
So that you know, we don't just say something like "guy" and there's you know, 15 guys and now you have six or seven officers or even one other officer like, "Which one? What are you seeing? What are you seeing?" So --
Q. Mm-hmm.
A. -- we -- we try to -- to put out a descriptor if we see something. And that's just to get everybody's attention so that we kind of have that second, third, or fourth eye that we are all seeing the same thing that's happening.
Q. Okay. And that's what this sounds like to you here? Somebody putting out a descriptor to draw attention of other officers?
A. Mm-hmm. Yes, ma'am.
Q. Okay. Do you know -- do you know at this point who is standing next to you?
A. I don't -- I don't remember.
Q. Mm-hmm. And I know we've talked some about did you know the people in the van, stuff like that, but I don't

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know if I asked you with respect to here on the overpass. Do you know any of the folks around you at this point?
A. So if -- if I may, can I -- can I ask clarification? Are you asking if I -- if I know them like I've been standing next to them for the last hour or two? Or if I know them like I've run into them multiple times and had conversations with them?
Q. Good question. Do you know their name?
A. I don't remember.
Q. Okay. Okay.
A. And you know, it -- I -- I -- there was multiple members of my shift around me. You know maybe they were one officer away from me or a couple, but I -- I can't recall if I knew specifically the person who was next to me and their name.
Q. Okay. Can you recall any specific names of people who you knew that were also there? Whether they were next to you or not?
A. Yes, my shift. Everybody on my shift as far as I'm aware. And a few of the people that I went to the Academy with. I saw them you know, randomly throughout the day. I said hi.
Q. Mm-hmm.
A. I -- because of the military I have -- my knees get sore fairly easy if I just stand in a sing -- single

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spot. So I tried to walk around my area a little bit just to not get as much knee pain. And so throughout the time that I was up on the 35, I was walking back-and-forth. And if I saw somebody that I knew I would say hi.
Q. Mm-hmm.
A. And strike up conversation if -- if nothing -- if nobody was actively doing anything that needed attention.
Q. And the atmosphere as you were doing that, was it kind of like in the Sprinter van? Tense, but some joking going on to kind of manage the situation? Or what was the atmosphere like?
A. Yes. So we are trying to -- we are trying to minimize the chaos around us by -- whether it be using humor, whether it be using sarcasm to cope with just how insane and chaotic things were. That's what the military taught me. That's what being a police officer's taught me. And -- and that's -- that's how you -- that's how I and -- and many people in my profession prevent from getting locked in too much to a very specific point. Because that can become dangerous. Does that -- does that make sense or do you need me to elaborate?
Q. I may need you -- you to explain the locked in part a little bit more. Yeah.
A. So hyper-focused, tunnel vision --
Q. Mm-hmm. Okay.

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A. -- upon a singular thing or topic --
Q. Mm-hmm.
A. -- that can be very dangerous in -- in our profession because we have to kind of look at the -- the broader picture in order to maintain safety. If we focus too much on a singular issue or a singular thing, people can take it advantage of that and hurt us or other people.
Q. Okay. Okay. So the -- the sarcasm or the joking, that's kind of a generally taught and accepted way to manage this sort of experience?
A. Yes.
Q. Okay. I'm going to play video some more. And I think we'll see -- I don't think we're gonna see Modesto. I think we're going to hear some shots. But let's -- let's see what we're able to see.
A. Yes, ma'am.
(Video is playing.)
Q. (BY MS. JOSEPH) Actually I think that you're going to be able to see him kind of around here. So I'm going to draw your attention to that area of the video.
A. Okay.
Q. And I'm actually going to back it up a little bit, okay?
A. Okay.
Q. It's hard to see from your -- your body cam and

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hard to hear, but after I heard "red shirt" I think a little while later I heard, "Red shirt on the ground." Did you hear that?
A. Kind of. I -- I don't -- I heard "red shirt" again, but I couldn't determine what was said after that.
Q. Okay. Here I can play it again -- whoops. Sounds like, red shirt on the ground, mumble, mumble, throwing a bunch of -- excuse my language -- shit.
Is that -- do you hear that?
A. Yes, ma'am.
Q. Is that your voice?
A. I don't think that was my voice, no.
Q. Okay. We see in the clip that we just watched from -- and I'm looking at the mark on the -- the playback, as opposed to the mark on your body cam. From about the 10:15 to the 10:39 mark.
We saw the line of officers that you're a part of, targeting and -- and discharging the shotguns, right?
A. Yes.
Q. Did you fire your shotgun?
A. Yes.
Q. During that clip? Okay. Do you know how many times?
A. I believe it was just once.

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Q. Okay. And I think we saw the person next to you fire. Did you -- were you able to see that in the video?
A. Yes, ma'am.
Q. The person to your right?
A. Yes, ma'am.
Q. Okay. And we heard more than two shots?
A. Yes. I think so.
Q. Okay. Do you remember whether you fired at Mr. Rodriguez before or after he was on the ground?
A. I do not.
Q. Okay. So it could have been either?
A. It could've been.
Q. Okay. Let me -- well, let me ask you this -- did you see Mr. Rodriguez engage in any behavior before you began to target him?
MR. LAIRD: Object to the form. You can answer.
THE WITNESS: I -- I don't know.
Q. (BY MS. JOSEPH) Okay. It's possible that this was one of those situations where someone on the line saw something and called out to draw other eyes to it?
A. Yes.
MR. LAIRD: Objection to the form.
Q. (BY MS. JOSEPH) Okay. So it's possible that you didn't -- and I'll just -- we haven't said this out loud,

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but a lot of the conversation in this case is around Mr. Rodriguez throwing a water bottle. And is -- are you aware of that fact?
A. I am aware that there's video of one of -- one or both of the gentlemen throwing things.
Q. Okay. So you may or may not have seen Mr. Rodriguez throw something?
A. I decided very early on in this situation that I would not be firing unless I physically saw somebody throw something. I -- what's the word I want to use?
I -- I took the order to be what it was. If I see somebody throw something then I will impact. So if I fired my weapon then I -- I visibly saw somebody throw something.
Q. Okay. Even though you don't necessarily recall this particular instance that is the practice you were following?
A. Yes, ma'am.
Q. Okay. I can't see it on this video, Officer Wright, I have seen another video where it appears to me that I can see Mr. Rodriguez walk up to a water bottle that's on the street and pick it up before throwing something. And it looks, although, I can't see it on your body cam because various times it's covered up, it looks like you would have a vantage point to have been able to see

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that.
Do you remember when you first laid eyes on Mr. Rodriguez? Whether it was before or after he picked up the bottle?
A. I -- I do not.
Q. But from your vantage point, it would have been evident -- evident to you that what he had in his hand was a -- a water bottle as opposed to say a brick or a rock?
A. I -- I don't know. That's fairly far. It -- I -- I don't know that I would be able to identify it if was a -- if it was a water bottle or something else.
Q. Okay. How far do you think that distance is from where you're standing to where Mr. Rodriguez is -- is standing?
A. I couldn't --
Q. I'm actually going -- I'm sorry -- I realize I'm going to ask about two different points. So let me ask you first, just for estimate purposes -- I wish I could make a mark, but I'm just kind of just -- here, let me see if I can make a mark.
Let's kind of estimate there as the first point. And then over here -- oops, there's a big "2" -- as the second point. So how far do you think you are from that "X?"
A. I'm not entirely sure. Maybe 15 or 20 yards,

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possibly.
Q. Okay. I'm just -- give me just a moment to save -- am I showing my email right now? Okay, I'm just going to try to save a picture that I just drew on there for us. Okay. And you said how many yards?
A. It could be possibly around 15 or 20 yards.
Q. Okay. Now, the "2" -- did I put it back on the screen where you can see it again?
A. Yes, ma'am.
Q. How far do you think are from the 2?
A. Maybe just slightly farther. Just with the way that the road curves, it could be slightly closer.
Q. Okay. So a little bit closer of a little bit farther?
A. Yeah. I -- I -- I can't really determine just the --
Q. Okay.
A. -- the way the road curves and where they are on the median.
Q. Okay.
A. Wherever that is.
MR. LAIRD: I'm going to mark that. Just so that we have it for reference as Exhibit two to your deposition.
(Exhibit No. 2 was marked.)

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Q. (BY MS. JOSEPH) What -- what is the maximum effective distance of this shotgun that you're holding at the time?
A. I --
MR. LAIRD: Let me -- Leigh, let me make sure I understand what you're asking. Are you talking about the shotgun using the less-lethal munitions?
MS. JOSEPH: Yes. And I tried to clarify that, Gray. But thank you for --
MR. LAIRD: I just want to make sure.
MS. JOSEPH: -- for coming in. That is what I'm talking about. Mm-hmm.
THE WITNESS: I don't recall because since then we have changed munitions and changed our distances. At least once. So I -- I -- I cannot definitively say what it was at that time. I want to say it was no more than a hundred feet. But I can't -- I can't definitively recall.
Q. (BY MS. JOSEPH) Okay. When you changed the distances in munitions did the distances get shorter or longer?
A. Again, I -- I can't remember if the -- if the new rounds that we got are -- can go further or -- or don't. I -- I don't think that they go as far because --
Q. Mm-hmm.
A. -- they are a lighter round.

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Q. Okay.
A. So I -- I -- I can't -- I can't remember.
Q. Okay. Do you have any understanding of the reasoning behind the change?
A. I -- I don't -- I don't.
Q. Okay. And do you know far the current rounds -- the maximum effective distance of the current rounds, whatever they are?
A. I -- I -- I do not because although I have been trained every year since on the rounds, I -- because of this incident, I really don't ever want to use these weapons again. So I qualify with them. And I don't check them out anymore.
So I don't -- I don't lock those into my memory bank because I -- I don't check them out or use them anymore.
Q. Why don't you want to use them anymore?
A. This entire incident just created a lot of stress and anxiety for doing my job and doing what I believe is -- was -- was right to protect people and this city.
And the hassle of that weapon system and how scrutinized it has become. I -- no offense to you I -- I don't want to go through this again.
Q. No offense taken. I -- yeah, yeah. When you see you know -- let me put it back up. Give me just a second.

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When you see what happened to Modesto -- you know, we just watched some -- some shots getting fired. Do you feel like this is an appropriate consequence for throwing a bottle of water?
MR. LAIRD: Object to the form. You can answer.
THE WITNESS: As I stated before, there's really no way for us to determine what is being thrown, what is in those in bottles. From my prior experience, I know that for instance, a true Molotov cocktail is two chemicals with a breakable device inside that once mixed explode. But it can look as innocuous as a water bottle.
I believe that this is an appropriate response to riotous behavior. When we, as I said before, cannot determine in the split seconds that we have watching these objects being thrown of how much damage they could potentially cause to not only the innocent people that are trying to peacefully protest, but even other agitators and other officers.
Q. A Molotov cocktail can't be in a plastic bottle though can it? Doesn't it have to be in glass?
A. No.
Q. Okay.
A. It can be in plastic bottle. That -- that's what I was saying.

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Q. Okay.
A. A Molotov cocktail is commonly shown as like a liquor bottle with a rag in it that you have to light on fire.
Q. Okay.
A. A true Molotov cocktail needs no fire. It's two chemicals that are mixed together.
Q. Mm-hmm.
A. That when the -- when one of the chemicals -- like ampule is broken on the inside --
Q. Mm-hmm.
A. -- and it mixes with those chemicals --
Q. Mm-hmm.
A. -- it becomes an explosive. So it would be a very --
Q. Mm-hmm.
A. -- effective way to put it in a water bottle as long as you could verify -- or as long you could guarantee that the -- the chemicals mixed.
Q. Have you seen that done before?
A. Not here in Austin, no.
Q. Okay. Would you classify Mr. Rodriguez here as a rioter?
A. If he was throwing objects, yes.
Q. Okay. Would you classify him as a violent

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protester?
A. If he was throwing things, yes.
Q. Okay. And by throwing things we're talking about a bottle of water?
A. Anything, yes.
Q. Okay. Would you classify him as an aggressive resistor?
A. Again, if he's -- if he's throwing objects, yes.
Q. What's the difference, if any -- and I -- I -- I took these words -- I think you said the word rioter and some of these other words I've taken from reports and from general orders -- the APD policy.
What's the difference between a rioter, a violent protester, and an aggressive resistor, if any?
A. Give me those three terms again just because I -- I want to make sure I get them correctly. So we have rioter --
Q. Rioter, violent protester, and aggressive resistor.
A. Okay. So I would say that a rioter and a violent protester are the same. A violent protester is what I believe to be the politically correct term that has been bestowed upon people who participate in riots to try and minimize what they're doing.
And an aggressive resistor is someone who --

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that that would be what I would consider a generalized term for like, use of force. In the sense that if we were trying to effect an arrest and they are actively resisting and being aggressive, they're not just like pulling away from us, but they're actively trying to fight us.
Q. Okay. Now, I hear that, but if I understand you correctly, it raises another question for me. Because nobody tried to arrest Modesto Rodriguez at any point on this night, right?
A. Not that I'm --
Q. You may not have that knowledge. Yeah, not that you're aware. Okay.
So if nobody's trying to arrest him, how can be an aggressive resistor?
A. I -- I don't know. I -- I was -- I was -- I guess I was linking those terms in my mind before I wrote them out and acted.
Q. Mm-hmm.
A. And -- and kind of took the time to define them to myself.
Q. Okay. Do you believe that you had cause to arrest Modesto Rodriguez?
A. Yes.
Q. Okay. If you cause to arrest him I'd assume that you believe you had cause to detain him?

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A. Yes.
Q. Okay. But you didn't do either one of those things?
A. No.
Q. Did you go to his aid after he was injured?
A. No.
Q. Did you see any member of APD go to his aid?
A. No.
Q. Do you think that -- well, not do you think, but was Modesto Rodriguez's behavior in throwing the water bottle criminal?
A. Yes.
Q. Okay. And how was it criminal? What was the violation?
A. Participating in a riot.
Q. Okay. So I have the Penal Code definition of riot in front of me from 42.02 and I want to ask you a little bit more about that.
MR. LAIRD: And Leigh, if -- are -- if you're finished with that --
MS. JOSEPH: I can take in down, yes.
MR. LAIRD: Yeah. Just so it helps me see what's -- there we go, thank you.
MS. JOSEPH: Yeah. Uh-huh.

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Q. (BY MS. JOSEPH) Just if I think I'm playing a video on it's not on your screen tell me to put it back on the screen.
A. Absolutely.
Q. All right. Okay, so looking at the Penal Code definition of riot I see, "assemblage of seven or more persons resulting in conduct which," so first let me ask you about seven or more because I see Modesto as one individual acting alone. Do you agree with that --
A. No.
Q. -- analysis? No.
Okay. So what seven -- what group of seven are more persons is he a part of here?
A. So he's part of the entire group of -- of everybody surrounding the Main and on Eighth Street.
Q. Okay.
A. Just because it is scattered out does not mean that it is a -- it is not a singular group.
Q. Okay. And does everybody in the group have to be engaging in the behavior that -- that is defined as -- as riotous in order for it to be a riotous group? Or only some people?
A. It sounds like it is a minimum of seven.
Q. Okay. And it says, "which creates an immediate danger of damage to property or injury to persons."

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And these are some "or" statements. So let's say this or this or this.

So, "creates an immediate danger of damage to property or injury to persons."

When I ask about this I want -- carefully note the difference between risk of danger and actual immediate danger. So in throwing the water bottle I believe that you've already expressed to me opinions that can make me understand that you believe that created a risk of danger; is that right?

A. Yes.

Q. Okay. In throwing the water bottle did Mr. Rodriguez create immediate danger of damage to property or injury to persons?

A. I believe so, yes.

Q. Okay. Or "substantially obstructs law enforcement or other governmental functions or services."

In throwing the water bottle that landed on the ground did Modesto Rodriguez substantially obstruct law enforcement or other governmental functions or services?

A. I would say that he was a part of the entire group that was preventing us from maintaining law and order in the area.

Q. Okay. Just by virtue of being there?

A. Mm-hmm.

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Q. Okay.

A. So for instance, everybody standing in the street, they're obstructing the highway. You know, they were told to disperse multiple times.

Q. Okay. So that one gets kicked -- gets checked off not because he threw the bottle, but because he's there?

A. Because he's there and because he threw the bottle.

Q. Okay.

A. Because when situations did arise were we needed to bring in ambulances or other officers or fire departments we had to mobilize entire other groups to try to wade through the crowds so that those other first responders could -- could get to places. So I would say that the entire crowd is doing what you explained.

Q. Okay. Okay. So that one is by virtue of being a part of the crowd. Anybody who's there substantially obstructs law enforcement or other governmental functions or services?

A. Yes.

Q. Okay. And in the last one, the "or" -- or "by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right."

Did -- does Modesto Rodriguez's behavior in throwing the water bottle meet that criterion?

A. You did say disturbs other peoples rights to the peaceful protest, right? Or -- or --

Q. "Disturbs any person in the enjoyment of a legal right."

A. Yes. So -- so I believe that his actions throwing things -- causing that to -- you know, being one of the people who caused that to be a riot is doing just that.

It's not allowing the people who are there for the right reason. And for the reason to legally protest to enjoy that because of the agitators.

Q. Okay. Now, I'm going to circle way back. I'm going to put this picture back up. And this time I'm not asking you about what you thought in the moment. I'm asking you about now that it's over and you have more facts at hand than you did in the moment.

Now, that you're sitting here in this deposition, you're looking at this picture of Modesto Rodriguez, you know that what he threw was a water bottle with water in it. Do you think that this is an appropriate consequence for the behavior that he engaged in?

MR. LAIRD: Object to the form. You can answer.

THE WITNESS: Yes.

Q. (BY MS. JOSEPH) You do?

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A. I do.

Q. Okay.

A. This was the only way for us to maintain some semblance of order.

Q. Okay. How do you feel about what happened to Modesto?

MR. LAIRD: Object to the form.

THE WITNESS: I feel like it was very easy to go there and make your voice heard without becoming an agitator. There were plenty of people who did it. There are plenty of people who still do it. It looks like --

Q. (BY MS. JOSEPH) I have to follow -- sorry, go ahead.

A. It -- it looks like he chose to be an agitator and try to ruin that for everybody else.

Q. I have to follow-up on your choice of words. "Make your voice heard." Do you know that Modesto Rodriguez is deaf?

A. No. Actually, I'm sorry, yes. I -- I was told that.

Q. I'm going to give you some background. And this is coming from me from what I've seen in the videos, so take it you know, as you will, with a grain of salt. But Modesto Rodriguez, who's deaf, had just seen a vehicle driving on these streets in a way that he testified, he felt was

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dangerous and threw the bottle after he saw that.
Does knowing that background about him change any -- I mean that's his testimony about his background, right? I'm just sharing with you what has been said. Does knowing that background about him change anything about the way that you evaluate his actions now after the fact?
MR. LAIRD: Object to the form. You can answer it if you can.
THE WITNESS: I -- that's -- I -- I don't know how to answer that because I -- I -- I'm not prevue [verbatim] to what he's thinking and why he's doing that. Or why he thinks that throwing a -- a bottle at a vehicle would somehow change that behavior.
Q. (BY MS. JOSEPH) Okay. Okay. I just wanted to ask. So let me go -- let me find our video. Do you -- would like to take another break, Officer Wright?
A. Do you mind if we take like -- like just ten minutes so I can use the restroom and -- and whatnot.
MS. JOSEPH: Sure. Let's take ten minutes. We'll come back at -- somebody do the math -- 12:16.
THE WITNESS: Sounds good to me.
MS. JOSEPH: Okay.
VIDEOGRAPHER: We're off the record. The time is 12:06 p.m.
(Recess was taken.)

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VIDEOGRAPHER: All right. We are back on the record. The time is 12:17 p.m.
Q. (BY MS. JOSEPH) All right. Officer Wright, we're back from a short break. And I'm going to share my screen and return to the video that we were looking at earlier.
A. Yes, ma'am.
Q. So we'll just pick up where we left off here at about 10:39 on the play bar.
(Video playing.)
Q. (BY MS. JOSEPH) What do you think is covering up your camera?
A. It's probably my arm.
Q. Okay.
A. So by that time I had been holding a shotgun for a -- for a while and so my arms were -- were getting tired and my shoulders were getting tired. So I was constantly kind of just moving around so I could hold the weapon in a way that you know, I could give certain muscle groups a break.
Q. Mm-hmm.
A. And it took me about -- took me a few minutes to realize that somehow my Pandora got activated. And so that's why there's music in my background. That was not intentional in any means. I had put my phone away and -- because my han -- my fingers -- fingers were sweaty it

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activated my Pandora. And I couldn't figure out where that music was coming from. I thought it was actually a boom box down below.
And then I realized that my pocket was lighting up and, oh, okay. So my phone's --
Q. Okay.
A. -- here is projecting Pandora directly into my body cam. So I apologize about that.
Q. Okay. You anticipated one of my questions. So you didn't put on your -- your jams for the protest?
A. No. Not at all.
Q. Yeah, okay.
A. As -- as a matter of fact I -- I think that you might hear me maybe utter a swear word, realizing that my Pandora is on and being somewhat frustrated with myself about it.
Q. Okay. All right. Let me resume play here. So I may have cut it off in the middle of the conversation. That might have been the end. But I think heard an exchange possibly between you and another officer. Kind of talking about who's looking where. Did you hear that conversation?
A. A little bit. If you don't mind just playing it again. So -- I'm sorry -- I was trying to -- I was more focused on looking at the screen to see -- I -- I was wondering if --

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Q. Sure. Okay. Yeah.
A. So now that I know what I'm supposed to be listening for.
Q. Yeah. So for this part focus on audio.
A. Okay.
Q. Yeah. I'll go back a little bit. I went all the way back.
A. Yeah, no, you're fine.
Q. Let me see here. Try there. I'm going to pause it there and ask you kind of generally about that conversation, but unfortunately I have to switch my AirPods first. Give me just one second.
A. You're fine.
Q. Can you hear me?
A. Yes, ma'am. You are slightly -- slightly lower than you were before, but I can hear you.
Q. Okay. I think I have got it.
MS. JOSEPH: Can y'all hear me now?
THE WITNESS: Yes, ma'am.
MS. JOSEPH: See if I can hear you. Can we go off the record?
VIDEOGRAPHER: It's 12:24 p.m. We are off the record.
(Recess was taken.)
VIDEOGRAPHER: All right. We are back on the

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record. The time is 12:26 p.m.
Q. (BY MS. JOSEPH) All right. I had a little technical difficulty. I'm going to apologize in advance if you guys hear background noise since I don't have the -- the AirPods in. But let me ask you now if you haven't forgotten what I just showed you.
Did you hear a conversation, Officer Wright, amongst some officers maybe talking about where to look or who was doing what?
A. Yes, ma'am.
Q. Okay. What was -- what was kind of going there?
A. So I don't know who it was, but we kind of collectively established that we realized that we had two or three less-lethal weapons in fairly close proximity. And to prevent all of us targeting the same person at the same time we set up the -- the only word I know is from the military it's -- it's called a field of fire.
And so from where you're standing it's a cone -- an outward cone shape. And so you have your lateral limits. So you have a right lateral limit and a left lateral limit. And your area of responsibility is within that cone. And kind of nothing else unless you know, there's an emergency.
So it sounds like we were setting up these kind of areas -- that -- that's what we'll call them. We'll

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call them areas of responsibility to focus on so that we didn't have -- so we -- we -- we're communicating better so that we didn't have multiple people impacting the same person.
Q. Okay. Okay. So 'cause that was kind of my question. Is this a watch area? Or a target area? Or both? So you're -- it sounds like both.
A. Yes, ma'am.
Q. So you're not like watching over there and then someone calls out that they saw something the other way and you go over there and aim. You're focused on your kind of designated area?
A. Yes, ma'am.
Q. Okay. Okay. Let me continue the playback.
(Video playing.)
Q. (BY MS. JOSEPH) I have to stop there. We heard the conversation I think about some marijuana use?
A. I didn't hear that actually.
Q. Oh, okay.
A. That didn't come through.
Q. Let me -- you do hear the sound?
A. I do -- I hear your sound. I don't hear --
Q. Don't hear the video? Okay.
A. No, ma'am.
Q. Let me try again. Do you hear the sound now?

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A. Yes, ma'am.
Q. Okay. Did you hear that? "Somebody's burning some good hemp"?
A. Yeah. That was me.
Q. Okay. I think that's a reference to somebody probably using some marijuana somewhere in your vicinity?
A. Yes, ma'am.
Q. Did you arrest anybody for -- for drug possession or use?
A. No, ma'am. That was actually the reason for my sarcasm. At the time, the -- I can't remember if it was the state or the City of Austin itself -- had began [verbatim] their transition of -- well, so the City of Austin had began of decriminalizing marijuana even more than they already had.
And I think the state had just enacted something about they -- they allow hemp farming. And the kind of -- the general consensus was -- is if your burn hemp and you burn marijuana you know, you really can't tell the difference. And that that's what we were told you know.
And so it became kind of a running joke with my squad at that point that anytime we smelled what we believed to be marijuana because the city didn't want us to do anything about it in our department. Didn't really allow us to do anything about it. You know we would make light of

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the situation of not being able to enforce the law due to city policies.
You know, some -- oh -- or somebody's making T-shirts. Or somebody's making little tiny rope. Stuff like that. You --
Q. Okay. Okay. Understood. Okay, let me continue playback.
(Video playing.)
Q. (BY MS. JOSEPH) Did you hear that exchange?
A. Yes, ma'am.
Q. What -- what was that exchange? What did you hear?
A. I heard -- I -- I believe it was me that said, "I think we both got the dude in the red shirt." And I believe the other officer said, "Yeah, it looked like it hurt pretty good."
Q. Okay. I think that's probably a relation back to somebody calling out red shirt. And then the -- the shots targeted at Modesto. Do -- do you think so?
A. Quite possibly, yes.
Q. Okay. Okay. Now, I know -- let me get to -- all right, I'm going to continue playback some more. I'm at 12:30.
Were you able to hear that?
A. Yeah, it sounds like I'm talking to somebody and

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explaining why we fired our weapons.
Q. Okay. And it sounds like you weren't able to tell that night that it was a water bottle that -- that was being -- (crosstalk.)
A. Yeah, it sounds like it.
Q. Okay. All right. I'm going to skip ahead to see if we can get to the Mr. Talley incident. I'm going to go to about -- a little before 18:00 on this bar. So I'm at 17:57.
So actually this is just before Mr. Talley. Something's actually going to happen, Officer Wright, kind of right in front of headquarters. And then you're going to see the crowd scatter. And I want to show you that and then ask if you know what happened.
A. Okay.
Q. Okay.
(Video playing.)
Q. (BY MS. JOSEPH) Is this still your Pandora?
A. Yeah, unfortunately.
Q. Yeah. Okay. So I interrupted to ask you that question. Let me go back ten seconds. And -- and see what causes everyone to scatter. Do you have any idea what happened there?
A. I don't, but from looks of it, it looks like somebody threw an incendiary device and people on the steps

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might have fired less-lethal at them.
Q. Do you see -- do you see the incendiary device that you're thinking of here in the video?
A. I think so. If you look towards -- so if you look where the street light is and then you go to the -- yeah, right -- and right below that -- just a little bit more over. You see that pillar of smoke? No, other way. Yeah, just a little bit up. You see that pillar of smoke?
Q. Is it this gray area here?
A. Yes.
Q. Okay.
A. So it's like right before that smoke starts happening you see a couple of flashes as if a firework -- like mortar was thrown. And so it flashes for what -- what I would assume would be the propellant engine. And then it smokes and it might explode here if we continued the video. But it looks like some -- some -- something is now burning on the front steps. And it was a --
Q. Okay.
A. -- a bright red flame before.
Q. Okay. Do you remember somebody throwing an incendiary device?
A. Yes. I remember --
Q. In that area?
A. -- yes. I remember at -- at least one if not

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multiple incendiary devices were thrown at the officers on the steps.
Q. Mm-hmm.
A. As a matter fact, I don't remember if it was a protester or somebody filming the event, got a fairly incredibly picture of it exploding at the officers feet. And I saw it a couple -- I saw the -- the picture a couple of times and haven't been able to find it since.
Q. Okay. Okay. Well, that was really just to educate me because I wasn't sure what was happening there. So that gives me something to -- to look at.
I'm going to go just about 30 seconds ahead and we'll see if we can identify Mr. Talley. Kind of in the area where I'm circling.
(Video playing.)
A. Okay.
Q. As he comes onto the screen. So it's just real brief that I see him in your body cam. Were -- were you able to identify him?
A. No. I was. I -- I -- I couldn't. There's a lot of people moving around. If you -- if you rewind it back a little bit I can -- I can try it again.
Q. So I think that I see Mr. Talley in a white T-shirt and dark shorts kind of jog up over here before your camera is occluded.

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A. Okay.
Q. We'll see if you see that. If you're able to identify him as the target that you're shooting at, is kind of my question.
A. Okay.
MR. LAIRD: And Leigh, Leigh would you mind specifying what the timestamp is? I can't see it.
MS. JOSEPH: Yes. Right now I just paused at 18:52.
MR. LAIRD: Perfect. Thanks.
Q. (BY MS. JOSEPH) That time it was under -- I can't figure how to get rid of this bar. I'm sorry, Officer Wright, let me try again --
A. That's all right.
Q. -- and try to get that bar out of the way.
A. Why don't we go back like 15 or 20 seconds? And then just watch it all the way through. That way we can -- we can maybe got that bar to disappear.
Q. Sounds good to me. So we're starting at 18:36. There he comes.
A. I -- I'm sorry -- I.
Q. If -- you don't have to apologize -- (crosstalk.)
A. I'm not -- I'm not trying to be difficult. There's -- there's a lot of people moving around in that area. And so I'm not entirely -- I'm not entirely sure

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which one you're claiming to be Mr. Talley.
Q. Mm-hmm.
A. So and also unfortunately these -- these cameras are really good, but they are still a little bit grainy when they get out to -- to that distance.
Q. Let's see if I can slow the speed. See if that helps us. When I move my mouse it makes that bar come up, but I'm going to try to point.
A. Okay.
Q. Okay. Right here, coming up.
A. You're saying right there in the very, very bottom of the screen?
Q. That's who I think your target was. Are you able to confirm that?
A. I -- I don't -- I don't know.
Q. Okay. All right, but you do -- and I can replay or continue play if needed -- you do fire the shotgun containing the beanbag rounds at this point?
A. I believe so because the first time we watched it I -- I -- I saw myself fire.
Q. Okay. Okay. And do you know how many times you fired in this particular engagement?
A. I don't recall, but if we could watch the video we can verify.
Q. Okay. I turned the speed back to normal so that

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it -- the sound is more --
A. Okay.
Q. -- like we would expect. And I'll just play it through.
Were you able to approximate how many times you fired?
A. Not really. So I only see one shell eject from my firearm or from my less-lethal shotgun rather. So I honestly can't tell if I fired once or twice right there. Do you mind just going back just 10 seconds. We can watch it one more time. I can -- I can try again.
Q. Sure. And the officer next to you, to your right fires as well; is that correct?
A. Mm-hmm. I believe so, yes.
Q. I didn't go far enough. If -- do you think you can tell if you fired more that once?
A. I -- I honestly can't. I -- I can't tell if I attempted to fire and my safety was accidentally engaged from bumping my vest and I instinctively jerked with the expected recoil. And then fixed the problem, and then fired, and then ejected the round. Or if I fired twice. I -- I honestly can't tell. I know for a fact I fired at least once.
Q. Okay. Okay. And throughout the day that day, you fired multiple times at multiple different individuals?

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A. Yes.
Q. Okay. So I know we talked earlier about what video you had seen. And we talked about your -- is -- your body cam video. Is this some of the footage that you watched before the deposition?
A. I actually -- I don't think we watched this portion. I think that we watched more of the -- what you're claiming to be the Modesto portion.
Q. Okay. Okay. But this does -- this is your body cam?
A. Yes, ma'am, this is my body cam.
Q. Okay. And if what I'm telling you is correct about who is Modesto and who is Tyree, then you did fire at both of them?
A. I've would -- I would agree that it's very possible that I fired at Modesto. However, I -- I have no idea who I -- who I am firing at based on what I can see in this video here.
Q. Okay.
A. I -- I don't know if it was somebody closer to me. If it was somebody further away. I -- I -- I don't know because it's in the very corner of that -- of that screen and essentially as soon as I raise the less-lethal shotgun I -- I can no longer see the picture.
And so part of that, just so we're all kind

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of on the same page, at the time I wore my body camera on the right side of my chest. I have since moved it to the left side of my chest after this incident because after reviewing this video I realized that the way that I hold a long gun, this arm (indicating) happens to cover my body camera a lot. And I realized that that could be a potential problem.
So what that also means is when I get into a shooting stance, although I'm facing this way (indicating) my body camera is showing more of the right side of were my body is facing. And not necessarily exactly where I am looking.
And then again, when I go into my shooting stance to properly prepare, I turn my body to make a thinner, slimmer profile causing not only my arm to semi-block the camera, but the camera to turn towards where my body is facing and not where my eyes and -- and head are facing.
Q. Okay. Okay. That's helpful to know. Did -- did someone instruct you to wear the camera in one position or another?
A. No. So I -- I will not be able to quote the policy verbatim. But our policy is essentially, middle of the chest between the first couple buttons from the top. And then either to the right or the left, if you have the

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outer vest. Or if possible, direct center if you have the inner vest.
Q. Okay. Okay.
A. The camera -- (crosstalk.)
Q. Let me ask -- go ahead.
A. I'm sorry. The camera doesn't mount on the center for the outer vest because of the way the vest zips up.
Q. Oh, okay. Okay. Let me play just a little bit farther and I -- I think we're about through with the video.
A. Okay.
(Video playing.)
Q. Okay. Yeah, I'm -- I'm gonna take that off of your screen. So you haven't seen a video showing Mr. Talley's conduct immediately before he's shot at?
A. I -- I have not seen a video, no.
Q. For purposes of our conversation, I'm going to represent that Mr. Talley threw a water bottle.
A. Okay.
Q. Okay. So assuming that that's a fact, is that conduct criminal?
A. In these circumstances, yes.
Q. Is it cause for arrest?
A. Yes.
Q. Did you arrest Mr. Talley?
A. No, ma'am.

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Q. Did you go to his aid?
A. No, ma'am.
Q. Okay. Is his behavior, assuming that he threw a water bottle you know, as I've described, riotous behavior?
A. Yes, ma'am.
Q. Let me pull some pictures up for you. And I'm gonna show you some pictures of Tyree labeled 1141, 1140, 50, 43, 44, 42, 38, 47, 45, 46, 1149, 1139, 1152. So I'm also going to represent to you that Mr. Talley was impacted 12 times.
A. Okay.
Q. By -- by beanbag rounds. At the -- and that these pictures contain some, but not all -- depictions of some, but not all of those injuries, okay?
So looking at Mr. Talley in the aftermath -- and I also don't know if you know this, but it's -- it's not a photograph that I'm showing you. So I'm -- I'm also going represent to you that Mr. Talley was also shot in the groin -- in the -- in the penis.
A. Okay.
Q. But that was another place that he sustained an injury.
A. Okay.
Q. Is this an appropriate consequence for throwing a water bottle?

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MR. LAIRD: Object to the form. You can answer.
THE WITNESS: So I cannot account for other officers from other vantage points seeing what Mr. Talley was doing and taking the same action that I possibly did on this individual. So what I would say is, yes.
Q. (BY MS. JOSEPH) Being shot 12 times and having his body covered in -- in bruises and cuts having lasting scars and disfigurement -- that's appropriate consequences for throwing a bottle of water?
MR. LAIRD: Object to the form. You can answer.
THE WITNESS: So at max, I fired twice and I would say that that is appropriate.
Q. (BY MS. JOSEPH) Even if it was -- (crosstalk.)
A. What I'm saying -- what I'm saying is -- is I cannot -- I cannot account for what any other officer did from another vantage point. What I can say is that we had been impacting people who had been throwing things all day and that it was very evident that that is what our response was.
So for people who continued to throw things, if they got impacted multiple times, I don't believe by -- by different vantage points, I don't believe that that is -- that is our fault. There's no way to coordinate from how

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many different vantages that we had and where we had officers you know, who was going to impact an individual. It would probably impossible because of how the situation was evolving.
Q. So from your perspective, if he had been out there for any length of time that day Mr. Talley should have known better?
A. I would say that he been there for any length of time Mr. Talley should have been able to see what the response was to people throwing things. And should have realized that it was not -- it would not behoove him or benefit in any way to throw things at anybody or anything.
Q. Did you receive training on excessive force and a person's right to be free from excessive force as part of your APD training?
A. Yes, ma'am.
Q. Does the fact that excessive force was used on one person and another may have seen it, mean that it's then okay and the second person no longer has a right to be free of excessive force?
MR. LAIRD: Object to form, but you can answer.
THE WITNESS: Okay. Can you please just restate your question. I just want to make sure I'm hearing right. And I'd like to -- to write it down so I'm not --

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I'm not forgetting any aspect of what you're saying.
Q. (BY MS. JOSEPH) Let me see if I can say it better because it's a little bit confusing. And I think I'm going to have to do it with kind of an example.
A. Okay.
Q. So I'm a -- I'm, you know, an American. I have a right to be free of excessive force, right?
A. Okay.
Q. Do you agree with that?
A. Yes.
Q. Okay. I see someone next to me do something and what I believe is excessive force is used on that person.
A. Okay.
Q. Okay. Does that mean that I have lost my right to be free from excessive force, if I engage in the same action?
MR. LAIRD: And object to form, but -- but you can answer.
THE WITNESS: I -- I'm sorry. That actually made it -- it made it more confusing.
Q. Made it worse?
A. And -- and -- I -- I'm not trying to be difficult. So in that situation are you saying that the force is used on you? Or you witnessed somebody using force and you have the right to not have force used on you?

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Q. I witnessed somebody do something --
A. Okay.
Q. -- and the consequence is that force is used on them.
A. Okay.
Q. And I do the same thing.
A. Uh-huh.
Q. That the first person did.
A. Okay.
Q. Do I still have an independent right to be free from excessive force?
MR. LAIRD: Object to the form.
Q. (BY MS. JOSEPH) Even though I've seen what I've seen.
MR. LAIRD: Same objection, but you can answer.
THE WITNESS: I'm -- I'm sorry. I'm -- I'm -- I'm -- I'm having -- I'm having trouble understanding what -- what you're trying to -- to portray. So are you saying that you witnessed somebody throwing something and excessive force is used on them. And then you do the same thing -- does that mean that you should receive the exact same consequence? Or you shouldn't?
Q. (BY MS. JOSEPH) Yeah, I'm not getting it across. I want to ask you that so let me see if I can say it better.

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I'm gonna try -- I'll try one more time and then we can move on.
A. Okay. And -- and -- I -- I apologize.
Q. Not your fault. Yeah. And -- and what's prompting me to ask this is your remark about Mr. Talley or the protesters who were out there -- should have seen what was happening that day when objects were thrown. They should have seen what the response was.
And so that's making me try to ask this question. Does what I see --
A. Uh-huh.
Q. -- does what I see, alter my right -- my Fourth Amendment right to be free from excessive force?
A. No. But I don't believe that -- in this particular situation I don't believe that you could say excessive force was used. And here's why. So in -- I'm sorry did somebody say something? Okay.
Q. No continue.
A. So in a situation where we have say five officers and we're dealing with one individual, okay? In that that situation devolves into a fight. And hypothetically say we use excessive force on him, right? That is all of us in the same exact area, focusing on the same exact person, at the exact same time.
Am I echoing? 'Cause I -- I -- I hear

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somebody.
MR. LAIRD: It sounded like there's a little feedback or something.
THE WITNESS: Okay. Okay. I -- I just -- I'm okay. So let me get back to where I was. So in that situation when all of -- say the -- say officers are together and excessive force is used then, yes, I would say that that is excessive force.
In this particular situation what we have is we have an individual who is far away. And we have officers from multiple different angles who are using the minimal amount of force, right? And as I said before there's no way to coordinate between everybody out there who had less-lethal weapons and the vantage points that they had, right?
So like I said, I fired maybe two rounds. I don't believe that that is excessive. Maybe the person next to me also fired two rounds at that same person. To him that is not excessive. The person 15 people down with a completely different vantage point who no idea that we were targeting the individual, fired one round. That is not excessive.
The cumulation of everything could be conceived as excessive, however, there's no way for us to know that the other force was being used at the time.

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Q. Okay. I understand what you're saying. So you don't --
A. So --
Q. In your opinion an individual -- I'm sorry, I don't want to interrupt you. Go ahead.
A. No, it's okay. And I apologize, I'm not trying to talk over you. So the fact that he was impacted 12 times, that is tragic and that is -- that is sad. And -- and no, I don't believe that that should have happened. But what it sounds like is, is you're trying to claim that -- that somehow we accumulated this idea of everybody in the area was going to shoot this same guy as a -- in an individual punishment for him. And that's just not the case.
Individual officers from different vantage points maybe all saw the same thing and reacted. And reacted in a reasonable way, with a reasonable amount of force to stop the riotous activity. The fact that it all accumulated onto one person, that's -- I -- I don't believe that that's our fault. 'Cause there's no way to precisely coordinate that in that particular situation or really in any situation.
Q. People always think that lawyers are trying to scheme some sort you know, answer out of them. And I'm really not trying to do that. I'm just trying to ask you questions.

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A. Okay. I -- and I understand and -- and --
Q. Yeah.
A. -- and I don't think you're trying to scheme. I think that you're trying to make the point that, yes, 12 impacts is a lot. And why, right? And what I'm telling you is, is that we need to look at it from a different paradigm of it's not like we had 12 -- 4 officers line up and shoot him 3 times each. You know, simultaneously. We had multiple officers who I had no -- you know I -- I had no ideas where these officers were. Because even my video it only shows maybe a max of four shots, right?
Q. So this was not a coordinated effort by APD for people to make sure that Tyree Talley was shot 12 times?
A. Not at all.
Q. Okay.
A. This is individual officers observing a riotous act and taking the actions in which we were not only instructed, but we felt necessary to prevent further harm and disorder to the people in the -- the people in the area and the area. And unfortunately and sadly for Mr. Talley multiple people were -- multiple officers with less-lethal shotguns were observing for him at the same time. And -- and took that same action.
Q. And in -- instead of a coordinated effort, it was actually the opposite. You guys were not able to

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coordinate?
A. There's no way to coordinate. The only way that we would've been able to coordinate, again, is if we were all lined up and you know, somebody was like, that guy, ready, fire. And that --
Q. And that --
A. -- that wasn't really what -- it wasn't what was happening.
Q. Okay. In that resulted in a number of -- how many people were armed with these shotguns at that time? Do you have any idea? Like more than 20?
A. Honestly, I have no idea. I --
Q. Okay.
A. I -- I have no idea.
Q. Okay. So that resulted in some number of APD officers armed with these shotguns equipped with the beanbag rounds all following the same order, shoot at somebody who's throwing an object?
MR. LAIRD: Object to the form.
THE WITNESS: Impact somebody who is -- who is throwing objects.
Q. (BY MS. JOSEPH) Okay. And so in Mr. Talley's case you know, your -- your view and what you're explaining to me is that one individual officer's actions were not excessive?

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A. No.
MR. LAIRD: Object to the form.
Q. (BY MS. JOSEPH) Okay. But the cumulation, the aggregate of 12 shots to Mr. Talley was excess.
MR. LAIRD: Ob -- object to form.
Q. (BY MS. JOSEPH) Even though it's not one individual. We can't blame a particular individual officer for that -- the -- the aggregate was -- was excess?
MR. LAIRD: Object to the form.
THE WITNESS: No. Because again, I don't think that you can -- you can -- I don't think you can call -- you can combine all of these. Because again, it's -- it's individuals from different areas. So I think that you would have to essentially make it each individual thing, an -- an individual situation.
Q. (BY MS. JOSEPH) How many times do you think Mr. Talley needed to be shot in order to not throw another bottle?
MR. LAIRD: Object to the form. Calls for speculation.
THE WITNESS: I don't know because I'm not -- I'm not there, right now. I'm not looking at what's happening.
Q. (BY MS. JOSEPH) But you were then. I mean, seeing what you saw. Impacting the people that you did

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and -- and targeting people who throwing objects. How many shots did it take to get somebody to comply?

MR. LAIRD: Object to the form. Speculation.

THE WITNESS: I'm sorry. Does that mean I answer? Or I don't answer? I'm sorry.

Q. (BY MS. JOSEPH) You still answer.

MR. LAIRD: Yeah, you answer if you can.

THE WITNESS: Okay. I'm sorry. So restate the question.

Q. (BY MS. JOSEPH) Yeah. When you were out there for hours you know, targeting -- under orders to target people who were throwing objects, right?

A. Ah, yeah, okay. I see what you're saying. Okay. So the less-lethal shotgun is not a -- is not an immobilization weapon. So it is indeterminate to tell how many shots it will take for someone to realize that this hurts, I should stop. Right? Because one, it depends on where you're hit. Two, it depends on how much of an actual blow you received. So for instance, if I missed or I -- or it was just a glancing blow it's -- it's not going -- something I'm happened.

Q. My screen back up. Yeah.

A. Something -- so if it's a glancing blow you know, that -- that might not gain com -- compliance. That might not make gain -- you know, make somebody realize that I -- I

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need to stop this behavior. So it -- it depends. I've seeing people get impacted four or five, six, seven, eight times and continue doing what they're doing.

It depends on each individual person's pain tolerance I suppose. If they're under the influence of anything. There are -- there a multitude of -- of reasons why one or two or -- or multiple impacts won't work.

It depends on the type of clothing their wearing. It depends on if -- if they have anything under that -- that clothing. We -- we -- we could go on for a long time and to -- to say you know, all -- all the different reasons on why these -- these rounds might not work. Or would work. And there is -- there's -- there's no way to tell until the behavior actually stops.

Q. You said something that I want to go back to. You said glancing blow. So I want to ask you -- I'm showing you these same pictures of Mr. Talley's injuries. Does this look like a glancing blow?

A. No. But could you go back to the first one?

Q. Yeah. I'll get there. Does this look like a glancing blow?

A. No.

Q. What about this one?

A. Nope.

Q. Okay. And we're just going backwards from this

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set that I've been you today.

A. Okay.

Q. What about -- what about these on the hips? Do these look like glancing blows?

A. They don't look like it, but they -- they could be. Just -- but they don't look like it.

Q. Does that look like it hurts?

A. Absolutely.

MR. LAIRD: Object to the form.

Q. (BY MS. JOSEPH) Do these look like glancing blows?

A. The one on the right side of the picture with the striped underwear looks like -- or no, sorry. So left picture, right side of the leg that looks like it could be a glancing blow. And again, glancing blow is -- is -- is relative as well. How -- how much material is being -- is -- is -- is being touched. It could be very minimal. It could be a lot. And the other one does not look like a glancing blow.

Q. What about -- what about the ones we see here?

A. So if I'm being --

Q. I think the new ones are the shoulder and the back of the arm.

A. So if I'm being honest, the shoulder and the elbow, those look like road rash. Those look like somebody

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falling down and scraping.

Q. Okay. You wanted me to go back. It's probably to this picture of the ear?

A. No. It was the shoulder one.

Q. The shoulder?

A. But that looks like more like road rash, but that -- that also looks like what -- road rash is somewhat of a glancing blow. It's a slide acrossed [verbatim].

Q. Okay. And I do have to ask you at this point you know, if you have particular training that enables you to identify the difference between a beanbag round injury and road rash?

A. I don't have any (audio distortion) -- I don't have any specific training to say (audio feedback) -- sorry?

Q. Oh, carry on.

A. I don't have any training to specifically say beanbag or road rash, however, through my training and experience for five years as a military medic, both stateside and in Afghanistan, I have seen a multitude of injuries and things that cause injuries and know what certain injuries look like.

Could this be a beanbag? Absolutely, this could be a beanbag. However, it also looks like it could be when -- if he fell down or when he fell down, he scraped his shoulder. And possibly over here when he fell down he hit

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his ear and that's what made his ear swell.
Q. But you don't know. (Crosstalk.) You don't know one way or another?
A. No. I don't know one way or another. So it could either.
Q. Okay. They could -- these very well could be beanbag munition injuries?
A. Mm-hmm. They can also be him running into a wall when he was finally running away. These two (indicating). And I'm not talking about the other ones. I'm talking about these two.
Q. Okay.
A. Is -- is -- a lot of -- a lot of the -- a lot of things could've caused some of these injuries. Could they be beanbags? Yes. Could they also not be --
Q. Okay.
A. Yes.
Q. Okay. You also talked about there being instances where it takes three to four impacts with a beanbag round before somebody stops in action.
A. Mm-hmm. Yes.
Q. Okay. I'll limit this question to May 30th, 2020, people who were throwing water bottles, okay? Of those people how many did you see reaching for a second bottle to throw again? After they threw the first one?

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A. So I can't specifically talk on only the individuals who threw water bottles. I -- I was -- was I able to identify at least one? And that sounds like it was Modesto. But there were multiple instances where we would -- I impacted somebody, they went down, they jumped back up, ran back around and then later I saw them throwing objects again. But they were either too far away or I didn't have a clear enough shot. And it -- had I tried to impact them again at that later time they would -- I could've possibly hit somebody who was not participating in that particular activity.
Q. So you didn't want to just stop the throw that was happening? You wanted to stop these people from throwing again? Even if it was going to be ten minutes later?
A. No. I wanted to stop the behavior as it was happening and hopefully that would stop future behavior as well.
Q. Okay. So I mean, Modesto throws a water bottle, he didn't have an arsenal of water bottles. He picks one off the ground and he throws it. I mean, Tyree throws a water bottle. You know, I mean what I'm getting at here is these people are not water bottle, water bottle, water bottle. They're throwing one. I mean, did you see anybody kind of repeatedly throwing water bottles?
A. Absolutely. So what you're saying is -- what

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you're saying is, is these guys picked up a weapon of opportunity that was on the ground and immediately threw it. The ground was littered with weapons of opportunities, so what's to stop them from grabbing another weapon of opportunity and throwing it again.
Q. What's to stop them is -- is it what I'm asking? I'm asking what you saw.
A. Yes. I saw people --
Q. So how -- how many people did you see walking around on the street, picking up a water bottle, throwing it, and then picking up a water bottle again and throwing it?
A. On multiple occasions I saw people picking things up off the ground and throwing them and doing that multiple times.
Q. All in a continued sequence? Bend down, throw, bend down, throw -- you saw that happening?
A. Not necessarily a continued sequence. Some of them were. Some of them weren't. They would meander through the crowd and like I said, pick up weapons of opportunity as they found them and throw them.
Q. And so that gets to this distinction in -- in clarification point that I don't quite get on what your objective is. Are you trying to like take somebody out so they can't throw something again?

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A. No.
Q. Or you just trying to stop the action that's happening in that moment?
A. We're trying to stop the action that's happening in that moment. And hopefully, they realize that that's not a good idea and stop doing that action. I'm hoping that they make that decision. I'm not -- I'm not hoping that because I -- I'm not hoping that I'm going to permanently incapacitate them from ever doing anything again.
Q. Yeah. I mean, I would hope not, but I just want to make sure. And so in that moment Tyree Talley's action, throwing a single water bottle, right?
A. Sure.
Q. Okay. It didn't take 12 shots to deter him -- to -- well, actually let me -- let me go a different way. Let me ask you something else. Had he already thrown the water bottle when you shot at him?
A. I -- I don't know. I -- I -- I don't remember -- (crosstalk.)
Q. Okay. Do you know on Modesto?
A. I don't know on Modesto. However, I think I have something in one of my supplements that might be Talley. Okay. So -- all right, so this is -- this is reminding me of it. So I -- I this might be the incident we're -- we're discussing.

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So "At 18:55 mark in my video, Officer Wright observed what I believe to be a male subject standing in the 35 service road intersection with Eighth Street. The male was facing the Austin Police Headquarters. I observed the male throw an object towards the officers on the steps. By the time that I had brought my less-lethal up, the subject had turned around. I fired the first round at the subject -- I fired the first round at the subject as he started to run northbound on the service road."

"I aimed this round to impact the subject in the abdomen, however, due to him accelerating into a run this, this round impacted him in the upper body, near the shoulder. I reloaded with my second round and hit him in the lower body."

The reason -- now that I'm reading this I remember. So what was happening, at that time, what we were seeing was we were seeing people run out from under the overpass that we were standing on -- or under the bridge that we were standing on. They would grab something, throw it and then try to run back under the -- under the overpass so that we couldn't impact them. And then they would continually go back-and-forth and do that.

So the idea here was we -- it sounds like I observed him throw the object so I impacted him and as he started to try to run back in, I was attempting -- I was

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trying to prevent him from running back to try and grab more things to throw at the Main at the officers there.

MR. LAIRD: And -- and, Justin, could you just identify the Bates number on the bottom of whatever page --

THE WITNESS: Yes.

MR. LAIRD: -- you're reading from?

THE WITNESS: That is 2469. And that's the middle paragraph that starts with, "at 18:55."

Q. (BY MS. JOSEPH) Okay. So is -- he has thrown the object already?

A. Yes.

Q. And is running away when you are targeting him?

A. Yes -- (crosstalk.)

MR. LAIRD: Objection, form.

MS. JOSEPH: Are you objecting to the word "targeting"? I got that from an officer yesterday. Is that --

MR. LAIRD: That's part of it.

MS. JOSEPH: Okay. I'll -- I'll use a different word, yeah.

Q. (BY MS. JOSEPH) Okay. So Mr. Talley had thrown -- or the subject that you're reading about in this report had -- had thrown the object and was running away at the time that you were firing your shotgun aimed with the

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beanbag rounds?

MR. LAIRD: And I object to the form. And -- and, Leigh, what I'm -- I'll tell you what I'm objecting to is -- is I think it's unclear when you say that he's running away.

MS. JOSEPH: Okay.

MR. LAIRD: Because he's --

MS. JOSEPH: Okay.

MR. LAIRD: I don't think that's what the officer is -- is saying, but ...

Q. (BY MS. JOSEPH) Okay. Mr. -- Officer Wright, I'll let you answer that question and you can of course -- you know, if he's not running away you can -- you can say so.

A. So I don't -- I don't know what word I would use, but based off of reading this, what I believed at the time was -- is that he was actively trying to throw stuff. And then maneuver away so that he would not be impacted. So he could -- he essentially was trying to do this thing so that he could do it and we wouldn't be able to -- to do anything about it. And so that's why I continued -- or I -- I -- I fired the second round.

Q. Okay.

A. So the first -- the first round is I'm witnessing him throwing it. By the time I've raised the -- the

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less-lethal shotgun and fired, yes, he has thrown it and started to move. We -- the reactionary times that we have we that's -- that's the way that it's -- it's going to be. We can't -- we you know, we -- we -- we can't ...

Q. So neither one of these shots is to stop him from throwing the water bottles?

MR. LAIRD: Objection, form.

Q. (BY MS. JOSEPH) The particular water bottle that he had already released from his hand when -- when the first shot was fired?

A. These shots are because -- the shots are because he threw the water bottle, yes.

Q. Because it had already happened?

A. Because it was happening and I reacted. And by the time the reaction was finished, the bottle had been thrown.

Q. Okay.

A. And then he began to what -- I believe to -- evade us. Well, evade is not the right word. Tried to maneuver away from us so that we couldn't impact him.

Q. Okay. And at least the second shot, if not both, the second shot was intended to be a deterrent from continued behavior?

A. Yes.

Q. We don't see in your body cam, but I've seen

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other -- other footage that makes it look like there's light aimed at Mr. Talley. Are you aware of somebody using some sort of lighting device to target particular subjects while you were out there on the 30th.

A. Not that I remember.

Q. Okay. Did you fear for your own safety when Mr. Rodriguez or Mr. Talley threw the bottle?

A. No. I feared for the safety of others in the crowd and the officers at the steps.

Q. I'm going to completely change tracks for a minute and ask you about the beanbag rounds themselves.

A. Okay.

Q. And I'm trying to push through, but like I said at the beginning, Officer Wright, if you need a break, you say so. Okay?

When you -- so I knew you were given some amount of munitions when you first checked out the gun at the -- the shotgun -- at North Substation.

A. Yes.

Q. How were those --

A. I believe so. I'm -- I'm pretty sure they -- they gave me -- they gave me at least one -- one load out.

Q. Okay. How were those packaged when they were given to you?

A. Okay. So the -- at that time the less-lethal

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shotguns -- now, I'm remembering this now. I apologize. So, at that time, the less-lethal shotguns came in a -- in a black gun case. Like a soft black gun case with a zipper pocket on the back. And -- or -- it -- towards the back of the case. In that -- in that case was the four or five rounds to fill the -- the weapon. The weapon system. Right?

And those were -- as far as I know, those were only replaced if somebody realized that they were expired or if they had expended.

Q. Okay.

A. So my initial load out was the rounds that it had been with the gun for however long.

Q. Mm-hmm.

A. And then after that we were handed rounds in I believe little white boxes.

Q. Okay.

A. And I don't know how many rounds were in each box.

Q. Mm-hmm.

A. But it was probably either five or ten.

Q. The ones that were in the case with the -- the shotgun case --

A. Uh-huh.

Q. -- were those in a little white box or --

A. No. Those were loose because those are the same

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rounds that were loaded into it on a daily basis for whoever checked out that particular weapon system.

Q. Mm-hmm.

A. They were -- I'm sure the first time they were handed out -- in a -- in a white box. But after that basically you would unload the -- the weapon system and then those loose shells would be placed in that pocket.

Q. Okay. And you mentioned that they would get changed out if they were expired or expended? Did as --

A. I think. I think expired.

Q. -- as the user -- okay. Yeah. And did you as the user have a way of knowing if -- if the rounds -- the beanbag rounds that were in the case with the shotgun were expired? Did you have a way of checking that?

A. I don't believe so because I -- I -- I don't believe that it's on the shell.

Q. Mm-hmm.

A. I don't remember being told that.

Q. Mm-hmm.

A. That we had to look at each individual shell. And I -- I don't believe even to this day -- I think it -- it was on the original box.

Q. Mm-hmm.

A. And so I -- I don't believe that there was a way for me to know if the shells that I was given were expired.

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And nor did I know if they were.

Q. Okay. Was any part of your training and handling these weapons -- did any of it involve kind of checking the integrity of the munitions?

A. Yes. However, it was -- it -- it was the -- so just -- just for explanation purposes, I -- I don't mean to insult anybody's intelligence. I'm just going to explain the shells so we all know what we're talking about, right?

Q. Okay. Doesn't insult my intelligence. I've never held one of these.

A. Okay.

Q. Never seen one in person. Yes.

A. Okay. So the bottom of the shell is made of brass.

Q. Mm-hmm.

A. All right? And the very, very bottom is slightly wider. And then there is a -- there is a primer in the center of that -- of that shell. From the brass point, it then -- it then extends out into a plastic case -- a plastic casing, right?

Q. Mm-hmm.

A. And the gunpowder is in the brass portion. There is a plastic plug that goes in-between the gunpowder and the less-lethal munitions sock, right? As a buffer --

Q. Mm-hmm.

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A. -- so that it doesn't catch the -- the sock on fire. And then it is -- it's got another -- if I remember right, it's got another piece of cardboard at the very top and the plastic is rolled over the top of that to secure everything from not falling out.

The part that we were taught to check is the same part that we check with our regular shotgun rounds. And that's that slightly wider portion at the very base so that the round doesn't fall too far into the barrel. And after continuous reload, what can happen because that's brass and that's a softer metal, is that can become deformed. And then the round slips too far into the barrel and it -- and it cannot be fired.

Q. Okay.

A. And so we are taught to inspect the back of the round to make sure that they are not deformed to where they would cause the weapon to be jammed.

Q. To make sure the weapon is still going to be operational?

A. Yes. But that -- as far as I remember, is the only part of the shell that we inspect as individual officers on the street.

Q. Mm-hmm.

A. Somebody else in the department might be tasked with other inspections. I don't know.

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Q. Okay, okay. So as an officer on the ground you have an expectation that the munitions that are being given to you are not expired?

A. Not expired and that they are functional and that they're not you know, defective in any way.

Q. Okay. Okay. Talking further about training, I believe you mentioned earlier that you -- you were and you continue to be qualified in these type of so-called less-lethal weapons. Has there -- has there ever been a time during your time at APD that that qualification lapsed or was expired?

A. No, ma'am.

Q. Okay. And I understand that in your training for using those, you're taught particular target areas. I think in kind of green, yellow, red system?

A. Yes, ma'am.

Q. So tell me what is green, what is yellow, and what is red?

A. So green is the optimal place for the most effective and safest target areas. So the -- the butt, the legs, are green. I -- I can't remember if the arms are green. I think they changed the -- I think they changed the -- the model that we shoot at.

Q. Mm-hmm.

A. The back is green. The chest is yellow. And the

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head and the groin -- oh, sorry. Go ahead.

Q. I'm going to stop you because I'm going to ask you about some specific areas.

A. Oh, okay.

Q. So that way, you don't have to tell me twice.

A. Sure.

Q. So green is -- ideal place to target. Yellow is okay, but not as ideal. And red is try not hit there?

A. Yes.

Q. Okay.

A. Red -- red is do not actively aim for these locations.

Q. Okay. I think it's like unless it's a situation where you're authorized to use deadly force?

A. Yes, and, no.

Q. Okay.

A. So that's specifically the head --

Q. Okay.

A. -- right? So for example, the groin -- the -- the front of the groin is also a red area.

Q. Mm-hmm.

A. If I remember correctly.

Q. Mm-hmm.

A. Obviously that would be an inappropriate place if we feel that we need to use deadly force to actively aim at

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that spot.

Q. Mm-hmm.

A. Because that -- that would not do it.

Q. So she you should never target the groin?

A. You should never actively target the groin, no.

Q. Okay. So let me ask -- I'm going to pull back up the picture of Modesto because I've noticed there's some linguistic disagreement on where one of his particular injuries is. So I'm going to show you instead of trying to say a body part.

A. Okay.

Q. So I'm going to show you this area on his torso.

A. Okay.

Q. And ask you if that is green, yellow, or red?

A. I would say that that's kind of right in-between green and yellow.

Q. Okay. Okay. Is the -- the chest is red, right?

A. I want to say, I honestly can't remember. I -- I can't because ever since we got the new Taser system, we have another mat with different colors all over it. And so -- and like I said, I -- I only see the mat once a year at this point.

Q. Yeah, okay.

A. And so I --

Q. Okay.

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A. -- can't actually remember.
Q. Okay. What about the -- this ankle spot? Do you know what color that is?
A. I don't know. I believe it to be either green or yellow.
Q. Okay. And for Mr. Talley I'm going -- I'm gonna try saying some body parts instead of looking through all the pictures --
A. Okay.
Q. But I'll pull one up if we need to. The -- and I'll just throw out a body part and you tell me what color zone it's in, okay? This is the portion of the deposition that's a test. But it won't last long. The -- the ear. What color zone is that in?
A. I would say the ear would be red.
Q. Red? Okay. And the penis?
A. Would be red.
Q. Okay. The chest?
A. As I said before, I can't remember if the chest is split between red and yellow. Or if it's just over the heart that's red.
Q. Mm-hmm.
A. Or -- I -- I honestly can't remember.
Q. Okay.
A. I would say probably yellow, maybe red.

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Q. Okay. And I think you already answered with regard to the buttocks, that you thought that was a green area?
A. I believe the buttocks to be the green -- to be green.
Q. Okay. And I think you said legs in general. So that would include thighs and calves would also be green?
A. Yeah.
Q. Okay. What about shoulder?
A. I believe the -- so I believe the sh -- where on the shoulder? Are we talking along the shoulder blade, on the back? Or are we talking on the front of the shoulder? Like where the socket is or --
Q. Do you remember --
A. And I'm sorry, I'm not trying to be difficult.
Q. No, no --
A. Or are we talking on the -- on the -- like deltoid area or the --
Q. Do you -- do you remember that picture we looked at and we said maybe -- you thought that could be road rash --
A. Maybe it could be road rash?
Q. -- but it also could be a beanbag round? I can pull it up again.
A. I do. I think that's the back of the shoulder so

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I would say that that would be green.
Q. Okay. And then you talked earlier a little bit about arms. My next ones would be forearms and upper arms, but I think you weren't sure about arms anymore?
A. Yeah. I -- I'm -- I'm not sure. I -- I think they're -- they're yellow or green.
Q. Okay. So some of the areas at least for Tyree, some of the areas that he was actually hit, not talking about where people were targeting, but some of the areas where he was actually hit were red areas?
A. Yes, ma'am.
Q. Which leads me to believe that these shots were not 100 percent accurate?
A. Yeah, that sounds fair.
Q. I rather think that then that you know, an APD officer was targeting a red area.
A. Yeah. Yeah, so there's officers -- their shots are not 100 percent accurate, as well as, we've already gone over the fact that Mr. Talley was moving. Which means that by the time we pull the trigger, he's still moving and so where we're aiming we're doing our best to aim for this -- the places that we are. But as he's moving around, that impact zone is changing.
Q. Okay. Did you observe inaccuracy of your weapon as you were shooting it that day? As you were using it?

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A. Yes, I did.
Q. Okay.
A. I observed -- I observed my round were flaring upward. And so I purposely for the rest of the day, because that scared me -- I'm sorry -- for the rest of the day I purposely aimed lower at the legs and the lower abdomen because -- because of that.
Q. Okay. Okay. I want to talk a little bit about the formation out there. So I don't think the roads were blocked; is that right? Or maybe some roads were blocked and some weren't.
A. Which roads are we talking about? Actually, hold on --
Q. Let me just --
A. So -- sorry two questions. So which roads are we talking? And when you say "blocked" are you asking if we block them as Austin Police? Or if the protesters and rioters blocked them?
Q. So what you're doing is pointing out extreme deficiencies in my questions. Let me try again.
Did you -- APD officers -- did you -- whether you or some other officer -- did any APD officers that day put up any barriers to block roadways around the headquarters?
A. I think so. I -- I believe that at -- at some

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point it was decided that you know, the -- it wasn't necessarily worth trying to keep them out of the roads and for those who are being peaceful could stay there. So I -- I do believe that we blocked off some roads. I don't know which ones though. I --

Q. Okay.

A. -- I can't recall which ones.

Q. Do you know with what?

A. I can't -- I can't say for sure. I don't know if we used cars or if we used the barricades that are used on Sixth Street every weekend.

Q. Mm-hmm.

A. Or a combination of both. I -- I -- (audio distortion.)

Q. Okay. And you were on the -- the overpass. We've talked about that. And we've also, I think at some point, referenced that there were other officers on the -- do y'all call is the "patio"? The front of the headquarters?

A. I think we call it the "steps".

Q. The steps?

A. If I remember correctly.

Q. What was the purpose of the officers on the steps?

A. I believe that the officers of the steps were there to make sure that we didn't have the same incident as -- as we discussed earlier. Some police departments that

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were getting overrun and -- and damaged on the inside.

Q. So --

A. So that was -- that was a safety measure because of what's inside of a police department, right? So not only are there weapons and stuff like that, but there is a -- an ungodly amount of personal information for people all over the city and all over the states. And even in different countries. And it would be very dangerous to allow an angry mob to get inside of that building and -- and -- and it could cause a lot -- a lot of damage. Not only physically, but -- but also in people's lives. Whether it be through other nefarious actions.

Q. Okay. So they were there to protect headquarters from getting breached?

A. Yes, ma'am.

Q. And you said angry mob, but at the time that Modesto and Tyree were -- were injured, the times we looked at on your body cam, would you describe that as an angry mob situation?

A. I -- I would describe -- I would describe that as an intermix -- an intermixing of people who wanted it to be an angry mob, agitators. And people who just wanted to yell and scream at us. And so like we did -- you know, unfortunately like we described before you know, that -- that does -- that does make the whole thing a riot.

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We were trying to be as lenient as possible with that aspect of it. But so angry mob? Sure. It -- it might be a little bit more -- might be -- it might be a little bit too strong. So the -- the protest that was full of agitators to prevent them from agitating further into a breach of the Main.

Q. Okay. And other than the police line on the steps, what other measures did APD take to prevent the breach of Main? For example, were there other physical barriers set up?

A. I honestly don't know because I -- I didn't -- I think -- I believe the closest I got to the Main that day was across the street at the 250 building. So I don't know if they did anything inside. And I don't remember anything specific when it comes to like the gates to the parking garages or anything. It's just not -- I'm sorry -- it's just not something that I was paying attention to.

Q. Okay. Did you observe -- well, let me ask you first. Did you personally kind of go down into the crowd and interact with citizens one-on-one, at any point?

A. Not that day, no. Later on -- a couple of days later, we attempted to I guess mingle with the crowd and -- and try and talk and stuff like that. But on the day in question, I don't believe that I ever went down into the crowd.

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Q. Okay. And to use a word, I think "mingling" is a good way to describe what I'm asking about. Did you see anybody -- any other officers kind of mingling in the crowd that day, interacting one-on-one on the 30th?

A. I didn't. I -- I didn't.

Q. Okay. That mask that you had with you, that went up and down, the shield -- the helmet --

A. Oh, yes. Yes.

Q. -- did -- when that was down did it in any way affect your ability to aim that shotgun?

A. I don't believe so, no.

Q. Okay. Did you just kind of move it up and down throughout the day on and off?

A. Yeah. It -- as I -- as I said before it was -- it was really hot that day and -- and when the -- when the shield was down it was a little bit more difficult to like wipe the sweat and stuff out of your eyes. So I was constantly popping up and -- and stuff like that.

Q. Okay.

MS. JOSEPH: Why don't we take ten minutes and I think this will be the last break that I need to ask for. And I'll be able to wrap it up on our next go around. Does that work for everyone?

THE WITNESS: Yes.

MR. LAIRD: Yes.

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VIDEOGRAPHER: We're going off the record. The time is 1:46 p.m.
(Recess was taken.)
VIDEOGRAPHER: We are back on the record, it's 1:57 p.m.
Q. (BY MS. JOSEPH) Officer Wright, we're back after another break. I'm glad to see you got some water.
A. Thank you.
Q. I'm going to ask you a few kind of random questions just picking up some pieces that I didn't get to here. So don't try to make them all go together because they may not.
A. Okay.
Q. Have you ever found yourself in a position where the use of deadly force was warranted or justified as an APD officer?
MR. LAIRD: And, Leigh, I want to make sure I understand. You're -- are -- you're not limiting to him using deadly force? I mean ...
Q. (BY MS. JOSEPH) Yeah, you may not have made the choice to use deadly force after fully analyzing the circumstances. But as an APD officer, have you encountered a scenario where it felt like it was something that could be done?
A. Yes. Would you like me to elaborate on that?

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Q. Yes, please.
A. Okay. The first one that comes to mind is, we went to a Super 8 in the sector that I work in, in Ida off the 35 service road southbound for a check welfare [verbatim]. For somebody who had made some suicidal ideations. And then just kind of stopped responding to people.
So we went to the hotel room. It was a bottom floor hotel room on the south side. So -- well, it was north-facing on the south side of the building. And we knocked on the door multiple times, announced ourselves, and nobody came to the door. Because we didn't have any sort of exigency because no plan or method or anything like that was -- was mentioned, we -- we did not have the exigency to -- to breach the room.
And so we decided to walk away. As we were walking away I heard the door latch. I turned around and the gentleman that we were there to check on comes out of the hotel room holding a steak knife. I drew my service weapon and actively targeted him and ordered him to drop the knife. And he -- he dropped the knife fairly quickly, but it was a long enough hesitation because he was looking at my partner not at me that when he turned to look at me he was holding the knife. And then pause, drop.
I felt in that moment that I was justified in

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using deadly force because of the distance that I was away from the individual and how quickly somebody can close that distance with an edge weapon. However, whether it be consciously or subconsciously I chose not to fire because -- I don't know if it was because of maybe how much of his body was still in the hotel room or you know, how -- or -- or the -- the look on his -- on his face or what his reactions were. But I -- I chose not to fire at that time.
And it was the -- it was the correct decision. I believe that had I fired, it would've been a justifiable use of deadly force, but thankfully everything worked out.
The second incident that vividly comes to mind was an incident where we had simultaneous calls at a residence. One was a crash. One was a possible burglary in progress. And one of the other responding officers was a gentleman on my shift. The other one was a gentleman on my sister-shift. And they determined that because of the time in which both calls happened and where they were that possibly they were related.
And what ended up happening is a male -- excuse me -- a male crashed his vehicle into the back of a residence and climbed in through the window. And took a mother and her son, who I believe was either eight or ten years old, as hostages. When the officers arrived on scene

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they made contact for the burglary first because as they saw the crash, nobody was by the vehicle. So they made contact at the residence.
And if I remember correctly, they could hear multiple voices. When the females that called in said that she and her -- she was the only one home. So because they heard multiple voices they -- and -- and one of them sounded to be in distress, they kicked the door open. And as they entered the residence, the gentleman that climbed in through the window fired a modified fully-automatic GLOCK 9-mm at my shift partner and my sister-shift's partner.
Later on we found out that one of those rounds struck my sister-shift partner in the gun belt. Specifically, on the Taser. Officers returned fire, but did not hit him and exited the residence. A few minutes later that man came out with a gun to that ten -- or that eight or ten year-old boy's head.
It initiated a SWAT call out. I was the second or third officer on scene. And I took up a side/front containment on that residence. And all I had was my shotgun -- my -- my lethal shotgun and my pistol. I was maybe 30 yards away. And I observed this man come out holding a gun to this child's head.
I -- at that moment I knew that I could use deadly force. However, the tools that I had at the time

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were not appropriate for that type of engagement. It was a very long pistol shot that I could not guarantee would not hurt the child and the shotgun was impractical because of the manner of shotgun shooting out multiple projectiles. Had I had a rifle there is a very high likelihood that I would have taken an open shot if I had it and used deadly force against that person.

Later on in that incident that is exactly what happened with one of our SWAT snipers. And he -- that person was pronounced deceased and we saved that child and mother and -- I can't remember which one it was. So, yes.

Q. Thank you for describing those two incidences to me. It sounds like based on your answer to my previous question that you have not actually implemented deadly force in the conduct of your duties at APD.

A. No, ma'am.

Q. Is that --

A. I'm sorry. I -- I -- I might have misheard your question. I apologize.

Q. No. You answered the right question. I was just asking a follow-up. Yeah. Have you ever shot someone with a firearm?

A. No, ma'am.

Q. Whether in the military or not? No? Okay.

A. Well, kind of back to what we said earlier. So

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the less-lethal shotgun is a firearm, but it is designed so -- I -- I just don't want to be -- I just don't want it to seem like I'm -- I'm lying or anything like that. So with a --

Q. Mm-hmm.

A. -- deadly firearm with a bullet projectile, no. I have not.

Q. Okay. And then the follow-up question, have you ever impacted other than as part of the -- what I'm going to call the Geor -- George Floyd protest here in Austin -- have you ever impacted an individual with a beanbag round? And I think you know what I mean when I say the George Floyd protests?

A. Yeah, yeah. No, absolutely. I -- I -- I don't think so. I believe that the George Floyd protest the first day was the first time and the only times that I have impacted someone with a less-lethal shotgun.

Q. As part of your training and using those weapons, I'm assuming you fired them. Tell me kind of what that training was like. What were you targeting and -- and how did that go when you were learning to use those weapons -- the less-lethals?

A. So for the less-lethal weapons they go through a quick distance verification. What is the closest distance you can shoot. And what is the suggested longest distance

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that you should shoot.

Q. Mm-hmm.

A. Before it becomes really ineffective.

Q. Mm-hmm.

A. And then kind of a brief you know -- as you get further because it's a heavy -- a heavy projectile it will start to drop and stuff like that. So you do have to adjust your aim for things like that. And then we are handed a -- if I remember correctly -- we were handed a less-lethal shotgun which is always got orange furnishings.

So an orange front stock and an orange rear stock. And we are given two rounds. We will fire the first round from a specified distance that is slightly farther away. And aim for a green zone while you know, yelling the words "impacting." And then we will move closer to the target and do the same thing, yell impacting and fire at a green portion of the -- the rubber mat. And it's just a rubber mat that's hanging with a -- a silhouette painted with the different colors.

Q. Okay. So before the George Floyd protest it sounds like you had discharged one of these so-called less-lethal shotguns twice in your life?

A. I think that we did it a few extra times in the Academy, but I -- I can't remember.

Q. Okay.

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A. But as far as the less leas -- sorry -- less-lethal shotgun goes before the George Floyd riots, I would say no more than ten rounds.

Q. Okay. I asked you about impacting others I'm going to ask about yourself now. Have you ever been shot with a -- a bullet from a firearm?

A. No, ma'am.

Q. And have you ever been personally impacted by a beanbag round?

A. No, ma'am.

Q. Okay. I said I was going to be jumping around. So now changing gears.

A. Absolutely.

Q. How many times has -- have you received a written performance review as part of your employment with APD?

A. I -- I think it's only been twice because of the way my employment timeline lined up. My first year was when I was in training so I don't believe that I got one for that -- I might have. So maybe three.

And then yeah my second year and then my third year. And I haven't received my fourth year, 'cause God I want to say I've only signed two. One from Serrato and one from Leyva. I don't think I had one from Francois. So I -- I think it's only two.

Just because of the way where -- the way my

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employment lined up, I think they're in done in like July or August or something like that. And I hadn't been -- I think -- I think that was it -- the first one. I hadn't been observed long enough to -- you know, I'd only been solo for like a month or something like that and so --

Q. Mm-hmm.

A. It wasn't -- it wasn't done. I think.

Q. So '18 probably wasn't done. 2023 probably isn't done yet. But then I have --

A. Yes. So '18 definitely was not done because I was in the Academy.

Q. Uh-huh. Okay.

A. I don't think that '19 was done because by the time I hit street --

Q. Okay.

A. -- either that time had already passed or I hadn't been observed long enough for the evaluation to be fair. So --

Q. Okay.

A. -- I should have got one '20, '21, and '22. Maybe I did get three. We'll say three. I don't know.

Q. Okay. Two or three. Maybe one was missed in there. But --

A. Yeah.

Q. Okay. And your expectation is that they're

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annual?

A. Yes.

Q. Okay. Have there been any like -- I don't want to use the word reprimand 'cause I know that's like a formal process within APD.

A. Sure.

Q. Has there been any sort of like deficiency that they've told you to work on in those evaluations?

A. No. I -- I've -- I've never been given anything that would -- I've never been given anything less than a like meets standards of -- of the standard officer, or however, they --

Q. Mm-hmm.

A. -- they describe it. There was you know, one or two things that aren't observed obviously like, I'm not in a leadership position. So you know -- you know although some leadership skills are observed you know, like taking command of their -- you know, like that sort of stuff. That shows as not observed.

But so everything is either --

Q. Okay.

A. -- above average or essentially where -- where the standard officer is.

Q. Okay. I'm going to try to speed up because I'm taking so much of your time. So I'm going to start talking

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a little faster. I've got it in my mind I want to get you out of here.

A. You take as much time as you need. It's fine.

Q. And -- and thank you for that. Do you have -- aside from anything related to the George Floyd protest and then we'll talk about that separately, do you have any history with IA or SIU?

A. I had -- I've one instance with internal affairs. It was when I was on FTO. When I was -- when I was being trained by my field training officer and I was PPO.

Q. Mm-hmm.

A. We responded to a situation where somebody called in and stated they had been assaulted at a gas station. We arrived on scene. I interviewed the man. I called EMS out for him and once EMS got there, he's like, "I -- I don't want do anything. I don't want to press charges. I just -- I just want EMS."

And so I was like okay. And then I noticed that two of the other officers that responded with us had like walked away. And then so I -- I let the -- not that I was holding the gentleman, but the gentleman that we were talking to left in the -- in the ambulance. And the next thing I know, the two officers from my shift that had walked away were walking back with an individual in handcuffs. And I don't remember exactly what the charge was that -- he

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ended up being arrested that night and we brought his car over.

They towed his car and they asked me to do the tow sheet. The administrative form that says the Austin Police Department towed your vehicle. This is what we found in it. This is what we found in it. This is the condition it was in. And you know, it's -- it's basically a receipt saying that the Austin Police Department towed your vehicle and where it went, right?

So I -- while I was filling out that tow sheet, because I was so new I was kind of slow at it so other officers did the inventory of the vehicle. And so when I started doing it for myself, the -- I was told hey that's already done. And I was like okay. Well, what did we -- like what -- did we find anything? And I was told to write, "nothing of intrinsic value was found in the vehicle." Right?

Q. Mm-hmm.

A. So I wrote that on the tow sheet and I submitted it. That gentleman later complained that we illegally towed his car and that he was illegally arrested and he filed a complaint with the OPO who turned it over to IA. IA investigated me for improperly filling out the tow sheet because basically what they send was nowhere in policy does it say something has to have an intrinsic value to be

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documented on the tow sheet.
Q. Hmm.
A. So you need -- you need to document everything that -- that you found in the car. And I was like, oh, like okay. You know, absolutely. And so it didn't result in any sort of discipline. It was more just an investigation into the other things they found that I technically had violated a minor policy so we had a discussion about it. And then as far as I know, it was completely cleared up with no disciplinary action other than just a -- maybe an oral -- just an oral conversation with my Sergeant about you know, just -- just make sure you just document things slightly better.
Q. Okay. And were you disciplined at all with respect to your actions during the George Floyd protest?
A. No, ma'am.
Q. Okay. And I know we said that we both know what I mean when I say that. That I'm talking about the protest events surrounding the May 30th, 2020. The days before and the days after.
There are a couple of places within the documentation of those protests that I see remarks like people were throwing things, intending to hurt officers. And I want to talk to you about intent for a second. Are you able to tell in the moment when you're up there on the

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overpass what someone's mental intention is?
A. I'm unable to tell what somebody's mental intention is. What I -- what I believe is that a reasonable person would say that if you throw an object at a person, even if it's a small object, you are intending to -- if -- if there's not an agreement to play catch you are intending to hit them with it. And therefore at least annoy or harass them with throwing that object. And possibly even cause pain.
So I mean bodily injury is any pain at all. But you know, when I'm seeing rocks thrown at people, the only time you throw rocks at people is to intentionally hurt them. The only time you throw fireworks at people you know, is to intentionally hurt them. Unless there is a prior agreement that we're going to shoot fireworks at each other.
Q. It's my understanding that after these events occur you -- you guys -- you APD officers were instructed not to follow the standard written policy on response to resistance reports, but to do something different; is that correct?
A. Yes, ma'am.
Q. Could you kind of tell me what the difference is in what the policy would have required and what you were instructed to do?
A. Yes. So essentially -- sorry, let me start over.

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So policy states that for every response to resistance they're certain things that need to be done. You need to contact a supervisor. You need to contact EMS for the person that was involved in a response to resistance. Things like we're required to take pictures of that person and ourselves. And anybody who was involved in the response to resistance.
A -- what's called details page in our report writing system is to be completed for every individual that is involved in a response to resistance. And then we're supposed to be interviewed by that supervisor. Whether -- sometimes it's on the phone. Sometimes depending on the severity of the response to resistance they will come out and interview us in-person. And then we are to write a detailed, either a report or supplement based on the call for service or whatever needed to be reported and that response to resistance.
The way that I understand it is that this was such an unprecedented event that the department did not have the resources to be able to do that. So it would have been impossible to every time I impacted or attempted to impact somebody to stop, call a supervisor, have the supervisor come out, pull me off the line, interview me, take pictures of everybody that witnessed it, take pic -- you know, talk to everybody that witnessed it, try to talk to the person

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that was impacted or almost impacted, coordinate getting EMS to them.
We -- we weren't able to do those things because we were so overwhelmed with the crowd control and trying to maintain as much of a -- a peaceful assemblance as possible. So at the end of the night, I don't remember if it was broadcast over the radio or if it was given to individual supervisors who just went around telling anybody that they could see, it was if had you had a response to resistance, write a supplement of roughly where you were and what you did. If you fired your less-lethal, roughly how many rounds you fired. And submit that under the case number that you were given.
So that was the -- that was the first directive. After that it -- it became more detailed as we had the time, as we had the manpower to go through each one of these instances, it -- we were required to go back, watch every second of our video, and do a detailed supplement of everything that we did.
So that's why I have multiple supplements. So my first one is very generic, very vague. And then I was told, hey, that's not quite enough, go back in and add a little bit more. Okay, that's fine, I'll go add a little bit more detail. And then, hey, give me another one, and we need more detail. And then, hey, give me another one, we

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need -- and then it was just, hey, minute by minute, go through tell -- you know, anytime you took any sort of police action, I want it timestamped. I want it you know, documented.

And so that's to the best of my ability is -- is -- is what I did. And that all went to a -- I don't remember what they call it. But it went to a -- a group of supervisors who went through each one of them and determined if it needed to go -- if -- if it was justified. If it was within policy and -- or if it needed to be locked at by A -- sorry -- by IA. Or if it needed to be looked at by SIU.

Q. Okay. Do you know a former APD officer named Michael Harris?

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

Q. Okay. I wondered if by any chance he might have been the guy standing to your right in the body cam we watched. But you don't know?

A. I -- I don't know and I -- I'll be honest, I'm -- I'm really, really bad with names. So I --

Q. Okay.

A. -- I don't know.

Q. I Googled you.

A. Oh, no.

Q. And --

A. That's terrifying.

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Q. I think you're on the Board of Directors of the APAPAC; is that correct?

A. Yes. I'm -- I'm part of the Political Action Committee for the Austin Police Department.

Q. Okay. And as -- what is the kind of main objective of that group?

A. So the main objective of the Political Action Committee is to represent the Austin Police Department during legislative sessions and during different city and state elections so that we as a police department can have representation at the state level, at the city level you know. And that we have -- we have help to you know, keep the -- you know, a lot of the -- the safety -- the safeties that are built into our job.

So for instance this last legislative session there was talk that people wanted to make us at-will employees to the mayor. And so we as the PAC worked with legislators at the state level to try and help pass a law that would protect us from becoming at-will employees to the mayor and the city manager so that it wouldn't be one of those things where you know, one of our officers -- and I'm not saying our mayor would do this, that's not what I'm say. But you know, as an example you know, somebody sees a speeding car, pulls it over and it happens to be the mayor and the mayor just goes, well, you know what, after today you're fired.

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Q. Yeah.

A. You know so it was it's -- it's -- it's those sorts of protections. I'm still fairly new to it. I've -- I've been on it for about a year. And a lot of -- most of the stuff we've done is, hey, this person is running for the Williamson County you know, County Commissioner and he wants you know, he wants our support and stuff like that.

Or you know, different city council members who are -- who are running for position you know, and it's -- it's well, you know, do you support the police? And if you do then we absolutely would love to -- love to you know, throw our support to you. And stuff like that.

Q. Mm-hmm. Okay. How did you obtain your position on the board. Were you voted in? Was it just you volunteered and -- and you got it? How does that work?

A. I was -- I was suggested to the position by a commander who has since retired from APD. His name is Commander Don -- or he was Commander Donald Baker. His wife was actually my -- my parents' realtor and so through that we -- we had many off-duty chats where he realized that I had you know, some level of interest in politics, but also some level -- a much higher level of interest in, you know, making sure that my career here at the Austin Police Department was productive, and you know, protective.

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And so he actually asked me if I would like to join. And I put him off for about a year because I didn't think that somebody so new should be, you know, representing like that. And he finally convinced me to join. And you know, he said, you know, just -- just be a part of it so you can learn what it's about. And you can learn how all of this stuff works. And then, you know, as time goes by you can get as active as you want to be. Or if you don't like it you can leave. But not like in a mean way.

Q. So you got involved and then is there kind of a vote for board? Or is it just people volunteer and they're on it?

A. Yes. So a name is suggested by a member. If there's an opening and the board votes yay or nay -- if that person should be allowed to -- to come in.

Q. Okay. I'm going to ask you a series of questions that I think can be kind of quick yes or no questions. If you feel like you need to elaborate, I'm not going to stop, but hopefully they'll be kind of quick.

Is -- does APD strive through its policies to keep the public safe?

A. Yes.

Q. Does APD strive through its policies to protect its officers?

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A. Yes.
Q. Okay. Now this one is not a yes or no. Is there any indication within policy -- if it's one or the other, an officer or a layperson citizen, who you're supposed to choose?
MR. LAIRD: Object to the form, but you can answer.
THE WITNESS: I -- I don't believe that there is any policy or -- I -- I don't believe that there's anything that is -- is determinant on you know, you have to choose one or the other.
Q. Okay.
A. I think in those situations, intensive investigations are done to see who was in the right and who was in the wrong. And the outcomes have varied throughout the last couple years.
Q. Okay.
A. We've had a couple of officers who have overstepped and they have been fired or they have left.
Q. Okay. Back to the kind of yes or no. Is it APD policy to strive to protect the Constitution and the amendments thereto?
A. Yes.
Q. And would that include the exercise of First Amendment rights?

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A. Yes.
Q. And would that include ex -- the Fourth Amendment right to be free from excessive force?
A. Yes.
Q. All right. Walk me through your analysis as an Austin Police Department officer holding a shotgun equipped with beanbag rounds of whether to fire. I know that -- I know what the directive was or the order was. You told me about that. But what other questions do you need to ask in your mind you know, to go through your analysis of whether to fire that weapon?
A. Are we -- and I -- just as point of clarification, are we asking in general or are we asking specifically for the events that happened on the 30th?
Q. If there's a difference, I'll will ask for both. So why don't you tell me in general first?
A. So in general -- so the less-lethal shotgun is what is considered a pain compliance tool, right?
Q. Mm-hmm.
A. It is -- it is a standoff weapon. A standoff weapon system that is used to try to gain compliance through pain. And that sounds archaic and barbaric, but so the idea is, is that it is the -- the -- if somebody is putting us, themselves, or somebody else in danger, say they have a weapon. Right? Say we've got somebody right here on the

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Congress Bridge and they're walking up and down the bridge with a knife in their hand. And you know, as people walk by there you know -- kind of chasing them and -- and kind of like lunging the knife at them, right?
Q. Mm-hmm.
A. So theoretically, black-and-white you know, we -- we have the ability to shoot that person. Right?
Q. Mm-hmm.
A. They're -- they're actively trying to hurt and possibly kill people. But that's not our first step. Our -- our first step is to try to and gain compliance. So we're, you know, we're going to be at a standoff distance with something in-between us. And we're going to ask, you know, we're -- we're gonna tell you to put that weapon down. If that weapon isn't put down then if it is available our next step is to try, if we -- again, if it's available, all of these -- also keep in mind, all of these situations are fluid. So they -- I'm not saying this is how it's going go every time, right?
Q. Okay. Mm-hmm.
A. The next step we can use is using that less-lethal shotgun to fire a beanbag round at the person to inflict pain as a means to try to get them to stop that behavior, drop that weapon, so that we can then approach and arrest them without taking it to a lethal level.

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Q. Mm-hmm.
A. Right? It is often used in the unknown. So if we don't know if the person has a weapon or not, but were -- we suspect that the person has a weapon. It is unsafe for us to move forward and go hands-on. So use the standoff weapon and if the -- the orders are not -- the orders that we're giving these people are not -- these individuals are not complied with, then our next step is if we're close enough to possibly use a Taser or to use a kinetic impact device or the less-lethal shotgun. It is mainly to prevent us not using deadly force.
Q. Mm-hmm. Mm-hmm, okay.
A. But --
Q. It does sound like that's different from kind of the process engaged in on May 30th? Is --
A. Slightly.
Q. -- were there some differences?
A. Yes. So one of the issues that we ran into during the George Floyd riots is that we had such a large accumulation of people who were showing hostilities toward us. Even the ones that weren't necessarily throwing stuff, you know.
Q. Mm-hmm.
A. The aggressiveness in which they are screaming, and shouting, and pushing against us made it very difficult

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to coordinate, you know, doing arrest teams and arresting individual agitators. So at a standard, peaceful, lawful protest that somebody sets up, you know, SRT will go out there and they will have teams, different types of teams set up. You know you'll have your containment teams, you'll have your arrest teams and stuff like that. And the idea is -- is you guys can scream and shout and -- and -- and let your voices be heard. Let your message be heard. Right?

However, due to the mob mentality we can't allow agitators to -- to cause people to start taking that to the next level. So as soon as we see that in a standard situation when it comes to protests and stuff like that, we engage an arrest team. Where the frontline will break open and four or five officers will -- they will signal -- they will all communicate which person is the agitator.

They will enter the crowd as a group to protect each other with two extra officers in the middle. And that will be their -- their hands-on people. They will surround that agitator, place them in handcuffs and remove them from the crowd. So that they don't intentionally stir that crowd up into doing something that the crowd doesn't necessarily want to do, but psychology and history has shown us that agitators can turn peaceful crowds violent, right? Even if it's just causing enough fear that they stampede each other, right?

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So that is what's done normally. Because we couldn't do that, because this was so large and because it was so -- what's the word I'm looking for? So -- not volatile. Complex. We couldn't form arrest teams. There was -- at the beginning there were so many agitators that we -- we couldn't wade into these crowds and arrest these individuals. We can't go after -- you know, we can't individually run after these people.

Through past mistakes made by officers not just here, but around the country and even around the world, we have seen that when you have a crowd that is already upset at you and an individual officer tries to wade through the crowd to arrest a singular individual, they become the ones that is -- the one that is surrounded. And it just takes one person to start some sort of physical altercation and everybody begins that physical alteration. And now that officer is in danger of getting severely hurt or losing his life.

And that's why we do it in that group setting. So that we can protect those internal officers with that slight perimeter around them. Slightly pushing people back. And then bringing everybody back at that same time and then just allowing the crowd to go back to what they were doing without that -- that individual agitator.

When we have so many agitators that we have

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thousands of rocks littering the 35 and we have water bottles, and we have fireworks, and we have all of these things going on at once, and then you have these agitators that are constantly moving from little group to little group so that even if we did start chasing after them, pretty soon we're going to be so far away from our own people that we are in a dangerous position. And then it leads us into even more dangerous position because now, say it was me, I'm alone and I'm suddenly surrounded. And these people start hurting me, right? Am I justified in just -- starting and shooting them? No, but I also have the right to protect myself, right?

So we get into this really, really scary gray area where you know, it -- it's -- it becomes so volatile that too many mistakes can be made, right? And so that's why we have to work as a team. That's why we -- we normally have everything set up in these arrest teams and in these -- these -- these proven SRT methods to remove the agitators while still allowing people to exercise all of their rights. Right?

These George Floyd riots happened and it was -- it was unprecedented for us. We -- we couldn't form those teams. We didn't have the people. We didn't have -- it was so spread out. It was -- it -- there -- there was no way to safely try to effect arrests. So it was decided by

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our chain of command that the only way to proceed was to try and deter the agitative behavior by using standoff less-lethal weapons.

And as the night went on the -- the agitators lessened. They were still there the entire time, but it wasn't -- it wasn't anything like in the beginning.

Q. Do you think -- do you think it's accurate to say that APD was not ready for a situation like this?

MR. LAIRD: Object to the form.

THE WITNESS: I -- I can't -- I can't personally speak for the department, right? I can say that it didn't seem like it.

Q. Mm-hmm.

A. Okay. Whether they were or they weren't, I can't say. What I can say is, from a person on the ground, it seemed like we were behind the curve.

Q. Mm-hmm.

A. That is my personal opinion. And it is also the personal opinion of somebody who had -- has zero control over that.

Q. Sure. Sure. Have policies on crowd control and use of force changed since the George Floyd protest?

A. Yes.

Q. And I can look -- I can compare the written documents, but I'll ask you just kind of general like -- can

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you give me some general areas in which changes were made?
A. Yeah. So I don't remember which day, but whether it was a day or two after the 30th, the -- they -- they changed how they wanted us to engage people with less-lethal weapons. I want to say they had designated people in designated places with those weapon systems. I believe that the ability to use crowd dispersion devices, such as smoke and gas, was taken away from SRT and was given strictly to SWAT.
Q. Mm-hmm.
A. And they were the only ones that could deploy those types of crowd control measures, if I remember correctly.
Q. Mm-hmm.
A. And then I think even after that that was further taken away to where we could not engage in any of those things. And that's -- that's when DPS troopers came in and began assisting us. Because we -- we suddenly really couldn't do anything to try and stop agitative behavior, if it got out of hand.
Q. It sounds like that was an attempt to reduce the usage of the so-called less-lethals and the gas. Is that what you understood that change to be? An attempt to kind of reduce the use?
A. I don't -- I don't know if it was an attempt by

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the department to reduce the use. Or if -- I know that the city council got involved. And I -- I believe that they made some directives that forced us to change certain policies and -- and the way that we did things.
Q. Mm-hmm.
A. So I don't know if that was a result of the department necessarily wanting things to change or the department being forced to changed -- sorry -- forced to change by things that the city council enacted.
Q. Okay. I have to tried to be thorough, Officer Wright, but have I failed to ask you about anything that you think is important with regard to what happened out there on May 30th, 2020, that you -- you think should be known or should be considered?
A. I don't -- I don't think so, no.
Q. Okay. Have you understood all of my questions today? Or if not asked me to clarify and gotten to the point where you understood?
A. I believe so.
MS. JOSEPH: Okay. All right. I'll -- I'll pass the witness.
MR. LAIRD: And we'll reserve our questions until the time of trial. We -- we will want to read and sign. And then I also wanted to see, Ms. Walters, if we could get an expedited copy of the transcript. And --

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COURT REPORTER: Okay. Go ahead.
MR. LAIRD: And -- and I also will need to order a copy of the video as well.
COURT REPORTER: Okay. So you would like a copy of the transcript and video, a read and sign, and you want to see about possibly getting this expedited.
MR. LAIRD: Yes, that'd be great, if we can.
COURT REPORTER: Do -- do you have an idea of how soon -- how quickly -- if you it were up to you -- and then I'll tell you if I can pull that off.
MR. LAIRD: Maybe --
VIDEOGRAPHER: Pardon the interruption, maybe we should go off the record here. It's the videographer. Is that okay with everyone.
MR. LAIRD: Yes.
VIDEOGRAPHER: All right. So the time is 2:47 p.m. and we're off the record.
(Proceedings concluded at 2:47 p.m.)

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CHANGES AND SIGNATURE - ERRATA

WITNESS NAME: JUSTIN WRIGHT DATE: JULY 21, 2023

PAGE	LINE	CHANGE	REASON

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ACKNOWLEDGMENT OF DEPONENT

I, JUSTIN WRIGHT, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
JUSTIN WRIGHT

THE STATE OF TEXAS)
COUNTY OF)

Before me, _____, on this day personally appeared JUSTIN WRIGHT (or proved to me under oath or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2023.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES:_____

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYREE TALLEY	§	
Plaintiff,	§	
	§	
v.	§	CASE No. 1:21-cv-249-RP
	§	Lead Case
	§	
CITY OF AUSTIN AND JOHN DOES	§	
Defendants.	§	

****

MODESTO RODRIGUEZ	§	
Plaintiff,	§	
	§	
v.	§	CASE No. 1:21-cv-1087-RP
	§	
CITY OF AUSTIN AND JOHN DOES	§	
Defendants.	§	

****

REPORTER'S CERTIFICATE
OF JUSTIN WRIGHT

****

I, Lilia W. Walters, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That the Witness, JUSTIN WRIGHT, hereinbefore named was at the time named, taken by me in oral stenograph on July 21, 2023, the said Witness having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter

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reduced to typewriting by me or under my direction. The charge for the completed deposition is $_____ due from Plaintiffs;

( ) That pursuant to the Federal Rules of Civil procedure, the Witness shall have 30 days after being notified by certified mail, return receipt requested, by the deposition transcript is available in her office for review and signature by the Witness and if any corrections made are attached hereto;

( ) That by agreement of counsel, a reading condensed copy of the deposition transcript along with the full-sized original Changes and Signature Sheet has been sent to _____ on _____ for review and signature within 30 days and if any corrections returned are attached hereto;

( ) That by agreement of counsel, the deposition officer is instructed to release the original deposition transcript to _____ on _____, for review and signature, and the deposition officer is thereafter released of any further responsibility with regard to the original;

( ) That the witness shall have thirty (30) days for review and signature of the original transcript and if any corrections returned are attached hereto;

( ) That the signed transcript ( ) was ( ) was not

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received from the Witness within 30 days;

( ) That the examination and signature of the Witness is waived by the witness and the parties;

That the amount of time used by each party at the deposition is as follows:

Ms. Joseph - 4 HOURS - 6 MINUTES
Mr. Laird - 0 HOURS - 0 MINUTES

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in this action in which this proceeding was taken to the best of my ability and under the circumstances, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 25th day of July 2023.

LILIA W. WALTERS, TEXAS, 12390
EXPIRATION 3/31/2025
Magna Legal Services
Firm Registration No. 633
16414 San Pedro Avenue
Suite 900
San Antonio, Texas 78323
Phone 210.697.3400
Fax 210.697.3408

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff, V. CITY OF AUSTIN AND JOHN DOES, Defendants. ____ MODESTO RODRIGUEZ, Plaintiff, V. CITY OF AUSTIN AND JOHN DOES, Defendants.	)	CIVIL ACTION Case No. 1:21-cv-249-RP Lead Case Case No. 1:21-cv-1087-RP

ZOOM AND VIDEOTAPED DEPOSITION OF

OFFICER DARRELL CANTU-HARKLESS

JULY 14, 2023

VOLUME 1

ZOOM AND VIDEOTAPED DEPOSITION OF

OFFICER DARRELL CANTU-HARKLESS, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on July 14, 2023, from 10:09 a.m. to 1:08 p.m., before Wendy Schreiber, CSR No. 9383, in and for the State of Texas, reported by machine shorthand,

at the City of Austin Law Department, 301 W. Second Street, Austin, Texas, 78767, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 999689

APPEARANCES

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Video Operator - Nate Laningham (Attending Remotely)

Also present: Alexis Lopez, Hendler Flores Law, PLLC

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EXHIBITS
NONE

REQUESTED DOCUMENTS/INFORMATION
NONE

CERTIFIED QUESTIONS
NONE

VIDEO OPERATOR: We are now on the record. This begins media file No. 1 in the video deposition of Darrell Cantu-Harkless in the matter of Tyree Talley, et al., versus City of Austin, et al., in the United States District Court for the Western District of Texas, Austin Division, Case No. 1:21-cv-249-RP.

Today is Friday, July 14th, 2023, and the time is 10:09 a.m. This deposition is being taken remotely at the request of Hendler Flores Law, PLLC. The videographer is Nate Laningham with Magna Legal Services and the court reporter is Wendy Schreiber.

Will Counsel please state their appearances and whom they represent.

MR. DEMIK: Stephen Demik on behalf of Mr. Tyree Talley and Modesto Rodriguez. I'm here with my paralegal, Alexis Lopez, also present.

MR. BARTON: And I'm Monte Barton on behalf of the defendant City of Austin representing Officer Cantu-Harkless in this deposition.

THE REPORTER: Officer Harkless, could I get you to raise your right hand for me, please?

In the deposition about to begin, do you swear to tell the truth, the whole truth, nothing but the truth so help you God?

THE WITNESS: I do.

OFFICER DARRELL CANTU-HARKLESS,
having been first duly sworn, testified as follows:

THE REPORTER: Thank you.
You may begin.

EXAMINATION

Q. (BY MR. DEMIK) Thank you. Good morning, Officer. Is it all right if I call you Officer Cantu? Or how do people usually refer to you?

A. Harkless is fine.

Q. Harkless? Okay. I just want to make sure I get that right.

So, Officer Harkless, we're taking your deposition today. Do you realize this deposition is the same as it would be in court as if you were giving live testimony before a judge or a jury?

A. I missed that first part.

Q. I'm sorry. I hope this fixes itself.

Do you realize that this deposition being taken today it would be the same as testimony before a judge or a jury?

A. I do.

Q. Okay. And -- and it's important (audio distortion) -- I'm sorry. I will get this checked out.

And if you understand the question or you can't

hear a question that I'm asking, would you please let me know?

A. Okay.

THE REPORTER: Okay. I'm going to -- could we go off the record, please?

VIDEO OPERATOR: Off the record at 10:12 a.m.

(Recess taken from 10:12 a.m. from 10:18 a.m.)

VIDEO OPERATOR: We're back on the video record. The time is 10:18 a.m.

Q. (BY MR. DEMIK) Okay. All right. That should be better.

Officer Harkless, can you hear me okay?

A. Yes.

Q. Okay, great. So I'll -- I'll just pick up where I started.

So do you understand that the deposition is in lieu or could be in lieu of courtroom testimony before a judge or jury?

A. Yes.

Q. And -- and so it's just important for me if you don't understand my question, if you'd like me to clarify my question, please ask me. Otherwise I'm -- I'm just going to assume that you understand the question when you answer. Is that fair?

A. Yes, I understand.

Q. Okay. Do you have any questions before we sort of

start discussing this case in particular?

A. No.

Q. Okay, great. If you do, just let me know. I'm happy to answer any questions or clarify if you need me to.

Let me start or begin how long have you been with the police department there?

A. I started out with Austin police Department in May 2017 at the academy.

Q. Okay. And what was your route to becoming a police officer?

A. As far as education or?

Q. Sure.

A. Well, I'm from Austin, Texas. I went to Crockett High School. I went -- I graduated high school, went to Abilene Christian University. Received a bachelor's in criminal justice and minor in political science and in May of 2017 I applied and started at the Austin Police Department's academy.

Q. Okay. I forgot one thing, Officer Harkless. I'm sorry, I don't want to bounce around too much but can you tell me what you did to prepare for this deposition today?

A. I just -- I spoke with counsel, Monte Barton, about my recollection of these events.

Q. And did you review any materials?

A. Yes.

Q. What did you review?

A. Reports and supplements I've written -- personally written in regards to the protest and then the -- the complaints.

Q. Okay. So the -- the court complaints, right?

A. Uh-huh.

Q. And I have I think one short -- very short narrative that I believe you wrote and then two what appears to be maybe, I don't know the terminology, use-of-force reports which just sort of have a list of unidentified individuals. Were there any other -- excuse me, were there any other reports that you reviewed?

A. I believe the only reports I reviewed were the two that you mentioned and a use of force kind of packet written by a sergeant at the time.

Q. Okay. When you say "packet," can you describe that in a little more detail for me?

A. Yeah, they're called response-to-resistance packets completed by the supervisors whose sole responsibility is to review use-of-force incidents and determine if they are within law and policy.

Q. Okay. All right. So the three reports that we've discussed, the use-of-force packet and the complaints, anything else that you reviewed or went through in preparing for the deposition?

A. Not that -- no, not that I can recall right now.
Q. Okay. All right. Now, let me -- I'll get back.
So you went to the police academy in May 2017, right?
A. Yes.
Q. And where were you positioned after the academy?
A. After I graduated I was assigned to Henry 500s until October -- October of 2018 and then I moved over to the Henry 600s where -- where I since report -- where I still remain.
Q. Can you -- can you explain to me what that means, the 500s and 600s that you've just mentioned?
A. Yeah, the -- the -- Henry is a -- is a sector -- a certain part of the City of Austin which is the eastern side of the (inaudible) area, and the 500s, 600s is an evening shift within -- within the Henry sector.
Q. Okay. And -- so when were you assigned to the intersection that you mentioned, I think the 600s?
A. I was -- I was assigned there October -- September, October of 2018.
Q. Okay. And is that where you were stationed in May of 2020?
A. Yes.
Q. Okay. So when you were stationed there in September, October of '18, then you were there through May '20 -- May of 2020 when this happened?

A. Yes.
Q. Okay. So at the time -- so we're -- we're -- I am going to bounce around a little bit but -- but just so we're talking about May 20th -- or, excuse me, May 30th, 2020, what was your position and what were your duties generally, and then we'll -- we'll get a little more specific, at the police department?
A. As far as the shift I was assigned to or what was I doing that -- the day?
Q. Well, let's -- let's sort of start with what your responsibilities were in your position, right, in May 2020 and then we'll -- we'll get to -- to the specific date. So why don't you start with in this division, in this position in May 2020 what were your roles and responsibilities and what -- can you tell us about your job and (audio distortion).
A. Okay. As far as the Henry 600s patrol, I was patrol -- I still am a patrol officer. My duties included responding to calls for service which includes, you know, assaults, robberies, burglaries, service calls, crashes, along the South Central east part of Austin, Texas.
Q. Okay. Now, on May 30th of 2020 why don't you set the scene for me. How did you end up on this overpass? Can you start when -- when did your shift begin? Were you called in? Can -- can you describe that to us?
A. As far as the -- if I remember correctly, evening

shift would start at sometime mid-afternoon. We were instructed to go to the Capitol to assist DPS with the protest outside of the Capitol. After that crowd moved along we were -- we were called to go to the proper of I-35 near our APD Main headquarters due to the protest taking over both the north and southbound proper of 35. We were instructed to clear out the protestors, getting them off the highway as we were -- you know, rocks, cones, bottles, fireworks, everything thrown at us clearing off the highway. That went on throughout the evening, throughout the night and ultimately the Henry 600s ended up on the overpass at nighttime -- in the even -- or, you know, late nighttime providing coverage and over watch for the officers at the main headquarters.
Q. Okay. Can I break that down a little bit? So you reported to your shift in the mid-afternoon, right?
A. Uh-huh.
Q. And you were dispatched to the Capitol. Is that the first place where you were dispatched?
A. Yes.
Q. And can you tell me generally a little bit about that protest at the Capitol? What was that like?
A. For the -- for the most part we were called there just to supplement DPS. Obviously, the Capitol was the main priority to protect for whatever reason. As far as I remember, that part was a protest, people exercising their rights,

nothing -- nothing too wild. I don't recall any -- anything outrageous going on as far as, you know, protestors throwing items or setting off fireworks or anything like that. So once that crowd kind of moved on from the Capitol to the 35, the APD Main headquarters, we were called by the downtown officers to help them because they were, you know, outnumbered and 35 had been completely shut down by protestors.
Q. Okay. So was it your understanding and your belief that the protests from the State Capitol had moved down; that, in other words, this was one continuous protest or -- or were these separate protests to your -- to your knowledge and understanding?
A. I'm not sure the same crowd, you know, was a part of both sets. This certain crowd here, certain crowd there, I'm not sure.
Q. Okay. How did you get from the Capitol down to the I -- I-35?
A. Oh, we had to use City vans, just unmarked, you know, white vans that helped transport, you know, mass numbers. We didn't have patrol vehicles readily available to everybody so, you know, about 10 to 15 officers in a van that transported us from the Capitol to the proper 35.
Q. Okay. And -- and what were you wearing? Why don't you describe for us what -- what your uniform looked like and what you were equipped with at that point, right, in the van.

A. I was -- I was wearing my department issued we call them Class -- Class C uniforms. Dark navy top, navy pants, patrol belt, Austin Police Department patches on our chest and shoulders.

Q. Okay. And when you were at the State Capitol, did you have these less-than-lethal-bean-bag shotguns?

A. Yes.

Q. Okay. So you had those at the Capitol and then you -- you took those -- the ten or 15 officers in the van, did you take those with you to the I-35 overpass?

A. It was multiple vans. Probably 60 to 80 officers in multiple vans and not everybody had a less-lethal shotgun.

Q. How did they determine who got one and who didn't?

A. That whoever checked one out at the beginning of the shift. There are a certain number of readily available that the department even has -- that has.

Q. Okay. How does that work? Again, I'm -- I'm not a police officer so forgive my ignorance but is that just first come, first served? You make the decision as an officer if you want to go check one out? Or how does that work?

A. Usually with less-lethal shotguns as far as patrol officers there's a -- one or two available to check out per shift and it's -- it's up to the patrol shift like who -- who needs to take one out. It's more of like, hey, someone needs to take it every day for patrol. Who wants to take it? More

voluntary basis of who takes one out or not.

Q. Okay. Did you volunteer to take one on May 30th, 2020?

A. Yes, as a part -- because usually I was the one that always checked it out on patrol shift anyway.

Q. Why is that?

A. At that time it was -- it was commonplace for the younger officers on the shift to check one out.

Q. And why is that?

A. Well, it's just kind of the culture of the young -- the new guy on the shift they check out the equipment so the senior guys don't have to.

Q. Is it kind of a pain? I mean, is it kind of a burden?

A. No, not necessarily.

Q. Okay. Why would the older guys want the younger guys to do it?

A. It's just carrying more stuff.

Q. Okay. I gotcha. Heavy?

A. No, not necessarily. It's just, you know, something that needs to be out in the street and it's somebody's responsibility so, you know, that can happen.

Q. More stuff to worry about?

A. Just more stuff to carry.

Q. Okay. So tell me about how -- how when you checked

out a -- one of these shotguns on May 30th?

A. I'm sorry, could you say that one more time?

Q. Sure. Tell me how and -- tell me about how you checked out one of these shotguns on May 30th, 2020.

A. I honestly don't remember where we started that day, whether it be our -- at our east sub or throughout the protest at some point our -- our meeting area was at the academy but either way you'd have to go to at the east sub we have someone called -- or someone at our PCO the -- someone who handles all of our equipment to go to them, check one out, write your name down kind of thing. This is under your name. It would be the same thing at the academy but I'm not sure if and where I started that day.

Q. Okay. And how many officers did you see check out these shotguns at the time that you checked yours out or is it something that happens at the same time, happens on a staggered basis? Tell me about that.

A. Again, I'm not sure where we started that day. I'm not sure how many other officers had less lethals.

Q. Okay. When you were at the Capitol, how many less lethals did you see?

A. I don't recall the exact number.

Q. Can you ballpark it?

A. If I had -- if I had to guess, one for every five officers maybe.

Q. So about 60 officers so about 12? Was it more than 10?

A. I couldn't -- I couldn't give you a solid, you know, answer.

Q. More than five?

A. Yeah, I would say more than five, yeah.

Q. More than five. Less than 50?

A. I think that would be fair -- fair to say.

Q. Less than 20?

A. Again, I mean, I -- I can't even recall like how many officers we had, what -- what DPS personnel looked like, what our -- everything was such a hodgepodge of people just being thrown into areas to help assist that me having like a general idea of how many people were even out there I couldn't even give you a great guess.

Q. Okay. So -- that's fine. It's fine. I don't want you to guess. I was just sort of looking for a range, like a ballpark, to get an idea whether it was 100 or whether it was two, right?

So you checked out the shotgun either at the east station or the academy -- you don't remember, that's fine -- and then where did you carry the shotgun? Did you go straight to the Capitol?

A. I -- I believe so.

Q. And tell me a little bit more -- I know I already

asked you -- but a little bit more detail about where were you at the Capitol? Did you set up a line? Were you dispersing the crowd? Tell me about what the operations were there. And I know you were support but go ahead.

A. Yeah, we were set up along the fence line in front of the Capitol with DPS.

Q. And -- and so there was a fence line there?

A. Yes. A gated fence, yes.

Q. And about how many officers were set up at that -- at that point if you were to guess? Again, not guess but what's your best estimate?

A. Us including DPS 100 maybe. I'm not sure their personnel. Yeah, I can't remember all personnel out there.

Q. And you said it was largely a peaceful protest?

A. Yeah, for the most part. Like the idea of it was at the direction of DPS they didn't want any protestors on Capitol grounds so once that line was established, you know, the protestors stayed on the streets which was fine to us.

Q. So there was a clear demarcation between where the protestors were allowed and where they weren't allowed?

A. Uh-huh, yes.

Q. And that would be the fence line?

A. Yes.

Q. Okay. Now, at the police station on May 30th, 2020 -- and I know there's sort of a fence now but on May 30th,

2020, there was no fence, right?

A. There was no fence, no.

Q. In front of the police station there was no fence line, right?

A. There's no fence. Yes, there's no fence at all.

Q. There was no -- it was different in the sense that there was no demarcation line. Like the fence line at the State Capitol that was different at the police station, correct?

A. As far as like a physical barrier in front of the steps? Other than officers, yes, that's correct.

Q. Okay. So how long were you at the State Capitol, approximately?

A. Maybe an hour or two. I'm not sure.

Q. That's fine. And when did you receive word that you would be going -- that you'd be moving?

A. When officers from the downtown area called for essentially what we call it it was an alternate-assistance broadcast over the radio from downtown officers saying they needed -- they needed more bodies, they needed help downtown because they -- all of the protestors had taken over both sides of 35.

Q. Okay. Now, you're talking about the 35 overpass as opposed to at the police station, right?

A. So when I refer to "proper," that's the actual

highway as opposed to the service roads.

Q. Okay. All right. And just so I'm clear, the I-35, that's the overpass where you were stationed, right?

A. Later that night, yes.

Q. Okay. Well, when you -- so when you get in the van, you said like 10 to 12 officers in the van going from the Capitol down to the police station, where were you let off first?

A. From the Capitol we went straight onto the proper or straight to the highway to start clearing off -- clearing -- clearing protestors from the highway.

Q. Okay. On the overpass?

A. Yes.

Q. Okay. Tell me about that. How did that happen? How did that go down?

A. As soon as we got onto the overpass, got out of the van, I could immediately see -- immediately saw, you know, hundreds and hundreds -- hundreds -- thousands -- I'm not sure the number, right, but both sides of 35 protestors coming in our van, taking on a barrage of rocks, water bottles and cones and sticks and stuff like that as officers began to form a line to start slowly, you know, inch by inch getting at least the southbound side cleared first and then getting the northbound side off and getting all the protestors off the overpass at least onto the service roads.

Q. Okay. So I -- I just want to be clear. Were you called officer assistance for the police station or to clear I-35?

A. I believe it was -- it was to 35. I think there were officers already on the proper but at some point they were overrun hundreds and hundreds of people and obviously losing ground and traffic was starting to be blocked on both sides.

Q. Where did those officers go?

A. I believe they just joined the ranks when we arrived.

Q. Okay. So when you get out, both sides are -- are blocked. What happens next?

A. Officers form a line across 35 kind of so both sides of traffic were stopped. You know, the northbound side was stopped. The southbound side was to stopped. We formed a line across, you know, the proper to the cars and slowly had to get everybody off the highway.

Q. Did you eventually do that?

A. Yes.

Q. How long did that take?

A. I do not recall exactly. Probably like 10 to 20 minutes.

Q. And what happened? Did they disperse or how did that happen?

A. At -- as far as I recall, the directive was to at least clear the proper. The service roads were considered --

the directive or the orders was like they can have the service road but they cannot -- you know, protestors cannot block the proper. So once we got them off the proper, right, they just maintained on both sides of the service road blocking the roads.

Q. Okay. So once you got the highway clear what did you do?

A. A lot of -- we stayed on the -- on the embankment of the northbound side for some -- for maybe a few hours longer just to ensure they didn't come back up and try and get on the proper again and then at some point like a rotation started where officers -- you know, officers who were at 250 parking lot which was on the northwest corner of 8th and 35 start rotating giving people breaks.

Q. Okay. How is it that you ended up on that overpass area?

A. Up until that point we had officers on the overpass ensuring that nobody else come up to block the protest again but there were no resources up there to help provide coverage for officers at the Main who were -- who were having like rocks and bottles and fireworks and frozen bottles and stuff thrown at them. So an order was given that somebody needs to go on the overpass to provide coverage because they didn't want -- because the people who were throwing things were too far back for the officers on the Main to take any type of action

against. So the idea was to get people on the overpass to help deter those actions. And I guess the -- the Henry 600s we had one of the bigger shifts, we were called upon to go up there to just provide that coverage.

Q. Okay. And who made that call?

A. I don't recall who was the supervisor who made the call.

Q. How were you first aware that that call had been made?

A. When my supervisor came to me and said we have to go on the overpass.

Q. Who was that super -- I'm sorry.

A. (Simultaneous speaking.) I forgot what I was going to say. Sorry.

Q. That's -- that's okay. Who was the supervisor who told you to go to the overpass?

A. My supervisors at the time were Sergeant Tabierou and Corporal Tyler Latham.

Q. And you said the Henry 600s were asked to go to the overpass. Why is that, I'm sorry? Maybe I just didn't hear but you were a larger group or what -- what was that answer? I couldn't hear it?

A. We were one of the bigger shifts. We -- we had a combined shift with a special unit of officers so we had about 14, 15 people on our shift.

Q. And about what time is it that you moved to the overpass? Like six o'clock? Nine o'clock? Do you recall?

A. I don't recall. It was at least nighttime.

Q. Nighttime in May probably after eight o'clock?

A. 8:00, 8:30. After -- after that at least.

Q. And what time did you start your shift that day?

A. I don't recall. I can't remember if we moved to a different emergency schedule at that time or we came in like normal. You know, like at a 2:00 -- at that time we had a 1:00, 2:00, 3:00 and four o'clock shift. I just don't remember -- I don't recall which shift we were on at that time.

Q. What's an emergency schedule?

A. That's -- that's called a -- an alpha-brava schedule where the department's mandated to do 12-hour shifts. You know, twelve hours A, twelve hours B type thing. I -- I can't recall being in emergency-type situations and that was my first time being part of something like that so I don't remember -- I remember it was activated during the protest. I just don't remember at what point.

Q. So that's 12-hour shifts straight?

A. Uh-huh.

Q. Now, you had mentioned that officers were being rotated around to provide relief. Why is that? What kind of relief is needed? Can you -- can you describe that to us?

A. Yeah. I mean, summertime -- you know, May it was

hot. A lot of standing. You know, the rotation -- the idea is to get people in the shade, sit people down, drink some water, 30-minute kind of breaks. Hour breaks are kind of long. You know, rotate.

Q. Okay. And is everybody wearing that uniform: the pants, the top at the time here in May 2020?

A. Most of Patrol is. The downtown officers, the -- the George, the DTAC guys, they have the blue shirts and shorts that they probably usually wear in the summertime, the light -- or the blue-blue, not the navy blue.

Q. Okay. And what's it like wearing those uniforms? Pretty hot?

A. It can be in the summertime, yes.

Q. Okay. Well, what does that look like?

A. What does what look like?

Q. Well, you say it can be pretty hot. What does that look like? Wearing this uniform in May in Austin, you know, being on this shift in mid-afternoon what does that heat look like? Are you sweating? You know, can you -- can you describe it just a little bit?

A. Yeah, naturally you -- you sweat when it's -- when it's hot in the thicker clothing in the summertime. I can't remember how -- what the degree was outside but it was warm actually because it's May in Texas.

Q. And you have -- and during the shift why don't you

describe to me what you have on you. So you have the uniform. We discussed that. You have the shotgun, right? How much does that weigh?

A. If I had to guess, six to eight pounds.

Q. Do you have that mask on the helmet?

A. We were -- yeah, we were wearing it, yes.

Q. So you were wearing that all day?

A. Yes.

Q. What other -- and you have the belt, right?

A. Uh-huh.

Q. And -- and what's on that belt or what weight is on that belt?

A. The belt is probably my best guess 12 to 15 pounds. Your -- your duty weapon, asp, OC spray, taser, handcuffs.

Q. Okay. Anything else you're carrying during the shift?

A. No, that's usually what I carry every day.

Q. All right. So let's -- let's talk a little bit about the less-lethal shotguns. What training and/or certifications have you received in the less-lethal shotguns?

A. So every year we are required by TCOLE to take the annual qualifications with all weapons at the department. It has (inaudible) issued to us so that includes, you know, your duty -- your duty firearm, less-lethal shotgun, the actual shotgun, OC spray, baton or asp, taser. Every year we take it

and then, of course, naturally, I check out the less-lethal shotgun every day and handle it and manipulate it every day.

Q. Do all the police officers have to receive the yearly training in the less-lethal shotguns?

A. Everybody -- every peace officer within the Austin Police Department from Chief all the way down to probationary police officer.

Q. Okay. Even though they might not check it out? It might be you checking it out as opposed to someone else but they at a minimum receive the yearly training?

A. Yes.

Q. What is -- what is that yearly training? Tell us about it.

A. There are, you know, a series of proficiency tests with the handgun and shotgun. You have to have an average minimum score, right, to pass to get that qualification.

Q. What -- what are you scored on? Are you shooting at targets? Are you given written exams? What does that look like?

A. It's all practical exams so shooting at targets.

Q. Okay. And then you're scored on how accurate you are?

A. Yes.

Q. And what's the score? 0 to 100?

A. Yes.

Q. Okay. And what were your scores?

A. For which? For which test?

Q. Let's just sort of focus on the accuracy test where I think you told me you're shooting at a target. You're graded from 0 to 100. What were your scores on those -- on those practical tests?

A. For every -- for --

Q. Let's go -- let's go September, October of '18 when you took the position you did to May 2020. So I'm assuming if you had the yearly test that was '18, '19, maybe '20 if it was before May?

A. I don't recall -- I don't recall when I had took it that year but, yes, every year you take them throughout -- those courses are offered throughout the year.

Q. Okay. So at least in '18 to '19 you took the yearly test, right?

A. Uh-huh.

Q. What were -- what were your scores?

A. So I guess I'll rephrase. The shotgun and fire -- a handgun, the duty gun test are scored from 0 to 100. Less lethal, taser, baton are just pass/fail.

Q. Oh, okay. All right. So for the firearms and lethal shotgun I guess --

A. Uh-huh.

Q. -- it's 0 to 100?

A. Yes.

Q. Less than lethal -- taser, baton, less-lethal shotgun which is what we're talking about here -- is pass or fail?

A. Yes.

Q. Okay. All right. What's the -- what's the range of the less-lethal shotgun?

A. The range? It's recommended up to -- up to 25 yards is what we're trained at.

Q. So when you take the test, do you recall what distance that is that you shoot for the pass/fail?

A. Twenty-five yards.

Q. Twenty-five yards, okay. And are you trained -- what are you trained to do at more than 25 yards?

A. The target zones remain the same as far as --

Q. I'm sorry?

A. The target zones -- the target zones remain the same.

Q. Okay. Are you trained to shoot it beyond 25 yards is what I'm asking?

A. Are we specifically trained? No, what -- the pass/fail standard for a less-lethal shotgun is 25 yards so that's where we conduct our proficiency test at.

Q. Okay. All right. Are you -- are you tested or are you -- I guess what happens when it's more than 25 yards? That's -- that's what I'm asking, I'm kind of curious about.

A. I'm not -- I'm not necessarily sure like the

functionality or -- the functionality of the less-lethal shotgun beyond 25 yards and I can't -- I honestly can't remember what the policy says the ideal impacting range -- max -- the maximum distance of the impacting range of a less-lethal shotgun at that time.

Q. Okay, at that time. Do you -- do you recall it at any other time?

A. Yeah. Well, now we have a -- obviously we have new bean bags where there's no minimum distance anymore and we can discharge -- you know, it's applicable up to 50 yards.

Q. But going back to May 30th, 2020, it was 25 yards with the range that you were trained on, right?

A. Yes, that's where we conducted our test.

Q. Okay. And the idea there is that the farther the distance the less accurate the weapon, correct?

A. Yeah, that goes for most -- pretty much most weapons.

Q. Right, right. And in this case with the less-lethal shotguns the longer the distance the less accurate you're going to be?

A. Yeah, I think that's fair to say.

Q. What was the distance in this case on May 30th, 2020 that you and other members of the Henry 600s were shooting bean-bag rounds at protestors on the street from the overpass?

A. I can't recall like the specific -- specific distance.

Q. Okay. Was it more than 25 yards?

A. I'm just trying to do math in my head. I'm assuming the overpass -- you know, that bridge is probably around -- I can't even guess how -- how tall, you know, that overpass bridge is. I'm not sure how far off the ground we were. I'm not entirely sure.

Q. Let me ask it to you this way. You're trained at 25 yards, right?

A. Uh-huh.

Q. You know what 25 yards looks like?

A. Uh-huh.

Q. Because you've done the yearly test at 25 yards, right?

A. Uh-huh.

Q. And you know what's less than 25 yards, correct?

A. Yes.

Q. So it's more than 25 yards?

A. Yeah, probably possible that it's more than 25 yards.

Q. It's probably possible that it was more than 25 yards?

A. Yeah. Yes, sir.

Q. Okay. What does "probably possible" mean?

A. At least 25 yards.

Q. Did anybody bring that up before -- well, let me ask you this.

Let me just sort of ask you this. Were you ordered to shoot these less-lethal shotguns, you and your fellow officers, or was that a discretionary decision that -- that you made?

A. There was no order to shoot protestors. There -- and it's all discretion in regards to protecting other officers and other protestors from being impacted by whatever objects were being thrown. If -- and this is just me on that night -- if something was available and it was safe to do so, I would impact somebody.

Q. Okay. So is your answer that you made the decision to shoot; nobody ordered you to shoot?

A. Yes.

Q. Did anybody authorize you to shoot or did you just make the decision at the time?

A. No, there was authorization that if -- if there is a need to protect other people or officers, that you do have -- you had the, you know, the go-ahead to do so.

Q. Okay. So when was that given? Was that like at the beginning of the shift? Was that when they put you at the overpass? When did they give you the green light to shoot if you saw a decision to make?

A. When we first got off -- got onto the proper from the Capitol to clear the highway.

Q. Okay. So when you first got to the overpass or the

highway, that's when they said you have clearance to shoot if -- if you decide to shoot?

A. Uh-huh.

Q. All right. When you were on the overpass and you're firing down into the street, were you the first to shoot? Were you the second to shoot? Were you the last to shoot? Let's -- let's break that down. I'll just break it down.

Were you the first to shoot?

A. At -- at what -- at what moment?

Q. So we're -- we're at the overpass. We've cleared -- cleared the highway. We're at the overpass looking down, right? From your BWC, body-worn camera footage, there's a group of officers at the top of that overpass, right?

A. This is nighttime or daytime or --

Q. No, nighttime.

A. Nighttime, okay.

Q. Do you -- do you recall that?

A. Yes, nighttime looking down at the Main, yes.

Q. And there's several officers who have these shotguns including yourself?

A. Yes.

Q. Including your -- okay. So those officers at the overpass nighttime looking down on the protestors, did you shoot first?

A. I can't remember -- I can't recall who shot first.

Q. Okay. But was it you who shot first?
A. I don't recall who shot first.
Q. Okay. Tell me about what was happening the moment you took your first shot.
A. Okay. Yeah -- (simultaneous speaking) -- I'm sorry?
Q. Go ahead. Please -- please go ahead. I didn't mean to interrupt.
A. Yeah, we were positioned on the -- on the overpass overlooking the Main and we were operating in kind of a spotter and less-lethal shotgun kind of tandems. So there was an officer next to me. We were in constant communication like spotlighting people who we thought were going to throw objects at officers at the Main or who had been. You know, we'd recognized the same subjects -- you know, more or less the same subjects throwing stuff at the officers and the -- what was going on and what we saw up to -- prior to me shooting my first less-lethal round was there was a group of protestors at the front of the Main who were protesting -- signs, you know, exercising their First Amendment rights -- but there were agitators coming from underneath the bridge, underneath where we were running out from underneath the bridge closer to the officers and throwing objects and then immediately retreating back under the bridge. So the idea was operating in the spotter and less-lethal tandem was the spotter with the flashlight would flashlight people running from underneath the

bridge like, "Hey, watch this guy. Watch him. Watch him." Kind of identifying things like he has something in his hand or he doesn't or whatever the case may be and upon an individual, you know, throwing an item -- because up to that point there's been fireworks, there's been bottles, there's been frozen water bottles. Earlier that day we -- we found that some of the bottles had urine in them, rocks, stones, bricks, whatever the case may be. We would watch people and watch people's hands as they run from underneath the bridge. All right.

So while operating in that tandem an officer next to me highlighted this individual who was running from underneath the bridge, threw an item and at that point my direction was direct -- was focused on him as he threw the bottle and that's when I deployed a round and I'm not sure -- so I'm listening to my partner. I'm not sure who else shot or if I did anything first or not.

Q. Okay. Well, you've been trained in these shotguns, you know what they sound like, right?
A. Uh-huh.
Q. They're loud?
A. Yes.
Q. You know what the sound of a shotgun going off and shooting the bean-bag round is, right?
A. Yes.
Q. Did you hear that prior to you pulling the trigger on

your shotgun?
A. I can't -- I can't recall three years ago and an ear piece in one ear, my part -- my officer in my other one.
Q. That's fine. That's fine. Let me ask you a little bit -- break that down a little bit what you had discussed. So on the overpass your line of vision, right -- you're familiar with that term, your line of vision -- your line of vision is obstructed at the point that anyone is beneath you because you obviously can't see through the overpass, right?
A. Yes.
Q. You can't see what's going on there, right?
A. Uh-huh.
Q. So your line of vision and the other officer's line of vision only began when somebody came out from under the underpass, right?
A. Yes.
Q. Okay. So you didn't have a direct line of sight under the overpass to look at particular individuals, it was only after they had come out from under the overpass. Fair?
A. Fair, yes.
Q. Okay. What officers had a line of sight on what was happening under the overpass, if any?
A. Officers at the -- the Main steps.
Q. Okay. And were the officers at the Main steps in communication with the officers in the overpass?

A. Yes.
Q. But with regard to who to spotlight, why to spotlight them, what was happening?
A. Not necessarily that kind of radio traffic. It was more of giving descriptors of people who had already thrown stuff, retreated back under the bridge. The officers at the Main were watching those individuals and kind of prepping officers on the overpass like, "Hey, this guy is wearing -- this guy is wearing this, this, this. He's underneath the bridge. It looks like he might do it again. He's at this area."

"Okay, I'll watch out for him if he comes back out again."

Q. Well, do you recall any of those descriptions in any detail?
A. As far as -- these type of descriptions -- descriptions are pretty -- pretty vague because the distance from the officer at the Main to underneath the bridge, you know, may or may not be descript of -- as descriptive as we'd like but, you know, general -- and this is the nature of our job where we're giving descriptors of, you know, it's male, black, white male, Hispanic male, white male, Asian male, female, long hair, black hair, whatever the case may be, this shirt, these pants, these shorts, these shoes, right? And the idea is in our profession we could take in those descriptors,

maybe see something and only enforce if something was going to happen. Again, we're not going to act in a reactionary measure if the person threw something, went under the bridge and came back out and didn't appear as if he was going to do anything again.

Q. Yeah, I mean, I understand the purpose of it, right, and you do have a difficult job. You would agree with me on that, right?

A. Uh-huh.

Q. But, I mean, I think between lawyers and cops you guys probably take the cake but we're a close second in my opinion. That's just unsolicited testimony. You can strike it from the record if Monte wants to. But I understand the purpose of it, right, but let me ask you this. On a scale of 1 to 10 -- you tell me if you don't follow me, okay? And at the 1 of the scale is this person is in a red shirt. That's it. And that's the descriptor that's given. You with me?

A. Uh-huh.

Q. It's very basic -- very basic one detail. On the end of this spectrum it's closer to what you were talking about; white male, early forties, goatee, white shirt with red print, red pants, belt, Nike shoes, holding a sign that says Black Lives Matter. Is that -- so do you understand what I'm doing with this spectrum? I'm going from 1 to 10. One is just, "This person is wearing a red shirt. Watch out, they're going

to throw something." And the other is all those descriptors. Where were these descriptions that you and the Henry 600s were getting on that scale from 1 to 10?

A. Somewhere around the middle, right around a 5.

Q. Do you recall any of those descriptions over -- was it radio?

A. All over radio, yes.

Q. Okay. Do you recall any specific description over the radio?

A. Not at this time, no.

Q. Okay. Did you rely on those descriptions exclusively in making your decision on who to shoot?

A. No.

Q. Okay. What else did you rely on in making the decision who to shoot with -- with your shotgun? You personally, nobody else. I'm just going to talk about you first.

A. Just my own personal observations of what someone did.

Q. So explain that a little bit more. What do you mean what they did? If they --

A. Well, as far as the officers on the Main calling out descriptors, it was more of like, "Hey, just watch this guy in case he wants to do it again."

It's not like, "Hey, if this guy comes out,

impact him."

So with the descriptors I would try and -- you know, I have to pay attention to the crowd but if I saw this gentleman and actually my attention would be more invested in this person to make sure he doesn't do it again. That's what I mean. I take in those descriptors. If I see this person, I would watch him but not necessarily just be, you know, invested in seeking like some kind of retribution or something -- and something of that nature.

Q. Sure. Of course. Yeah, we're not -- yeah, we're not saying that at all. So how -- this crowd in front of the police station, let's just say in general the group of people below the overpass that you shot rounds at -- do you know who I'm talking about? Fair enough? That group.

A. Say that one more time (simultaneous speaking).

Q. No, the first time. Am I -- is it too quiet or is it garbled?

A. I just -- I just -- I just maybe I didn't -- yeah.

Q. That's on me. I -- it's -- I'm having a bad technology day.

But the group of people who are sort of milling around there in front of the police station below the overpass, okay, if we were to define that group of people -- you with me?

A. Okay.

Q. -- how long had that group been there before you were

at the overpass?

MR. BARTON: Hang on just a moment, Steve. I hate to interrupt but I think we're going to need to go off the record for 30 seconds because the battery is running out in our computer and I need to figure out how to get it hooked up.

MR. DEMIK: Sure. That's perfectly fine. I was going to suggest -- should we take five?

MR. BARTON: Yeah, I think that will be perfect.

MR. DEMIK: Okay.

VIDEO OPERATOR: We're off the video record. It's 11:10.

(Recess taken from 11:10 a.m. to 11:19 a.m.)

VIDEO OPERATOR: We are back on the video record. The time is 11:19 a.m.

Q. (BY MR. DEMIK) Okay, Officer. I'm certainly not accusing anybody of anything but during the break besides getting the power worked out for the computer did you discuss anything with Mr. Barton or anything else about this deposition?

A. Yeah, we just went over just what we've already discussed previously.

Q. Okay. No, no, I mean, just during the little break we had, the five-minute break, that's all I'm asking about.

A. Yeah, what we've discussed here previously prior to the break.

Q. Okay. What did you discuss?
A. About my actions on the overpass and impacting an individual.
Q. Anything specific?
A. Not that specifically. Just impacting somebody over the bridge while on the overpass.
Q. Okay. So just in the last five minutes what specifically was discussed? What questions and answers were -- were given?
A. What questions were asked? Well, I was -- I asked Mr. Barton about -- I just wanted to clarify if we were talking about the same individual and how you mentioned I fired what it sounds like multiple rounds when, you know, throughout the course I just want to clarify I only impacted one person, one shot, so I was just kind of curious as to if we were talking about the same individual or not.
Q. Sure. That's -- that's -- that's totally fine. So let's talk about that real quick before I go back into what I was asking about.
So how many people did you shoot on May 30th, 2020, total? And I'm talking about Capitol, overpass, everywhere, that entire shift.
A. I'm going to refer to my narrative that I wrote.
Q. Sure, go ahead. You can refer to it. No problem.
A. So I documented five total less-lethal rounds of

deployments but also notated that out of those five only one was at the nighttime overpass.
Q. Okay. So does that mean when you were at the overpass you only fired your shotgun one time?
A. One time, uh-huh.
Q. Okay. Where were the other four?
A. That was throughout the course of clearing proper on the highway in the evening time when we first got from the Capitol to the highway.
Q. Okay. So the four -- is it -- the four less-lethal deployments, that's shots, right, that's one, two, three, four out of your shotgun?
A. Uh-huh.
Q. Those happened at the overpass clearing the highway?
A. Yes.
Q. Okay. From the overpass shooting down into the crowd there was one deployment that hit one person?
A. Not into the crowd, at one specific person but, yes.
Q. Okay. Fair enough. Fair enough. So from the overpass one deployment, one shot from the shotgun at one person underneath the overpass -- or not underneath but below the overpass?
A. Yes.
Q. Okay. The other four deployments did you hit people or do you know?

A. I documented those four less-lethal rounds were deployed on three different people and they did impact those people.
Q. Okay. Four shots (audio distortion.) Right?
A. I think you muted when you had your fingers up.
Q. Oh, four shots, three people?
A. Yes.
Q. Okay. What range were those shots on the highway?
A. I didn't document the ranges in any of my notations or any of my supplements or texts.
Q. Were -- were they less than 25 or more than 25 yards?
A. I -- I only remember two -- two of those three deployments distinctly in my memory. One was probably around, you know, 15 to 25 yards and the other that was on the proper after an individual threw an object at me and other officers and then the two rounds on the one subject was at an individual he was at a substantial distance away, you know, 50 yards -- 50, 60 yards but I was pointed out to him by a supervisor. He was making some type of object. Like he reached into a backpack and making an object to throw at officers so I deployed two rounds at that individual.
Q. So let me break those down just so we don't throw them off one basket, we divvy them up.
One of the deployments, the first one was 15 to 20 yards or 25 yards. You said within 25 yards?

A. Uh-huh, yes.
Q. An individual threw something at you specifically?
A. Uh-huh, yes.
Q. What did they throw?
A. Like the larger traffic cones.
Q. Okay. One of those orange traffic cones?
A. Yes. Like more the -- not the big barrels but the taller ones. Probably the ones that are about four feet tall and those are designed to be on a highway. Not necessarily like the janitor ones you see but the -- you know, the taller ones.
Q. Made of rubber?
A. Yes.
Q. Okay. All right. When you -- when you were on the overpass when you made those deployments -- let's just limit it to that deployment. We'll call it the traffic cone individual. Did you have a shield or any other protection or just the mask?
A. Just the mask.
Q. And did you -- did you deploy -- let me ask you about all these times. These five less-than-lethal deployments on May 30th, 2020, were you wearing the mask? Was the mask up? Was the mask down? How -- what was the position of the mask when you deployed your shotgun?
A. Me personally the mask was up.
Q. All right. Did you ever take the mask down?

A. Not when I had the less-lethal shotgun.
Q. So you moved the mask up when you're ready to fire your shotgun?
A. Yeah, I left it up most of the time while I was carrying the less lethal.
Q. The other individual you said about 75 yards -- I know that I'm -- I'm -- I'm giving you that number, but it's more 25 yards -- that individual who was making something --
A. Uh-huh.
Q. With me? -- what was he making?
A. So at one point -- and I have it notated -- or I believe Sergeant Kwant (phonetic) had it notated in the R2R packet that the officer near me said this gentleman was making a Molotov cocktail.
Q. Okay. Was there any verification that was secured that he was making a Molotov cocktail? And, again, I'm not turning it into a murder case but I'm saying you saw somebody, it looked like they were making something. Your supervisor told you to impact them and you did, right?
A. A supervisor. I'm not sure -- it wasn't mine specifically. We're all -- we worked with a shift at that time on 35. We were all spread apart, you know. But a supervisor pointed this individual out. I was able to get -- get eyes on him, saw the same thing where he was in a backpack in and out making something with like a bottle, maybe a rag. I deployed

rounds at that individual and at that point they ran. They ran off. They didn't -- I obviously didn't see him again.
Q. Okay. Did the supervisor tell you to fire or what did the supervisor say, right? Because that -- that could happen two ways. One is the supervisor could say, "That individual there making a Molotov cocktail, impact him." And the other is like, "Hey, I just want you to know that guy is there. Do what you want to do." Which one was it?
A. It was more of a hey that guy looks likes he's -- watch out for that guy. Watch him. Because at that point more of the same and we kind of all developed this like spotters and less lethals because at this point in this line only people that can really use force were the officers with less-lethal shotguns because we learned real quick that people -- officers who didn't have less-lethal shotguns who tried to take action and go into the crowd would get surrounded by crowds forcing issues that didn't need to happen. So the spotter -- the spotter on Talley is like, "Watch that guy." I told most people, "Hey, watch that guy." And, again, whereas the police don't have to make that second call if they're going to impact somebody or not.
Q. Okay. All right. Because -- because I did -- I sort of want to focus on what your level of discretion is as a line officer or a patrol officer in these situations. So in this situation on May 30th, 2020, what I'm hearing you say is that

you had spotters, you had supervisors also pointing people out but your level of discretion was whether you chose to shoot somebody or not. That was your level of discretion. Nobody -- you didn't have to turn over to the supervisor and say, "Hey, can I shoot this guy?" You had the green light from the moment you came out of the van to impact people if you wanted to, right?
A. If I felt it necessary, yes. It was necessary, yes.
Q. If it was necessary and your decision?
A. Yes.
Q. Okay. Now, the higher level of discretion where you're deployed, right, at the overpass, in the highway, on the off streets, that's not in your discretion. You have to follow the orders where they place you, right?
A. Were you asking me if I had discretion on where I went? Is that --
Q. General areas. So, for example, when you dropped at the overpass at nighttime looking down off the crowd, that's an order that you take. They tell you to go to that overpass and position yourself there, right?
A. Yes.
Q. I'm just -- I know it's silly but I want the jury to understand what your level of decision is and then at what level you have to take orders because you do have to take orders from your superiors, right?

A. Uh-huh.
Q. And if they tell you to go to the overpass, then that's where you have to position yourself, right?
A. Yeah, in short I go where I'm told and enforce where I can.
Q. Right. And you have this -- this sliver of discretion or decision making that you have whether to fire the shotgun or not. That's your discretion, that's your call once you get the green light that you can fire, right?
A. Yes.
Q. Okay. All right. Let me come back before we took a break. How long was this crowd milling around the street below the overpass?
A. Since -- since we were called to the 35 from the Capitol in the middle of the afternoon to the late morning. Usually the protests will kind of die down 3:00 -- 3:00, 4:00 in the morning.
Q. So about what time did you shoot your shotgun from the overpass?
A. Night -- nighttime. Like, you know, 8:30, nine o'clock -- nine o'clock-ish. I'm not sure when we actually went up there. I don't know the exact time. I mean, 9:00 to midnight. I'm just not sure of the time.
Q. Okay. Well, you said before that you thought you went to the overpass about 8:00 or 8:30, sometime at night,

right? How long were you on the overpass before you fired your shotgun?

A. Yeah, I don't -- I don't recall how long I was up there.

Q. Did you -- did you fire it at midnight?

A. Yeah, I mean, it's -- it's definitely easier for me to say that losing track of time was very -- it just happened down there because you're standing at -- standing at a spot for who knows how long and you go to the next spot and you stand there. You're just, you know, hypervigilant watching people. There's not really a time -- there wasn't really much time for me to stop, take out my phone, look at my time or look at my watch or anything like that. So I know for sure it was nighttime. It was dark. Nighttime May, June time usually sunset. Nighttime is 30 minutes after sunset. You know, May time sunsets around 8:20, 8:30. So 30 minutes after that it would be dark. And as far as me knowing how long I was on that bridge, I -- I can't recall.

Q. Okay. Well -- and I understand you don't -- you don't want to give an answer that's incorrect. I understand that. But my question was you fired one shot from the overpass down into the crowd, correct?

A. At a -- at one individual.

Q. At one individual. That's fine, we can make that. You fired one shot from the overpass down at one individual

while you were on the overpass, right?

A. Yes.

Q. You didn't fire four times up there, you fired one time up there, right?

A. Yes.

Q. Okay. Now, I just sort of want it to best of your ability box it in, right? I'm not asking I fired at 8:27 p.m. or I fired at 9:17 p.m. but from what you're saying it sounds to me like it was after sunset so it's after 8:30 but it was before midnight, right, but it even sounds like before 10:00 p.m. So you could probably say it was between 8:30 and 10:00 p.m. Is that -- is that fair? Again, I'm not asking for 8:27 or 9:17 but I am looking for a range of time.

A. Yeah, I -- I think that would be fair, 8:30 to 10:00 p.m., 10:30-ish.

Q. Okay, between 8:30 and 10:00?

A. Yeah.

Q. All right. So about what time did you get to the -- down from the State Capitol when you cleared the highway which you said took 10 to 20 minutes, right, was it still light out? At what point do you remember -- where were you when it got dark at 8:00 to 8:30?

A. I believe -- I mean, from the time -- you know, as far as my recollection is the sequence of events, right, clearing the highway, now I'm on the embankment on the

northbound side looking at the northbound service road and then, you know, someone replaces us. Then we go to the southbound service road embankment kind of looking at the Main and then we rotate to 250, our parking corridors across the street from the Main, and we're getting water and sitting down for some times. Back on the embankment. Just kind of rotate everywhere until it kind of -- the protest starts getting, you know, rowdy and objects are being thrown. Nighttime is when we're directed to go up to the overpass.

Q. So did you get any information at the time you go to the overpass how long that crowd had been milling in front of the police department?

A. It -- I mean, they had been there since we got on 35. There's -- you know, there's -- throughout the protest there's been a constant crowd in front of the Main protesting the entire time.

Q. Okay. Did you get any briefing information intelligence on who this crowd was and how long -- let me break it down.

How long it had been there in front of the police department? Did you get any debriefing intel information from anybody on the police force?

A. As far as I know, the crowd had been there since the 29th. There's been a small crowd there May -- the night of May 29th because I remember I was working patrol the night before

and we had to pull officers from a crash that I was working and they had to go to the Main to help out.

Q. To the main police station?

A. Yes, on the 29th. So as far as I know there was a crowd there on the 29th. That's where it started.

Q. And were you there on the 29th?

A. No.

Q. Okay. You just knew that other officers had been told to go there?

A. Yes.

Q. Why didn't you go? Because you were working the crash or what?

A. Yeah, it was -- it was a rough crash so I had to go home.

Q. Okay. All right. So on the 30th, okay, when -- when they order you to the overpass to position yourself at the overpass looking down on the crowd, did you have any information about how that -- how long that specific crowd had been in front of the police station?

A. As far as like the crowd, I have like no -- like no specific information or intelligence to tell you that was the same people there in front of the main police station from the 29th to the 30th. I assume it's just a constant rotation of people wanting to join the protest.

Q. Okay. Well, as a police officer, there's -- there's

a concept called briefing, right?
A. Uh-huh.
Q. And so before you're sent on a specific task or job oftentimes you'll be given a briefing, correct?
A. Correct.
Q. And that will be a sergeant or a supervisor or someone will say, "Listen, guys. Here's the information you need. This is what our objective is. This is the rules of engagement." All those things happen in the briefing, right?
A. Correct.
Q. Did you get any briefings before you came to the overpass?
A. Nighttime or Capitol?
Q. Nighttime.
A. Nighttime.
Q. Thank you for clarifying.
A. Yeah, so I believe we were down at 250 and we were directed by our supervisor, "Hey, the officers at the Main are getting hit with stuff. If you're near the bridge, we need officers up there now. That's going to be us. Let's go."
Q. And why did they tell you they needed officers up above for this crowd in front of the police station?
A. From what I recall we were told that they -- officers at the Main were getting hit with objects. You know, rocks, bottles. You know, there's fireworks going off, that type of

stuff. And most of the agitators were too far away from officers at the Main to deploy and go grab them because George -- the George officers -- downtown officers, they have more training, kind of mobile field force and like group-arresting tactics. So what they're used to is they're at the Main, they'll develop a plan, and they have a line set up at the Main steps. All right, they'll develop a plan. They'll send five, six officers out into the crowd, grab somebody, you know, pull them back to the Main. But the agitators, right -- you have the protestors in front of the Main protest which is fine but the agitators would be behind that group throwing stuff over making it very difficult for the officers at the Main to go and grab them. So to deter and keep that coverage and to keep those agitators away we were told to go to the overpass to kind of, you know, help those officers and protect them from the people running from under the overpass throwing objects and running back further away.
Q. Okay. But did you receive any briefings as far as who this crowd was, how long they had been there, who's in the crowd?
A. From what I remember seeing, there was too many people to put different descriptors out for all those types of people.
Q. Okay. So -- so, no, you did not have a formal briefing where they briefed you on this crowd?

A. No, just other than what we were -- where we were going and why we were needed there.
Q. And -- and if I can give it back, and you correct me if I'm wrong, but where you were going and why you were going there, you were -- where you were going is they told you to go to the overpass overlooking the crowd and why you were going there was to provide cover or protection for the officers at the police station, right?
A. Yes.
Q. Okay. So that that was where you were going and why you were going there?
A. Yes.
Q. Okay. All right. Let me ask you just generally about your experience in -- in deployments, I guess. You know, not -- well, do you have any military experience, Officer?
A. No.
Q. Okay. So good. So then "deployment" meaning -- "deployment" is a fancy word for shooting, right? Deployment of less-than-lethal rounds, deployment of firearms, deployment of service weapons, that -- that means shooting, right?
A. So different from what we were trained in the academy less-lethal shotgun and it's -- and I don't want to give you the wrong information. This is just me and I'm no firearms expert but from what I remember in the academy that the less-lethal shotgun they use the term "deploying" instead of

"shooting" because it's not a firearm. It's less-lethal means, it's a bean bag.
Q. Okay. Yeah, I'm (simultaneous speaking) -- sorry, go ahead.
A. And that's why I refer to, you know, deploying a less-lethal shotgun as opposed to shooting it because that's what we were taught to -- that's how we were taught to phrase, you know, that type of language.
Q. Okay. Sure, I understand that. And, again, I understand your different terminology but what you're saying is the terminology that we're taught to use is deploying a less-lethal shotgun and then discharging a firearm there's a difference there because less -- less-than lethal we call it deployment instead of shooting and firearm we call it discharging instead of firing. Fair enough? I mean, I'm -- I'm not asking you to go through the police manual. I'm just saying that's the distinction that you're taught in the police force, right?
A. Uh-huh.
Q. Okay. You've been with the police department now -- well, up until May 2020 -- I don't -- I don't need to talk about stuff after 2020 because it's -- you know, we're just going from the time you started up to 2020 so that was about three years as a police officer, give or take?
A. Three years with the City. We -- we like to just --

just count our street time so December of 2017.
Q. Okay. Okay. More like three years? The academy is 2016 and then we're moving up to May 2020, more like three years you're a police officer. How many times have you either discharged -- let me -- let me start there. How many times have you discharged a firearm during your time in the police department?
A. Never.
Q. Okay. So you've never fired your service weapon. And then on May 20th you deployed the less-lethal shotgun five times. Besides that, besides the five times in 2020 -- and I'm talking about patrol related, I'm not talking about training, okay, if that makes sense -- how many times discharged -- or excuse me, excuse me, deployed less-lethal shotgun besides these five times on May -- on May 30th, 2020? How many times have you done that during your time with the police department?
A. About eight or nine times or -- not including the five, correct?
Q. We're just -- yeah, not including the five. From the time you started as a police officer to May 30th, 2020.
A. Okay. Zero times before that.
Q. Okay. So zero times. So on May 30th, 2020, if I understand you correctly, that was the first time in the line of duty that you shot a less-than-lethal shotgun?
A. Yes.

Q. Okay. Did you receive any training about inspecting the less-lethal shotguns when you check them out?
A. As far as like servicing the shotguns or cleaning them?
Q. More -- more or less. What I'm asking is -- maybe I can help -- maybe I can help sort of focus it this way. So you received training and a yearly certification -- or a yearly test on the less-lethal shotguns, right, in firing them and -- and, you know, the -- I guess can we call it an accuracy test?
A. Yes. Proficiency/accuracy.
Q. Sorry?
A. Proficiency or accuracy.
Q. Proficiency or accuracy. Any part of your training or certification with these shotguns about inspecting them, right, like servicing them I think is the term you used and that's kind of what I'm asking is servicing it, how it works, what the parts are, what -- you know, inspecting it, right, to make sure it's in working order, things like that. Any part of your training and certification to deal with that?
A. In the academy, yes.
Q. Okay. Can you tell me about that training?
A. It's -- it's been awhile. You know, it's just we -- there's lectures and Power Points that went over the functionality of less-lethal shotguns, yeah, I guess the parts, the slides, how it works, the bean bags that are used to put

into the less-lethal shotguns. You know, and it's a -- it's -- they're cleaned and maintained the same way as shotguns -- shotguns are.
Q. Okay. Let me ask you a question and you answered my question. Thank you. The bean bags, do you load those into the shotgun individually before you fire? So, for example, on May 30th, 2020, you fired it five times. Do you have to reload it after every shot? How does that work?
A. So it has the capability of holding four rounds without one being in the chamber so it's capable of five total if you have one in the -- in the chamber ready to go. But other than that you could have four in there and whenever you're ready you can slide a round -- or you can, you know, pump a round into it to get it, you know, ready to deploy.
Q. So does that mean on May 30th, 2020, you had shot it four times I think at the overpass -- excuse me, four times on the highway and then one time on the overpass. Does that mean you had to reload it in between those two?
A. Yes.
Q. And what -- what does reloading look like? What do you do? Where do you have the bean bags? Where do you get them?
A. So our supervisors had rounds and any time -- or pretty much it was just keeping your pockets full. You have to have my rounds in my cargo pants pocket and any time I needed

to reload, you know, put my less-than shotgun on safety and insert rounds into the tubing.
Q. Okay. So between the time that you had fired it four times in the overpass you had to do that, right? You took the bean bag out of your cargo pocket and you loaded -- did you load four rounds in it?
A. I loaded them until I -- until it was full.
Q. Okay. So four?
A. Yes.
Q. Okay. Do you recall when you reloaded the shotgun?
A. If there was -- if there was a break, I would reload -- I probably -- possibly more than likely reloaded every time I deployed a round.
Q. Okay. So you'd fire it once and then you'd take another bean bag and put it in there and so now instead of having three you have four? You have a full chamber?
A. Yes.
Q. And so to your recollection then you probably reloaded four times?
A. More than likely, yes.
Q. Okay. All right. And is there any kind of notification or permission that you need to get when you reload? So what I'm asking you is that after you've fired the shotgun, do you have to tell anybody, "Hey, I'm reloading"?
A. There were -- there were times where you would let

another officer near you also on a less lethal like, "Hey, I'm reloading," to kind of pick up the area that you were watching because everything was so dynamic that any second you could have something thrown at you that person could be right in front of you or at a distance where maybe a deployment would be applicable or practicable so obviously if you were loading you can't deploy and you just let someone around you know like, "Hey, I'm going to back up, reload real quick," because it takes time to manipulate until you get your rounds in there.

Q. So you would mention to somebody that you're reloading so that they could cover you if something happens, right?

A. Yes.

Q. But -- but my question is do you have to get any kind of approval or go to a sergeant or go to somebody in line and say, "Hey, listen, I want to let you know I'm reloading. I've discharged, you know, two times, three times, whatever"? Is that any protocol that you follow?

A. No.

Q. And how many bean bags are you given? So on May 30th how many do they give you? You know, are your cargo pants like ten rounds or how -- what do they give you?

A. As far -- they're full as far as I remember. You know, as many rounds you can probably fit in a regular cargo pants pocket and 10 -- 10 to 15 of those bean bags.

Q. Okay. So you had about 10 to 15 rounds?

A. Yes.

Q. So do you receive any training about inspecting the rounds to see if they're functional, if they're expired, if they're defective, any of that?

A. Not that I recall.

Q. And how big are these bean-bag rounds? Can you estimate? And we'll put on the record with some kind of estimation but just show us how big these rounds are?

A. As far as the tubing they're in or actual bean bags?

Q. Both.

A. The tubing I would estimate to be about like three inches, like one inch in diameter, and the bean bag once it's deployed is about, you know, two inches in diameter. That's the ball. Small two-inch sphere.

Q. And, you know, these bean bags, they -- they can hurt people obviously, right?

A. Yes.

Q. If they hit certain parts of the body, there can be very serious injuries, right?

A. Yes.

Q. And, you know, they're less than lethal but that doesn't mean that they can't cause serious bodily injury, correct?

A. Correct.

Q. So you had mentioned a spotlight or a flashlight somehow that officers from the overpass were pointing at particular individuals. Was that a -- was it a hand-held flashlight? Was it like a spotlight on a patrol vehicle? What was it?

A. Hand-held flashlights.

Q. Hand-held flashlight. And who was doing that? People who didn't have the shotguns?

A. Yes.

Q. Okay. How many people were holding flashlights to your recollection and pointing them down onto the crowd?

A. As many people as were less-lethal shotguns and I can't remember on our shift. I think on our shift up there at least my shift of 14 probably at least five of us had less lethals to my best guess.

Q. Okay. What about in front of the police station? Do you have any idea how many less-than-lethal shotguns they had?

A. At the officers at the Main?

Q. Yes, sir.

A. I don't know. I have no idea.

Q. But you were aware they had them, right?

A. I was -- I would assume they had them.

Q. Did -- did anybody brief you and tell you that the officers at Main had the shotguns?

A. No. No, sir. That was mostly -- I didn't have any

interaction with those guys at the Main because those are mostly the George -- the downtown officers and at no point during those first two days did I go into the Main or interact with those officers over there.

Q. Okay. But they were on radio -- constant radio contact with you officers at the overpass, right?

A. Uh-huh, yes.

Q. And so were you made aware at any point that they had shotguns, too?

A. No, that's not necessarily something that we would radio to each other.

Q. So was it fashioned then that the officers at Main were relying on the officers at overpass to utilize their shotguns?

A. Yes.

Q. Okay. So did you have knowledge that the officers at Main also had shotguns or -- well, let me ask it that way. Do you have any information that they had shotguns?

A. I can only assume. I'm not sure of the resources they had. I know they're available to them but I'm not sure what they had on the steps with them.

Q. Okay. But it would be safe to assume if they're protecting the main police station in Austin that they have some means to deter the crowd or push the crowd away, right?

A. Yes.

Q. When -- when officers were shining the flashlights on particular individuals, were they encouraging other officers to fire at them?

A. No. The -- the communication -- the whole idea was to spot individuals who we thought posed a threat to other officers, right? So the idea is the flashlights -- because obviously I'm -- I'm watching the crowd as well, not only relying on my spotter at that time I'm watching the crowd as well. He's watching the crowd and the idea is we communicate like, "Hey, I think I see someone. Watch them." And then I would direct my attention to that person, right, with the flashlight on them and it wasn't a whole bunch -- the flashlights aren't constantly on. We -- they turned them on at specific moments at specific people so there's no confusion about who we're talking about.

Q. Do you recall anyone saying -- saying something to the effect of, "Go after the guy in the red shirt" when they flashed a spotlight on him?

A. No, I don't recall that.

Q. Was the -- was the idea of shining the flashlight to assist the officer shooting the shotguns?

A. Yes, to direct -- direct their less-lethal officers to that person. Kind of a pay attention and watch this guy.

Q. Okay. And -- and was it in any way intended to help get them visibility to -- to shoot that person? So, in other

words, to get them a better view when they fired the shotgun?

A. It was more an idea so there would be no confusion about who we're talking about.

Q. And -- and in an effort to prevent confusion they used hand-held flashlights?

A. Yes.

Q. So the idea of bean-bag rounds and less-than-lethal shotguns is -- is a deterrent, right? I mean, this is what you're trained in. You don't want to kill somebody, right?

A. Yes.

Q. But you want to deter them. You want -- you want a crowd to disperse, you want an individual to -- to flee a certain area. That's the reason why you use these shotguns, right?

A. Correct.

Q. And the idea is that if you shoot somebody with a shotgun, they're going to run the other direction or -- or in some sense be subdued to go away from you, right?

A. Yeah, or stop their immediate action.

Q. Okay. And so if an individual is, for example, crouched in a fetal position on the ground, okay, is that an instance in which you would impact them with a less-than-lethal shotgun?

MR. BARTON: Object to the form.

Q. (BY MR. DEMIK) That's fine. You -- you can answer.

MR. BARTON: You can go ahead and answer.

THE WITNESS: No.

Q. (BY MR. DEMIK) And the idea is to shoot the less-than-lethal shotgun the least amount of times so you give the individual the idea but you don't just try and hurt them, right?

A. I'm sorry, say that one more time?

Q. Sure. And let me get closer to my telephone.

The idea and what you're trained in is that you shoot them only the number of times that it takes, right, to deter them. I mean, you don't -- you don't keep shooting them to inflict pain, correct?

A. Correct.

Q. And so if you shoot an individual one time and they flee, you're not supposed to shoot them again, are you?

A. No. In -- in most circumstances, no.

Q. Okay. What circumstances would you do that, would you shoot someone again after you shot them once and they had complied?

A. And they hadn't complied or --

Q. They had complied.

A. Well, it wasn't necessarily -- I -- to be specific and to flush it out, sometimes I work with a specific unit, the Violent Crime Task Force, in which we apprehend -- we try and apprehend, you know, people who commit serious violent

offenses. That point when we're trying to, you know, inflict an arrest and I've done it before where I've deployed a less-lethal shotgun multiple times from a fleeing subject knowing that he's a danger to the community. So that's a specific circumstance where I'm deploying multiple rounds for a fleeing suspect.

Q. Well, but you've never done that, right, because the only time up until May 2020 -- and, again, maybe it's a timing thing, maybe it's that -- but from the time you started the police academy in May 2017 to May 30th, 2020, you hadn't done that, right?

A. Yeah, up to that point but after the fact you mentioned that I wouldn't impact some -- a fleeing subject but I have in my career. It's just a specific circumstance where you could impact a fleeing subject multiple times. It just depends.

Q. Okay. Did you have any information or knowledge of anybody in that situation in this crowd in front of the main police station on May 30th, 2020?

A. I think I covered you up on the first part of that.

Q. Sure. Did you have any information or knowledge that anyone in the crowd in front of the main police station on May 30th, 2020, was one of those individuals that you had just described?

A. No, not to my recollection.

Q. Well, is -- is that something you would note?
A. Would note?
Q. Yes. Would you put that in a report? You said somebody who is a danger to the community, fleeing, serious felony offense, that's something you would write a report on, right?
A. Yes.
Q. You did not write one of those reports pertaining to May 30th, 2020, did you?
A. No, I did not, no.
Q. Were -- did you have any e-mails or electronic communications with regards to this event on May 30th, 2020? I'm talking about e-mails to fellow officers, I'm talking about e-mail communication -- electronic communications with supervisors, sergeants or anyone else.
A. No.
Q. Did you have any information on what you were heading into? Okay, so on May 30th -- I think you said you worked on May 29th and you investigated a pretty serious crash. What -- what was that? Can you tell me a little bit about that? And, again, I'm not -- that's not this case but I just want for context what was that crash? Was it like on the highway? Was it a truck? What was it?
A. It was a fatality crash with a couple of kids.
Q. Oh, geez, I'm sorry. A pretty serious event. Where

did it happen?
A. At east State Highway 71 and 130 out past the airport.
Q. Is that -- is that on the highway?
A. Yeah, the service roads but, yeah, the highway.
Q. Okay. So that was on May 29th and I imagine you remember that pretty vividly because it was serious?
A. Yes.
Q. And a very -- a very difficult part of your job to have to deal with those things, I imagine?
A. Uh-huh.
Q. So on May 29th you went home. And then the middle of the afternoon on May 30th you started the shift what -- what we're talking about in this case. I guess in general -- in a general manner I'm asking you did you have any information -- did anybody tell you what you were going to walk into on the 30th? Did you have any idea?
A. From what I remember, the night of May 29th it wasn't -- it was not that large of a crowd. It was a smaller crowd protesting. I think what -- what really kind of enhanced the shock factor was like officers on the 29th -- officers from citywide evening shifts were told to hold over, to work longer after the end of their shift to go down to Main to help and that was a misuse of resources. They didn't need that many officers on May -- on May 29th. So when I got to work the next

day, they're like, "Last night it was just -- it was kind of calm. It wasn't that craz -- it wasn't crazy at all. I don't know why we were there." And then May 30th, yeah, happened.
Q. I think I understand what you're saying and I think it happens in some context is that officers were given -- to your knowledge -- this is only your knowledge. I'm not asking you to testify as Chief of Police or anything of that but to your knowledge, Officer, people had been called in to work, forced to work on the 29th and things were rather calm?
A. Yes.
Q. More or less. And -- and so what that sort of was was a miscalibration, and I understand you can't predict what's going to happen, but then on the 30th it was much more active, it needed much more personnel, much more attention to police officers than on the 29th, right?
A. Yes.
Q. But -- but on the 29th, you know, a lot of these are the same officers. They had to work on the 29th and so I don't know what you call that. When I was waiting tables we call it like working a triple or something. What -- what is that called in the police force?
A. Where officers are --
Q. Have to work like extended hours, like pretty serious hours. Twelve-hour shifts and the emergency protocol that you talked about that --

A. Yeah, we have -- we still have to -- I think for the most part departments still have to adhere to the policy that an officer can only work 16 hours within a 24-hour period. But as far as like mandatory -- we call it holding over, mandatory when your shift ends so let's just say, for example, we were the 4:00 -- 4:00-p.m.-to-2:00-a.m. shift. When our shift ended at 2:00, the department is like, "Hey, mandatory holdover. Anybody that -- you know, all these evening shifts that are about to go off? Y'all go to the Main until further notice." That's what you call it.
Q. Right. And that had happened to quite a few officers from the 29th to the 30th?
A. Yes.
Q. Now, getting back to it -- and I understand the 29th, you know, you had some anecdotal information but going into the 30th did anybody from the police department, you specifically, sort of prepare you for, "Hey, it's a lot -- it's a lot rougher or a lot more people or whatever the extenuating circumstances are on the 30th as compared to the 29th"? Does that make sense? Does that question make sense?
A. Yeah, it makes sense but, no, there was -- there was no information like given out to like, "Hey, be prepared, it's going to get rowdy out there." I mean, even at the Capitol it wasn't. For me personally this being my first time being involved in a situation like this me personally it just -- it

wasn't eye opening at the Capitol until we got to 35 and at that point it -- it seemed out of control.

Q. From the Capitol to the police station?

A. On the 30th, yes.

Q. Okay. Now, at the time -- let me ask you just two follow-up questions to that.

At the time you were at the overpass, right, and your body-worn camera is on and you're there with your shotgun and the -- the other officers are sort of on that line going up and down on the -- on the overpass on the highway, would you describe the crowd at the bottom as out of control?

A. I'm sorry, we're talking about daytime or nighttime?

Q. Nighttime.

A. Nighttime? I would honestly describe the crowd at the front steps at Main as more -- just more of actual protestors. Signs, chants, young screaming. But it was the members underneath the bridge and like the in between in kind of the no man's land that were the agitators that were just out of control. You know, cars being set on fire, mattresses being set on fire, fireworks, rocks, stones, sticks, bottles, all that kind of stuff.

Q. On May 30th, 2020, were there any cars set on fire?

A. Yes.

Q. At the police station?

A. Underneath the bridge right where we were standing.

We -- it was getting to the point where we were inhaling smoke and had to move a little bit further north on the proper away from the smoke.

Q. Okay. What kind -- would that -- well, that must have been during the daytime, right, because then at the night is on the overpass?

A. Yeah, it was nighttime we were called the cars were set on fire.

Q. Okay. What kind of car was it?

A. Sedan if I remember right.

Q. And where was it located?

A. It was located underneath the overpass or right underneath the overpass I think -- I believe on 7th Street.

Q. And was the fire department called?

A. Yes.

Q. And what did they do?

A. They had to wait for us to escort them up there. For officers, not us, but officers to come from the Main, they had to, you know, generate a plan, come out with probably 20 officers and then walk the fire department to the car so the protestors wouldn't surround them and, you know, at that point we had to kind of move over as the over watch into the smoke just to provide coverage for those officers and the fire department.

Q. About what time was that?

A. Ten o'clock-ish to midnight-ish I would guess.

Q. Was that before or after you had fired your shotgun from the overpass?

A. I believe that was after.

Q. So let's -- let's talk about before you fired your shotgun. So that's good, you're sort of making distinguishments in time and that's good. It helps us be more accurate. But from the time you went to the overpass until the time you fired your shotgun, right, would you describe that crowd as out of control?

A. Partially, yes.

Q. What does "partially" mean?

A. And it wasn't everybody. Not everybody out there was in riotous behavior. There -- there were just, you know, a good amount -- a good amount of agitators that, you know, turned the protest into, you know, more a rioting and looting type of situation.

Q. Would you characterize that crowd in front of the police department up until the time you fired your shotgun as a riot?

A. The crowd directly in front of the officers in the Main? No, I wouldn't categorize them as a riot, no.

Q. Okay. Was there a riot happening -- from the time you went to the overpass until the time you had fired the shotgun, would you characterize any area as a riot in that

vicinity? I'm not talking about suburbs or something like that, I'm talking about in that vicinity, was there a riot going on?

A. Yeah, a handful of -- you know, obviously there's definitely more than three people engaging in riotous behavior so, yes.

Q. So there was no riot in front of the police station but there was a riot behind the protestors at the police station?

A. Yes.

Q. Okay. You've mentioned this term a few times, "agitator." What is an agitator?

A. So the idea of a protest is, you know, to get -- you know, get a point sent to -- you know, send your message -- First Amendment rights -- First Amendment rights and we all understand what was going on at that time. Yeah, like there's -- there's no argument from me about what wrong was done during that time, right? But the people -- agitators -- agitators I described is the people that are just literally destroying the message just wanting to see and create mayhem which includes, you know, obviously the fireworks, cars setting on fire, mattresses set on fire. You know, a gentleman was apprehending later that night after making a Molotov cocktail right near the Main. Just those certain people.

Q. Okay. That's not the individual on the overpass that

you shot with the shotgun who was making the Molotov cocktail, you're talking about a different one?
A. Yes.
Q. Okay. The individual on the overpass, again, did anybody confirm that he was making a Molotov cocktail? Did anybody go seize his bag and find gasoline and lighters and any of that?
A. The daytime one, no. The nighttime one, yes.
Q. Okay. And nighttime after you shot your shotgun?
A. I believe so, yes.
Q. What does an agitator look like?
A. There's -- there's no specific look as far -- the looks aren't anything. It's actions of somebody.
Q. Okay. What does a protestor look like?
A. Again, it's not necessarily looks, it's just the actions.
Q. Okay. So somebody who is an agitator could look like a protestor?
A. Yeah. Yes.
Q. And somebody who is a protestor could look like an agitator?
A. It's sort of racist. Again, it's nothing to do with looks. It's just all about actions.
Q. So -- and that's what I'm sort of asking is if it doesn't have anything to do with looks, then how do you tell

who is an agitator and a protestor in a group of 100 people in front of you? It must be very difficult, right?
A. No, not necessarily. I mean, just whoever is trying to inflict injury on someone else, you know, or, you know -- and I use -- you know, I want to use it loosely but, you know, whoever like disrupts the peace, right? The fact that they're protesting and trying to get their message across whether it be yelling or talking, screaming through megaphones, blow horns, whatever the case, it's all fine until fires are set, fireworks are thrown into crowds, bottles, rocks are being thrown. At that point I can distinguish a person who's, you know, talking, getting a message across, I can differentiate that person from someone who is, you know, engaged in that kind of behavior. It's -- it's distinguishable. It was easy for us to -- easier for us to see.
Q. Well, you're human and you make mistakes I assume, Officer, like all of us?
A. Right.
Q. And -- and you could make a mistake in whether you determine somebody was an agitator or a protestor? It's possible you make a mistake especially if there's a crowd of more than 100 people in front of you, right?
MR. BARTON: Object to the form.
THE WITNESS: It's possible.
Q. (BY MR. DEMIK) And nobody is perfect, right?

MR. BARTON: Object to the form.
THE WITNESS: Correct.
Q. (BY MR. DEMIK) Right. And so you're really -- you're -- you're talking about the decision of each individual officer, aren't you?
A. We're talking about my decisions here today which is -- I guess I'm focused on my decisions that I made that night, that day.
Q. Sure. And your decisions could differ from another officer right next to you, couldn't they?
A. Right.
Q. And they could differ from an officer five people down in a line from you, right?
A. Correct.
Q. And so that's what I'm asking you. We're talking about an individual assessment of who's an agitator and who's a protestor. There's no sergeant saying, "He's an agitator, she's a protestor, she's an agitator, he's a protestor." It's your own individual decision, right?
A. Right.
Q. And you have to make it sometimes in a split second, don't you?
A. Correct.
Q. And we can all make mistakes, right?
A. Correct.

Q. Did you see any other officer fire a shotgun at somebody who you weren't sure if they were an agitator or not on May 30th, 2020?
A. No, not at all.
Q. Did you pay attention to any of the protestors that other officers were shooting? I use -- let me back up because I really -- I want to be fair. I used the word "protestors." We've made that distinction so I want to strike that and I want to ask it of you this way.
Did you see any other officer shoot an individual or did you pay attention to any of the individuals that other officers were shooting?
A. Yeah, I did see individuals get impact -- impacted with less-lethal shotguns.
Q. Okay. And why didn't -- why didn't you fire at them as well? If you saw another officer impact an individual and you didn't fire, why didn't you fire?
A. My guess is I didn't see the initial. I was probably pay -- I was paying attention to something else and, you know, peripheral vision I saw someone get impacted but I didn't see the actions leading up to that event so, therefore, you know, I didn't impact that individual.
Q. So you're sort of limiting your decision of who to shoot or impact based on what your own eyes see?
A. Yes.

Q. And your eyes see something different than every other officer's eyes see because that's how human nature works, right?

MR. BARTON: Object to the form.

THE WITNESS: Correct.

Q. (BY MR. DEMIK) Were you there when an individual drove into the crowd? I'm talking about the crowd in front of the main police station, were you there when an individual drove a car through that crowd?

A. At nighttime?

Q. Any time.

A. I mean, yeah, I was -- I was there at the Main for the -- you know, the middle of the afternoon all the way through nighttime so if it happened within that period, then I was there.

Q. Okay. Were you there when an individual drove I think a white car into the crowd?

A. Yeah, I was -- yes, I was -- where? I mean, over the overpass? I mean, I was in that vicinity if I was there.

Q. Can you tell us what happened during that?

A. Honestly, I can't recall -- I don't recall that specific event of the car coming into the crowd.

Q. Do you recall a white car coming into the crowd and officers from the main police station coming down and removing that person from the car?

A. So, I mean, obviously in prep for this I reviewed that video but, you know, prior to reviewing the video I didn't remember that at all.

Q. Did you see it on the video? I'm confused.

A. Yeah, in reviewing for this prep I watched that video but prior to reviewing that video, you know, prepping for this I didn't recall it prior to.

Q. Okay. So when you watched the video, did it refresh your recollection as to what happened on May 30th, 2020?

A. No, not really, no.

Q. Watching the video of -- what video are you talking about? What video specifically did you review?

A. If we're referring to the same thing, I guess a silver car or SUV was stopped in the southbound service road right at 8th Street and, you know, there were protestors in front of it and officers from Main had to come and get the -- that -- that individual from the car out and then the officers drove the car like out of the area. I'm not sure what happened with that whole situation.

Q. Where were you -- where were you when that happened?

A. I believe I was on the overpass at that time.

Q. So do you recall observing that?

A. Yeah. Like I don't recall it -- yeah, prior to, you know, what's described in the video I saw, prior to that I didn't recall and even after the fact I still don't recall it,

you know, personally. My own memory or recollection I don't recall that situation or that incident.

Q. Okay. Well, I mean, I'm not trying to be too lawyeristic but if I don't remember what happened last week, it's perfectly understandable, but if somebody shows me a video of me going down a water slide with my kids, I'd be like, "Okay, I remember that now, right? I saw the video." I didn't remember it prior to seeing the video but once I saw it I'm like I remember where that happened. That happened at Schlitterbahn in New Braunfels, Texas. You can tell I'm fresh off vacation. But I -- I remember that video, right? So when I see the video, it refreshes my recollection and now I remember, yes, I was there, I saw it and, et cetera. So let's apply that to your situation.

You didn't recall this car coming through the crowd before you saw the video. Then you watched the video to prepare for your deposition, right? Did that refresh your recollection of witnessing that event?

A. Yeah. No, like I don't remember that, you know, incident happening. I guess it just wasn't a significant event for me to commit that to memory. There were plenty of things that happened at night where, you know, something would jog it but this one honestly it just didn't jog my memory of anything.

Q. Okay. Well, would you agree with me that a car driving through a crowd of protestors is a pretty significant

event in your line of work?

MR. BARTON: Object to the form.

THE WITNESS: It happened multiple times that night so, I mean -- and from the video I saw I guess when it started it was already stopped so I don't know like actually how it got to that point but, yeah, on like -- it just -- this specific event like it didn't, you know, jog any type of memory of that happening that night.

Q. (BY MR. DEMIK) Okay. Well, let me ask you this way. Are you aware of the protest in Charlottesville, Virginia where an individual ran over a protestor and killed her?

A. Not -- I don't remember -- I don't recall the details or specifics specifically on that.

Q. You don't remember when there were protests -- White Supremacists in Charlottesville, Virginia, there were massive protests there and an individual ran over a group of protestors and he killed a female? Do you recall seeing that on the news or Donald trump making a statement about it?

MR. BARTON: Object to the form.

THE WITNESS: I do not.

Q. (BY MR. DEMIK) Would you agree with me that if a car is driving through a group of protestors who were in the street exercising their First Amendment rights, that could potentially hurt or kill somebody, couldn't it?

A. Yeah, of course.

Q. So on May 30th, 2020, do you dispute that a car drove into this crowd in front of the police station?
A. No, not after I reviewed the video. There's no way for me to dispute it.
Q. And what happened was the group -- a group of officers from the line in front of the police station came into the crowd and removed that woman from the vehicle, correct?
A. Yes, after review of the video, yes, that's what I saw on the video.
Q. And one of the officers got in the car and drove it away?
A. Correct.
Q. Did anybody impact that woman with less-than-lethal shotguns?
A. In the video I didn't see anybody do that.
Q. Where were you when that happened? You were on the overpass?
A. I believe so, yes.
Q. Okay. And you were looking down into the crowd?
A. If I was up there then, yes, I was looking down into the crowd.
Q. And you saw these officers come from the line into the crowd, remove the woman from the car, right?
MR. BARTON: Object to the form.
THE WITNESS: And, again, like only after

reviewing the video like I can give you answers about what happened but my personal memory of that specific event I -- I just -- I can't -- I can't recall -- I don't recall that situation.
Q. (BY MR. DEMIK) Well, I guess -- I guess, again, I'm not trying to state a point but, you know, if somebody else took a video of something I didn't see, that's -- that's not in my personal knowledge. If somebody took a video of something happening in Wimberley, Texas and I wasn't there, so I don't have any recollection of that. You can show me the video and I can say, okay, I guess that happened but I wasn't there, I didn't see it. There's that. And then there's my kid on the water slide in New Braunfels, Texas. I was there, I did see it. I was standing next to the person who took the video. I saw it and now I've seen the video and I recall it and that's what happened. Which one of it is this?
MR. BARTON: Object to the form.
THE WITNESS: So, yeah. If someone were to tell me, "Hey, this happened that night. You were there," I would still say I don't remember that and even after watching the video I can sit here and say like I don't remember that happening. But it doesn't necessarily negate that it did happen because it did happen but I -- my personal memory isn't -- you know, it's just not saved up there.
Q. (BY MR. DEMIK) So you do remember shooting an

individual from the overpass that was an agitator in your view?
A. Yes.
Q. And you recall the details of that?
A. Yes.
Q. You recall seeing the person?
A. Yes.
Q. And what did they do to make you shoot them?
A. They threw an object at the officers at the Main.
Q. What was the object?
A. I think it was lighter fluid. I think it was a bottle.
Q. Okay. What -- what kind of bottle? Glass bottle? Liquor bottle?
A. I believe probably after -- I'm not sure. A water bottle. Plastic water bottle, I believe.
Q. Okay. And you -- you recall vividly seeing that because that was your justification for shooting, right?
A. Yes.
Q. You recall shooting the person one time?
A. Yes.
Q. Right? What did they do when you shot them?
A. They began to fall to the ground.
Q. And then what happened?
A. When I deployed, he was still standing up and then I'm essentially just watching my bean bag like so I'm looking

down the barrel following, you know, my sight -- my line of sight and watching the bean bag fly through the air and, you know, pretty instantaneously he's hit multiple times as he's falling to the ground.
Q. What was he wearing?
A. A white T-shirt.
Q. What did he look like?
A. I couldn't tell you. I know he was a male. I couldn't tell you his, you know, race or necessarily anything like that.
Q. Sure. So you recall those details vividly because you shot an agitator with your shotgun per, you know, policy and procedure and you remember all the details because what you did in your eyes was totally appropriate and justified, right?
A. Uh-huh, yes.
Q. Okay. But you don't remember this car coming through the crowd?
A. No.
Q. You don't recall who was driving?
A. No. I don't think I ever saw the person.
Q. You don't recall if any officers came off the line and took her out of the car?
A. Prior to reviewing the video, no.
Q. Well, after reviewing the video did you recall it or did you still not recall it?

A. No. Yeah, my only knowledge of this event is the video.
Q. Okay. That's fine. But I'm just -- I'm taking you at what you're saying. I watched the video and I still don't recall.
A. Yes.
Q. Okay. So you watched the video of the woman in the car. Still don't recall her being taken out of the car, right?
MR. BARTON: Object to the form.
Q. (BY MR. DEMIK) You -- you don't -- you said you don't recall that, I believe, correct?
A. Yeah, after the fact. I mean, I know on the video. I watched the video I know exactly what happened in the video but before and after there's nothing -- like there's no personal memory other than what I can tell you I saw in the video.
Q. Okay. So after watching the video you still don't have any personal recollection of what you viewed and what you observed with relation to the car?
A. Yes.
Q. Okay. Did you get any intelligence -- so I think you -- you had touched about this before. You understand what the protestors were protesting about. What in -- what in your view or your words were the -- were these protests about? And -- and I understand you're not the protestor, you're not in the

crowd. I totally understand that. I'm asking from your vantage point as a police officer on May 30th, 2020, what were these protests about?
A. The protests were in response to the George -- the George Floyd incident in Minneapolis and then in addition to that we had protestors with the Michael Ramos Brigade so I kind of combine the two.
Q. Okay. Tell me a little bit about that. What's -- what's the difference between the Michael Ramos Brigade and George Floyd protestors?
A. Difference like the message or what do you mean?
Q. Well, what's your understanding of what the difference is?
A. The George Floyd thing was, you know, just a serious application of police practices. That situation all I saw out there was, you know, pretty -- it was -- it was -- you know, it's terrible -- it's terrible police work, right?
As far as Michael Ramos goes, I guess I'll ask I'm still in the midst of that. I don't know --
MR. BARTON: No, just -- you don't have to say anything other than what you recall. Just what your general -- I think the question is if you can clarify in your opinion what is your understanding the difference was between those two events.
THE WITNESS: Oh, I think the whole ideology

behind both protests -- both sides were the same. It's just unjust police practices.
Q. (BY MR. DEMIK) Okay. Is there a difference in your understanding between the level of volatility or tactics or protest techniques between the two?
A. No. And I guess I want to add on to those two brigades -- to those two groups that we also had intelligence that ANTIFA protestors were also in the midst.
Q. Okay. Okay. Is it true that the Mike Ramos Brigade is a group that has a reputation for being more violent in your view?
A. Honestly, if -- that was the first time -- I'm trying to get the sequence of events. I think Mike Ramos was '20 -- was it -- I think it was just -- I think it was a couple months before so that was the first time they kind of -- to my knowledge kind of mobilized. They kind of added their voice to the George, you know, Floyd protests nationwide specifically for Austin. So I had no knowledge of them until those protests started on May 30th.
Q. Okay. Well, did anybody give you any information on the Mike Ramos Brigade having a reputation as being more violent?
A. No.
Q. Were you given any information that anyone from the Mike Ramos Brigade, this Mike Ramos Brigade, was present in

front of the police station on May 30th, 2020?
A. Honestly, I don't recall any differ -- differentiation between Mike Ramos and George Floyd -- George Floyd protestors. We only identify people with the ANTIFA group who notoriously wore all black and face coverings and had the, you know, shield that -- I can't remember -- I can't recall their symbol. Like the hammer and a star symbol, whatever that symbol is.
Q. Did you have any information of the Minneapolis police station being torched prior to May 30th, 2020?
A. I believe that was -- I believe that was circulating around. I believe I was aware of it or something like that.
Q. Were you aware of it?
A. I believe so. At that time we were all kind of -- like in our down time we would all talk about what's going on across the country, how OCs were doing and obviously Minneapolis was the worst off.
Q. And, you know, having a police station torched is pretty serious, would you agree?
A. Yeah.
Q. And in this situation you had a crowd of people milling around in front of the Austin police station, the main police station, right?
A. Yes.
Q. And -- and were people concerned about that? Given

what had happened in Minneapolis were people concerned about the police station being stormed?
A. Yes.
Q. Okay. And would it be fair to say that that increases your alertness level?
A. Yes.
Q. I mean, this -- this -- these people were -- were protesting and milling around the -- the main police station for the City of Austin, right?
A. Yes.
Q. They weren't milling around, I don't know, a restaurant or a government building in some suburb, it was downtown in front of the police station, right?
A. Yes.
Q. And there's probably a lot of firearms and other deadly weapons in that police station that the police have, right?
A. Yes.
Q. And so if somebody -- something were to happen and people were breached -- people breached the police station, that would be a very serious, serious thing for police officers and for the City of Austin, wouldn't it?
A. Yes.
Q. You -- you mentioned sort of you were kind of aware of the George Floyd protests. I believe that George Floyd was

killed maybe several days before this. Does that sound about right? I think it was in May of 2020.
A. Yeah, I can't recall it. It was roughly around pretty -- roughly around the same time.
Q. And -- and where were you getting your information? Just watching the news? Was it people at the police station? Where did you get most of that information that you just sort of would hear?
A. News and word of mouth.
Q. Okay. What news do you watch?
A. Whatever I see -- whatever I see on my phone nowadays. Obviously the papers in our house but, you know -- you know, Fox and ABC and maybe NBC, those news outlets. Whatever pops up on the phone I'll just take a read into them.
Q. Okay. Well, on my phone New York Times is the first thing that pops up or Apple News. Is it Fox on your phone?
A. I usually scroll through like Fox and NBC just to get a read on -- you know, obviously things are pretty divided out there. It's just to get a read on everybody's perspective on things, not solely just ones news outlet. I'll read multiple outlets on the same subject just to see what's -- kind of piece together as many facts as I can.
Q. And is part of getting your facts you watch Fox News?
MR. BARTON: Object to the form.
THE WITNESS: Sometimes.

Q. (BY MR. DEMIK) Why did you become a police officer?
A. In college I was majoring in criminal justice really not knowing what I was going to do but one of the programs offered was a ride-along with one of the local police departments and I really enjoyed it and thought it was something I could do.
Q. Where was that at?
A. Abilene, Texas. I went to Abilene Christian University.
Q. Oh, okay. Well, I mean, it's something you could do. You could also be a lawyer.
A. That's true.
Q. So why did you pick law enforcement?
A. Why did I pick law enforcement?
Q. Yes, sir.
A. That's a tough one. I don't know. I just -- I just like the per -- the perspective of -- or the idea of, you know, going -- literally -- and it sounds, you know, childish but, you know, just going out and just trying to correct the wrong. Just -- just finding bad guys and I've -- I've had success in doing so so far in my career. I still enjoy it.
Q. When you say hunting bad guys, what does that image look like to you in your head?
A. So, you know, patrol in Austin Police Department there's a lot of freedom to just move patrol, right? You

handle the calls for service but when there's nothing going on you can do what you want and be as proactive or not proactive as you want. So I -- I enjoy being proactive and, you know, finding people with warrants. You know, I read a lot of reports, see what people did and just kind of pick and choose who I want to look for for the day kind of a thing. You know, like I said, I've had success in doing so.
Q. So in your free time you search the warrants -- the wants and warrants, and then, you know, that's something you enjoy about your job is going to find somebody, for example, who gets paroled, they've got a warrant out, they've got a failure to appear, an FTA or something, and so they have like an APB out on them and so you take those and you try and find those individuals?
A. Yes.
Q. Okay. And you said you've had some success doing that. What does that -- what does that mean? What does "success" mean?
A. Just the amount of people and type of -- the type of awards that -- you know, that type of work can kind of -- can kind of get you noticed and kind of get you connected to certain people so, you know, it would be like commendations or, you know, like a thanks from detectives or robbery or homicide detectives helping them out with their cases on my free time. You know, collect information, finding people, helping with

search warrants, all that type of stuff. And then, you know, working with the Violent Crimes Task Force, you know, whether it be overtime or something like that just gaining that experience and helping them out with, you know, search warrants and applications and all that kind of stuff.

Q. Do you -- do you have aspirations to perhaps being a detective or what is -- what does your future career look like in your eyes?

A. In the immediate future I hope that I can get with the Violent -- I can be assigned to the Violent Crimes Task Force and primarily assist with investigations with detectives for robberies, sex crimes and aggravated assault units. Like I said, helping with apprehending and search warrants and giving search warrants and investigations and building some cases with hopes to being a detective maybe in one of those fields.

Q. Sure. Were you -- moving back -- switching gears, moving back to May 30th, 2020, were -- were you aware that anyone in the crowd was deaf?

A. No.

Q. Did anybody ever bring that up, like there could be some deaf people in the crowd?

A. No.

Q. Did anybody take any measures if there were deaf people in the crowd?

A. Not that I can recall.

Q. And by "measures," I mean, you know, "There could be someone deaf in the crowd. Do we have, you know, means of -- of communicating with them and sort of accounting that they might be in the crowd?"

A. Not that I can recall.

Q. Did -- did the -- but are you aware now that there were deaf people in the crowd?

A. Yes, I'm aware now, yes.

Q. Did that have -- was any calibration made for the possibility of deaf people being in the crowd, any calibration?

MR. BARTON: Object to the form.

THE WITNESS: Not that I'm aware of.

Q. (BY MR. DEMIK) Okay. And by "calibration" I mean did anybody bring it to your attention?

A. No.

Q. Did anybody voice that in your -- in your presence that there might be deaf people?

A. No.

Q. Did anybody have any discussion what to do if there were deaf people in the crowd?

A. No.

Q. Did anybody have a discussion about finding out whether there were deaf people in the crowd?

A. No.

Q. Okay. I think that's all I have, Officer. I

appreciate your time but I just ask a throw-away question and maybe it's -- well, no, no. Actually, no, no, on the laptop over here -- sorry. I'm reading your report. Do you have that in front of you? And I don't need to mark it as an exhibit. I mean, I'm going to ask you about it but I want -- you said you have it there?

A. Yes.

MR. BARTON: Do you have a Bates number?

MR. DEMIK: It is -- yes, I do. Give me one second. It is 1932. I mean, we can make it an exhibit if you want to, Monte. I don't --

MR. BARTON: If you can just reference the Bates number I think that's good enough for us but -- that's fine with me. Just we can locate it. It's COA 1932 as I understand it?

MR. DEMIK: Yes, sir.

Q. Do you have that in front of you?

A. Yes.

Q. Okay. So it says, "On May 30th I was assigned to the downtown area 8th and IH-35 during the protest/demonstrations." Right?

A. Yes.

Q. BWC is reference to body-worn camera, I imagine?

A. The BWC, yes.

Q. What is level 2R, 2Rs and level 3?

A. Sorry?

Q. What is level 2R 2Rs/level 3? It's the second line there in the narrative text.

A. So those are -- and I can't -- at the time we had categories for use of force and depending on, you know, what type of use of force you used it falls into a separate category. So in this specific situation level 3 just kind of open hand weapons tactics force that we use on individuals I think. Later on I'll notate that I pushed some individual on the highway. So that resulted in a level 3 use of force, therefore. Like you have to document one way. The deployment of less-lethal shotguns falls into a level 2, level of response to resistance reporting.

Q. Okay. And so you're asked to do these reports to document what happened as a police officer, right?

A. Yes.

Q. And you receive training in how to write these reports as part of your job as a police officer, right?

A. Yes.

Q. And trained to be accurate, right?

A. Yes.

Q. Thorough, right?

A. Yes.

Q. Detailed?

A. Yes.

Q. Have you ever -- have you ever been cross-examined in court?
A. Yes.
Q. Okay. So I was a defense attorney a long time ago so this probably seems familiar what I'm asking you and I'm sure you've answered it a million times but I just need to get it into the record that you received training on how to write these reports; they need to be thorough and accurate and detailed and -- is all that correct?
A. Yes.
Q. And then if you forget a detail, you can go back and you can do an addenda, right?
A. Yes.
Q. So you can go back and you can add information if it's important, necessary or to make the report complete, right?
A. Yes.
Q. All right. And this is your report and you wrote this narrative?
A. Yes.
Q. All right. You wrote, "Throughout my shift I was -- I was used my less-lethal shotgun to prevent subjects from throwing stones, rocks, fireworks, starting fires and making Molotov cocktails..." That's what you wrote, right?
A. Yes.

Q. "... and directing all of the aforementioned objects at myself and other officers." That's what you wrote in your report, right?
A. Yes.
Q. And you -- you drafted this report the next day, on May 31st, 2020, right?
A. At looks like 3:00 in the morning, yes.
Q. Why were you writing a report at 3:00 -- oh, is that when you got off shift?
A. Yes.
Q. So you were at the protest all the way through and then you went back to where? Your -- your patrol -- where did you go?
A. Most likely we went back to E sub. E substation.
Q. E substation?
A. Yes.
Q. And so you're -- you're writing this report immediately after the event after your shift, right?
A. Yes.
Q. And it's -- the events are fresh on your memory because they just happened and you're writing this report just after the events happened before you even have a break from work, right?
A. Relatively after everything happened, yes.
Q. So this report was written approximately seven hours

after you fired your shotgun from the overpass, right?
A. Yes.
Q. And you didn't write any addendums -- addenda to this report, did you?
A. Does "addendum" mean additional like supplement or --
Q. Yeah, supplement, addenda, addition, whatever you're trained to call it.
A. Yes, I did.
Q. What -- what was that? Is that the follow-up report where you listed the individuals who you impacted?
A. The more detailed one.
Q. Okay. Did you write another narrative text correcting this one?
A. Did I write -- I'm sorry, say that again?
Q. Sure. Narrative text so I want to differentiate. So you have the other report where you just sort of have a list of deployments from your less-lethal shotgun, right? That's the other report, right?
A. Yes.
Q. Okay. In this report it has a narrative text, right?
A. Yes.
Q. The other one, does it -- it doesn't have a narrative text. It just has the list of deployments, right?
A. Yeah. This is actually -- so, yeah, it's a little bit more de -- this is definitely more detailed, the

supplement. The -- the directive given by supervisors -- I guess I'll rewind back.

Typically how this report-writing process goes is when you have a use of force you have to document in these documents who you used it against and a details page about what type of force you used and all that kind of stuff. But the direction given by my supervisors was, "Just write something up real quick. You don't have to do the details page. Just say a very, very brief -- write a brief supplement about what you did and why you did it. Don't worry about how many people. Just -- just put it on paper." That was the directive at the time.

Q. So did your supervisors direct you not to be detailed in your report?
A. They directed us to just write something real quick and then obviously a month later we were told to review body cams and, you know, start adding a little bit more descriptions.
Q. Sure. And -- and when you reviewed the body cams and you could add more description, that's when you can write a supplement or an addendum to your police report or your narrative, correct?
A. Yes.
Q. And you didn't do that here, did you?
A. On this night? No, I did not do it that night.

Q. Well, on this narrative text you didn't add or supplement to this text? And what I'm talking about -- I think I know where we're -- we're crossing wires here. I'm talking about a narrative text. I'm not talking about just the list, I'm talking about a narrative text.
A. What's this called, the exhibits?
MR. BARTON: Oh, he's asking what the number is on the documents and it's called a Bates number. You can just call it -- read the -- read the numbers.
THE WITNESS: So are you asking me if I wrote anything in addition to No. 1932?
Q. (BY MR. DEMIK) Any -- any additional narrative text.
A. So if I added anything to 1932?
Q. Yes.
A. Okay. The only thing that was added a month later was No. 2328.
Q. Okay. Besides that you didn't write an addendum or supplement to this one in front of us?
A. No, these are the only two documents I wrote.
Q. All right. Let me sort of get back to this with you, okay? The final line of your narrative text says, "The above is the best recollections of events of the day." Right?
A. Yes.
Q. It says "the best recollections." That's your words, right?

A. Yes. Without --
Q. It doesn't say -- it doesn't say pretty good recollections, does it?
A. No.
MR. BARTON: Object to the form.
THE WITNESS: No.
Q. (BY MR. DEMIK) It doesn't -- it doesn't say fairly good recollection, does it?
MR. BARTON: Object to the form.
THE WITNESS: No.
Q. (BY MR. DEMIK) It says the best recollections, right?
A. Yes.
Q. Going back to the I guess second paragraph, your report says, "Throughout my shift I would use my less-lethal shotgun to prevent subjects from throwing stones, rocks, fireworks, starting fires and making Molotov cocktails."
Those are the five things that you listed in your report on May 31st, right?
A. Yes.
Q. There's no water bottles in there, correct?
A. Correct.
Q. It says, "I used my less-lethal shotgun against six to seven different subjects throughout deployment during the protest."

A. Yes.
Q. Right? That was your best recollection on May 31st, right?
A. Yes.
Q. And today earlier you said that you think you impacted three or four individuals, right?
A. Yes.
Q. Three to four individuals is different than six to seven different subjects or individuals, right?
A. Yes.
Q. So it's fair to say that when we were talking earlier, you had forgotten about three to five people that you had shot, right?
MR. BARTON: Object to the form.
THE WITNESS: This initial narrative was just written without looking at any body cam footage but that second narrative was written after reviewing every minute of my body cam footage from that day.
Q. (BY MR. DEMIK) I understand that. That wasn't my question though.
A. Yeah.
Q. My question -- earlier you said you said you thought three or four individuals, right? I think you actually said four. Right?
A. Yes.

Q. Your report says that you shot six to seven different people, right?
A. Yes.
Q. That's the difference. Six or seven is more than four, right?
MR. BARTON: Object to the form.
THE WITNESS: Yes.
Q. (BY MR. DEMIK) So there's individuals that you forgot that you shot on May 30th. Fair to say?
MR. BARTON: Object to the form.
THE WITNESS: No, not after reviewing my body cam and watching every minute of the protest. The second one is definitely the most detailed.
Q. (BY MR. DEMIK) Okay. Well, let's unpack that a little bit.
A. Uh-huh.
Q. Do you recall speaking to me maybe an hour ago and you stated that you had impacted four individuals? Is that true or false?
A. Yes.
Q. All right, that's four. Your report says six to seven, right?
A. Yes.
Q. Okay. That means that there's two to three individuals that you had forgotten about between the time you

wrote this report to the time you talked to me an hour ago in this deposition, right?

MR. BARTON: Object to form. That's -- I know, Stephen, you're probably aren't trying to be argumentative but the effect is that you are being. He's already answered that and referenced the subsequent report so now I think you're trying to put too much emphasis on one report when, actually, the documents do speak for themselves and he has testified about that.

MR. DEMIK: I understand, Monte, but if your objection is form, it's noted for the record. I'm not being argumentative. I'm trying to get my question answered.

Q. You -- Officer Harkless, you said before that you didn't -- you don't think you forgot that you shot anybody. That was your answer, right? And I'm not being argumentative, I just -- want to get the facts. That's a fact that that was your answer, right?

A. Yes.

Q. So I'm just asking you how that is? If your report says you shot six to seven people and earlier in this deposition today on July 14th, 2023, you said you shot four people, how did you remember six to seven when you told me you shot four?

MR. BARTON: Object to the form.

THE WITNESS: So, yeah, the report -- the

initial report written after that, I guess, 10-hour, 12-hour day was -- you know, after reviewing the body cam from the entirety the correct number was listed as on that second report. So why was there a mistake? Because, like I said earlier, humans make mistakes.

Q. (BY MR. DEMIK) So that -- and that's fine, Officer. I'm really not -- we all do make mistakes. I'm really not -- you've got a tough job. I'm really not being argumentative. But what I'm saying is that when you wrote this report at least on May 31st at 3:04 a.m. -- that's when you wrote this report -- when the events were freshest in your mind, to your memory at that time, on May 31st, 2020, at the end of your shift, your best recollection was you shot six to seven individuals, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes. At the time, yes.

Q. (BY MR. DEMIK) Okay. All right. Subsequent to that, right now July 14th as we've had this discussion, right, the discrepancy between your report and what you -- what you've testified to earlier, how many individuals did you shoot on May 30th, 2020?

A. So, yeah, relying on that supplement on 2328 after I notated that I watched the entire of my body cam, four people because we often -- you know, law enforcement in dynamic situations we have to rely on body cam because the video, you know, it doesn't -- it doesn't lie. It can't lie. So relying

on my body cam in that 2328 document, four people were impacted by myself on that day.

Q. (BY MR. DEMIK) Well, I mean, again, I'm not being argumentative but body cam doesn't lie but body cams can be turned on and off, right?

A. Correct.

Q. Body cams can record only parts of the day, right?

A. Yes.

Q. Body cams can record only parts of an incident, right?

A. Yes.

Q. Or parts of a shift, right?

A. Yes.

Q. And so this narrative text that we've been looking at is your narrative text in your police report from that day based on your recollection, right?

A. Yes.

Q. Based on your recollection at 3:04 a.m. on May 31st, 2020?

A. Yes.

Q. And so we do rely on body cam footage, of course, but we also rely on police reports in cases, right? Criminal cases or civil cases we rely on police reports, don't we?

A. Yes.

Q. Judges rely on them?

MR. BARTON: Objection to form.

Q. (BY MR. DEMIK) Is that right, judges rely on police reports?

A. Yes, I assume so.

Q. Prosecutors -- prosecutors rely on police reports, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes.

Q. (BY MR. DEMIK) Lawyers rely on police reports, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes.

Q. (BY MR. DEMIK) Okay. This -- this next part of your report states, "I also had to push an unknown subject level 3 back off the proper of the northbound proper of 35 in order to clear the roadway. The subject was non-compliant and refused to back off the highway when initially asked. The subject was able to stand back up and walk off the highway." Right?

A. Yes.

Q. And you've documented that because that was the use of force level 3, right?

A. Yes.

Q. Okay. And the reason why you -- you put it in that narrative is that you first gave the subject whoever this individual was -- what -- what did they look like? What were

they wearing and who were they?
A. I don't -- I don't recall. I haven't watch that video in three years.
Q. Okay. So your -- your recollection is better in your police report than it is now of who that was and what happened, right?
MR. BARTON: Object to the form.
THE WITNESS: Say that one more time?
Q. (BY MR. DEMIK) Sure. Your recollection in your police report where you talk about this individual that you backed off the proper -- northbound proper 35, your memory was better when you wrote that than it is now of what happened there, right?
A. Yes.
Q. All right. And the reason why you wrote that they were non-compliant was because I assume that's on the use of force continuum. You're aware of what that is, right?
A. Yes.
Q. And on the use of force continuum way over here at the beginning is giving an individual a verbal command, right?
A. Yes.
Q. So you give them a verbal command to exit the roadway for -- as an example here -- and "non-compliant" means you instructed them and they didn't do it, right?
A. Yes.

Q. And then on the use of force continuum you can get louder like, you know, when you -- when you issue those instructions that's moving along the force continuum, correct?
A. Yes.
Q. And you can use a taser if you need to if they're within range, right?
A. Whenever -- whatever -- whatever "reasonable" means, yes.
Q. You can use a baton before that, right?
A. Yes.
Q. Before that you can use your hands to physically push somebody if -- if you want to get -- if your objective and your direction is to get them off the roadway, right?
MR. BARTON: Object to the form.
THE WITNESS: Yes.
Q. (BY MR. DEMIK) Okay. And here this -- this -- this paragraph essentially says -- and I'm going to put it in my words and you correct me where I'm wrong -- you instructed this individual off the roadway to clear the roadway, they didn't do it and then you put hands on them I think you said, right? Or -- or I think you remembered earlier but you -- you physically touched them and then they complied and they got off the roadway. Is that right?
A. For the most part I believe so.
Q. Okay. Now, before you shot your shotgun from the

overpass the one time and the one individual that you shot, you did not issue a verbal command to that individual, correct?
A. No.
Q. That's all I have, Officer. If there's anything else that you think is important that you would like to say, I do this. It's just -- I'm not -- you know, if there's something you think I missed or there's something that you think is important to this case or this area of inquiry, I want to give you an opportunity to say it, too. I mean, Monte can ask you questions if you want to do it that way but this is just normally what I do.
Is there anything that you think is important to note for this case that I either forgot to ask you or you've got a burning desire to say?
A. Not that -- not that I can think of.
Q. Well, I thank you for your time, Officer. I know you really do have a tough job and I thank you for taking your time to do this and answer these questions. I wish you good luck and -- and have a good day.
We can go off the record, Monte, unless you want to ask questions?
MR. BARTON: Well, I want to make a comment to the record. We've discussed these two documents, COA 19342 and COA 2328, which I believe actually continues over to page COA 2329 and so I just want to be clear not necessarily causing

these to be exhibits but I want this whole segment in the deposition transcript to be clear that those were the documents that were referenced by Officer Harkless.
MR. DEMIK: That's absolutely fine. I -- I agree. You know, if you want to make them an exhibit, I will. I really -- as you can tell, I didn't share screen or go into them that way so that's why I didn't make them an exhibit. I have no problem clarifying for the record Bates 1932, Bates 2328 to 2329 were what we were discussing. If you want to put them in the record, I'm fine with that, Monte, but otherwise I think that clarification for the record will cover us.
MR. BARTON: I agree with you. I think that's clear enough and then I have no questions of the witness.
MR. DEMIK: Okay. Well, thank you very much, everyone. I appreciate your time and thanks for working with my technological difficulty. It's much appreciated. Thank you, Officer.
MR. BARTON: I will just say for the court reporter, we do want to read and sign.
THE REPORTER: Thank you.
VIDEO OPERATOR: That concludes our deposition. The time is 1:08 p.m. We're off the video record.
(Deposition concluded at 1:08 p.m.)

CHANGES AND SIGNATURE

WITNESS NAME: OFFICER DARRELL CANTU-HARKLESS DATE: 7/14/23

PAGE/LINE CHANGE REASON

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I, OFFICER DARRELL CANTU-HARKLESS, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

OFFICER DARRELL CANTU-HARKLESS

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared OFFICER DARRELL CANTU-HARKLESS, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR

THE STATE OF _____

COMMISSION EXPIRES: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,)
)
Plaintiff,)
)
V.) CIVIL ACTION
)
CITY OF AUSTIN AND) Case No. 1:21-cv-249-RP
JOHN DOES,) Lead Case
)
Defendants.)
)
MODESTO RODRIGUEZ,)
)
Plaintiff,)
)
V.)
)
CITY OF AUSTIN AND)
JOHN DOES,)
)
Defendants.)

REPORTER'S CERTIFICATION
DEPOSITION OF OFFICER DARRELL CANTU-HARKLESS
JULY 14, 2023

I, Wendy S. Schreiber, Certified Shorthand Reporter No. 9383 in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER DARRELL CANTU-HARKLESS, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on

to the witness or to the attorney for the witness for examination, signature and returned to me by ;

That the amount of time used by each party at the deposition is as follows:

STEPHEN DEMIK, ESQ. - 03 HOURS:043 MINUTE(S)

MONTE L. 'MONTE' BARTON, JR. - 00 HOURS:00 MINUTE(S)

That pursuant to information given to the Deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

FOR THE PLAINTIFFS:

STEPHEN DEMIK, ESQ. (Attending Remotely)
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I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of

the action.

Further certification requirements pursuant to the Federal Rules of Procedure will be certified to after they have occurred.

Certified to by me this 18th day of July, 2023.

_____

Wendy Schreiber, Texas CSR 9383
Expiration Date: 05/30/24
MAGNA LEGAL SERVICES
Magna Registration No. 631
16414 San Pedro, Suite 900
San Antonio, Texas 78232

Job No. 999689 Phone: (866) 672-7880

FURTHER CERTIFICATION UNDER FEDERAL RULE 30(e)(1)

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to STEPHEN DEMIK, ESQ., Custodial Attorney;

That $_____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Federal Rule 30(e)(1), and that a copy of this certificate was

served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____, 2023.

_____

Wendy Schreiber, Texas CSR 9383
Expiration Date: 05/30/24
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San Antonio, Texas 78232

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Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Tyree Talley,	)	
Plaintiff	)	
	)	
v.	)	Case No. 1:21-cv-249-RP
	)	Lead Case
City of Austin and	)	
John Does	)	
Defendants.	)	

ZOOM VIDEOTAPED DEPOSITION

JOSEPH HETHERSHAW

VOLUME 1

JULY 17, 2023

ZOOM DEPOSITION OF JOSEPH HETHERSHAW, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on July 17, 2023, from 9:34 a.m. to 11:34 a.m., before Priscilla Glover, CSR in and for the State of Texas, reported by machine shorthand at my residence in Grand Prairie, Texas 75054, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

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Also Present: Videographer, Nate Laningham

I N D E X

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JOSEPH HETHERSHAW

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P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record. This begins media file number one in the deposition of Joseph -- Joseph Hethershaw in the matter of Tyree Talley et al. versus City of Austin et al. In the United States District Court for the Western District of Texas Austin Division, Case Number 1:21-cv-249-RP. Today is Monday, July 13th, 2023 and the time is 9:23 a.m. This deposition is being taken remotely at the request of Hendler Flores Law, PLLC. The videographer is Nate Laningham with Magna Legal Services and the court reporter is Priscilla Glover. Will counsel please state their appearances and whom they represent?

MR. DEMIK: Stephen Demik on behalf of plaintiffs along with my paralegal Alexis Lopez present.

MR. LAIRD: Gray Laird for the City of Austin along with Priscilla Chavez.

COURT REPORTER: Also --

VIDEOGRAPHER: Whenever you're ready, ma'am.

COURT REPORTER: Okay. Just to correct

the record, today's date is July 17th, FYI. It's okay. He's probably --

JOSEPH HETHERSHAW,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. DEMIK:

MR. DEMIK: Great. Good morning, Officer Hethershaw. I apologize again for my tardiness. Where are you located right now? In Austin, I assume?

A. Yes, sir. I'm currently located at City Hall.

Q. Okay. And you can hear me okay? If there's any problem just raise your hand or anybody else, if you can't hear me. I was having a little bit of technical difficulties on Friday.

A. Yes, sir.

Q. Thank you. Officer Hethershaw, you understand that today's deposition that we're taking that could be presented in lieu of live testimony to a judge or jury. Do you understand that?

A. Yes, sir. I do.

Q. Okay. And so it's important that you give your answers under oath the same as you would any other proceeding.

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MR. DEMIK: Actually, Madam Court Reporter, have we sworn the witness? Do we need to do that?
COURT REPORTER: I just -- I did swear him in.
MR. DEMIK: Oh, you did okay. All right. Thank you. I was just looking at my notes.
Q. (By Mr. Demik) So you understand you've been sworn in as a witness, testifying under oath. So it's the same as if you would be testifying to a judge or a jury in the court room during a trial?
A. Yes.
Q. Okay. If you don't understand any of my questions, I'll just ask you to let me know that. Otherwise, I'm just going to sort of presume that you understand, you can hear me okay, you understand the question. If you answer it and, of course, if your lawyer objects that's perfectly fine. You can pause for a minute and then you can answer the question if there's an objection. Do you understand all that?
A. Yes, sir. I do.
Q. Okay. Have you given a deposition before?
A. No, sir. I have not.
Q. Okay. All right. If you have any

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questions you can let, you know, your attorney or me know as well but it should be pretty straight forward. Any questions for me Officer Hethershaw, before we get started?
A. No, sir.
Q. Okay. How -- let me ask you what you did to prepare for today's deposition? What did you review and who did you speak with?
A. Oh, I reviewed my body worn camera, my supplements and I spoke with Ms. Chavez and Mr. Gray.
Q. Okay. And when you say supplements, how many -- did you write a narrative text report and then some supplements? How did that go?
A. I wrote two supplements. I did not write the initial report. I wrote one the day -- day -- a couple of days after and I think I wrote one after reviewing the body camera.
Q. Okay. When you say -- do you -- did some -- another officer write the narrative text and then you added the supplements?
A. So normally with reports someone will write a initial report, kind of an overview of what occurred. And then I write a supplement pertaining to what I did.

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Q. Okay. Do you know who wrote the overview report here?
A. I wrote my supplements.
Q. Okay. But do you know who wrote the report that the supplements went to?
A. I do not know who wrote the initial report. No, sir.
Q. So body worn camera, supplements, you spoke to your attorney and Ms. Chavez. Anything else that -- that you reviewed in preparing for today's deposition?
A. No, sir.
Q. Okay. How long have you been with the police department?
A. Three and a half years now, sir.
Q. Okay. And can you walk me through that basically just sort of how you got started, academy, where you were stationed, all that?
A. Sure. I started the academy mid 2019, graduated January 31st of 2020. I worked South Central Eastern Patrol. I worked the Riverside or what's better known as the Henry District for the Austin Police Department. I have several certifications including -- I'm a part of the street response team, I'm an intoxilyzer operator, I'm a

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mental health officer and that's all I can think of off the top of my head.
Q. Okay. I didn't -- I didn't just catch -- I didn't catch that second one. Street response team --
A. Special response team.
Q. I'm sorry?
A. The special response team.
Q. Special response team. And what was the second one?
A. Intoxilyzer operator.
Q. Okay. That's like a breathalyzer?
A. Correct. Yes, sir.
Q. Okay. And what was the other one?
A. Mental health officer.
Q. Mental health officer?
A. Correct.
Q. Okay. And what does that entail?
A. The mental health officer?
Q. Yes, sir.
A. We do evaluations for people who ask us. We receive a extra 40-hour class regarding mental health and we respond to mental health calls when people ask for -- especially a trained mental health officer to kinda determine if people need -- what

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kind of help they need and if we need to intervene in any way.
Q. Okay. Before you went to the academy in mid 2019 what was -- what's your educational background?
A. I -- high school -- high school graduate and then I worked at Williamson County Jail for approximately a year and a half -- I believe year and a half, two years.
Q. Okay. So after high school you went and worked for the jail?
A. I worked for Lifetime Fitness as janitor for a short time and then I worked at Williamson County and then I worked for Austin Police.
Q. Okay. And at Williamson County what was your position?
A. Correctional Officer.
Q. Okay. And what facility were you -- did you work at one facility or multiple facilities?
A. I worked at -- so for Williamson County it would be the -- just the jail. There's only one.
Q. Okay. And you worked as a Correctional Officer there from when to when?
A. I believe until mid 2019 to when I transferred to the academy and then I believe I

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started in 2017. I don't accurately recall that off the top of my head. It could have been --
Q. That's fine.
A. -- 2017.
Q. That's fine. And -- and -- you know, I might ask you to -- if -- if your memory is not perfect or you don't have an exact answer it's totally fine. I might ask you to sort of bracket it, if that makes sense, you know. After this year, before that year, whatever but I understand, you know, and you don't have to be exact like August 17th, you know, 2017 or whatever. Why did you become a police officer?
A. I wanted to help people and certain -- certain events that occurred. When I was a kid -- had a big impact on me watching Columbine and other stuff like that definitely had an impact. And I wanted to help people and I wanted to be one of the first people on scene to try to help people and intervene in any problems that they had.
Q. What was it about the Columbine incident that inspired you to become a police officer?
A. Well, it was -- it was really rough seeing everybody kind of sit on the outside and no one kinda going in to deal with it and there was a

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policy change after that. And that was definitely something that struck -- struck something in me to where I didn't -- that I didn't want to be the one waiting outside. I wanted to be the one in there to kinda assist in the issue.
Q. Sure. Okay. So when you went to the academy in 2019 you graduated on you said January 1st 2020?
A. January 31st. Yes, sir.
Q. 31st. Okay. Sorry. And then what was your first position? Were you first stationed with the Henry group or -- or where was your first position?
A. So I went to -- like I said, I'm a mental health officer so the first week out of the academy we went to a mental health class to become mental health officers. And then after that time I went to the Henry evening shifts and I worked Henry evenings my entire career. I've never worked anything else.
Q. What is the regular evening shift generally?
A. So it -- the hours have changed over the years but it's anywhere between 1:00 p.m. and we get off normally around 2:00 a.m. Or we normally work ten-hour shifts but we start anywhere between 1:00

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and 4:00 and get off normally before 2:00.
Q. Okay. So at this time if you recall, May 30th of 2020, I believe it was a Saturday, what hours were you working?
A. So if I recall correctly, it was my day off and I was called in. So I was working until they basically told me to go home.
Q. Okay. What was the last shift you worked before your day off that you were called in?
A. I worked Fri -- that -- the Friday before. So I worked Friday patrol and I was responding to calls until I got off of work. But we were held over due to the events that were unfolding.
Q. On Friday?
A. Correct.
Q. Okay. So kind of walk me through that a little bit for -- for somebody who doesn't, you know, know the hours. Does that mean you started at about mid afternoon, 1:00 to 4:00 p.m. on Friday? You worked til after midnight and you were held over on Friday?
A. Correct.
Q. Okay. And what time did you get off? I guess that would be Saturday morning. What time did you get off?

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A. I cannot recall.
Q. Okay. Would it have been like --
A. Later.
Q. -- 8:00 a.m.?
A. I honestly can't -- I -- I don't have a good memory of when I got off that morning.
Q. Okay. Do you recall how many hours you were held over on Friday evening?
A. No. I know that it was past my normal shift time but I can't give you an accurate answer to how many hours.
Q. Okay. And when you were held over on Friday where were you stationed?
A. Henry. We were taking patrol calls in evenings. Calls -- calls were service 911 phones or anything like that.
Q. Okay. So you weren't stationed for protests on Friday, you were patrol officer held over. And why is that? Because they needed officers for the protests and so you were held over to do the patrols?
A. Yes, sir. To my knowledge, they needed extra bodies in Henry -- or extra -- I say bodies, extra officers to assist with the 911 phone calls because a lot of officers were getting sent to

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downtown.
Q. Okay. But you weren't downtown?
A. No, sir.
Q. Okay. So if you graduated the academy May 31st, 2020 and this was May 30th, 2020, you had been a police officer for approximately three months -- three, four months?
A. January 31st. And yes, it was approximately three to four months. I believe that's accurate. Yes, sir.
Q. Okay. And -- and are you still with the police force now, I assume?
A. Yes, sir.
Q. And stationed in the same position or have you moved since then?
A. No, sir. Same shift, everything.
Q. So let's walk through the Saturday, okay? So Friday you had your shift, you were held over. I assume you went home, went to sleep. And then how does it work that you get the call on your day off to come in?
A. So from my recollection, we got paged in via our Spoke app, which is just a -- basically like a page that we were to come in. We all met at the east substation and then we were all loaded up into

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patrol cars and taken down to I-35 off of H Street. I don't recall what time we were called in. However, I don't remember that.
Q. Okay. And do you know a Officer Cantu Harkless?
A. Yes, sir. I do. He works in the same sector as I do but on opposite days.
Q. Oh, okay. That's what I thought because we spoke to him on Friday. Do you recall seeing him or Saturday or were you guys in separate deployments, I guess?
A. The short answer is I don't know.
Q. Okay.
A. I call recall if I saw him that day or not.
Q. Okay. Fair enough. So you get the page, you come into the east substation and then what happens at the east substation?
A. To my best recollection, a -- I believe a supervisor of some sort in some capacity, I don't remember, I recall who; paired us up in four and we got into a patrol car and we went straight from the east substation to the 35 bridge.
Q. Okay. About what time was it?
A. I can't -- I know it was -- it was

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daylight. I believe it was the afternoon but I -- I can't accurately recall. Like give you -- give you a time. I don't -- I don't know. I believe it was in the afternoon cause I had woken up and it was definitely not the morning.
Q. Fair enough. How much sleep did you get? Do you recall? A lot? A little? None?
A. I don't recall. I believe a --
Q. What was --
A. -- fair amount.
Q. Yeah. I mean, it was less than 12 hours, right?
A. I can't say that accurately. I mean, I don't -- I don't know when I was called in and I don't remember when I went to sleep.
Q. Okay. So you're put in a patrol car, four of you, you get to the -- to the interstate. Tell me what happens then.
A. We're paired up with a supervisor when we went down to 35 and we were given a directive to provide overwatch for both the protesters and the officers who were on the main steps of 35 or out of the main sub -- the main headquarters.
Q. Okay. Were you asked to clear the interstate or did that already happen?

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A. That had already happened by that point, I believe. Because there were no protesters on the bridge at that point, it was just officers when I arrived.
Q. So when you arrived you and the other three individuals in the patrol car were ordered to go to overpass and provide cover for the people for the police officers below?
A. For both police officers and protesters, correct.
Q. Okay. And -- and who gave that order?
A. I cannot accurately recall a name. It's been -- been three years since the incident so I -- I honestly don't know.
Q. Sure. But was it a super -- but do you all getting the order? I mean --
A. Yes.
Q. You didn't go -- you didn't go there of your --
A. Correct.
Q. Right. You didn't go there of your own free will, right?
A. Correct. Yes, sir.
Q. So someone that was a superior to you gave an order that you and the other officers would go to

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the overpass and -- right?
A. Yes, sir.
Q. And -- and you sort of purged on the overpass towards -- in towards the station. Is that fair?
A. Yes, sir.
Q. Okay. Let me stop here for a second and switch gears a little bit. Were you issued a less than lethal shotgun?
A. Yes, sir. I was.
Q. Okay. Let's walk through that. When were you first assigned the less than lethal shotgun and pick it up and check it out and all that. Can you walk us through that?
A. Sure. I was at the east substation. I don't -- they were giving at least, I believe, it was like one less lethal a car or at least they were handing them out. I received one and I went down with one to the 35 bridge.
Q. Well, what is that? Again, I don't -- I don't know. And so maybe talk to me like I'm a kindergartner. But what is a card? What is that? They hand out -- yeah. Explain that to me.
A. I mean -- I meant a car. Like they --
Q. A car. Oh, a car.

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A. Right. They were just giving them to a group of people so that way a group would have them.
Q. Okay. So they gave one shotgun to each patrol car or did they chose one patrol car and give everybody shotguns?
A. I don't recall how they were specifically handing them out. I know that I received one and we only -- I believe it -- I was the one in the car that had one.
Q. Okay. And who gave it to you?
A. I can't -- I don recall.
Q. Okay. How does that normally work?
A. For a normal patrol shift we go to our police equipment and we check one out using our City issued IDs so that way they make sure who it goes to. On this day I don't remember how they were handed out. I remember I received one. I don't remember who gave it to me. It's been -- it's been a little while since that --
Q. Sure. Sure. But you didn't go in and check it out the way --
A. No, sir.
Q. -- you went on a patrol?
A. Correct.
Q. Somebody handed you it outside the

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substation?
A. I can't say that accurately either. I don't remember where I received it.
Q. Okay. So we can say you -- you remember you didn't check it out but you re --
A. Right.
Q. -- somebody gave it to you. You just don't remember who gave it to you or what the circumstances were?
A. Correct. I know I -- the only issue, I don't know if I was inside the substation, outside the substation. I was in the vicinity of the substation but --
Q. That's fine. It's fine. And you know, all we're looking for is just your best recollection and the truth, that's it. I don't want you to guess at something or make something up. So did -- were you issued a less than lethal shotgun or Friday, the day before?
A. I believe I checked one out.
Q. Okay. And -- and why would you have checked it out on Friday?
A. I -- so for my shift I normally carry a less lethal. I'm the only guy who carries it normally. I just -- I carry one just to have it

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available. So that way in case we run across any incidents where it may be useful that I have it available.

Q. Is there any sort of protocol like on every patrol, one guy needs a less than lethal shotgun or is it just sort of at discretion who wants to check it out? Is there some quota that, you know, you have to have a certain number of shotguns -- less lethal shotguns for each patrol? Tell me about that.

A. I'm not aware of any policies regarding any -- of a quota or anything like that. Anyone who is certified is available to check one out. So if patrol should have eight on the street, they could. If they wanted to have zero on the street, they could. I -- I normally check one out for my shift because I work in a very dangerous area and I want to make sure that I'm prepared.

Q. Sure. Okay. So let's also talk about, you said, certified, right? Are you --

A. Right.

Q. Do you have any certifications or training -- let's just go generally with firearms in general. And I know I'm going to work to the less than lethal shotgun. That's what I want to talk about but you

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know, I figure I'll start out big. Are you certified or trained in firearms in your job?

A. Yes. I'm certified for what the academy and what the department requires.

Q. Okay. And -- and what does that look like for a -- let's say for a service weapon? What does that training and certification look like?

A. We qualify every year. I get a little bit more training cause I'm a part of the special response team. So we train a little bit more frequently sometimes involving firearms. So answer is we train and I qualify year with my firearm.

Q. What is train -- so the qualification is where you -- you shoot and you have accuracy tests, right, like zero to 100?

A. Correct.

Q. What does the training look like?

A. Training, it depends. I can't -- I mean, it can be anything from adjusting your grip to how you're pulling the trigger to what is your sight alignment, other things like that. I mean, training differs. Whether or not it's offered that year and whether or not staffing training is available. So I -- I just -- I don't understand your question maybe.

Q. That's fine. Let's talk about the less

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than lethal shotguns. What is the training and certification that you received and for that prior to May 2020 -- May 20th, 20 -- May 30th, 2020?

A. Sure. During the academy they train you on how to use it and then we qualified with it and that's the extent of the training with it.

Q. Okay. Do you receive training in checking the service ability of the less than lethal shotguns?

A. Yes.

Q. Okay. What does that consist of?

A. Normally just doing a function chest -- function test making sure that the slide is working correctly, making sure that nothing is stuck in the barrel. Making sure the trigger works, making sure the safety works. Things of that nature to make sure that it's functioning properly.

Q. What about the actual rounds? Do you get any training on checking the rounds, seeing what condition they're in, what constitutes a good round versus an expired round?

A. That's more or less a -- I'm going to -- I'm going to say no only because to qualify if you see that there's a crack or if you see that there's a dent. They're like make sure -- they like look at

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it but they don't give us specific training on being like this means this or this means this. They just say look at it, make sure there's no dents, make sure there's no cracks and stuff but I don't -- I'm not specifically trained in the functionality or necessarily the fundamentals of how it works.

Q. What are the bean bag rounds made of?

A. I -- I don't know. I -- I can't speak to the nomenclature of it. I just -- I'm not an -- I'm not an expert in it. I know it has a bean bag in it but --

Q. Okay. So you said you -- and then do you do like an annual certification accuracy test with the less than lethal shotgun?

A. Yes, sir.

Q. Okay. And how many of those have you done prior to May 30th, 2020?

A. One.

Q. And when was that approximately?

A. During the academy.

Q. At the academy. Okay. And why don't you tell us what -- what -- what that certification looks like?

A. Sure. To qualify you stand at three different lines and you fire rounds at a target and

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they make sure that you're hitting accurately and so that's the qualification.
Q. What are those -- what are the distances at those three different lines?
A. I can't accurately recall off the top of my head.
Q. Are you trained that there's a -- that there's a distance that you should use or should not use the shotguns?
A. So the old rounds, I can't testify to, they changed the rounds since then. And so I know the newer rounds I know the engagement -- I know roughly the engagement distance for those but the old rounds that we were using during that time, I can't recall. I've forgotten that since then.
Q. Okay. But we -- we do want to stick with up to May 30th, 2020.
A. Right.
Q. And so you said engagement -- what did you call it? Engagement distance?
A. Just a -- yeah. I don't recall what I said but yeah, just a -- the -- the distance in which you can impact somebody. Yes.
Q. Okay. And -- and what is that distance so the -- as last you know it? I know that you said

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you don't remember the earlier ones but as last you know it, what's that distance?
A. If I were to give you an answer it'd probably be for the new ones because the old ones used during the time of the protest -- and I know you want to stick to the 30th. I just -- I can't accurately recall because I'm more so refreshed on new ones so I don't want to give you an incorrect answer.
Q. Totally fine. Understandable and appreciate it. Well, what is the distance for the new ones?
A. The new one has a zero -- zero engagement so we can -- we can less lethal someone at a 0-foot. I believe the maximum range is approximately 75 feet or 25 yards. No, that may be inaccurate. I actually don't remember that off the top of my head.
Q. So prior to May 30th, 2020 did you receive training on what engagement distances? The distance which you should use the shotguns, the distance which you probably shouldn't use the shotguns?
A. Yes, sir.
Q. Okay. And -- and what was that distance?
A. Like I had -- like I had testified before, I just -- it -- I can't recall off the top of my

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head for that specific round that we were using at that time. I know we have changed since then and it's been -- I -- I can't recall how long it's been since we've even used that round so...
Q. Okay. Well, the general concept, and you correct me if I'm wrong, is that at a closer distance the -- you had more accuracy, right?
A. Correct.
Q. So -- so you had stated at -- at zero feet, right? Right in front of you, you can use this less than lethal shotgun with pretty high accuracy because it's you and I just standing in front of each other, right?
A. Or the new one. Correct. I'm not aware of what the engagement distance were on the old one.
Q. Okay. And I'm not asking you the engagement distance. I understand you don't remember it but just going to the general concept and I am talking about as of May 30th, 2020. The general concept is just what I'm asking you is that the reason why those distances what they mean is that if you're at zero feet, as you had testified, where, you know, that's one distance the accuracy is high, right? Is that fair?
A. It is but the reason it's zero feet is to

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make sure that it -- for other reasons for serious injury and for other stuff like that. For certain distances for close range like zero feet have more to do so, I believe, with injury than anything else.
Q. Okay. Okay. That's -- that's another aspect of it is the closer you are the more it -- injury it could cause?
A. Correct.
Q. Okay. And -- and to be sure these bean bag round can cause serious bodily injury. Would you agree?
A. They are less than lethal, they certainly can cause injury to someone. Correct.
Q. Sure. If you hit them in the wrong body part such as the eye or in some sense -- or areas of the head it could be very serious, right?
A. Yes.
Q. Okay. So there's two things and -- and thank you for bringing it up. There's -- there's accuracy and there's -- let's just call it injury or degree of injury. So the closer you are, the shorter the distance in general the higher the injury and the better the accuracy, right?
And then if I can just sort of make it two questions, and that's alright if you want to

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break them up. The father out you go on the range, right, if you're firing the shotgun from, let's say, a hundred yards -- I know that I'm embellishing but I'm asking you the concept of it, then your accuracy would go down a lot, right?

A. The accuracy at distances can be harder if that is the answer to the question you asked.

Q. Yeah. I mean, I just sort of want -- somebody who doesn't understand firearms or who doesn't understand these shotguns. And certainly, I've never fired one or handled one. But I think I understand it, I'm just asking you if I'm right. That the reason why those distances are trained, right, is that you have the three lines that you fire from for your annual certification, your accuracy test, is because the farther away you get the less -- the less ability you have to pinpoint where you want to hit somebody? Is that fair?

A. Yes. It is harder at distances to impact someone. Yes.

Q. Okay. And even though you don't remember it, which is fine, there are distances that the police department says, you know, if you're within this distance -- and I'm not going to put words in your mouth cause -- so I'm not going to put a number

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on it because, like you said, you don't remember. But if you're within this distance it -- it's -- it's to okay to fire, right? You're -- you're within the recommended distance.

If you're outside that distance, if you're farther away what -- what is the policy and procedure? Is it that you can fire or that you can still fire but you just need to be aware of that distance? Does -- does -- does my question make sense?

A. It does. It's more of the second one that you represented. You have to take these things into consideration -- special considerations that you have to do. So if you're at a sizable distance you have to make sure that your shot -- you take more careful and more time to accurately engage the shot.

Q. Okay. So the reason why they even have a distance or a distance of engagement or whatever it is, is because in this range you -- you should feel more confident to shoot. Outside of this range you should probably exercise more caution. Is that fair?

A. Yes, sir.

Q. Okay. How many -- have you ever discharged your service weapon? I'm not talking

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about the shot guns now, I'm talking about your service weapon or -- or a -- a long rifle. How many times have you discharged that in the line of duty?

A. Zero times.

Q. Okay. How many times total today -- okay. So I got to break it up by time so I'm clear. I want to be clear in my question. July 17th, 2023, today, how many times have you discharged the shotguns, the one we're talking about?

A. The less lethal shotguns?

Q. Yes, sir.

A. I can't put an accurate number on that. Calling, training and on duty, I -- those are the times where I discharge it.

Q. Okay. More than ten? Now, I'm going to ask you to bracket it and it's okay. I'm not trying to trick you. I'm just saying would it be more than ten?

A. Yes. Actually, that's accurate.

Q. Less than 50?

A. Yes. I'd probably say that's -- yeah.

Q. Okay. So 10 to 50. Can -- can we shrink that all? To the best of your recollection, I want you to give a -- an accurate answer but understanding that you don't have a log. So you're

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not going to be able to tell me 21 times or whatever.

A. Right.

Q. So I'm asking you for your best estimate. So we've got 10 to 50. Can you shrink that at all? Like 20 to 30? 20 to 40?

A. I'd say 10 to 35.

Q. Okay. Thank you. I appreciate you working with me on that and getting that concept and it's okay. I just sort of want a -- you know, a range of what we're dealing with.

Now, let me ask you the second part which is time, right. So from the time you graduated the academy January 3rd -- well, no I want to go before that. So may 30th, 2020, before that, okay. So I'm -- I'm eliminating anything that happened after May 30th, 2020. Before that how many times had you discharged or impacted someone with a -- that -- that's a good -- how many times have you impacted someone with one of these shotguns?

A. None at that point.

Q. Okay. How many times -- cause this -- it's a distinction, right? I just caught myself. How many times have you discharged one of these shotguns prior to May 30th, 2020?

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A. Just during the academy, to my knowledge.
Q. Okay. Okay. And the difference there is -- especially for somebody like a jury who might see this. The difference is discharging means firing and impacting means you actually hit somebody, right? Is that fair?
A. You could -- you could say deploy. There's -- there's a myriad of different nomenclature that you could use but --
Q. Yeah. And -- and thank you for that too, you're helping me out on -- I haven't had all my coffee this morning but discharge is generally for a firearm, deployment is for a less than lethal shotgun. So deployment means I fired a less than lethal shotgun. Impact means I deploy it and it hit somebody, it impacts someone, right?
A. Yes, generally.
Q. Okay. And that's -- as long as we're on the same page and you understand what question I'm asking I think is good enough. I know that there's different law enforcement terminology and I'll just never learn it.
Okay. So prior to May 30th, 2020 you had not impacted a person, meaning you had not shot a -- one of these shotguns and hit somebody before

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May 30th, 2020. Is that fair?
A. Yes, sir.
Q. Okay. So this was the first time that you had shot and hit somebody with one of these shotguns?
A. Yes, sir.
Q. Okay. Same question, just asked a little different. Okay. So now I'm going to take us back, Officer, if that's alright with you to that overpass on May 30th, 2020. When you arrived how many officers were on that overpass approximately?
A. Okay. I was about to say -- and I'll give you a bracket. Anywhere from 30 to 50, I believe.
Q. Okay. So you're -- you're -- you're getting good at it. I don't even have to bracket it, you get the concept now. This isn't so hard. So -- so 30 to 50 officers on the overpass. And how many of those 30 to 50 officers had to -- again, another estimate, right, had these shotguns?
A. I -- that, I don't know. I can't accurately say for that one because I can't brack -- I was only paying attention to what I had and kind of what I had going on but I --
Q. Sure.
A. -- I can't give a statement to what other

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officers were carrying.
Q. Well, did ever officer have one of these shotguns?
A. No.
Q. Okay. Were you the only officer had one of these shotguns?
A. No.
Q. All right. So somewhere between one and -- well, and -- and -- and again, I understand. I understand you were focused on what you were doing and what you saw which is important which is why we're here. But peripherally when you're there on the overpass can you give me an approximate ratio? And nobody's -- I'm not going to, you know, mathematically hold you to this. We're not making fine wine here but was it one shotgun for every three officers? One shotgun for every ten officers? You know, can you give me a ballpark that way just so we can understand how many shotguns approximately were on the overpass?
A. And I -- I would like to give you an estimate. The -- my only issue is like I -- we weren't necessarily in groups. And I didn't -- I -- there wasn't like a -- there wasn't like a -- for every four officers there was one less lethal. It

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was just kinda everyone was spread out and I wasn't entirely sure what everybody had going on. So I just -- I don't want to give an inaccurate statement or inaccurate approximation, you know.
Q. Right. That's fine. So you said you weren't in groups. Was everybody just sort of in a line on the overpass overlooking the police station?
A. That's correct. I mean, we -- we stayed close to the original supervisor we had when we came down but everyone was either huddled up talking or just kind of in a line on the bridge.
Q. Okay. And so when you're -- when you were positioned -- you're ordered to position yourself on the overpass of the highway. How long had that crowd -- and I'm talking about the crowd milling outside of the main, so the main police station. How long had that crowd been there?
A. I don't know. I mean, they -- they were there when I got there and I don't know if they were there from the night before. I'm sure people came and went but I can't give an accurate statement to that. I don't know.
Q. Okay. There had been protests in the same area the evening before?
A. Yes, sir, to my knowledge.

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Q. Okay. You weren't stationed there though because you were on patrol, right?
A. Correct.
Q. Okay. You just heard about it --
A. I'm sorry. Just from other officers.
Q. Okay.
A. And kinda just looking at, you know, our computer and seeing the stuff that was going on downtown.
Q. Okay. Did you get any briefing? So you know, for example, I assume at east substation and the Henry area where you were -- where you were located if there's a -- you know, a warrant takedown or a house search or something like that, you're familiar with the concept of like a briefing. I don't know if that's what you call it but like a briefing. Does that make sense?
A. Yes, sir. It does.
Q. And that's where a supervisor, Sergeant, Lieutenant, something like that comes in assembles all the police officers, explains to them, you know, what the background is, what the mission is, what the goal is, all the information they need to know, correct?
A. Yes.

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Q. Okay. In this scenario on May 30th, 2020 when you're called into work and you report to the east substation, at any point was there a briefing whether it was formerly like in a office room or whether it was in a patrol car or whether it was over radio, did you get any kind of briefing prior to showing up at the overpass?
A. Gosh, this was a long time ago. Yes. I believe so, we had an informal briefing.
Q. Okay. Can you tell us about that?
A. I believe the supervisor was on duty, said that we were going to provide overwatch on 35 bridge and that I was to be assigned to a supervisor and then we were going down to 35 and that was the informal briefing.
Q. Okay. Had you been advised or given information that there had been blockage on the interstate or the overpass and that it had been cleared?
A. I can't recall.
Q. Okay. When this information was given to yourself and other officers did they say anything about the crowd? Who was in the crowd, how long they had been there, what their behavior's been.
A. I believe the majority of the briefing

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occurred on the bridge. I don't believe it necessarily occurred on the substation because everyone -- there was a rapidly evolving situation that we were kind of still all trying to figure out what necessarily was going on.
Q. Sure. And I understand that. In the -- and we're going to call it a briefing but I understand that's not what most people would have in their minds where, you know, like the TV show where the guys up at the podium and everybody is drinking coffee and getting the information. So it happens at the overpass, they're giving you information. During this time, right, when they're giving you information did anybody give any information on whose in the crowd, how long they had been there, what their behavior has been?
A. I believe once we got to the bridge we received information that they had taken the bridge at one point and that we were there to secure the bridge and make sure that no one was to be able to come back on the bridge. That the crowd had been there for -- since the morning at least. And we were tasked with providing both security to the 35 bridge as well as overwatch. Mine -- my role specifically was more overwatch than anything else.

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Q. Okay. And what does overwatch mean? I -- I know that you sort of said this before but can you break that down for us? What does overwatch mean?
A. Absolutely. So overwatch is a term that we use to just kinda watch over the crowd. See what the crowd is doing. See what officers are doing. See how everyone is interacting. Pointing anything out that may be dangerous and kind of give entail as well as take any action if needed.
Q. Okay. Were you given any directive on what that action might be?
A. We were given a directive by a supervisor, I can't recall his name, that if anyone was to throw anything we believe they may cause serious injury or bodily injury to someone that we could apply our less lethal shotgun as per APD policy at the time.
Q. Okay. What is that APD policy or your understanding of it May 30th, 2020?
A. I actually quoted it in my supplement if I'm able to refer to that.
Q. Sure. I -- I have no problem with that if you want to look at your supplement, that's great.
A. It says is engaged with riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people or officers creating the risk

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for injury.
Q. Okay. And so essentially -- and I'm going to put it in my own words but if it's wrong you correct me. But essentially what that is, is that's a supervisor telling the officers who have these shotguns that they have the discretion to use them if they see what you just quoted?
A. Correct. They're reminding us and giving the examples of saying like hey, you this is the policy, use officer discretion, obviously, and deploy how you see fit. Correct.
Q. And -- so in other words, let's break that down a little bit. And again, this may seem silly but I just want to paint a picture for somebody who wasn't there such as myself or a jury that's listening to this. That means, you know, if you see something you don't have to go ask for permission to fire, right?
A. Correct.
Q. You don't have to -- you don't have somebody standing behind you saying yes, you can fire; no, you can't fire?
A. Correct. We have discretion as individual officers.
Q. Each individual officer on that overpass

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has discretion to fire if they see fit?
A. Correct. If they believe that someone is causing a risk of serious injury or injury to another person. Correct.
Q. Okay. And that -- and at some point you reviewed your body cam footage, right --
A. Yes, sir.
Q. Before -- before -- before the deposition?
A. Yes, sir.
Q. At some point on the overpass -- and I don't have an exact time, I don't want to give one but at some point officers were sort of working in conjunction saying, you know, go after the guy in the red shirt or using flashlights to spotlight certain individuals. Isn't that true?
A. I wouldn't say go after, that's not a terminology I would use. But we were certainly communicating and acting in a tact-able sense of being able to point out potential people who were trying to cause harm or anything like that. Yes, sir.
Q. So breaking that down, did you ever hear somebody say go after a guy in a red -- go after the good in the red shirt?
A. I can't -- I can't recall that. I don't

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remember that.
Q. Okay. But you do recall that there were officers with handheld flashlights that were using them to spotlight individuals underneath the overpass?
A. I recall flashlights being used. I don't remember necessarily what for. We were using it to light up the area. It was extremely dark later on in the night.
Q. Okay. Do you recall officers using the flashlights to highlight or -- or focus attention on certain individuals that then other officers were firing at?
A. I can't -- I can't recall that for sure. I don't remember that.
Q. How many times did you deploy, right, fire your shotgun on May 30th, 2020?
A. I know in my supplement I said I deployed approximately 10 to 20 shots but I -- I -- that -- to bracket for you. That's the best bracket I can give you.
Q. So more than 10, less than 20 shots, right?
A. Correct.
Q. And so how many times did you reload on

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your -- your shotgun?
A. That, I don't accurately remember. I don't remember that.
Q. Okay. How many rounds does the shotgun hold?
A. The less lethal shotguns that we use hold four plus one, so five total. So if you have one in the chamber of the gun or the less lethal shotgun and you have four that are in the two ready to use but not necessarily primed and ready to go.
Q. Okay. So five total with one in the chamber. Sorry, approximately five. We go with that. It's safe to say you had to reload at least one? Again, I'm doing elementary math but if you fired more than 10 times you had to reload at least once?
A. Yes, sir. I'd say that's accurate.
Q. Okay. And how do you do that? Tell us about reloading, what that looks like.
A. You -- normally the way I do is I turn the shotgun over and I make sure that I can see where the rounds go into. And then I load them carefully and slowly to make sure that I make sure that they load accurately and make sure that I've load a good amount and that it's not going to get jammed.

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Q. And where do you get the rounds?
A. We were given a rounds at the east substation and other people on top of the bridge were also assisting us and had extra rounds available if we needed them.
Q. Okay. Did you get round -- to your recollection, did you get rounds from other people or did you just use the ones that you had say in your cargo pants or pockets or whatever?
A. I don't remember. Yeah. I don't -- I don't remember.
Q. What -- I -- I forgot to ask you this question before but approximately what time did you get off that night on Saturday? So -- right. So we're going through you're called in, in the af -- in the daylight sometime, you're deployed or -- or up at the overpass. Just fast forwarding end of shift, what time did you get off shift that night?
A. I don't -- I can't accurately recall that. I believe if I were to give you a bracket somewhere between 6: 00 and 2:00 -- 3:00 a.m. Somewhere between 6:00 and 3:00.
Q. 6:00 p.m.?
A. 6:00 a.m. and 3:00 a.m.
Q. Oh, or 3:00 p.m., right?

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A. No, sir. So when -- the time where I would have gone home or -- or would have gotten off of work would have been approximately between the times of 3:00 a.m. and 6:00 a.m.
Q. Oh, okay. 3:00 and 6:00. I got you. And when you got back to the -- did you go back to the east substation?
A. That's where I was parked, so yes.
Q. Okay. And did you write your supplement when you got back to the police station?
A. I don't know. I -- no.
Q. Okay.
A. Not that day. I -- I'd written it later.
Q. Okay. What did you do when you got back to the police station?
A. I don't remember in great detail. I remember I took all my stuff off and went home. I remember I gave my less lethal back to the substation -- no, that actually -- no. That's not accuracy. I don't -- the only reason I say that is because some nights I was able to hand my less legal shotgun over to someone else and somebody gave it back to the substation. So I can't give an accurate answer for that.
Q. Okay. And so let me ask you that. So you

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can hand your shotgun to another officer who maybe is coming on shift?
A. Correct. We did that occasionally.
Q. Okay. So occasionally it would happen that the shotgun just sort of passes hands rather than sort of going back into the armory being checked out -- going back in the armory and being check out -- I'm calling it an armory. I don't know what it's called. But you -- you could -- you could transfer the shotgun to another officer whose going on shift and just as long as you guys knew that that happened, right?
A. Correct. And it's up to them to do the functionality tests and to make sure that all the rounds in the account and stuff. Yes, sir.
Q. Okay. And is there any kind of log kept for that functionality test?
A. No, sir.
Q. You said you took off all your gear. So can -- can we paint that picture a little bit? What gear -- let's -- let's go to when you're at the overpass and isolate it in time so I'm being specific. But what is the gear that you have on? Can you just sort of walk us head to toe what -- what you have on your person at this time on the

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overpass?
A. I was wearing my department issued vest or my department issued gear. So a taser, department issued pistol, magazines, a baton. I believe I was wearing a ballistic helmet and a face shield as well. And that's all I can recall right now.
Q. And you were wearing -- you were wearing pants, right?
A. Correct. I'm wearing my department issued -- I'm wearing my uniform as well.
Q. Okay. And is that where you -- I don't know. I'm asking but is that where you kept your rounds in the cargo -- you know, these pants have cargo pockets, right?
A. Uh-huh.
Q. And a lot of officers keep their rounds in their cargo pockets?
A. I -- I -- I can't remember where I put mine on that specific day. I just don't remember.
Q. Okay. Well, that's a place that you and other officers can put your rounds, right?
A. Sure. Officers can keep them there. Yeah.
Q. Okay. And then that's -- that's the uniform and the equipment that you had on your

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person your entire shift?
A. To the best of my knowledge, yes, sir.
Q. Sure. You mentioned the tactable helmet. When you deployed or fired your shotgun say -- I'm using the same terms but, you know, deployed the shotgun, did you have your helmet or mask on?
A. I had my helmet on, I did not have my face shield down.
Q. So you can wear the face shield up or you can wear it down, correct?
A. Correct.
Q. Okay. Did you ever have it down that this shift -- this shift, May 30th, 2020?
A. I can't -- I don't remember.
Q. Okay.
A. I mean --
Q. Did you -- go ahead.
A. It's feasible that I did but I don't remember whether or not I did.
Q. Okay. Did you ever have the -- the mask down when you fired the shotgun?
A. I don't recall off the top of my head. I don't think so.
Q. Okay. Have you ever -- this is a silly -- this is going to seem like a silly question but I'm

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asking out of curiosity. Have you ever been hit by a less than lethal shotgun -- impacted?
A. No, sir.
Q. Do you receive any training on medical injuries that could result from a impact from one of these shotguns?
A. Yes, sir. I believe there is a PowerPoint they show that it could -- it shows that it can cause serious bruises and other things like that.
Q. Okay. And when did you view that PowerPoint?
A. The academy.
Q. And can you convey the general information that you learned from that PowerPoint?
A. That specific PowerPoint?
Q. Any -- any PowerPoint on this topic?
A. Just any training I've received on less lethal in general?
Q. Yes.
A. Okay. I mean, it -- it's a less than lethal means. It can cause injury to people. You want to try to hit them in the legs area or the bottom part. And you want to stay away from the torso as much as you can but it's -- you don't have to and you definitely want to stay away from their

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head up so...
Q. And why is that?
A. Because it could -- it could cause them serious injury if you hit them in the head.
Q. Okay. Did you learn about the injuries that it could cause?
A. Yes. I believe that. I can't --
Q. Okay.
A. Generally, yes.
Q. Okay. And what are some of those injuries?
A. I can't -- I know their -- it could cause serious injury. I can't -- I'm not a doctor. I just know that it could cause like serious injury to someone if you hit them in the head.
Q. Sure. Well, I -- I just sort of want to ask you -- I know you're not a doctor but, you know, what training you received or in the time -- in your time at the police department what information you'd been given on what kinds of injuries can result from someone being shot with these shotguns? So do you have any concept of what kinds of injuries can be caused?
A. Sure. I mean, conceptually like large bruises. I mean, it could cause I'm sure -- you

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know, it could cause serious injury. I'm sure it could crack a bone. I mean, I -- it -- it -- it's very -- it depends but it could cause serious injury.
Q. Okay. And could that include nonphysical injuries? You said you had a specialization in mental health, right? Could that cause psychological injury?
MR. LAIRD: Object -- object to the form but you can answer.
A. Okay. Yeah. I'm -- I'm -- I'm a mental health officer, I'm by far from a -- a phycologist or anything but I'm sure that -- I'm sure that, you know, just like anything a sound or, you know, anything like that would certainly cause someone some emotional distress if getting -- feeling pain. Yes.
Q. Or being shot, right?
A. After being impacted.
Q. Yeah. And again, being impacted is being shot with one of these shotguns, right?
A. Is being hit with less lethal ammunition.
Q. I think you answered this but you don't have any military experience, right? You -- you --
A. No.

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Q. -- went from high school -- high school, correctional officer, police officer, right --
A. Correct.
Q. -- generally? Okay. Okay. So how many -- let's -- let's come back to 10 to 20 deployments of your shotgun on May 30th, 2020. Just trying to narrow us down, we're on the same page. How many individuals in those 10 to 20 shots did you impact?
A. In my supplement I said approximately 5 to 7. Yeah. It -- it's a range just like, you know, less lethal rounds were. I mean, it was rapidly evolving in, you know, a chaotic situation so...
Q. What do you mean by chaotic situation? Can you paint that a little bit more for us?
A. Sure. So we were -- I was personally struck by a water bottle. We had lots of, you know, protesters or fire works going off behind me. I heard mal-tops being made. I heard rocks being thrown. I saw bottles rocks being thrown. I saw bottles being thrown. People were quite upset and angry and it was just -- it was a very chaotic and rapidly evolving situation. It changed from minute to minute.
Q. So you were -- what -- what were you impacted with specifically? What made physical

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contact with you? Let -- and -- and let me -- Officer if it's alright, let me further sort of slice down the time, if that's all right. So let's go from the time that you impacted the individuals below, okay? And -- let -- let me back up. Let me back up. Do you specifically recall impacting Tyree Talley?
A. I -- I don't recall names. I never really got names for who was who.
Q. Okay. Do you specifically recall impacting two deaf individuals -- one or two deaf individuals?
A. I -- I never got a chance to speak with anybody that I got impacted so -- or that I impacted.
Q. All right. So after you -- you impacted these people you never had a conversation with them?
A. No, sir. I was not able to do -- do crowd size, hostility in the events going on.
Q. Okay. Okay. So now what -- what I'm trying to do is get the timeframe. So from the time that you discharged or deployed -- deployed the shotgun, right, on May 30th, 2020 -- and I keep repeating that date cause I just want to be specific. So everything before that, right, so not

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after that but everything before that, what are the objects that -- that were thrown by the crowd that made physical contact with your person?
A. I was hit in the groin by a water bottle during a effort to supplement people that -- who were under the bridge.
Q. How did that happen?
A. So officers were deployed under the bridge to, I believe, attend to somebody. I don't know the exact circumstances. The crowd was gathering around them and being increasingly hostile. They were getting things thrown at them. So at that time we moved down from the bridge from the -- I guess the northern part where that hill is. We came down, we came around and we observed a large crowd surrounding the officers. Luckily the officers were able to get out and move. And as we were standing there objects that we could only see for a fraction of a second began to be hurled at us and other officers and that's when I was in the groin by the water bottle.
And at that time I did not deploy my less lethal. We were quick to back out to the safety of the steps to avoid any further hostile action taken against officers to avoid any body

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injury or serious body injury from the things being thrown.
Q. Okay. Were you impacted by any other objects to your person?
A. No, sir.
Q. Okay. And so for -- as a police officer being impacted with a water bottle is -- is a serious thing, right? I mean, that puts you on high alert, right?
A. Well, it -- it certainly hurt. I mean, it was -- it was to my groin area and that hurt --
Q. Right.
A. -- a lot -- enough.
Q. Sure. So the -- when the water bottle -- did you see who threw the water bottle?
A. No. So it was a -- it was a very dense crowd. I couldn't see anything and I -- I saw the water bottle only as it was like two or three feet from me and then I felt the impact.
Q. Okay. Did you -- I think you already answered this but I want to be clear. Did you fire your shotgun in response to that?
A. No. I -- I had no one to identify and I couldn't accurately or safely make a shot for anyone who was throwing anything so I decided against it.

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Q. Okay. And -- and the reason for that is -- and I'm not putting words in your mouth, you correct me if I'm wrong. But when you discharged these -- when you deploy -- when you fire these shotguns you want to have a specific individual that -- that you're aiming at and that you intend to impact, fair?

A. Yes. But more so I want to have a reason, right. Like if I saw someone throw something and I could accurately and safely deploy it to prevent that person from causing further body injury or serious bodily injury to another person, I would have done so. But had -- because there was not a safe opportunity and I could not accurately identify anyone I chose not to.

Q. Right. You want to accurately identify an individual before you fire your shotgun at them?

A. Correct.

Q. You don't -- is that right?

A. Correct.

Q. What I'm saying is you -- you don't -- the purpose of these shotguns and it's counter intuitive for some people I think that, you know, hunts but you don't fire these shotguns into a crowd? You don't -- correct?

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A. You can fire them at specific individuals if you can do so safely in a crowd environment, right? Like if there's a group of people standing around, right, it's discretionary. So if there's a group of people and they're all close to each other, no, it may not be safe to accurately do it. But if someone is by themselves in an open area and you can feel you can accurately make the shot you can absolutely do it.

Q. Okay. And -- and that's what you're supposed to do. You're supposed to identify one individual and impact them not just fire into a crowd to disperse the crowd?

A. Correct.

Q. Okay. So when you were at the overpass, right, as opposed to sort of underneath the overpass -- when you were at the overpass were you -- were you hit with anything? Were people -- in your estimation were people throwing water bottles at the officers at the overpass?

A. Yes. So personally I had a water bottle fly past my face and I had the -- I observed rocks being like -- landed behind us on the roadway. I observed fireworks and other things going off behind me and very close to me. Enough to make me jump or

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almost had to go toward the edge because of how close it was to me because traffic -- traffic was behind us and it was definitely a rapidly evolving situation.

Q. Okay. And so you felt under threat at the overpass by the -- the protesters and the people assembling in front of the police station?

A. I felt a threat from the agitators and people who were throwing stuff but not from the majority. No.

Q. Okay. How do you tell the difference -- and I asked -- I've asked this question before. But how do you tell the difference between an agitator and a protester?

A. Normally by them throwing things or engaging in illegal activity versus someone who is just there peacefully protesting.

Q. Okay. And what do they look like? Is there -- is there a difference in -- in the way they look?

A. No. I mean, it's just someone whose engaging in the illegal behavior of trying to cause, you know, injury to an officer by throwing things I would say is an agitator.

Q. Okay. So you can't tell who an agitator

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is by looking at them, you -- you can tell by watch -- witnessing their actions?

A. Correct. I'd say that's accurate.

Q. Okay. And you know, coming back to -- to May 30th, 2020, what if somebody tells you that somebody is an agitator what do -- what do you do in that situation? Do you -- do you shoot them with a shotgun or do you know?

A. Well, it's -- it totally depends on the situation. There's a lot of factors that would have to go into doing something like that.

Q. Okay. Well, we can be more specific.

A. Okay.

Q. But if you're up on the overpass and someone says hit that guy or impact that guy, he's an agitator, what do you do?

A. Well, it's up to my personal discretion. So I would have to view the offense, right. Just because someone is telling me to watch someone or do something like that doesn't mean I'm going to, right. I personally have to believe that that person would -- is -- is causing or going to cause body injury -- serious body injury to somebody. Just because someone tells me to do something I'm not going to do it.

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Q. Well, in a rapidly evolving situation and chaos, is -- is your words, if another officer says hey, impact that guy. Are you going to stop and say well, give me the reasons why or are you going to fire?

A. I'm going to observe that individual's behavior. So if they're like that gentleman over there he, you know, threw a -- or you know, he did something. I'm going to observe that person and make a determination based off their behavior from my own individual experiences and training to determine what action needs to be taken next.

Q. Well, let's be honest, they're not referring to the people beneath the overpass on May 30th as gentlemen, are they?

MR. LAIRD: Objection, form.

A. Normally they would -- as -- they would say that person or that protester or something like that. Yes.

Q. (By Mr. Demik) Okay. So yes. And I do want to sort of drill down and I'm just asking for your opinion, right. This is a hypothetical. Let's be clear, this is a hypothetical. But I'm asking, you know, in this realm of officer discretion and I'm really just trying to be fair and give you the

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question. I want to ask you which is in this realm of officer discretion -- what I'm really asking you is are there instances in which you would not observe, okay. So not personally observe the throwing of a water bottle, not personally observe the throwing of a rock, not personally observe the throwing of a firework, et cetera, are there instances that another officer would tell you something they saw and you would fire your shotgun at that person?

A. So --

MR. LAIRD: Object to the form, but you can answer.

A. I can only attest to what I would do, other officers, I can't speak for them. But personally I would have to observe behavior and I would have to -- because at the end of the day, I'm the one who has to justify it. So I'm only going to do what I know I can justifiably do.

Q. (By Mr. Demik) Okay. So you would ask that officer to give you specific details before you fired your shotgun?

A. If time allowed but in this situation that's not necessarily the case and that's not something that I would do.

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Q. Okay. Well, that's -- that's -- we're -- -- we're -- you know, rapidly evolving situation and chaos, let's -- let's account for that, right. It's just a rapidly -- I want to take the assessment that you had, it's rapidly evolving and it's chaotic. If an officer were to tell you to impact someone and you didn't personally observe what they did, how would you deal with that?

MR. LAIRD: Object to the form, but you can answer?

A. I would -- like I said before, I would make my own personal decisions, my own personal judgment and further observe that person's behavior and further try to assess what was going on because I can only do whatever I can justifiably do.

Q. (By Mr. Demik) Okay. And you would assess and observe before you fired?

A. Correct.

Q. On May 30th, 2020, okay, in the 10 to 20 times that you fired the shotgun, in every one of those instances did you observe the individual that you aimed at be an agitator?

A. I observed aggressive or what could have -- possibly be deadly resistance to officers or peaceful protesters prior to deploying my less

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lethal. Yes.

Q. Okay. So -- so before you fired your shotgun you personally observed behavior yourself before firing the shotgun at that person?

A. Correct.

Q. Okay. Were there any instances on May 30th, 2020 in the 10 to 20 times that you fired the shotgun that you fired it at someone where you did not observe them personally but you had been given information that that person was an agitator or engaging in agitating behavior?

A. Each person I observed was engaged in activity that I believed could cause body injury or serious body injury to a person. Yes.

Q. Okay. Now, on the overpass looking down on -- at the crowd in front of the station -- the police station there were limits to the visibility that you and your fellow officers had from the overpass, right?

A. It was certain -- we were certainly -- yes.

Q. Yeah. I mean, it -- well, yeah. I mean, you couldn't see behind the police station?

A. Correct.

Q. And you couldn't see underneath the

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overpass because you're -- you're on the overpass, right?
A. Yes, sir.
Q. Okay. And so individuals directly beneath you -- directly beneath you, not on your line of vision but individuals directly beneath you, you couldn't personally observe what those individuals were doing, right?
A. Correct.
Q. Okay. So at the time -- were you getting any information from any other officers on what was happening below you?
A. I believe people from the steps were perhaps calling out agitators who were retreating under the overpass.
Q. Okay. And how were you getting that information?
A. Via my department issued radio.
Q. So police officers -- and breaking that down, police officers who were at that line -- there was a line of police officers in front of the police station, right?
A. Yes, sir.
Q. And those police officers had radios, right?

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A. Yes, sir.
Q. They also had shotguns, right?
A. I believe so. Yes.
Q. And -- and they were radi -- they were in radio communication with the officers on the overpass, right?
A. Yes, sir.
Q. So were they giving information to you officers at the overpass on things that were happening beneath you that you couldn't see?
A. Yes, sir.
Q. Why were they giving you that information?
A. Mostly for officer safety and stuff like that, right. Like if -- if someone is a known agitator or they seen someone whose thrown something two or three times, we want to be made aware of that person to observe them and personally see what they're -- what they have going on or to make sure, you know, that mainly for officer safety purposes more than anything.
Q. Okay.
MR. LAIRD: Hey Stephen it's been -- looks like we've been going about an hour and twenty minutes. Could we take maybe a five-minute restroom break?

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MR. DEMIK: Absolutely. Thank you. And again, I'm really sorry I held people up this morning, that's not my MO.
MR. LAIRD: Oh, no problem at all.
MR. DEMIK: Five minutes will be great. Is that all right, Officer?
THE WITNESS: Yes, sir.
MR. DEMIK: Okay. How about -- I've got 9:41 mountain. What is it central right now?
VIDEOGRAPHER: 10:41.
MR. DEMIK: Okay. 10:46, does that work for everybody? Does that work for you, Gray?
MR. LAIRD: Yeah. That's fine.
MR. DEMIK: Okay. Great. We'll take a five-minute break then.
VIDEOGRAPHER: All right. We are off the video record at 10:41 a.m.
(Break taken.)
VIDEOGRAPHER: We are back on the video record, the time is 10:48 a.m.
MR. DEMIK: Officer, I -- I should have mentioned that. You seem like a very polite guy. If you need a break you're -- you're absolutely welcome to ask for a restroom break or -- or whatever you need if you want. I

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don't want you to have feel -- you know, you got to slug through. So if you need a break feel free to tell us too. Thanks for that, Gray.
Q. (By Mr. Demik) And that actually raised a question in my head. So what did you do on this shift at the overpass on May 30th, 2020. Again, you hear me repeat that a lot just cause I want to be specific. But what would you and other officers do when you needed to use the restroom?
A. Normally you go in pairs and you would go down the side of 35, walk across to what we call 250 or where the people fix our vehicles, and there was a restroom available in there that we would use.
Q. Oh, okay. And was that just sort of an ad hoc like, I got to go, you go in a pair or was that on some kind of ration? Did you get a break or any relief?
A. I don't -- I can't accurately remember if we got a break. I can remember that if you needed to use the restroom you went to whoever you were with in the patrol car. And you were like hey, I'm taking so and so and we're going to the bathroom. Like okay, when you would just go to the restroom if you needed to.

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Q. And so when you were hit in the groin with the water battle did you receive any medical treatment at the end of your shift or any time afterward for events on this day?
A. No, sir. No form of medical care.
Q. Okay. Any bruises?
A. Not to my recollection.
Q. Okay. Okay. Did you -- at the time that you were called in on Saturday, on the -- on the 30th did you have information about other cities -- and let me be specific. Did you have any information or knowledge of the Minneapolis Police Station being torched?
A. That specific, I -- I can't remember.
Q. Any information the police stations had been -- I don't know what the word is, overrun or vandalized?
A. I recall protests breaking out. I can't accurately say whether or not -- what news I had heard or anything like that.
Q. Was there any kind of elevated -- what's the word I'm looking for? Elevated awareness, I guess; that's not the right word. But any kind of elevated awareness because these people, the protesters, were assembling and milling around the

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front of the main police station, did that have any significance for you -- for you as a police officer?
A. I mean, not in the sense of -- I mean, we just wanted to make sure that -- you know, there's important documents, there's victims information, there's important cases that are inside the building so I mean more so --
Q. And weapons -- and there's weapons in there too, right?
A. I'm not out of the main substation so I -- I would venture to guess yes, but I don't -- I wouldn't know where those are kept or anything like that.
Q. Are there weapons in the east substation?
A. Yes.
Q. So you -- you're -- you can say no if you're not aware but the main sub -- the main station -- the main police station in Austin also has weapons, doesn't it?
A. Yes, sir.
Q. Okay. How long -- and I know you're going to have to give me an approximation cause this was three years ago, but how long were you at that overpass? And I'm going to include, let's say, you took a restroom break and went and came back. So I

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don't want you to break it down that minutely. But you know, how long were you at that overpass approximately if you could put it in a estimate of hours?
A. So if I -- if I have to estimate I would say more or less, 12 hours.
Q. Well, on the overpass?
A. Once I -- once I was there we -- we didn't -- well, I mean, we had -- we were there pretty much -- pretty much all night I mean until we were relieved to go home. So it really -- because it's an estimate I would have to venture to guess 12 hours but I never -- for the most part with very short pauses --
Q. Sure.
A. -- was on there all night.
Q. And -- and the majority of that time you're standing at the overpass looking below you?
A. Correct.
Q. Okay. Now, when you wrote your supplement when did you write that? I mean, you can look at it if you need to but --
A. Yeah.
Q. -- if you want to go off memory that's fine too, however you prefer.

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A. Looks -- the first one was June 2nd, 2020 of -- looks like at 10:43.
Q. That was when you wrote the supplement?
A. I -- I think so. It says -- that's what it says on the related date.
Q. Okay. And did you write a narrative?
A. Yes, I did.
Q. Okay. Could you read that narrative for me.
A. Sure. Out loud? On May 30th of 2020, I Officer Hethershaw, Number 9073, responded to a mobile field force response downtown to the main headquarters on East 8th Street. When I arrived I was tasked with holding the South IH-35 bridge southbound over 8th Street, which is actually -- yeah. No. It was southbound. I was given a less legal shotgun and was providing overwatch for the units below. I moved down to help maintain an overwatch. I moved down the bridge to help maintain overwatch. When I put in stars, I put R to R, which means response to resistance and further stars just to make everything aware.
But per policy I knew at the time, went to deploy less lethal shotgun on a subject in which I quoted AP policy stating is engaged in

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riotous behavior. Was throwing rocks, bottles or other dangerous projectiles at people and or officers creating a risk for injury. Thus during my time providing overwatch I fired at approximately five -- I fired at approximately five to seven people. These people were throwing rocks, water bottles and other projectiles at officers at the AP main.

I deployed between approximately 10 to 20 shots. One particular time I can recall when I was directed by a supervisor on scene to get protesters off of a car that was in the middle of an intersection. The protesters were hostile toward the vehicle. I deployed my less lethal multiple times. And I put in stars again, end of -- I have response to resistance or R to R, stars and I put no other information and my initials.

Q. Okay. Thank you. I want to break that down a little bit. Can you tell me -- and now I'm not -- now I'm not going off the report. I'm asking you about your recollection and your sort of personal knowledge. What happened with the car?

A. So from the car -- the car was in the intersection. We weren't really sure why it was there or what it was doing but eventually a

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supervisor did come over and say hey, get those guys off the car and he's referring to the people who were surrounding the car.

Well, I observed multiple people, they were banging, they were obviously agitated. They were raising their fists, they looked like they were extremely agitated. It looked to me like they may try to extricate the person from the vehicle or they may try to cause that person severe injury. So I deployed my less lethal a couple of times to try to get the people away from that car so we could get that car safely out of the intersection to make sure the driver and other -- anyone else around it could not cause further injury -- or be injured, I'm sorry.

Q. Okay. Was this -- where was this intersection specifically?

A. That was east 8th Street and IH-35 service road southbound.

Q. Okay. So it was off the highway?

A. Correct. It was on the service road in the middle of the intersection.

Q. Okay. And did you fire your shotgun from the overpass or were you down on the -- what did you call it?

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A. The --

Q. Service road. Yeah.

A. No, sir. I was on the overpass.

Q. Okay. And -- and what color was that vehicle or that car?

A. Watching my body camera, I believe it was silver.

Q. Okay. I'm -- I'm -- I'm just trying to get in my head -- were you aware or did you observe a car come down in -- in front of the police station and have someone removed from that car and have the car driven off? Do you recall that?

A. That specific of circumstances, no. I remember a car being in the intersection, multiple people trying to get the person and extricate them from the vehicle and many -- many hostile acts were observed and I deployed my less lethal multiple times. And from that on I don't necessarily remember what happened to the car or who drove the car off or anything like that.

Q. Okay. Well, when you -- I -- again, I just don't know the streets of Austin that well. But was this in front of the police station? Did -- I want to ask you about where you fired your less than lethal, right.

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A. Uh-huh.

Q. So was this in front of the police station or was this up on an over -- a exit ramp?

A. No.

Q. Or -- or --

A. It was in the middle of an intersection. So right there like literally in the middle of the intersection the car was. And the car was facing southbound and protestors were interacting with the vehicle initially and it was on the service road and I was up on the overpass.

Q. And so were you the only person to fire your shotgun or did other officers fire as well?

A. I don't remember.

Q. Okay. And what happened after you fired your shotgun?

A. The protesters dispersed and officers were able to get the vehicle out from the situation and mover it along.

Q. All right. What happened to the driver of the vehicle?

A. I'm not aware of what happened to the driver of the vehicle.

Q. When you say officers were able to get the vehicle, what does that look like? Can you -- can

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you --
A. From what I observed and my body camera, they just -- they like -- almost like created a space for it to drive out. And that's pretty much what I remember is officers eventually went out there and they got the car out of the situation. I'm not aware of their tactics or whatever they used, excuse me, but they eventually got the car out of the intersection.
Q. The officers drove the car out of the intersection?
A. I'm not aware if they drove the car out of the intersection or not.
Q. Okay. Did you observe who drove the car?
A. No.
Q. So that's -- and the star, star, R to R's, use of force, that's a code that you put in when you -- is that the firing of the shotgun or that's just a general use of force code? What is that?
A. So I use that in my reports. Different officers use different things. I use that for -- we have a team of people who reviews our responses to resistance. And so kind to the reports -- so that way I can point out to them like hey, this is the most important part that you need to read because

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this is where I'm using force. And this is where I kind of explain everything.
Q. So when you wrote your supplement on June 2nd of 2020 you wrote that based on your best recollection of the events, right?
A. Correct. At that time we weren't sure how we were reporting this because nothing like this from what I asked around had ever occurred before. So everybody was just kind of at a loss. Nobody necessarily did so everybody -- we just kinda wrote a belief overview of what occurred so that way we can kinda, you know, at least say something so...
Q. What were you told? I mean, that -- that -- can you say some more about that? What were you told about writing the reports in relation to this specific event?
A. We were just told to -- I mean, you write -- you write what you did, right. But it was a -- it was a long day.
Q. What do you mean by that?
A. It was just -- it was 12 hours. I mean, from start to finish it was a very long day. Normally we work 10 so I mean, working the extra two hours in -- on your day off can certainly cause for a long day.

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Q. So when -- you were up till the wee hours of the morning the same day working, right?
A. Sure.
Q. And so when you wrote your supplement on June 2nd, the best of your recollection was that you had -- you had impacted or shot five to seven people, correct?
A. Correct.
Q. And 10 to 20 shots?
A. Correct.
Q. Okay. And did you document the specific use of force -- and again, I know the answer so I'm just trying to frame what I want to ask you but --
A. Sure.
Q. -- I'll ask it to you in a leading way. You didn't put a specific -- or did you? Let me ask you that. Did you put a specific detail for each individual that you had impacted?
So for example -- giving example just so I can be clear. Individual one, this is what they were doing specifically, this is what they were wearing. This is the time and the date and the moment that I made the decision to fire. Did you keep that for those five to seven individuals?
A. Not in my first supplement. My second

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supplement, I kind of did that but in the first one --
Q. Okay. And when you say kind of did that, what does that mean?
A. It means I did reference specific individuals and specific actions that I impacted. I did not give any -- I don't believe I gave -- if you -- if you would allow me to read this real quick so I can accurately say it.
Q. Sure.
A. Okay.
Q. Actually, you know what? For the record, Gray, I don't know if you want to jump in. But Officer Hethershaw -- and I have no problem with you looking at it, that's not the issue. But to be clear for the record, there's usually a number in the lower right-hand corner called a Bates Number.
Could you just state that Bates Number on the record so, you know, if somebody wants to say well, what was he looking at, we have the Bates Number?
A. Sure.
THE WITNESS: Is that fine? Okay.
MR. LAIRD: Yeah. That's fine.
A. It'll be -- the second supplement I'm

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referencing is COA2479.
Q. (By Mr. Demik) Is it -- it's more than one page?
A. No.
Q. Okay. And -- and we're just being lawyers about that, you just got to put it in the record. So looking at COA2479. Go ahead. Please go ahead.
A. Okay. To my knowledge and from this report, it looks like I only reference people as a subject and I did not use any further description such as shirt collars or anything else like that.
Q. And that's fine. I understand. Did you remember those things at the time? And I'm -- let me ask you that way. On June 2nd, okay, did you -- did you recall specifically any or all of the five to seven individuals that you had -- that you had hit?
A. I mean, I don't understand the question. Like what do you -- what do you mean?
Q. Sure. So on June 2nd you -- in your memory -- I'm asking you what was in your memory on June 2nd when you wrote the supplement, right? Cause now it's been three years. But on June 2nd did you remember each individual that you had shot or impacted? Did you -- did you have a specific

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recollection of what they were wearing, what the circumstances were, et cetera? Or some of them, right, maybe some but not all.
A. Some of them. I mean, I -- I can't accurately say that I remember, you know, every thing. That's why I kinda wrote the second one to kinda make sure that I'm still in stone. Like hey, like this is everything that occurred and why I gave approximations was I wanted to be as accurate as I could and as transparent as I could to try to give them the best and accurate answer that I could.
Q. Okay. And -- and what you wrote was subject. You didn't write any identifiers, right?
A. No, sir.
Q. Okay. But here's what I guess I'm asking you and I'm not saying you did anything wrong I'm -- at all I'm just saying that -- did you have that information and you just chose to put subject or did you put subject because you weren't necessarily clear on the exact details?
So let me, again, give you an example, maybe I can sort of clarify with an example. Subject number two, that guy was wearing a white shirt and shorts and, you know, red sneakers. But -- but I'm going to put subject because I have

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to list all the times that I -- that I used force, right. That's one example. The other is like, you know, I can't really recall what that person was wearing but I do recall using force, you know, the code and so I'm going to put subject. Does -- does that make sense to you?
A. Yes. The second description is more accurate. It's more -- more -- more along the lines of like there was a lot like rapidly evolving circumstances and stuff so you would deploy. And then after that factor scanning and making sure like after I deployed my less lethal, you know, a water bottle came flying passed my head. You know, you're having to scan, you're having to evaluate constantly.
Q. That term rapidly evolving circumstances or rapidly evolving situation, was that discussed at any point on May 30th, 2020? What I mean is, did any supervisor maybe during the briefing at the overpass or sharing information, was that addressed by any superiors to you?
A. Like the specific terminology or just the events?
Q. The concept. This is a rapidly evolving situation, you got to use your discretion, you got

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to be flexible. That -- that's sort of what I'm asking you. Was there a conversation to that effect?
A. I'm sorry. I just don't know if I understand the question completely.
Q. Yeah. And -- and I'm trying. You know, at this point the -- I think you said a superior. I don't know if you remember who it was. But they're up on the overpass with the officers, you with me?
A. Uh-huh.
Q. And they said, you know, here's your -- here's your parameters, right. If you see somebody engaged in riotous behavior you have discretion to shoot your shotgun, right?
A. Right.
Q. So there was some information being given to the officers up on the overpass, right? Was -- was there any discussion or information about this being a rapidly evolving situation?
A. I think contextually just because they had taken over 35 and they were -- things were being thrown and people were coming and going, yes, but that specific terminology was never used.
Q. Were there any helicopters that were -- that were there?

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A. I don't remember.
Q. Is that something that you've seen in the past that the police department has the ability to use helicopters to observe crowds?
A. Absolutely. I mean, Air 1. We have our Air 1 asset that is used from time to time.
Q. And were there any -- I'm going to use the word spotters if -- if that's more clear. I can -- were there any spotters -- besides the officers at the overpass, the officers in front of police station, were there any spotters? Exam -- for example, police officer at the top of a building, a police officer observing from one of the floors of the building giving any -- any information? Were there any spotters?
A. That, I cannot accurately remember. Just -- only because we were getting information but I'm not entirely sure where it's from. You know, it's a -- a random call sign that I don't know who they are saying something or something. So I -- that, I don't know.
Q. You don't know where the information was coming from but you -- you took whatever is on the police radio's information that's being given to you at the overpass.

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A. Correct.
Q. Okay. So I'm almost done here but let me ask you about the -- sort of the effect. And I don't mean the injury that we talked about before but I mean the effect of -- of firing one of these shotguns and hitting somebody with a less than lethal round, okay.
In general in your experience -- training and experience, times that you've deployed, et cetera, that's to push the person back, right? I mean, when you impact them with a -- with a less than lethal shotgun the idea is to push them away, right?
A. No. I believe that the idea of the less lethal shotgun is to deter any further behavior, right. Like it's to stop the individual from committing serious bodily injury or body injury to another person from their actions.
Q. And how do you deter with the shotgun?
A. You deploy it in the sense of if you see something about to happen or happening you can deploy it and you impact them -- the lower half of the region with a less lethal ammunition.
Q. And -- and I think what you're saying then is that you use pain as a compliance technique?

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A. In -- in the general sense -- in the -- in laymen's terms, yes.
Q. Okay. Well, I mean, I just -- and now, I'm going to ask you a hypothetical, okay? Just cause I want to get the concept. So I'm not saying May 30th, 2020. I'm saying -- let's say there's an individual whose 25 -- 20 yards, let's put him 20 yards, okay, in front of you throwing a water bottle, okay. If you -- and it's just you and him, let's just limit it. So I know there's a lot of other variables.
But if you -- if you shoot -- you're here, the individual is here, you impact them with a round. You shoot them with shotgun, right. How does that -- what -- and the -- I'm going to -- I'm going to say it, you correct me. That has two purposes, one is to impact the individual, hit them with a bean bag round so that they flee and they stop the behavior that they're engaged in. Or two is, it hits them, it inflicts pain and because it inflicts pain it deters them from continuing to engage in the agitating behavior that they're engaged in. That's a lot of words so you please clarify.
MR. LAIRD: Object to the form, but you

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can answer.
A. I believe more so the -- the less lethal shotgun -- and again, I am by far not an expert and nor someone who trains or trains other people. I do not train other people in the use of the less lethal. But from my training and experience it's used to stop an individual's behavior that can cause serious bodily injury or death.
Q. And -- and I guess that's what I'm -- what I'm drilling down. How does it stop them?
A. Again, by no means am I an expert on the less lethal. It -- by impacting somebody with a less lethal means you're using it to -- in a -- in a very, very general sense to stop it from happening. So whether that means that they get hit it and they're like oh, man, I don't want to like do it cause like I -- like it knocked my balance off or, you know, it is -- it hurts. It's trying to stop the activity from occurring.
Q. Okay. All right. Well -- well, one way to stop it is the -- handcuffs are one means to limit somebody's mobility so they can't engage in riotous behavior, right?
A. I -- in a very -- I'm not going to be able to go down there and handcuff a protester in the

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middle of a riot.
Q. Absolutely. Absolutely. I'm not talking about May 20th. This is a time that I'm jumping off May 20th, 2020. Just in your training and experience as a police officer with the police department, I'm just asking you about the general means to get someone to stop, okay, engaging in -- in threatening or risk of threat behavior. Are you with me?
A. Okay. Yes, sir.
Q. All right. So one way is you can physically restrain them, right?
A. Yes, sir.
Q. You can -- you can put handcuffs on them, right?
A. To -- to stop like violent behavior?
Q. Yeah.
A. Sure. Yes.
Q. Or prevent a risk, right, if they're some --
A. I mean, putting handcuffs on someone is not a use of force by any means.
Q. Okay. You can use batons, you can use tasers. You know, you have the use of force continuum, right?

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A. We do have a use of force continuum. Yes.
Q. And -- and those are things that you can do to stop an individual from engaging in this agitating behavior that we're talking about, right?
A. There's -- there's a lot of things that you can use.
Q. Right. And -- and again, I'm not saying that, you know, you -- I'm not saying you come down from the overpass and you handcuff somebody. That's not what I'm saying. I'm just sort of -- I -- I'm trying to understand how shooting somebody with a shotgun would stop their behavior. And I think I know the answer but I -- I'm not a police officer. You're -- you're here being deposed as a police officer.
And my understanding is that one is that if the person is hit it could knock them off balance, right, and so that they can't throw a water bottle. Let's use throwing a water bottle.
A. Okay.
Q. That's -- that's one way that the shotgun can -- can deter the behavior, right?
A. Sure. Yes.
Q. It -- and it can also make them run away, right? If you get hit with one of these bean bag

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rounds you're like ow, and you run the other direction, right?
A. In -- I -- I can't speak for what a person would do when they get hit by it but, yes. I'm sure it would hurt. Yes.
Q. Okay. Okay. And then what is the training that you received if an individual has been impacted once one time? Okay. How many times do you impact them?
Are -- that's what I want to ask you is, like are you trained in any way on here's how many times you shoot somebody?
A. You are given parameters to assess their behavior. So if one doesn't work and you reassess you can then deliver another less lethal ammunition.
Q. Okay. So -- and that makes sense to me. Do it until it stops, right. If you hit them once and they're still engaged in the behavior, hit them again. Still engaged in the behavior, hit them a third time. They stop, then you stop shooting them with the shotgun, fair?
A. Yes. Based off your own individual assessment.
Q. Okay. And that makes sense. I get it. What do you do -- I'm going to ask you again what

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you, Officer Hethershaw, right. Your -- your own training, experience and sort of how -- how you've been trained and how you do it.
What do you do if there's -- and this is a hypothetical, okay? I'm not talking about May 30th, I'm talking in general. What if you're there with three other officers and you impact the person, you shoot them with a shotgun and the other two shoot them with a shotgun, right?
A. Uh-huh.
Q. And they've complied. They've -- let's say they've fallen on the ground and gone into the fetal position.
A. Uh-huh.
Q. Do you impact them again?
MR. LAIRD: Object to the form, but you can answer.
A. So I can only speak to what I would do and my own individual actions. So if I believe that person is still a threat there are a myriad of things that could happen. It all depends on facts and circumstances. So it all -- it depends is my answer. Because you -- just because someone is on the ground, right, it doesn't mean that they -- you know, a lot of times -- to give -- to give you a

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hypothetical. If someone has a gun and we impact them and they fall on the ground and they still have the gun in their hand, that's not saying I'm not going to impact them again, right. It -- it depends on circumstances, it depends on my individual assessment. It depends on the circumstances.

Q. Sure. And -- and those circumstance -- that makes sense. The circumstances that you consider are -- I mean, I'm not -- I can't name them all cause -- because you can't prepare for every unknown situation. But it's sort of based on the immediacy of the threat, right? Like you gave the example they have a firearm. That's an immediate threat, right? I mean, they can shoot somebody, they can shoot you, they can shoot somebody else. They could, you know, potentially shoot themselves but that's an immediate threat, right?

A. Correct. Or they could have other hidden weapons on them.

Q. Other hidden weapons on them. Right. So one of the factors that you would consider in choosing whether to impact somebody; let's just say a third time, okay, is the immediacy of the threat. That's just one factor, it's not all off them. But would you agree that that's one factor?

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A. Sure. That is a factor and a myriad of them.

Q. Okay. And at what point are you trained or are you instructed to stop shooting an individual?

A. When the -- when the officer believes that the threat no longer exists.

Q. Okay. All right. Okay. Let me ask you was there any discussion as far as crossfire in -- on -- now, I'm back to May 30th, 2020. We're specifically talking about you and the overpass and -- and -- and the people milling around the front of the police station. You with me? Was there any discussion of crossfire?

A. Can you define what you define as crossfire?

Q. Sure. Well, when you're -- when you're using firearm or shotgun, less than lethal -- let's say less than lethal. One of the things that you are trained to be concerned about is what your line of -- what your line of fire is, right?

A. Correct. Yes, sir.

Q. If you're shooting in a -- in a crowded grocery store as opposed to one individual at a traffic stop and there's nobody else around, do you

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need to be aware of your line of fire and who you could potentially hit, right?

A. Correct. You need to be aware of your surroundings.

Q. Was there any discussion of that on May 30th, 2020?

A. That, I don't remember or I can't recall specifically.

Q. Was there any discussion of this -- of the issue of having officers in front of the police station, okay? Officers at the overpass. Was there any discussion of -- of crossfire for the individuals that were in the street -- milling in the street below?

A. That, I -- I don't -- I can't recall that. I don't remember that. I don't remember.

Q. Did anybody bring -- bring it up? That we're not the only officers on the overpass that had a line of fire here?

A. I -- I can't recall. I don't remember.

Q. Okay. Is that something you would -- that would be important to you?

A. Yes.

Q. Okay. And you don't recall anyone talking about that, discussing that, giving any directives

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on that?

A. I don't remember many speci -- I don't remember many conversations I had that day specifically. It was --

Q. Excuse me.

A. -- three years ago so I -- I don't remember any specific conversations.

Q. Understood. And excuse me, I sneezed. But this -- this was an unusual situation, right. You hadn't experienced something like this before during your three months as a police officer?

A. Correct.

Q. You hadn't experienced something like this in the academy, obviously, cause you're training to be a police officer, right?

A. We just did scenarios for -- I mean, for mobile field force training and stuff like that. So you engaged in scenarios and stuff that were similar and would mimic scenarios such as this.

Q. Okay. And this was a notable circumstance in your first three months as a police officer, fair?

A. Yes, sir.

Q. What about ever since after that? Have you had a similar situation in -- after May 30th,

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2020?
A. Well, I'm part of a dispatch and response team for Austin Police so I respond to protests quite a bit. So not -- not something of -- to that magnitude of riotous behavior but I have responded to several protests since then.
Q. Okay. Any of them bigger than this one?
A. I can't accurately say that. I mean, this was a big -- this -- the one that we're discussing was a big one but there -- there's been some big ones too.
Q. All right. Let me just check my notes. I think -- I think I'm done. I just want to look at my notes.
Do you have any electronic communications regarding this incident? Like e-mails that you shared with fellow officers? I'm not talking about your report. Like let's section off the supplement that you wrote on June 2nd. Any electronic communications, e-mails, other correspondence that you have, you know, had with someone regarding this incident, May 30th, 2020?
A. Not to my knowledge.
Q. And -- and of course, I'm excluding lawyer communications, I'm not talking about that. I'm

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talking about fellow officers, supervisors, anybody like that.
A. Not to my recollection.
Q. Okay. When you showed up at the overpass on May 30th, 2020 and you were stationed above, right.
A. Uh-huh.
Q. These citizens, protesters, agitators, including all of them; this group of people, what information -- actionable information did you have, if any? And -- and that's a really big term. But I mean it to be big because I want to know like walking into a situation what information did you have about this situation?
A. Sure. So from the totality that I've learned up until that point; learned that they had taken 35 at one point. That they were engaged in throwing lots of things at officers or at some point surrounding officers and were engaged in riotous behavior. Like I said in the beginning too, I mean, there were as well there were -- like there was also like peaceful protestors out here. But there are the -- you know, there are the agitators, they are the rioters as well.
Q. And I imagine it's difficult to tell the

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difference sometimes?
A. Not necessarily. I mean, if I see someone throwing a rock or a water bottle or throwing fireworks I could see that that person is engaged in riotous behavior versus the people who are just simply standing on the steps not doing anything. Then I can definitely make a differentiation.
Q. Right. In terms of, you know, the group as a whole before somebody throws something, right.
A. Uh-huh.
Q. Let's say -- let's say that. Let's say group of people. It must be very difficult to tell the difference before anybody throws anything. It's just a group of -- massive group of people in front of you. You can't really say this one is going to be an agitator, this one is just a protester, right?
A. Correct. I mean, until they engage in some form of illegal activity they're -- they're just protesting up to that point.
Q. Right. And -- and so let me ask you this way, in your view -- and I'm just talking about you. I can't ask you to opine on what other people think or saw.
A. Uh-huh.
Q. In your view in that shift on May 30th,

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2020, were all the people who were agitators, throwing things, riotous behavior, all the sort of things that you quoted in your supplement. And I -- I can't go off memory. You probably can't but let's just call them agitators, fair?
A. Okay.
Q. Were all the agitators impacted by shotguns?
A. I -- I can't accurately say that at all. I mean, I -- I can't -- I can only speak for the people that I impacted and that I saw engage in riotous activity. But I can't say for every single agitator out there that they were engaged in some way or another.
Q. Did you witness any agitators who were not impacted by rounds?
A. I mean, I'm -- I'm sure. I mean, I -- like I said, it as a rapidly evolving situation. I mean, there was -- there was a lot going on. I mean, I can't say -- I can't give you a specific example but I'm not going to say that's out of the realm of possibility.
Q. Right. Well, I mean, you're focused on who you're focused on and who you're going to impact. I get that. Fair?

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A. Fair.
Q. But you're also -- I mean, you also have peripheral vision. You're also -- when you're not shooting the shotgun you're also observing things, right?
A. Uh-huh.
Q. You got to say yes for court reporter.
A. Oh, sorry. Yes.
Q. That's all right. It's lawyer stuff. And so there had to have been situations where you witnessed other offerers fire their shotgun while you were not firing your shotgun, right?
A. Yes.
Q. Okay. So -- and I just want to make sure that I -- that I asked the right question and you answered it fully. Did you witness any agitators, okay, throwing things, agitating behavior, all that other stuff, who were not impacted by shotguns?
A. That -- I -- it's just a broad question because like it -- it doesn't dictate like whether other means were used or whether there is kind of like -- so I -- it was -- there was a lot going on so I can only speak for the agitators that I saw, that I dealt with and that I impacted myself. Other officers were doing whatever other officers needed

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to do. And I was more so worried about what I was doing and protecting the peaceful protesters along with my fellow officers.
Q. Okay. Did you witness at any point on May 30th someone who had not engaged in agitating behavior impacted by shotguns?
A. Again, I -- I can't -- I can't say for certain because I don't know what other officers saw. I don't -- I can't speak for other officers. I don't know what actions they saw or lead to believe. So I only saw what I saw and I can only justify what I can justify.
Q. Okay. That's fair. But I'm not asking about other officers, I'm just asking about what you, okay? What you observed, what you witnessed, what you saw.
A. Correct.
Q. So that -- it's just a two-part question and I asked you the first and now I'm asking you the second. Did you personally view anyone who was impacted, shot with a shotgun, who you had not seen engaged in agitating behavior?
A. I -- the short answer is no. But again, I'll qualify that only for the sense of I can't speak for what other officers saw. I can't see what

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riotous behavior they observed. I can't say that I observed that other person's behavior. So I can't give an accurate statement to that.
Q. So you -- you -- what I think you're saying -- and you correct me if I'm wrong. I don't want to put words in your mouth. But what you're saying is all I can really recall specifically and -- and testify to are the individuals that I shot with the shotgun. I can't answer to what happened before or after or outside my line of site. I can only answer to the individuals that I impacted.
A. That's pretty -- that's pretty accurate, I would say.
Q. I just -- I just want to make sure. Is there anything else -- and Gray can certainly ask you questions if he wants to as well. Gray, I don't know if you intended to but I always ask this question at the end. Officer, I ask is there anything else that you think is important for us to know about this, you know, this case, this incident, your -- your testimony? Cause I'm not always asking a hundred percent all of the questions but is there anything that you think is important for us to know?
A. I just think that I've said it all. I mean, this had a lasting impression on my life. I

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mean, you spoke to mental distress earlier. So I mean, it's caused quite a lot of anguish and caused a lot of emotional damage for myself as well as being a part of it. So -- and that's all I'd really like to leave with.
Q. Well, I -- I'm -- I'm sorry for that. I got to ask you a couple of follow-up questions. And I -- I certainly am not trying to, you know, make you feel bad. But what do you mean by its caused you distress and anguish?
A. Well, I -- I don't -- I don't like doing stuff like that. That's not why I did the job. That's not what I wanted to do.
Q. And how has that been a lasting impact? So not just on May 30th and June 2nd but, you know, obviously today it -- it still effects you, I think, from what you said, right?
A. I would say that's accurate. Yes.
Q. What are the lasting effects then?
A. Just -- I mean, it's -- it's tough. I mean, when you -- when you think back on that time it was just a -- a tough point in my life. So I mean, that's all I can say for the most part, the most detail I can go into. I mean, it -- it's just a rough time.

Q. Okay. And I don't mean to pry. I really don't. And so if -- but what do you mean a rough time in your life at that time in May of 2020?

A. It was just -- I mean, there's a lot of -- there was a lot of -- there was a lot of stuff going on, you know. Just starting my career, a whole lot going on and it was just a rough time in general so...

Q. How would this event effect your career?

A. Just -- you know, it's a -- it was a tough time. I mean, it was just -- it's definitely just -- in the simplist of terms I mean, it -- you want to help people and it's just not -- not something I imagined myself doing.

MR. DEMIK: Okay. Thank you, Officer. You had a tough job. I appreciate your taking the time out of it to speak with me today and -- and give this testimony. I certainly, again, for the last time but importantly want to apologize for being late. I don't like wasting people's time. But thank you for answering my questions. I'll turn it over to Gray now.

MR. LAIRD: And we'll -- we'll reserve our questions until the time of trial. We -- we do

want to read and sign the transcript. And then, also, Ms. Glover if I -- if we can order an expedited transcript, that'd be great.

COURT REPORTER: Okay. Mr. Laird, when would you like the transcript.

MR. LAIRD: It'd be great if we can have it within seven days, maybe. Would that work or --

COURT REPORTER: Yeah. I don't think that's -- that may be regular time but yes, I'll try to get it -- I'll put it in front of and get it to you as soon as I can.

MR. LAIRD: Great. Thanks so much.

COURT REPORTER: Uh-huh.

MR. DEMIK: And -- and same here, Ms. Glover, if that's all right. We'd like a copy, obviously, as well.

COURT REPORTER: Okay. Awesome.

VIDEOGRAPHER: We'll conclude our deposition, it's 11:34 a.m. We're off the video record.

(End of proceedings.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Tyree Talley,)
Plaintiff)
)
v.)Case No. 1:21-cv-249-RP
)Lead Case
City of Austin and)
John Does)
Defendants.)

ZOOM VIDEOTAPED DEPOSITION
JOSEPH HETHERSHAW
VOLUME 1
JULY 17, 2023

I, Priscilla Glover, Certified Shorthand Reporter in and for the State of Texas hereby certify to the following:

That the witness, JOSEPH HETHERSHAW, was duly sworn by the officer and that the transcript of the Zoom deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on_____, 2023 to the witness or to the attorney for the witness for examination, signature and return to me by _____, 2023.

That pursuant to information given to the deposition officer

at the time said testimony was taken, the following includes counsel for all parties of record;

Mr. Stephen Demik, Attorney for Plaintiff
Mr. Gray Laird , Attorney for Defendants

The amount of time used by each party at the deposition is as follows:

Mr. Stephen Demik - 2 Hours: 06 Minutes
Mr. Gray Laird - 0 Hours: 00 Minutes

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I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the actions.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 19th day of July, 2023.

Priscilla Glover, Texas CSR #8105
Expiration Date: 10/31/24
Magna Legal Services
Telephone 866-624-6221
WWW.MagnaLS.com

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____, 2023;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

[ ] If returned, or [ ] If review and signature by deponent was waived, the original deposition was delivered to Mr. Gray Laird, Defendant's attorney on _____, 2023;

That $_____ is the deposition officer's charges for preparing the original deposition transcript and any copies of exhibits, charged to Mr. Stephen Demik, attorney for the Plaintiff;

That the deponent was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this ____ day of _____, 2023.

Page 112

_____
Priscilla Glover, Texas CSR #8105
Expiration Date: 10/31/24
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CHANGES AND SIGNATURE

WITNESS NAME: JOSEPH HETHERSHAW
DATE OF DEPOSITION: JUlY 17, 2023

PAGE/LINE	CHANGE	REASON

Page 114

I, Joseph Hethershaw, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
Joseph Hethershaw

STATE OF _____)
COUNTY OF _____)

Before me _____On this day personally appeared Joseph Hethershaw, known to me or proved to me on the oath of _____or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office on this the ____ day of _____, 2023.

_____
NOTARY PUBLIC AND
FOR THE STATE OF _____

My Commission Expires:

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff,	)	
vs.	)	No. 1:21-CV-249-RP
	)	Lead Case
CITY OF AUSTIN AND JOHN DOES, Defendants.	)	
MODESTO RODRIGUEZ, Plaintiff,	)	
vs.	)	No. 1:21-CV-1087-RP
CITY OF AUSTIN and JOHN DOES, Defendants.	)	

ZOOM VIDEOTAPED DEPOSITION OF TIMOTHY COBAUGH

Date: Tuesday, July 18, 2023

Time: 2:04 P.M.

Location: MAGNA LEGAL SERVICES REMOTE
16414 San Pedro Avenue, Suite 900
San Antonio, Texas 78232

A P P E A R A N C E S

For the Plaintiffs: HENDLER FLORES LAW, PLLC
BY: STEPHEN DEMIK, ESQ.
901 South MoPac Expressway
Building 1, Suite 300
Austin, CA 78746
(512) 439-3200

For the Defendants CITY OF AUSTIN:
AUSTIN CITY HALL
CITY OF AUSTIN LAW DEPARTMENT
BY: MONTE BARTON, ESQ.
301 W. Second Street
Austin, CA 78701
(512) 974-2409

Also Present: ALEXIS M. LOPEZ

Videotaped By: MAGNA LEGAL SERVICES
BY: NATE LANINGHAM
(866) 624-6221

Reported By: REBECCA K. QUINN, CSR #5720
MAGNA LEGAL SERVICES
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I N D E X O F E X A M I N A T I O N

Page:
BY MR. DEMIK.....5

-O0O-

I N D E X O F E X H I B I T S

(No exhibits marked)

P R O C E E D I N G S

THE VIDEOGRAPHER: This is the video deposition of Officer Timothy Cobaugh in the matter of Tyree Talley, et al, versus City of Austin, et al. in the United States District Court for the Western District of Texas, Austin Division. Case number 121-CV-249-RP.

Today is Tuesday, July 18th, 2023 and the time is 2:04 p.m. Central.

This deposition is being taken remotely at the request of Hendler Flores Law, LLC. The Videographer is Nate Laningham with Magna Legal Services and the Court Reporter is Rebecca Quinn.

Will counsel please state their appearances and whom they represent.

MR. DEMIK: Stephen Demik on behalf of the Plaintiffs from Hendler Flores Law, along with my paralegal, Alexis Lopez.

MR. BARTON: And I'm Monte Barton on behalf of the Defendants, City of Austin, and we're here in City Hall.

///

TIMOTHY COBAUGH,
having been duly sworn by the Certified Shorthand Reporter to tell the truth, the whole truth, and nothing but the truth, responded, "Yes," and testified as follows:

EXAMINATION BY MR. DEMIK

Q Good afternoon, Officer Cobaugh. How are you?
A Good. How are you?
Q Good. Have you done a deposition before? Have you done one of these?
A No.
Q Okay. Is this your -- so this is your first deposition?
A Yes.
Q Okay. Let me just sort of clarify a couple of the ground rules. Let me know if you have any questions.

The first is if you need a break, it's totally fine, you can just signal to me or anybody else, we can take a break if you need one. You know, you can just raise your hand and we can take a five or ten-minute break, whatever you need. Okay?

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A Yes.
Q The second thing is that you understand that this is videotaped testimony that we're taking and it's treated the same as if we were in a courtroom with a jury listening and watching or a judge, right?
A Yes.
Q Okay. And so it's important for you to be truthful, accurate, complete in your answers.
Do you understand?
A Yes.
Q Okay. Is there anything that would prevent you from giving truthful, accurate, complete answers today during this deposition? Lack of sleep, any intoxicant or anything of that matter?
A No.
Q Okay. I'll start where I always start when we do these depositions. And some of these questions may sort of seem rote and maybe a little boring, but can you tell me what you've reviewed or looked at in preparing for today's deposition?
A I reviewed my report as well as the lawsuit.
Q Okay. That's the complaint that states the allegations?
A Yes.
Q Okay. So you reviewed your report. What are

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-- is that the supplemental report? Can you give me some more description as to your report?
A Yes. It's the supplemental report.
Q Okay. Okay. So you reviewed your report. How many pages?
A It's one page.
Q Okay. So besides reviewing your one-page report and the complaint, have you reviewed anything else?
A No.
Q Okay. Have you spoken to anybody in preparing for your deposition today?
A Just Monte.
Q Okay. And I don't need to know what you discussed specifically, that's attorney/client privilege, but how much time did you spend with Mr. Barton in preparing for today's deposition?
A Two hours.
Q Okay. Any other preparation for the deposition besides reviewing the report, reading the complaint and two hours of meetings with your attorney?
A No.
Q Okay. And you are --
A In the meeting with my attorney we watched the

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video.
Q Okay, sure. Would that be the body-worn cam video?
A It would be the video from the police station, as well as a video that I believe was recorded on a cell phone.
Q Okay. How much -- well, there's a lot of videos because, you know, there's a lot of body-worn cameras by the different officers and then people taking it on their cell phone.
How many, if you know because I wasn't there obviously, but how many videos did you look at with your lawyer?
A Two.
Q Oh, okay. So one was -- was it a body-worn cam footage, was it from the police station, was it from a patrol car, what was the video from?
A One was from the police station and one was from a cell phone.
Q Okay. So one from almost like an overview camera filming; is that right?
A Yes.
Q And the other from a cell phone. Who took that cell phone video, do you know?
A I don't know.

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Q Okay. Okay. Thank you for being thorough.
So let me just sort of recap, make sure I got everything. One-page report, read the complaint, two hours of meetings with your attorney, cell phone video and police station video.
Those are the things you reviewed and did in preparing for the deposition?
A Yes.
Q Okay. Anything else I missed?
A No.
Q Okay. Let me ask you -- let me switch gears now, and I try and side post as much as I can so you know sort of what areas I want to ask you about. I might forget something and jump back, but if I do that, I'm going to do my best to sort of let you know what topic or what area I'm asking you about.
So right now I want to ask you about your background and history at the police department.
Okay?
A (Nods head up and down)
Q So what is your educational background prior to becoming a police officer?
A I have a Bachelor of Science in criminal justice.
Q From where?

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A Liberty University.
Q Where is that?
A Virginia.
Q Okay. What town in Virginia?
A Lynchburg.
Q Oh, yeah. Do you know where Kingsport, Tennessee is?
A I do not.
Q That's where I grew up. It's about an hour and a half from Lynchburg.
What years did you attend Liberty University in getting your BA in criminal justice?
A 2011 to 2015.
Q Okay. We'll back up a little bit.
Prior to Liberty University, did you go to high school?
A Yes.
Q Where did you go to high school?
A Trumbull, Connecticut.
Q Is that where you grew up?
A Yes.
Q Okay. Sorry, I have some rain going. I don't know if you can hear that. Can you hear me all right?
A (Nods head up and down)
Q Okay. It seems like a thunderstorm outside.

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So Trumbull, Connecticut to Liberty University, 2011 to 2015. After Liberty University, you graduated with your BA in criminal justice, what did you do then?
A During the time I was at Liberty University and afterwards I was in the Marine Corps Reserves so I deployed relatively soon after that, as well as joined APD after college.
Q Okay. When did you join the Marine Corps Reserves?
A 2011.
Q When you were in university?
A Just before. The year leading up to it, yes.
Q Okay. All right. I guess I don't -- I'm just asking. I don't know how that works. So you joined the Marine Corps, you went into the reserves, then you went to Liberty University, but you were still in the Marine Corps Reserves?
A Uh-huh, yes.
Q Okay. And I think you said did you deploy as part of your Marine Corps Reserve duty?
A Yes.
Q Okay. When was that?
A 2018 and 2019.
Q Okay. Where did you deploy to?

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A Afghanistan.
Q Okay. Where in Afghanistan?
A Helmand Province.
Q Okay. And how much time -- so you gave me a range, 2018 to 2019, thank you, but was it nine months, ten months, a full year, what was the deployment?
A 11 months.
Q Okay. Okay. And when did you join APD?
A 2018.
Q Okay. What did you do between 2015 -- wait, yeah, 2015 and 2018 when you were deployed to Afghanistan?
A Um, I worked.
Q Where did you work?
A In Connecticut.
Q What kind of work?
A Sorry, I actually joined APD in 2017.
Q Okay. Fair enough. Thanks for checking that. So we're talking 2015 to 2017?
A Uh-huh.
Q You worked, right?
A Uh-huh, yeah, that year and a half.
Q And where did you work?
A Um, my last job before APD was at -- on a farm.

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Q What would you do on a farm?
A I was the manager.
Q Was that in Connecticut or Virginia?
A Connecticut.
Q Connecticut. All right. And so you said that was your last job before APD. Were there any other jobs in that year and a half?
A No.
Q When did you end your term in the Marine Corps Reserves, if you did?
A 2019.
Q Okay. Was that after the deployment?
A Yes.
Q Did you have any specialties in the military first?
A I was in infantry.
Q Okay. Any specialties within infantry?
A I was a rifleman squad leader.
Q All right. So rifle -- you were a rifleman squad leader in the Marine Corps Reserves and you were a rifleman squad leader when you were in Afghanistan 2018/2019?
A Yes, correct.
Q Okay. Tell me about when you decided to join the APD and what you did?

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A I joined APD in 2017 and -- so sorry, I actually started the Academy in 2016. At the end of 2016 and graduated the Academy in June of 2017, and I started working patrol after the Academy.
Q Okay. So let me just make sure I got the sort of timeline right. So graduated from university in 2015, Liberty University, right?
A Uh-huh.
Q Went with the Academy in 2016?
A Uh-huh.
Q Graduated in 2017?
A Uh-huh.
Q Correct?
A Uh-huh, yes.
Q Sorry. Yeah, you got to say yes for the court reporter. Sorry, it's just a thing.
2018 you were deployed to Afghanistan as a Marine?
A Yes.
Q Okay. 2019 you come back?
A Yes.
Q And you work as a patrol officer for the Austin Police Department?
A Yes.
Q Okay. Did I miss anything in there?

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A No.
Q Okay. Well, besides the farm, I guess you sort of worked on the farm in the interim. Fair?
A Yes.
Q Was that like a family operation or -- where you kind of came in and out or what was that situation?
A It was owned by a family friend.
Q Okay. So did you have -- from the time you finished the Academy in 2017, are you with me, until you returned from Afghanistan in 2019, did you have any period of service for the Austin Police Department in that -- in that window?
A Yes.
Q Okay. How long and when?
A So I graduated the Academy in 2017, 2018, just a little over a year.
Q Okay. With the Austin Police Department, right?
A Uh-huh, yes.
Q Okay. Okay. So about a year you were in service before you were deployed?
A Yes.
MR. DEMIK: Okay. You know, there's a really bad hail storm outside. Would you guys mind if we take

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five minutes and just let it calm down? It's actually -- I don't know if you can hear it, but it's really distracting for me.
Could we take a five-minute break?
MR. BARTON: Sure.
THE VIDEOGRAPHER: We're off the video record. The time is 2:19 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the video record. The time is 2:25 p.m.
Q (By Mr. Demik) All right. Thank you, Officer.
Where we left off I think was about a year in 2017/2018 in service with the Austin Police Department, deployed to Afghanistan, come back in 2019, back with the Austin Police Department.
Is that right? Did I get it right?
A Yes.
Q Okay. What has been your assignments and positions while at the Austin Police Department, including we'll call it that space before your deployment?
So your entire time with the Austin Police Department would have been your positions and responsibilities?

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A I worked patrol for approximately five-and-a-half years, and the last seven months I've been on the violent crimes task force.
Q So the time that we're talking about here, and we're going to be talking up to May 30th of 2020, that's the date of the videos you watched, right, was May 30th, 2020?
A Yes.
Q So we'll be talking mostly about the time leading up to that.
And so on May 30th, 2020, how much accumulated time did you have as a patrol officer with the Austin Police Department?
A I'm not sure.
Q Okay. Well, we've got about a year from 2018 -- 2017/2018, come back in 2019, 2019 to May 2020, can you give me a ballpark?
A Two to three years.
Q Okay. And where were you stationed during that time?
A During what time?
Q During 2000 -- during the time you started at the Austin Police Department up until May 30th, 2020?
A I worked patrol in south Austin.
Q Okay. Were you always stationed there?

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A During that time, yes.
Q Okay. In May -- on May 30th, 2020, where were you stationed, in south Austin?
A Yes.
Q Okay. So downtown wasn't your area?
A Correct.
Q Okay. Around this time, we'll just talk about let's just say January 2020 to May 2020, a little more specifically what was your area of responsibility in south Austin?
A Southeast Austin in Frank Sector.
Q Okay. Have you received any specialized screening or certifications in your role as an Austin police officer?
A Yes.
Q What are those?
A I've been to SWAT school, been to CAST school, been to entry school, vehicle containment school, rifle school, pistol -- muzzle pistol courses and less than lethal shotgun courses, hasty react certified, covert surveillance certified, undercover school, active shooter response schools.
That's all I can remember right now.
Q Okay. Were all those in the Academy?
A No. All of those are outside the Academy.

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Q Okay. Is that normal for most police officers to do that many schools outside the Academy?
A I would say it's more than average.
Q Okay. What's CAST school, that was the second one you mentioned?
A It's APD's active shooter response or active attack program.
Q Okay. You next mentioned there less than lethal shotgun. Can you tell me more about the training, education, experience, whatever you call it with regards to that?
A I attended less lethal training in the Academy where you deploy the less lethal shotgun and I've also done at least two formal certification courses outside of that where you practice with the less lethal shotgun and appropriate times to employ it.
Q Okay. So my only barometer are other officers that I've spoken to, so I want to use that as an example.
For an officer who gets a course in the Academy on less than lethal shotguns and then takes yearly certifications, if that's the baseline, what more have you done than that?
Do you understand my question?
A Yes. Two more less lethal shotgun schools.

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Q And why did you attend those?
A To receive more training.
Q Why did you want to receive more training in less lethal shotguns?
A To be better at my job in case I need to employ it.
Q Okay. What are those two less lethal shotgun courses consist of? Are they the same?
A They're similar, but they're not the same.
Q Okay. What do they consist of? Let's start with the first one. What year, and you don't need to remember the month, but what year did you do the first one?
A I believe 2017 or 2018.
Q Okay. And what did it consist of in 2017 or 2018?
A You learn about the -- how the less lethal shotgun functions, the policy around the less lethal shotgun, and then you shoot it on the range, and then you go through scenarios where you do or do not deploy the less lethal shotgun.
Q Like mock scenarios like?
A Yes.
Q Okay. When you say the policies -- when was the second course that you took? Was it after 2020 or

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before 2020?
A It was in 2020.
Q Do you remember was it before May or after May, the date that we're going to talk about here?
A It was after May 2020.
Q Okay. Good. Okay. So then prior to May 30th, 2020, you had taken one less lethal shotgun course, fair, besides the Academy?
A Yes.
Q Okay. And you had mentioned the policy with regards to less lethal shotguns. What was your understanding of that policy May 30th, 2020 and before?
A You can utilize a less lethal shotgun as a form of less lethal force to avoid having to use lethal force so you can de-escalate the situation.
Q Okay. Under what circumstances? And we're talking about -- Officer Cobaugh, this might -- I don't want to get complicated, but -- and I know that policies have changed, so, you know, we're just talking about May 30th, 2020 and before. Almost as if we stopped time at May 31st, 2020 and we're just talking about before.
Do you understand?
A Yes.
Q Okay. So in this period May 31st, 2020 and

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before, what were the circumstances that you were trained you could use the less lethal shotguns?
A You can use them on a person you view was a threat to you or the public.
Q (Nods head up and down)
A As well as during a riot for people that are exhibiting riotous behavior.
Q Okay. Other scenarios where you could use them?
A That encompasses it.
Q Now, let me ask you about your usage of these shotguns. Again, you know, I might repeat myself, but it's just to make the question clear for the record.
May 31st, 2020, so the day after and before, how many times had you deployed the shotguns in this line of service with Austin Police Department?
A Zero times.
Q Okay. So from the time you started with the Austin Police Department in 2017 to May 30th, 2020, you had never shot one of these less lethal shotguns while on duty?
A I have shot them on duty when I was training but not on duty amongst the public.
Q Okay. So good, thank you for being accurate and specific. So I think the question is to make it

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clear for the record, from the time you started Austin Police Department in 2017 until May 30th, 2020 while on duty as a police officer in the public, you had never shot one of these shotguns?
A Correct.
Q Okay. Thank you. Did you -- in your course, and I say "course" because remember we're before May 30th, 2020, in your certification and your training and the less lethal shotgun course, did you receive any training about inspecting the bean bag rounds?
A No.
Q Did you receive any training on the lifespan of the rounds or the condition -- let me ask you that, the lifespan of the rounds? Like an expiration date on a thing of yogurt, did you get any training on that?
A I don't remember.
Q Okay. Did you get any training on what environmental conditions the rounds should be stored in?
A I don't remember.
Q Okay. Did you receive any training on how to inspect the rounds before loading one of these shotguns?
A Yes.
Q Okay. What did that consist of?

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A Examining the round to make sure there was no tears in it or it wasn't damaged.
Q Okay. So let's change topic here and move forward to the week. We're going to do the week before May 30th, 2020.
May 30th, 2020 was a Saturday, correct, if you know?
A Correct.
Q Okay. So let's talk about the week before.
What was your work schedule that week preceding May 30th, 2020?
A I don't remember.
Q Do you remember the day before?
A No.
Q Okay. So you don't remember whether you worked or not on Friday?
A No.
Q And I assume that would be the same answer for that entire week before, Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, you don't remember whether you worked or not?
A I don't remember what days I worked.
Q What hours you worked?
A No, I don't remember.
Q Okay. Do you remember, and we're talking

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about preceding your shift on May 30th, 2020, so that week before, and I recognize you don't remember the days you worked, that's fine, do you remember any memory of that time, any particular experience?
And what I mean by that is something that would help you remember, protests, use of force, car accident, anything like that?
A Can you explain that again?
Q Sure. Absolutely. So -- and sometimes it helps to give you an example. I'm just going to give you an example to help clarify my question if that's all right.
I may not remember a week that I worked in 2020, but if I had an event in that week and I remember that I had a trial, right, then that would be a significant experience for me. In my job if you have a trial, it's a pretty, you know, I don't know what you call it, significant event, it's not your everyday, you know, you don't have a trial every day, you have maybe two or three a year. So that's my example.
My question is that week preceding May 30th, 2020, did you have any experience on the job or related to the job that you remember?
A I remember May 30th that there was a riot downtown.

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Q Okay. Good. The week before May 30th do you remember any other events?
A No.
Q Okay. And the day before, do you remember any events the day before the riot as you call it?
A No.
Q Okay. What about the day after Sunday, which I think would be May 31st, 2020, do you have any recollection of that day?
A No.
Q Okay. What are your recollections since we -- and all I'm doing, Officer, I'm not playing tricks or anything, I'm just sort of narrowing the time. Okay. So we talked about Friday, we talked about Sunday, and you said you didn't have any specific memory of those days, fair?
A Yes.
Q So now we'll go to Saturday in between both of those. And I'm just going to ask you very generally, I'm going to ask you some more specific questions, but I'm going to give you an opportunity first to very generally what are your memories of that Saturday, May 30th, 2020?
A I remember I was working evening patrol, and right after I started my tour of duty that day I was

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called downtown to work the riots.
Q Okay. So where is your police substation where you report to at this time?
A On May 30th, 2020 it was 404 Ralph Balanced Drive.
Q Okay. Is there a name for that station?
A The south substation.
Q Okay. So you report to the south substation. Do you remember what time you began your shift?
A No.
Q Okay. Would it have been before noon?
A It would have been between noon and 4:00 p.m.
Q Okay. And about how long were you on your shift at the south substation before you received the call to go downtown?
A 45 minutes, approximately.
Q Okay. How did you receive that notification to go downtown?
A A message on our mobile computer.
Q Were you in a patrol vehicle at the time?
A Yes.
Q Okay. And were you with a partner?
A Yes.
Q Who was that partner?
A Officer Alas.

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Q Could you spell that for the court reporter?
A A-L-A-S.
Q And is that male or female?
A A male.
Q All right. Did Officer Alas also have to report with you because you guys were in the same squad car?
A Yes.
Q Okay. So tell us what happened next after you got the call on the mobile computer after 45 minutes on your regular shift to go downtown?
A We met up with other officers in a parking lot downtown. I believe it was around Third Street.
Q What did the mobile device say? I don't know code, so maybe you can interpret it for me, but what did that mobile alert say? Report downtown there's a fire, report downtown, you know, what was the description given at that time?
A I don't remember.
Q Okay. Okay. So you met in a parking lot. How many other officers did you meet with in the parking lot?
A Approximately 50.
Q Okay. Was that parking lot like right next to the police station, was it several blocks away? I don't

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know the geography that well.
A It was at least several blocks away.
Q Okay. And was that like a designated rendezvous point, is that why you met there?
A I didn't know if it was a designated rendezvous point. It may have been by the chain of command. I'm not sure.
Q Okay. So you get to the parking lot of, and you meet up with the other officers and then what happens?
A We went to the State Capitol Building.
Q Okay. So that's where you were first ordered to go to was the State Capitol Building?
A Yes.
Q Okay. Tell us what was going on there?
A There were -- there was a crowd of people on the Capitol grounds, and DPS was trying to keep the Capitol grounds safe and they needed help.
Q Were these individuals or this crowd, let's call it a crowd, was the crowd like inside the fence, was it on the footsteps of the Capitol, where was it?
A It was all over. It was on the outside, on the inside of the fence, all the way up to the building, the front doors.
Q Where were you positioned when you reported

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there for duty?
A I was on the lawn in front of the Capitol.
Q Okay. And tell us what you did there?
A We stood in a line and made sure no one else committed acts of violence or vandalism.
Q Okay. How long were you at the Capitol?
A I don't remember.
Q More than four hours?
A I'd say less than four hours.
Q Okay. More than an hour?
A Yes.
Q Okay. Well, let me frame it to you this way. When you left the Capitol, was it light or dark out?
A Light.
Q What are you wearing at this point where you're on the lawn of the Capitol in a line making sure that this crowd did not pass you into the Capitol?
A A marked blue police uniform and a helmet.
Q Any other items of equipment, baton, service firearm, taser, shotgun, shield?
A I had a service firearm and a taser.
Q Did you have the shield? How did you form a line with your fellow officers?
A I did not have a shield. We stood shoulder to shoulder.

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Q Now, during this time at the Capitol, how would you characterize the crowd?
A They worked many acts of violence vandalizing the Capitol.
Q Okay. Can you put more words to that? What does that look like? Throwing molotov cocktails, spray paint, throwing rocks, what does it look like?
A They were spray painting on the driveway, on the doors of the Capitol, on the steps of the Capitol, profanity and foul language towards the police officers, and they were fighting DPS troopers.
Q Physically fighting?
A Uh-huh, yes.
Q How many times did that happen?
A I only saw one.
Q What do you do in that -- what did you do in that situation?
A We stayed where we were at.
Q Okay. What happened with that, with the DPS officers that were fighting with individuals from this crowd?
A I don't know.
Q Did you see anybody get arrested?
A It's hard to say whether people are being detained or arrested. I saw people get handcuffed, but

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I don't know if they were placed under arrest or not.
Q Okay. Fair enough. So you had mentioned spray painting and profanity, yelling profanity at police officers. I certainly don't mean to make you feel uncomfortable, but can you tell us some of the words that were being yelled at you and other police officers?
It's all right, you can -- we'll pardon your French.
A Fuck the police, fuck 12, all cops are bastards, Adudac and Ahab (phonetic), all cops are racists, all cops are murderers. They're a few that I remember.
Q And you're a police officer, right, at the time?
A Yes.
Q And so those were insults to you personally as well, right?
A I did not take them personally.
Q Okay. So when people were screaming at you, I imagine feet away that all cops are racists, by implication you're a racist, that didn't affect you in any way?
A No.
Q Okay. For being called -- and these are what

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they were yelling, certainly I'm not saying it, but murderer, you know, all the other things you stated, those didn't provoke any emotional reaction in you?
A No.
Q Okay. Why is that?
A It's my job to remain professional.
Q Okay. And in some circumstances like this one that must be difficult?
A It wasn't difficult for me to stay professional.
Q Okay. Did you engage in any use of force during the time at the Capitol?
A No.
Q Okay. Did any officers in your vicinity use any force at the Capitol?
A Not that I remember.
Q And I asked you this before how you would characterize this crowd. Was there riotous behavior at the Capitol while you were stationed there?
A Yes.
Q Would you classify it as a riot?
A Yes.
Q Okay. And what is a riot in your mind?
A A crowd of people gathered together that are damaging property or threatening violence or committing

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violence.
Q Okay. Tell us about how you ended up from the Capitol back at the police station?
A From the Capitol we did not go back to the police station. From the Capitol we went to the proper of IH-35.
Q Okay. Maybe you could be a little bit more specific.
How did that happen? Did a supervisor come to the line and say, all right, we're going to go to the highway now or did you get some kind of notification, how did that work?
A A supervisor said we're going to go to the highway now. We got in a van and they drove me to the highway.
Q Okay. At what point on this shift on May 30th, 2020 did you -- did you get one of these shotguns?
A I had one. I got a shotgun from the south substation at the beginning of my tour of duty.
Q Okay. In the patrol car?
A I checked it out from the Equipment Room at the substation.
Q Okay. So you checked it out from the Equipment Room at the south substation and then you had

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it in the patrol car, right?
A Yes.
Q And then when you met up with the 50 or so other officers at the parking lot, you took the shotgun with you?
A Yes.
Q Did you take the shotgun with you?
A I believe so.
Q Okay. So did you -- and maybe it's just a memory, I don't know, it's fine to correct your answer, there's no problem with that, we're talking about three years ago, I understand, but did you have the shotgun when you were in that line of officers at the Capitol or did it go somewhere?
A I don't remember.
Q Okay. Fair enough. But you answered my question I think, you checked out the shotgun at the beginning of your shift on May 30th, 2020?
A Uh-huh. Yes.
Q Thank you. And then when was the next time you remember picking up the shotgun and taking it with you?
A I remember having it on 35.
Q Okay. So how many other officers were in the van that you were transported to I-35 with?

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A Approximately 10.
Q How many shotguns were with those officers in your van that you were in?
A I don't remember.
Q Okay. At least one, right?
A Yes.
Q Okay. Because you had -- you had it with you, right, do you remember?
A I believe so.
Q Okay. Tell us what happens when you get to I-35?
A We got out of the van and met up with several officers that were on 35.
Q Okay. How many is "several"?
A Approximately 12.
Q And what do you do?
A Um, we took cover behind a tractor-trailer that was parked there because we were getting pelted with rocks.
Q Okay. As soon as you got out of the van you were being pelted by rocks?
A Yes.
Q Okay. Northbound or southbound, do you remember?
A Southbound.

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Q And at this point you have the helmet with the mask, right?
A Yes.
Q Do you have any kind of shield or any additional equipment from what you had at the Capitol last?
A No.
Q Okay. Besides -- well, you have the shotgun with you, right?
A Yes.
Q Okay. So you and some officers exit the van, you take cover behind a tractor-trailer and then what happens?
A Once we get enough officers there we started to form a line that we could actually defend.
Q Okay. Is that a line across the highway --
A Yes.
Q -- or what was the trajectory of that line?
A It was a north to southbound line down the highway.
Q What's -- what's this experience like? Is this a stressful situation exiting the van and being pelted with rocks? Having to take cover, then form a line with other officers, would you describe it as a stressful situation?

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A Yes.
Q Okay. And tell us what happens once you form that line with other officers?
A We cleared the highway of all the people that were standing in the middle of the highway.
Q How did you do that?
A We stood in a line and took a step approximately every five minutes until we stepped our way all the way off the highway.
Q Did you make physical contact with the crowd or was this more of at a distance?
A I did not make physical contact with the crowd.
Q Okay. Did other officers from the line make physical contact with individuals from the crowd?
A I don't remember.
Q Okay. And about how long does that take? And an approximation is all I'm asking you for, but from the time you get out of the van to the time the individuals are cleared from the highway, about how long?
A Approximately two to four hours.
Q Oh, okay. After you clear the highway, is it daytime or nighttime?
A I believe it turned to nighttime around the time we finished clearing the highway.

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Q Okay. So from the time -- and again, I'm just breaking it into time chunks, so forgive the repetition, but from the time you exited the van when you were deployed at the highway to the time that it was cleared, this chunk of time, did you engage in any uses of force?
A Yes.
Q Okay. How many?
A I don't remember.
Q What were those uses of force?
A I deployed the less lethal shotgun.
Q Okay. And do you have an approximation of how many times you did that? More than 50, less than 50?
A Less than 50.
Q More than 20, less than 20?
A Less than 20.
Q More than 10, less than 20? I'm just bracketing that. You can go ahead and jump to it if you want, but what's the bracket there?
A 5 to 15.
Q Okay. And did you reload during this chunk of time exiting the van to clear the highway?
A Yes.
Q And do you recall how many times you reloaded?
A No.

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Q Okay. At any point in time in this time period that we're talking about, exiting the van to clearing the highway, did you -- did you have the shotgun with you the entire time or did you pass it off to somebody else at any point?
A I had it with me the entire time.
Q Okay. How many other officers had these shotguns at this time?
A More than one is all I remember.
Q Okay. What happens now that you clear the highway and it's nighttime?
A A large crowd started forming outside of the police headquarters, and so several officers went down to the front steps and several officers remained on the bridge above the headquarters.
Q Okay. And who made that determination who went down as opposed to who went to the overpass?
A I don't remember.
Q All right. Did you make the decision to stay at the overpass?
A I don't remember.
Q Or somebody told you to stay on the overpass?
A I don't remember.
Q Do you remember out of the group you were in

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how many officers went to the overpass and how many went down to the police station, approximately?
A Approximately 50 to 100 on the bridge and approximately 50 to 100 on the front steps of the police headquarters.
Q Okay. And the ones that went to the steps of the police headquarters, that's called the porch, right?
A I've never referred to that as the porch or heard that term.
Q Oh, okay. Okay. We'll just call it the steps to the police department, that area.
Do you understand when I talk about, when I refer to that area, that corner in front of the police department?
A Yes.
Q And so the officers from the freeway that were with you that went down there, they went and they joined other officers that were already down there on the steps of the police department, right?
A I don't remember if there was officers already down there or not.
Q Okay. Tell us what happens next when you -- when you're at the overpass?
A Um, we monitored the crowd until

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approximately -- I was relieved at just before midnight.
Q Okay. So when you were -- just before midnight, it was the end of your shift or were you relieved to go somewhere else?
A I was relieved to go back to work patrol in southeast Austin.
Q Okay. And what did you go do when you were relieved just before midnight?
A What did I do after I was relieved?
Q (Nods head up and down)
A I went back and worked patrol in southeast Austin.
Q Okay. Did you work all night, did you work a couple of hours?
A I worked till approximately 6:00 a.m.
Q Okay. So you had worked over -- on this day you worked over 12 hours?
A Yes.
Q About how many hours did you work continuously May 30th to May 31st?
A I believe it was approximately a 16-hour shift.
Q Okay. Let me ask you about that. That's a long time. So I want to start from the time that you -- that you went to the State Capitol, okay, to the time

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that you were at the overpass, did you get any breaks in there at all?
A Yes.
Q What were those breaks?
A I was given a break to eat, use the bathroom, drink water approximately one every hour.
Q Okay. All right. So you had a body-worn camera on you the entire shift?
A Yes.
Q Okay. And when was that recording and when was it recording during your shift, approximately?
A I was interacting with the public it was recording.
Q Okay. Is that something you turn on and turn off by tapping or how does that work?
A Yes. You turn on and off by tapping it.
Q Okay. How many times did you turn on your body-worn camera? And I'll limit it, I'm not going to go the whole shift, but at the time you were at the overpass, did you turn it on once, did you turn it on a few times, a bunch of times, what do you remember?
A A bunch of times. I don't remember an approximate number.
Q Okay. All right. So tell us what happens when you're positioned at the overpass overlooking the

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crowd in front of the police station?
A There was a crowd that continually exhibited riotous behavior.
Q Okay. In addition to the group in front of the Capitol, this was also a riot; is that what you're saying?
A In front of the Capitol was participating in the riotous behavior. I'm sorry. I'm sorry, say that question again.
Q No problem. We talked about the group in front of the Capitol and you said that was a riot, riotous behavior?
A Yes.
Q And so I'm just asking you, this group in front of the police station was also a riot, people engaging in riotous behavior?
A Yes.
Q Okay. The time you were at the overpass from dark to just before midnight, is that when you were at the overpass more or less?
A Yes.
Q Okay. During this time, this chunk of time in this time period, how many uses of force did you engage in?
A Approximately five to ten.

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Q Were all those uses of force with the shotgun?
A Yes.
Q Okay. And how many individuals did you -- I think the term is impact, how many individuals did you hit with the shotgun during this time period -- we're going to stay on this time period -- getting to the overpass until you left just before midnight?
A I don't remember.
Q Was it more than ten?
A No.
Q Okay. So it was less than ten. Was it less than five?
A It was five to ten.
Q Okay. Five to ten individuals?
A Yes.
Q Okay. Now, can you tell me, and it's up to you, Officer, you can be specific or you can just sort of be general, what were these five to ten individuals that you shot with the bean bag rounds from the shotgun, what were they doing?
A Mostly what I remember is they were throwing objects.
Q Okay. What objects?
A Rocks, bottles, molotov cocktails, fireworks.

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That's all I remember.
Q Okay. And who were they throwing them at? The police station, the freeway, somebody else, where were they being thrown?
A They were throwing them at police officers, as well as a lot of them missed the police officers and hit the crowd itself.
Q Okay. Can you describe that for me a little bit?
How did they miss the police officers and hit individuals from the crowd, like where did that happen?
A People standing close to the police officers were also hit.
Q Okay. And there's basically two groups of officers here at this time period. There's officers in front of the police station and officers at the overpass, fair?
A Yes.
Q Were there other lines of police officers in the vicinity or were those the two groups of officers?
A Those are the two groups that I remember.
Q Okay. And so these objects were being thrown at officers in front of the police station and hitting individuals that were close to the police officers?

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A Yes. As well as objects being thrown at the police officers on the bridge.
Q Okay. And describe that a little bit for me. How were these objects being thrown from -- they're being thrown from the street up onto the freeway?
A Yes. Some were thrown from the street onto the freeway and then some were people driving by on the freeway.
Q Behind you?
A Yes.
Q Okay. So you're stationed at the edge of the freeway, and there's objects coming at you from the street, right?
A Yes.
Q And also behind you people throwing at -- that met you from cars?
A Yes.
Q Okay. What measures did you all take to protect yourself from the -- thrown from the cars?
A The people are throwing them from the cars were very infrequent so we didn't have any protective measures.
Q What actions were taken if one of these cars -- well, how many times did it happen?
A I distinctly remember one because the object

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went in close to me.
Q Okay. What was it, a firework or --
A It was a milkshake.
Q Oh, In-N-Out or -- I'm not being silly. I just -- there are different quality milkshakes from different institutions I can tell you.
And did it hit you or landed next to you?
A Landed next to me.
Q Okay. Okay. Any -- I guess I'm just -- I want to understand, were there rocks thrown from the cars or fireworks or molotov cocktails or anything like that?
A The only -- no, not that I remember.
Q Okay. And so the milkshake that was thrown at you and your fellow officers, were any measures taken against that person?
A No. They were going by like 60 miles an hour so it would have been like impossible to do anything.
Q Okay. And was that the first object that had been thrown from a car?
A That I remember, yes.
Q Okay. Okay. Did you -- what kind of car was it that they threw it at you?
A I don't remember.
Q Okay. Did you see it at the time?

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A Did I see the car?
Q Yes, sir.
A I don't remember. I would assume that I saw the car.
Q Okay. All right. Let me ask you a little bit about communications, right, radio communications.
At the time you're at the overpass with the other officers with the shotgun, you have your shotgun, how many shotguns are on that overpass, approximately?
A I don't remember.
Q Okay. Again, I'm not being annoying, but like three to five, five to ten, can you give me a bracket?
A I don't -- I couldn't give you a bracket, no.
Q Okay. Well, again, at least one. You had one, right?
A Yes.
Q At least one officer had one, right?
A At least one more in addition to me?
Q Yes.
A Yes.
Q Okay. Have you reviewed your body-worn camera footage from your body cam after May 30th, 2020?
A I've reviewed portions of it, yes.
Q Okay. When was the last time you reviewed portions of that video?

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A Approximately two years ago.
Q Okay. And why were you reviewing portions of that video at that time two years ago?
A I don't remember.
Q Okay. Was it personal curiosity that you just wanted to check it out and view it or did somebody ask you to view it?
A I don't remember. I just remember reviewing it on a computer at the police substation by myself.
Q Did you have any reaction when you watched the video, which I guess would have been how long after -- Okay. So about two years ago you reviewed portions of the video.
Are you with me at that point in time?
A Yes.
Q How long after May 30th, 2020 was that that you were reviewing the portions of the video?
A Approximately six months to a year and a half.
Q Okay. And watching the video six months to a year and a half after the May 30th, 2020, did you have any observations or did you note anything after you watched the video?
A No.
Q Okay. Was there anything significant to you watching that video six months to a year and a half

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after May 30th, 2020?
A No.
Q Did you have a discussion with anyone after watching the video six months to a year and a half after May 30th, 2020?
A No.
Q Any electronic communications such as email, text messages or anything else with regards to watching portions of the video?
A No.
Q So now -- so we talked a little bit about the milkshake being thrown from the car. Now I want to come back to the crowd milling around in front of the police station. With me?
A Yes.
Q Okay. So I think you said you believed that you impacted five to ten individuals in that crowd below you from the overpass that evening; is that fair?
A Yes.
Q Okay. Now, do you have any specific recollection of what those individuals were doing? So we're not talking about the milkshake in the car on the overpass, we're talking about the individuals that are below you from the overpass?
A They were throwing rocks, fireworks, bottles,

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molotov cocktails, vandalizing the street and lighting a car on fire.
Q Okay. So molotov cocktails is where there's gasoline in a bottle with a rag in it and they light it and they throw it and then it explodes in flames, right?
A As far as I know, yes.
Q I didn't see any molotov cocktails exploding in the videos. Did you see any molotov cocktails resulting in flames that evening?
A Yes.
Q Okay. Where were those?
A There was an individual that came out from underneath the bridge that threw the molotov cocktail at the side of the police building and it went up in flames briefly.
Q Okay. And was that an individual that you shot with the shotgun?
A I don't remember.
Q Okay. Did you see that individual shot by any other officers with the shotguns?
A I don't remember.
Q Okay. So you remember this individual throwing the molotov cocktail, hitting the side of the police station, but you don't recall where they went or

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what happened to them?
A I remember there was radio traffic that he went into a porta-potty near the police headquarters.
Q Okay. All right. Coming back to -- to the -- the individuals that you impacted in the crowd below you.
So I understand you're saying generally there were rocks, fireworks, molotov cocktails, bottles being thrown by individuals in the group, right?
A Yes.
Q With regards to specifically the five to ten individuals that you shot with the shotgun, what were they doing? And I'm asking you to be more specific if you can to your recollection.
A I couldn't be any more specific than that.
Q Okay. So out of those individuals, do you have any specific recollection of this guy, I remember shooting him, he was throwing a rock?
A No.
Q Or this person, this individual I remember was throwing a molotov cocktail and so I shot them?
A No.
Q This individual threw a water bottle and so I shot and impacted him or her?
A Yes.

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Q Okay. Tell us about that?
A Um, I was watching the video of the police -- from the police headquarters, reminded me of an individual that I impacted with the bean bag round.
Q Okay. And who directed your attention to that video?
A My lawyer.
Q Okay. So this is separate and apart from that time that you went back by yourself and watched portions of your body-worn cam six months to a year and a half after May 30th, correct?
A Yes.
Q Okay. How long ago -- and you did mention this at the beginning, how long ago was that that your lawyer directed your attention to this video from the police station?
A July 13th.
Q Thank you, great. It's very specific. That's great. And that was during a meeting with your lawyer I imagine, right?
A Yes.
Q Okay. Now, besides -- and was that video shown to you and directed to you with regards to one individual or multiple individuals?
A There were multiple individuals in the video,

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but I believe it was captured and cut for that one incident where there's one individual.
Q Right. That makes sense. And let me just ask you, you see it another way.
Out of the five to ten individuals that you impacted with the shotgun on that evening of May 30th, 2020, was your attention directed to any other individual besides this one individual who threw a water bottle?
A While watching the video?
Q Yes.
A My attention wasn't directed to a specific individual. I think it was just directed to watching the video.
Q Okay. Fair enough. But in that video that contained one individual that you shot with the shotgun, were there other individuals in that video that you also shot with a shotgun?
A No.
Q Okay. So in the video that you were directed to on July 13th to watch, okay, in that video there was one individual that you shot with a shotgun, correct?
A Yes.
Q And the four to nine other individuals that you shot with a shotgun were not in that video?

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A Correct.
Q Okay. Did you have any -- did you note anything significant or have any feelings or impressions on July 13th when you sat and watched that video?
A No.
Q Okay. Well, you did have one thing that you noted, right, which was one individual who threw a water bottle, fair?
A Yes, I remember that.
Q Okay. Okay. So do you recall -- let me ask you, do you recall at any point when you're on the overpass, do you recall a car driving in the street into this crowd of people in front of the police station?
A I -- only after I watched the video do I remember.
Q You broke up there a little bit.
A Only after watching the video do I remember the car that drove into the street.
Q Okay. And after you watched the video and it refreshed your recollection, what did you remember about that?
A All I remember was there was a car that drove into the middle of the street and police had to escort it out.
Q Okay. What happened was some police officers

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came down from the -- from the station, from the line and they took the individual out of the car, right?
A I don't know if they took them out or not.
Q Okay. And -- okay. And about when did the -- okay. So I want to focus on the individual that you impacted throwing the water bottle in the video.
Do you know the one I'm talking about?
A So the video that I am referring to is not the the video of the car.
Q Okay. All right. So thank you for clarifying, but those are two separate videos?
A Yeah.
Q All right. So when did you watch the video that had the car in it?
A The same day, July 13th.
Q Oh, okay. All right. Well, why were you shown that video if it didn't have the individual that you impacted?
A I don't know.
Q Okay.
A I believe it's because I'm named in the lawsuit for the individual that was impacted from what I've been told.
Q Okay. All right. Okay. And so what did you -- let me ask it to you this way.

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When you watched the video with the individual that you impacted where you're named in the lawsuit, are you with me on that video?
A Yes.
Q Okay. Could you see yourself in that video on the overpass?
A I could see a bunch of police officers on the bridge. I'm not sure which one was myself.
Q Okay. Was it at a quality well enough where you could pick yourself out from those officers or was it too --
A No.
Q Okay. Were you able to tell exactly when you shot that individual watching that video?
A Um, you can tell when the individual gets bean bagged, and it's within a brief period of time, which is when I would have impacted the individual. So based on that, I can tell that I impacted the individual during that time.
Q Okay. And did that -- did that refresh your recollection? Did it help your memory watching that video?
A Yes.
Q Okay. And there's also a body-worn cam that has footage of when you impacted that individual,

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correct?
A I believe so.
Q Did you watch that video or when was the last time you watched that video? Was it the six months to a year and a half after May 30th, 2020?
A I don't remember if I had ever watched that video.
Q All right. So when you impacted the individual, and what was that individual wearing?
A I don't remember.
Q Okay. So your lawyer directed your attention to this video and you watched it of one of the five to ten individuals that you impacted on May 30th, 2020, right?
A Yes.
Q And you watched that video July 13th, right?
A Yes.
Q That was five days ago, right?
A Yes.
Q And after watching that video five days ago with your attorney, now five days later you can't remember what this individual was wearing?
A Correct.
Q Okay. Was he wearing jeans, shorts, hoodie, shirt, anything ring a bell?

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A I don't remember.
Q Okay. But you do remember very vividly the throwing of the water bottle, fair?
A Yes.
Q You don't remember what he looked like?
A I don't remember what he was wearing.
Q Do you remember what he looked like?
A I remember him being a male.
Q Okay. A male. Any other descriptors that you remember?
A Medium build.
Q Okay.
A Possibly average height.
Q What's average?
A 5-8.
Q Okay.
A That's all I remember.
Q Okay. But you don't remember what he was wearing?
A Correct.
Q Okay. And that's -- fair enough -- is not just based on three years ago, that's after watching the video five days ago, correct?
A Yes.
Q Okay. What range were you at when you

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impacted this individual that we're talking about from the video that you watched with your lawyer?
A Approximately 20 yards.
Q From the overpass down?
A Yes.
Q Okay. Was the -- was this individual, and we'll just say "the individual," since I don't know whether -- we'll call him the video individual, so just for shorthand; is that alright?
A Yes.
Q Okay. Does any of the other individuals, were they impacted by any other officers' shotguns?
A Based on the video I watched, yeah.
Q Okay. What about based off your memory, that too?
A Yes.
Q Okay. Where were those shotguns coming from that impacted the video individual?
A I know there was at least one other than mine came from a shotgun on the bridge.
Q Okay. Any shotguns from the line at the police station?
A I don't know.
Q Okay. Those officers did also have shotguns, correct?

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A I believe so.
Q And they were firing them during this time period, correct?
A I don't remember.
Q You don't have any recollection of whether or not the officers in the line in front of the police station were firing their shotguns?
A I don't remember.
Q Okay. How many times approximately was this video individual hit with bean bag rounds?
A I don't know.
Q Can you give me a ballpark?
A More than one.
Q Okay. More than ten?
A I don't know.
Q Okay. Any way you can bracket that, five to ten, ten to 15, 15 to 20?
A Approximately six.
Q Okay. And how many times did you fire at the video individual?
A One time.
Q Okay. Okay. While you were on the overpass -- I'm going to circle back, I meant to ask you about this -- was there radio traffic between you, officers and yourself on the overpass and any other

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officers?
A Yes.
Q Who were those other officers?
A Officers on the front steps and officers in the command post.
Q Where was the command post?
A I don't know.
Q Okay. Was that something that's in sight that they're viewing the crowd or is a command post just to coordinate logistics from somewhere else where it's not within eyesight?
A Based on my previous experiences, it's different. Sometimes it's at AP main, sometimes it's at other office buildings.
Q Okay. And so you were getting information on your radio from officers that were on the line in front of the police station?
A Yes.
Q And that was -- well, let me ask it to you this way. Did anyone at any point on the overpass, right, overpass to just before midnight when you left the overpass, did anybody direct you to impact or shoot anyone with a shotgun? With your shotgun?
A Yes.
Q Who was that and when?

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A I remember one incident where there was a person that was throwing fireworks at the crowd, and he was standing in the middle of the street, and a supervisor behind me, I don't know his name or what he looked like, directed my attention to him, to the person throwing the fireworks.
Q Okay. So -- so the supervisor observed this person throwing the fireworks into the crowd and he said to you impact that guy?
A I believe he said that person's throwing fireworks.
Q Okay. And I mean he was telling you that to direct your attention to it because you had the shotgun?
A Yes.
Q Okay. And then did you impact that individual, did you shoot them?
A Yes.
Q Okay. All right. What about -- so that was one time. Were there any other times that you were directed with the shotgun?
A I don't remember.
Q Okay. There were other officers to the right of you and to the left of you on the overpass at this time, right?

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A Correct.
Q And all the officers on the overpass were talking to each other, right?
A Yes.
Q And they would make comments like, you know, pay attention to that guy in the white, for example, right?
A I remember certain officers calling out people's clothing. I don't remember who they were, if they were talking to me.
Q And the reason they're calling out people's clothing is because they're directing your attention, again, the guy with the shotgun, they're directing your attention to these -- that -- those individuals, correct?
MR. BARTON: Object to the form.
Q (By Mr. Demik) You can answer.
MR. BARTON: That's fine.
THE WITNESS: Yeah, sure. I -- I was looking at the crowd, so I don't know if they were directing towards me or not.
Q (By Mr. Demik) Okay. Well, I'm not being glib here, but they weren't directing your attention to their clothing just to say, hey, that guy's got a cool shirt, were they?

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A I don't remember.
Q They were directing your attention to that individual -- I'm using an example, this is an example, but, hey, that guy in the white shirt, they're communicating that information to you because they want you to focus your attention on that individual, fair?
A I don't remember anyone specifically directing me other than the one, the fireworks incident.
Q Okay. Do you recall at any point somebody saying, pointing and saying that guy in the white?
A No.
Q Okay. Okay. So what conversations -- well, no, let me go back. On the overpass you can't see what's happening beneath you, fair?
A Define beneath me.
Q Sure. Let's use physics, right. If you're here looking straight forward at a 90-degree angle from that vantage point directly beneath you underneath the overpass, you can't see what's going on there at this time, can you?
A I would say you can. I could see probably halfway under the bridge if I looked over the bridge, which I periodically did.
Q Okay. So periodically you leaned over the railing to look underneath the underpass?

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A Yes.
Q Okay. And did that make it easier or harder for individuals who were throwing objects from below at you, to hit you?
A Did what make it harder?
Q Leaning over the railing to look beneath the overpass?
A I don't know if that made it harder or not.
Q And why would you look? Why would you lean over the railing to look underneath the overpass?
A To see if the crowd's moving.
Q Fair enough. You could see halfway underneath the overpass, but even leaning over the railing there's still this area underneath the overpass that you can't see what individuals are doing, right?
A Yes.
Q And because of that you're also sort of relying on the information that's being radioed to you by other officers, and specifically I'm talking about the officers in front of the police station who can see what's happening beneath the overpass; is that fair?
A Yes.
Q Okay. Now, what are the -- what are the parameters that you were given on this date, specifically this date?

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You talked a little bit about training and the less lethal shotgun course, but I want to talk about May 30th, 2020. What were the parameters you were given whether you could or could not fire these shotguns, your shotgun?
A We could fire them at people that were a threat to the public or instigating the crowd by exhibiting riotous behavior.
Q What does "instigating the crowd" look like?
A Um, they would get a bunch of people together to move up to the police and throw things at the police or they would vandalize the street insinuating that there was a loss of control and we can do whatever we want to do at that point.
Q Okay. So if you saw an individual who's instigating, meaning telling others to go throw things at the police officers, you can impact that individual?
A No. That in addition they were exhibiting riotous behavior themselves.
Q Okay. All right. So those were the parameters, but were you given any parameters when you could not shoot someone with one of these shotguns?
A If they're peacefully protesting.
Q Okay. Now, that's the parameters that you

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could and could not. Now I'm going to ask it to you in a little bit of a different way.
Did anyone give you with your shotgun, superior or otherwise from the police department, did anybody give you parameters on when you should or you should not shoot an individual with these shotguns?
A I don't remember.
Q Okay. Was there any discussion about the range at which you should or should not shoot someone with a shotgun?
A I knew that based on the training I received prior to that day the limitations of the less lethal shotgun.
Q And what are those?
A With the particular round that was being used at that time frame of a minimum of five yards and a maximum effective range of 25 yards.
Q Okay. And what happens after that maximum effective range of 25 yards if you fired at someone beyond 25 yards?
A The round could tail off and deviate from the target.
Q Okay. And it could hit them in a place where you didn't necessarily intend to aim at?
A If you shoot it for more than 25 yards, it's

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possible.
Q Right. All right. Was there any discussion between you or any other officers or superiors about the line of fire here? And here, let me be specific what I'm asking you.
I'm asking you did anybody bring up the fact that there were officers with shotguns in front of the police station and officers up at the overpass and their respective lines of fire on individuals in the crowd?
A Not that I remember.
Q Was that anything that you were concerned about?
A Can you be more specific about what I'd be concerned about?
Q Sure, sure. Well, shooting someone with a shotgun is considered a use of force, correct?
A Yes.
Q It's meant to deter individuals by hitting them with these bean bags, right?
A Yes.
Q And whether that either makes them flee in the other direction, right, you hit them and they run away, right?
A Yes.
Q Or what I would call, and maybe I'm using the

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wrong term, but pain compliance. They get hit with a bean bag round, it hurts, so they stop doing what they're doing?
A Yes.
Q Also if an individual is like, you know, like a baseball windup, getting ready to throw something and they get impacted with a round, it might knock them off balance, that's also going to deter them from throwing a molotov cocktail, for example, right?
A That's possible, yes.
Q Okay. And there is also sort of a show of force, right, where you can show an individual a shotgun and command them to comply, fair?
A That's not something that I'm familiar with.
Q Okay. You're taught the use of force continuum, right?
A Yes.
Q And the use of force continuum begins with something as simple as giving someone a command, right?
A No, it can start at any given point.
Q It can start at any given point, and it can start at the point where you, the police officer gives someone a command, for example, to get on the ground and that's a use of force because you're giving them a command and they either comply or don't comply, fair?

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A No, that is not a use of force.
Q Okay. What would be your lowest level of force that you would use as a police officer and you've been trained about to gain compliance?
A According to APD policy, the level four response is for if things where you have -- you push someone to the ground or you grab their arms and you pull them behind the back as they're resisting.
Q Okay. Fair enough. You asked me what I meant by my question, so I'm trying to drill down on that.
If an individual -- let me give you two scenarios and maybe this will help you understand my question. An individual is here and there's a line of police officers in front of them, are you with me in this hypothetical?
A Yes.
Q All right. And the police officers hit them with the bean bag rounds, right, that individual knows that they've been shot, that there's police officers in front of them and that they need to stop in whatever behavior they were engaging in that led them to being shot, right?
A Yes.
Q Okay. Now, let me ask you another hypothetical.

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Let's say there's police officers that are hidden behind that individual, okay, and they have a line of police officers in front of them, if that individual is impacted and hit from behind and they don't know where it came from or what it was, would that give you a concern as a police officer trying to ensure and get compliance from this crowd?
A So would it concern me if they knew where they got impacted from?
Q Or what -- impacted with?
A No.
Q Okay. After you fired your shotgun and hit an individual, you said I don't think that guy knew we were back here. Do you recall that?
A No.
Q Okay. If you were to watch your body-cam footage and you heard that statement, I don't think that guy knew we were back here, would you deny making that statement?
A If I said that on my body-worn camera?
Q Yes, sir.
A If I watched my body-worn camera and I said that, I would not deny saying that.
Q Okay. Do you recall any other officer around you saying that?

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A No.
Q Okay. So let me ask it to you this way.
Were you -- did you have the impression or opinion that there were individuals beneath you on the overpass who were impacted with shotguns who did not know that you were there?
A Not that I remember.
Q Okay. In your position and in your -- you know, in your capacity there at the overpass with the shotgun, is that something that occurred to you, that someone below you could be shot with a shotgun and not know that where you were or where they'd been hit from?
A I don't remember if that occurred to me.
Q Were you aware or was there any discussion of any deaf individuals that might be in this crowd that you were firing your shotgun into?
A No.
Q Is that a concern or a -- an issue that ever occurred to you on May 30th, 2020?
A No.
Q Any other officers to your knowledge?
A Not from my knowledge.
Q Okay. What about any superiors in any briefings or show-ups or anything like that, did you

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hear anything about that on May 30th, 2020 or that possibility that somebody in this crowd might be deaf or hearing impaired?
A No, I don't remember anyone saying somebody might be deaf or hearing impaired.
Q Okay. Okay. I want to ask you after reviewing one of the papers -- and I don't know if you have it in front of you, I doubt you do, but I believe it's a supplement. And let me just ask you questions about it because I'm not trying to quiz you on it, but I want to ask you about the meanings of some terms.
What is restricted duty mean?
A Restricted duty is when you're being investigated, you're placed on a duty where you're not on full duty or you're enforcing police actions.
Q Okay. And have you been placed on restricted duty before?
A Yes.
Q Okay. How many times?
A Once.
Q When was that?
A It was in 2020.
Q Okay. Before or after May 30th, 2020?
A After.
Q And why were you placed on restricted duty?

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A During the investigating use of force incident.
Q Which use of force incident?
A Where a bean bag round was deployed at a female.
Q Okay. And was that on May 30th or some other time?
A May 30th.
Q Okay. The same event or the same protest that we're talking about?
A Yes. Same day, about two hours later than what we're talking about with the video.
Q Okay. So after you impacted the video individual as we referred to in the shorthand, two hours later you shot a female with your shotgun?
A Yes.
Q Okay. And why would that -- why would that get you put on restricted duty as opposed to shooting the video individual?
A I don't know.
Q Okay. Were you given any information on what the difference between those two was?
A No.
Q Okay. What happened as a result of restricted duty? Is there some kind of investigation that they do,

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do you get a lawyer, do you get to see any of the investigation, what happens?
A Um, I don't remember getting to see any of the investigation. I was returned to full duty after three months, I believe.
Q Okay. And were you ever given any information about how that came about? Was there a complaint, was that initiated by someone within the police department, were you ever given any information about that?
A I don't remember being given information of who initiated the investigation.
Q Okay. You were just told that you were on restricted duty because you had impacted a female with your shotgun?
A Yes. They -- just the one line that they said you're on restricted duty for 11:00 p.m. on May 30th you impacted a female.
Q Okay. And did you get any other information about this incident or accusation?
A No, not at that time.
Q Okay. At any other time?
A After I was returned to full duty.
Q And what information were you given?
A That I had to attend a de-escalation course.
Q Okay. And what was the reason that you had to

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attend the de-escalation course for impacting this female?
A My chain of command told me to do so.
Q Okay. I think I asked you this already, but I just want to be clear. Do you have any knowledge or did anybody tell you why you were placed on restricted duty for shooting a female two hours later and you were not placed on restricted duty for shooting the video individual two hours before on the same night with the same weapon?
A I don't know why my chain of command chose to -- that specific incident to put me on restricted duty as opposed to --
Q Okay.
A -- the 9:00 p.m. incident.
Q Okay. So I guess better shorthand is we can call it the 9:00 o'clock incident and the 11:00 o'clock incident, would you know what I'm talking about?
A Yes.
Q Okay. So nobody gave you any information on why the 11:00 o'clock incident got you on restricted duty as opposed to the 9:00 o'clock incident.
Now I want to ask you in your mind, Officer, was there any difference between the impacting at 9:00 o'clock, 9:00 o'clock incident and the 11:00 o'clock

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incident?
A Yes.
Q What was the difference?
A The 9:00 o'clock incident with the guy in the video, he was violent, and the person at 11:00 o'clock was not violent towards others.
Q What was the person at 11:00 o'clock doing when you shot them with the shotgun?
A They were spray painting profanity on the sidewalk.
Q Okay. And why did you choose to impact that person if they were just spray painting the sidewalk?
A Because they were exhibiting riotous behavior and continuing to incite the crowd.
Q Okay. All right. So that individual, you made the decision to impact that individual at 11:00, and during the 11:00 o'clock incident because in your observation and your opinion they were engaging in vandalism and instigating the crowd?
A Yes.
Q Okay. Were they throwing anything?
A At the time I impacted them, no.
Q At any other time?
A I don't know.
Q Okay. Was there any other besides spray

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painting the pavement, and again, I need to ask you this because when -- before I asked you what instigating the crowd was, and you gave me an answer, but during the 11:00 o'clock incident you said this individual, the female individual was instigating the crowd, correct?
A Her behavior was, yes.
Q Okay. What does that mean?
A I would say it's similar to the broken windows concept where if we damage property, it's scientifically proven that people around you will also contribute to damaging the property and not treating it with respect.
Q Okay. All right. So this female individual during the 11:00 o'clock incident you didn't observe her throwing anything, correct?
A Correct.
Q You didn't observe her throwing molotov cocktails, fireworks or stones, right?
A Correct.
Q You did observe her spray painting the pavement?
A Correct.
Q What was she spray painting on the pavement?
A All cops are bastards.
Q Okay. And again, that didn't provoke any emotional response from you, right?

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A No.
Q But you decided to shoot her with your less lethal shotgun?
A Yes.
Q What injuries did that person sustain?
A I don't know of any injuries.
Q Were you given any information on any injuries sustained by that female at 11:00 o'clock?
A No.
Q Okay. Let me move back to 9:00 o'clock, what about that individual, the male, were you given any information on his injuries?
A In my meeting with my lawyer I reviewed the lawsuit or complaint. There's pictures of who I believe is the individual with injuries.
Q Okay. What is your understanding of what injuries that individual suffered as a result of being shot with your shotgun?
A His skin was bruised.
Q Okay. Now, that's two individuals that you shot with your shotgun on May 30th, 2020, but if you shot five to ten, that leaves three to seven more individuals, right?
A Approximately.
Q Approximately, of course. Did you get any

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information on those other individuals, those three to seven individuals that you also shot with your shotgun?
A No.
Q And did you get any information about their injury, if any?
A Did I attempt to?
Q Yes, sir.
A No.
Q Okay. So you mentioned you looked at your report. Do you have that with you?
A Yes.
Q Can you tell me the number in the bottom right-hand corner, there should be a COA number?
A COA-1964.
Q Okay. All right. And what's at the top of that one-page report?
A It says the Austin Police Department, General Office Hard Copy.
Q Okay. And does it have GO number 2020 dash 1510503 at the top right-hand corner?
A Yes.
Q Okay. And then the first line under the line has Subject, Number 9, Unidentified Person?
A The first line is follow-up report number 31.

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Q Oh, okay. All right. And what's the date on that report?
A It was submitted on May 31st, 2020 at 0127 hours.
Q Okay. Were you aware of any other use of force report that was -- that was reported on June 23rd, 2020?
A There is a report also in front of me that I believe was in -- is -- I wrote a supplement to. So I have the initial part, piece of that report as well.
Q Okay. Great. And what's the COA number, Bates number, bottom right-hand corner on that one?
A 000370.
Q Okay. And what's the date on that one?
A It was reported on March 24, 2022 from incidents that occurred on May 30th, 2020, 2100 hours.
Q I'm sorry, could you read that again slower?
A It was reported on March 24, 2022 and occurred on May 30th, 2020.
Q Okay. Why -- so that's about almost two years after the fact. Why was the report written almost two years after May 30th, 2020?
A It appears that special investigative unit that was -- they were the last ones to add to the report.

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Q Okay. And what did they add to the report?
A They conducted an investigation to determine that all actions taken complied with policy and law.
Q Okay. Was there any supplement to your knowledge that was done on June 23rd, 2020? Like about a month after May 30th, 2020?
A No.
MR. DEMIK: Okay. And I -- Monte, I apologize, but I think it's best for me just to share a screen, and what I'm looking at, Monte, is COA-2598. Can I -- how does that work?
Can I pull that up and share a screen? Is that possible, Nate?
THE VIDEOGRAPHER: Yes. You have screen sharing ability.
MR. DEMIK: I do. Let me know if you all see it.
Q (By Mr. Demik) Can you -- I don't know if you need to zoom in, but can you see that, Officer?
A Yes.
MR. BARTON: Let me ask my paralegal to send me a copy so that I can see the full thing.
So it starts at COA-2598; is that correct?
MR. DEMIK: Yeah. And again, I apologize, Monte, I didn't know I was going to -- I thought that he

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-- this was the report he was referring to. It's COA-2598.
MR. BARTON: Okay.
MR. DEMIK: Can you see that, Monte, so you can write it down? I can also ask Alexis to e-mail this to you right now, Monte.
MR. BARTON: Yeah, if you could send that, that would be good.
MR. DEMIK: Alexis, could you do that? It's from the Dropbox folder. Sorry, sorry, wrong button.
Q (By Mr. Demik) Okay. Officer, hopefully you've had a chance to sort of look at this while we've been talking.
Do you recognize this report?
A It's the first time I've seen this piece of paper.
Q Okay. Do you see -- and again, that's fair. I'm not trying to ambush you in any way. This is something that I had that I wanted to ask you about.
So this is the first time you're seeing this paper, you haven't seen this before, right?
A Correct.
Q Okay. So I'm just going to use it to ask you about things that are noted in here understanding that you didn't review this in preparing for your deposition

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and this is the first time you're seeing it, fair?
A Yes.
Q Okay. So generally what do you -- what do you understand this type of report in front of you to be? Would this be considered a supplement?
A Um, I'm not sure.
Q Fair enough. Okay. So I want to ask you about this portion that says, Use of Force Details. Can you see the little pointer or is it --
A Yeah, I can see it.
Q Okay. So if you follow that arrow, I'll just use that to direct your attention. So it says use of force details, date and time occurred, May 30th, 2020, right?
A Yes.
Q And it has Reporting Officer AP-8383 Cobaugh, Timothy. That's you, right?
A Yes.
Q Okay. And date reported June 23rd, 2020, right?
A Yes.
Q Okay. And in the remarks it says a baseball-sized rock hit me directly in my kevlar. Felt a brief throbbing in my head.
A Yes.

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Q Does that ring a bell for you in any way?
A It does.
Q Okay. Please explain.
A This reminds me that I -- when I was standing on 35 earlier in the day and still daylight out someone threw a rock and hit me in my helmet.
Q Okay. And you felt a brief throbbing in your head?
A Yes.
Q Okay. And that would have been before the 9:00 o'clock incident when you shot the video individual with your shotgun, right?
A Correct.
Q So if I'm in the middle of a 16-hour shift, right?
A Yes.
Q At a time where you're having people call you a murderer and yell that you're a murderer, right?
A Yes.
Q Yell that you're a racist?
A Yes.
Q And other insults directed at you and other police officers all day, right?
A Most of the day, yes.
Q Most of the day. Okay. Let me just move down

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with you, and again, I want to be fair, so I'm not trying to ambush you. You haven't seen this before and that's why I'm going to use my pointer and just ask you about things on this piece of paper that you haven't seen or reviewed in preparation for today's depo. Does subject number 6, unidentified person in type, complaint of injury pain, no treatment, resistance type, aggressive resistance, does this paragraph ring any bells for you?
A No.
Q Okay. And this next -- and -- okay. And this next one, officers involved, officer named Cobaugh, Timothy, that's you, right?
A Yes.
Q And role and use of force, you were involved in the use of force, right?
A Yes.
Q And it says number of shots fired 25. Does that ring any bells for you?
A No.
Q Okay. Do you recall ever hearing that you had fired 25 shots on May 30th, 2020 related to a use of force?
A Based on my experience in writing the report, I put 25 as the approximate number of rounds I fired

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throughout the entire shift.
Q Okay. And it says officer injured and the answer is yes, right?
A Yes.
Q Does that ring a bell or can you explain that?
A No, it does not ring a bell.
Q Okay. Well, officers are injured means -- was it you that reported that you had been injured that day?
A I don't remember. I reported I felt a throbbing pain in my head, so it's possible that that is what it's referring to.
Q Okay. Did you seek any medical attention on May 30 -- I guess you couldn't on May 30th, but May 31st or afterward for any injuries related to this date?
A I could have sought medical attention. I chose not to, unnecessary, because I didn't feel I needed it.
Q Okay. Did you seek medical attention at any point afterward?
A No.
Q Okay. Did you make any notation or claim or observation of injury to anyone, medical professional, somebody at the police station after May 30th, 2020?

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A I don't remember.
Q Okay. Does the last one on this page, again Bates number COA-2598 for the record, the last page of this again has subject number 6, unidentified person, right?
A Yes.
Q And has your name as being the officer involved, right?
A Yes.
Q And it says reason for use of force necessary to defend reporting officer, that's you, right?
A Yes.
Q Force used, 8402, Level II, R-II-R incident, what does that mean?
A Similar to we talked about the level of force, the level it's used at force. Level I being the highest. So Level II is the level of force APD has determined that less lethal bean bag round is.
Q Okay. And there it says weapons used, impact ignition, bean bag round, enter number of shots, right?
A Yes.
Q Okay. Does this section ring any bells or give you any recollection?
A No.

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Q Okay. Okay. I'm going to stop sharing screen. I just wanted to ask you about that and let you see it so you could see what I was referencing.
So while we're at it, let me just ask you, and you already gave the Bates numbers for the reports that you have in front of you, okay, but let me just ask you generally, forest through the trees here, how many reports did you author, draft or sign in relation to May 30th, 2020?
A I believe one.
Q Okay. And how many supplements afterward to that report?
A I don't remember. I believe one.
Q Okay. And do you recall any supplements after 2021? Let's say a year later, do you recall any supplements, additions, amendments or anything after May 30th, 2021?
A No.
Q Okay. Let me just check my notes real quick.
A Do you mind if we take a short break?
Q Absolutely. You want to take five?
A That would be great.
Q Perfect timing. How about 3 or 4:13?
A Great. Thank you.
Q Yeah. Thanks for letting us know.

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THE VIDEOGRAPHER: All right. We're off the video record. The time is 4:08 p.m.
(Break taken)
THE VIDEOGRAPHER: We're back on the video record. The time 4:15 p.m.
Q (By Mr. Demik) Okay, Officer, I'm almost done. I have a few more areas to ask you about.
During the break did you discuss your deposition with your lawyer or anybody else?
A Yes.
Q Okay. I don't -- what areas or topics of conversation did you have during our -- it was only like six minutes, seven minutes?
A We talked about on the night of May 30th if somebody directed me to impact somebody, and I said -- I brought up the one incident about the fireworks thrower, but I don't remember any other incident. But if somebody did direct me to impact someone, I wouldn't just impact someone because they told me to impact someone. It would have been my own observation.
Q Okay. Okay. And I think I understand that, and that was -- that's been one of my questions and just all transparency to -- on other police officers, you know, that we've been -- that we've done depositions in is if another officer says to you, hey, that guy in the

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white shirt, I'm using a hypothetical as an example, impact him or he did X, he threw a molotov cocktail, what do you do?
I mean I ask out of curiosity. Do you say no, I'm not going to impact that individual because I didn't see it, or do you impact that individual for safety and in an abundance of caution, what do you do?
A I think every situation is different.
Q All right. So there are situations in which somebody would say, hey, impact that guy and you do it, right?
A I think there's a lot more to it than that.
Q Okay. Well, we're being pretty vague, I want to drill down on some specifics.
Let me ask you, is there ever a situation for you personally, I'm not asking you to answer for other officers, but for you personally where somebody would say, hey, that guy did X, insert X, right, right his behavior, impact him and you would do it?
Is there ever a situation like that?
A Yes.
Q Even though you didn't personally observe, you impact the individual or you shoot him because the other officer says, hey, they did X, fair?
A I think the situation depends on what you

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mean. You may observe part of it. I don't think there would be a situation where you didn't observe anything happen at all and you just impact the person.
Q Okay. Well, in this crowd, how many people were there in the crowd at varying times, give me a range?
A 200 to 2,000.
Q Okay. You can't observe what 2,000 individuals are doing, can you?
A Correct.
Q So there's certainly going to be individuals within those 2,000 that you don't see doing stuff, right?
A Correct.
Q That another officer may see doing stuff, right?
A Correct.
Q All right. And so there are situations in which the other officer would tell you their observations or their, you know, estimation and say impact that individual and you would do it, right?
A After I made my own observations, yes.
Q Okay. Well, that's my question. Because we're not really answering it, right?
There either is or there is not a situation in

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which another officer tells you impact that guy because he did X? There either is -- there's the possibility that situation where you impact him or you say I absolutely would not do that under any circumstances until I observed it myself.
So which one is it?
A I would not impact somebody until I observed some sort of behavior or matching behavior of what he just described.
Q Okay. So if another officer next to you says, hey, impact that guy, he just threw a molotov cocktail and it hit the police station, you would say to your fellow officer, I'm not going to do it, no, unless I see it?
A I would have to observe that that individual was in fact just in the spot where a molotov cocktail was, and I look at the police station seeing that there is, yes, a molotov cocktail on the ground and this individual's arm is extended out like he just threw it. Then yes, based on both of our observations I think it would be reasonable to infer that that person was the subject that just threw the molotov cocktail, and so I would then impact that person.
Q Okay. But you wouldn't impact somebody if you didn't observe, right, his behavior in that scenario?

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A Yes.
Q Yes, I would not?
A You're correct. You're correct.
Q Okay. All right. Let me ask you, did you have a show-up meeting or a briefing at any point on May 30th, 2020?
A Yes. At the beginning of my patrol shift as we do every patrol shift we have a show-up as you call it.
Q Okay. And I imagine they didn't give any information or share any information about downtown because at that point you didn't even know you were going to have to go downtown, right?
A Correct.
Q Okay. So after that show-up, which is through your regular patrol at the south substation, was there any show-up or any briefing given to you or in your presence about the police station? I'm not even talking about the Capitol, I'm talking about the police station.
A I did not receive a brief at the police station. There was an informal brief at the Third Street parking lot.
Q And that was where you met before you went to the Capitol?
A Yes.

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Q Okay. And what information was shared in that brief?
A That there was people downtown in a riot.
Q Okay. Did they tell you who was in that crowd?
A No, they didn't give me any specific, people that were in the crowd.
Q Did they tell you what they were doing to make it a riot?
A Yes.
Q What was that?
A They were breaking out windows in the police cars and spray painting at the Capitol at the time and throwing objects at the DPS troopers.
Q Okay. So that's at the Capitol. Now, with regards to the police station, when you showed up on the freeway out of the van and then you station yourself at the overpass pursuant to orders, was there any -- whatever you want to call it, informal show-up, informal debrief -- or brief, sorry, informal brief, was there any of that that happened after the Capitol with regards to the police station orders?
A No.
Q So nobody gave you information on the history of that crowd below you?

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A I was there almost the entire day, so I was one of the first officers there. So there was a -- there wasn't many more people to give me a history on the crowd. I guess that answers the question.
Q Okay. Well, you were up on the freeway when you first got there for two to four hours you said?
A Yes.
Q Was there already a crowd down in front of the police headquarters?
A No.
Q Okay. So they formed after you cleared the freeway?
A Yes, I watched them form.
Q Okay. And was it all the people from the freeway or was it different people that constituted this crowd in front of the police headquarters?
A I'm not sure.
Q Did you have any -- well, did you have an understanding of what these protests were about, generally what the issue was?
A Yes.
Q And where did you get that information?
A Based on what I saw in the news.
Q Okay. What news?
A I don't remember the specific news source.

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Q What news do you watch around May 2020?
A I don't remember what I watched.
Q Do you remember what news you normally watch?
A I have a CNN app on my phone. I don't know in 2020.
Q Okay. Do you have any recollection of where you were getting information on the protests and the issues surrounding the protests?
Do you have any recollection of any source, media source whatsoever?
A The only recollection I have is I don't think there was any news or media or social media outlet that wasn't talking about the protest.
Q Okay. Well, that's true, but there's different media outlets, right?
A There are.
Q And so normally some people sort of gravitate towards one or the other, right?
A Yes, but I don't.
Q Okay. Well, I'll just be specific. There's the MSNBC crowd, there's the Fox News crowd, where do you fall in that spectrum?
A I try to listen to both so I can be educated on both sides.

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Q Okay. So you watch MSNBC, right?
A Probably once a year.
Q Okay. How often do you watch Fox News?
A Probably once a year or less.
Q Okay. Do you ever get any information on the protests, and by that I don't mean just media, I'm not just focused on media, I'm talking about friends, family, fellow officers, family members, whatever it is?
A I don't remember any specific people that were giving me information.
Q Okay. Did you have any opinion on the issues of the protests going into May 30th, 2020?
A No.
Q Okay. Did you have any opinion or perspective on why these people are calling police officers murderers and racists?
A No. I try to not have a personal opinion because I thought it would affect how professional I was.
Q Sure. That's understandable.
Did you have any -- in your viewpoint as a professional, right, you're a professional police officer, you kind of need to understand who the crowd is, you would agree with me, right?

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A Yes.
Q Whether they're white nationalists or Antifa or what have you, that factors in sometimes to who you're dealing with, right?
A Yes.
Q Okay. Did you have an understanding on any level of what the issues were that these protesters were protesting about?
A I didn't have any intelligence for the May 30th specifically what they were protesting about, but I know it was over the incident with George Floyd. Because like I said it was in every news media outlet.
Q Okay. And you didn't have any opinion on that matter?
A No.
Q Not an opinion one way or the other?
A No.
Q Totally neutral?
A Totally neutral.
Q Fair enough. The plastic masks, did you have that era helmet, whatever you call it, did you have that your entire shift on May 31st, 2020?
A Yes.
Q When you were firing the shotgun, did you have the plastic mask down or up?

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A I don't remember.
Q Okay. Do you have any specific recollection of having it down while you were shooting?
A No.
Q Do you have any specific recollection of having it up while you were shooting?
A No.
Q Okay. Do you have any specific recollection of having it down at all during that shift?
A No.
Q Okay. Any specific recollection of having it up during that shift?
A Yes.
Q Okay. What's that recollection, any recollection?
A I remember it was -- in order to like drink and eat, it had to be up, and I thought it was better to see with it up. So I remember keeping it up throughout the shift as much as I could, if not all of the shift.
Q Okay. Makes sense. But no recollection of having it down?
A I don't have any recollection of having it down.
Q Okay. I want to ask you -- you already answered my question about deploying the less lethal

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shotguns, and I think if my memory serves me correctly, before May 30th, 2020 you had never deployed the less than lethal shotgun in the line of duty, correct?
A Correct.
Q Any other discharge of firearms while in the line of duty as opposed to training at the City of Austin?
A No.
Q Okay. What about in your military service in the Marine Corps Reserve?
A Yes.
Q Okay. About how many times did you fire your gun in the Marine Corps Reserve?
A A lot.
Q Okay. Fair. And did you ever hit anyone?
A I don't know.
Q To your knowledge, did you ever kill anyone?
A Not to my knowledge.
Q Okay. But you had a lot of experience -- I don't want to put words in your mouth -- but you had a lot of experience firing your weapon as part of your service and your deployment with the Marine Corps Reserve?
A Yes.
Q Did you ever do any crowd control during your

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time with the Marines?
A No.
Q Did you ever face any protests in Afghanistan during your time with the Marines?
A No.
Q Who were you firing your weapon at mostly?
A Enemies of the United States government and the Afghan government.
Q Okay. I think enemy combatants would you say?
A Yes.
Q Okay. Did you ever have interactions, and what I'm really just getting at is experiences that are similar to crowd control while you were in Afghanistan? I mean not dealing -- because -- let me ask it to you this way.
Enemy combatants and US soldiers aren't the only people in Afghanistan, correct?
A Correct.
Q Okay. So what I'm just asking is did you ever have any experience dealing with the civilian populace that came anywhere close to the ballpark of dealing with protesters or something of that nature?
A No.
Q Okay. Did you ever have or deploy less than

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lethal weapons during your time with the Marines?
A No.
Q Okay. Officer (audio unintelligible).
A Say that again. You broke up.
Q I'm sorry. Thank you for letting me know.
Why did you become a police officer?
A To serve, to save Austin.
Q Okay. Well, you could serve the City of Austin as a social worker or a judge or a lawyer, why a police officer?
A Because I thought it was the best way for me to serve the City of Austin.
Q Okay. Why is that as opposed to another job?
A You get that in law enforcement experience. I'm sorry, I had military experience.
Q Okay. And I didn't ask you this when we were going through your background, but why Austin as opposed to Vermont or Massachusetts or Pennsylvania?
A I heard that it was a good place to live.
Q Okay. So you made the decision to move to Austin and then based on that you wanted to serve your community, you had experience in the military, so that's what gave you the choice or led you to the choice to be a police officer; did I sort of summarize it

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correctly?
A Yes.
Q Okay. What do you enjoy about your job as a police officer?
A I enjoy protecting innocent people.
Q Okay. What do you not enjoy about your job as a police officer?
MR. BARTON: Object to the form.
THE WITNESS: The hours.
Q (By Mr. Demik) I'm sorry?
A The hours.
Q The hours, right. Well, 16 hours, I don't envy you.
And during this time there were exceptional hours, but are the hours difficult outside of the George Floyd protest window?
A They can be and sometimes they're not.
Q Okay. All right. Thank you for your patience. I appreciate it. My last question is always what I just consider a catch-all question.
You know, do you believe there's anything I didn't ask you, anything you believe is important to the case, anything you would like the judge or jury or anyone else to know? I like to give you an opportunity.
I've just been asking you questions, you've

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been gracious and cooperative enough to answer them, do you have anything that you think we should know or anything I forgot to ask about this incident?
A No.
MR. DEMIK: Okay. That's all I have, Monte, unless you have anything.
MR. BARTON: No, I don't have any questions for the witness, but I do want to order the transcript, video, and I've been told to request the expedited transcript.
THE REPORTER: Okay. Thank you.
MR. DEMIK: All right.
THE VIDEOGRAPHER: That concludes our deposition. The time is 4:35 p.m. We are off the video record.
(Deposition concluded at 4:35 p.m.)

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DECLARATION ERRATA SHEET

Case Caption: TALLEY VS. CITY OF AUSTIN

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the above-captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

_____
TIMOTHY COBAUGH

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DEPOSITION ERRATA SHEET

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TIMOTHY COBAUGH

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TIMOTHY COBAUGH

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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)

I, Rebecca K. Quinn, CSR No. 5720, in and for the County of Santa Clara, State of California, hereby certify that the witness in the foregoing deposition was duly sworn or affirmed by me to tell the truth, the whole truth, and nothing but the truth in the within-entitled case; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, to the best of my ability, and was thereafter transcribed into typewriting under my direction and supervision.

IN WITNESS WHEREOF, I have hereunto set my hand.

Date: July 24th, 2023.

REBECCA K. QUINN, CSR #5720

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff, vs. CITY OF AUSTIN and JOHN DOES, Defendants.	)	No. 1:21-CV-249-RP Lead Case
MODESTO RODRIGUEZ, Plaintiff, vs. CITY OF AUSTIN and JOHN DOES, Defendants.	)	No. 1:21-CV-1087-RP

ZOOM VIDEOTAPED DEPOSITION OF BENJAMIN LYNCH

Date: Tuesday, July 18, 2023

Time: 9:08 A.M.

Location: MAGNA LEGAL SERVICES REMOTE
16414 San Pedro Avenue, Suite 900
San Antonio, Texas 78232

A P P E A R A N C E S

For the Plaintiffs: HENDLER FLORES LAW, PLLC
BY: STEPHEN DEMIK, ESQ.
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For the Defendants CITY OF AUSTIN:
AUSTIN CITY HALL
CITY OF AUSTIN LAW DEPARTMENT
BY: MONTE BARTON, ESQ.
301 W. Second Street
Austin, TX 78701
(512) 974-2409

Also Present: ALEXIS M. LOPEZ

Videotaped By: MAGNA LEGAL SERVICES
BY: NATE LANINGHAM
(866) 624-6221

Reported By: REBECCA K. QUINN, CSR #5720
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I N D E X O F E X A M I N A T I O N

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BY MR. DEMIK.....5

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I N D E X O F E X H I B I T S

(No exhibits marked)

P R O C E E D I N G S

THE VIDEOGRAPHER: This begins media file number one in the video deposition of Officer Benjamin Lynch in the matter of Tyree Talley, et al. versus City of Austin, et al. in the United States District Court for the Western District of Texas, Austin Division. Case number 121-CV-249-RP.

Today is Tuesday, July 18th, 2023, and the time is 9:08 a.m. This deposition is being taken remotely at the request of Hendler Flores Law, PLLC.

The Videographer is Nate Laningham with Magna Legal Services and the Court Reporter is Rebecca Quinn.

Will counsel please state their appearances and whom they represent.

MR. DEMIK: Stephen Demik on behalf of the Plaintiffs from Hendler Flores Law.

MR. BARTON: Monte Barton on behalf of the Defendants, City of Austin Law Department, City Hall.

THE VIDEOGRAPHER: You can go ahead whenever you're ready, Madame Court Reporter.

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BENJAMIN LYNCH,

having been duly sworn by the Certified Shorthand Reporter to tell the truth, the whole truth, and nothing but the truth, responded, "Yes," and testified as follows:

MR. DEMIK: Thank you.

EXAMINATION BY MR. DEMIK

Q Good morning, Officer Lynch.
A Good morning.
Q Can you hear me okay?
A Yes.
Q Okay. If you can't hear me, if you just raise your hand and -- on Friday I had some issues and then yesterday it went better. So just flag your hand if you can't hear me or if for any reason you can't hear what I'm saying.

Does that work?

A Yes, sir.
Q Okay. So my name is Stephen Demik. I represent the Plaintiffs in this case. I'm from Hendler Flores Law.

Let me just sort of ask you have you ever been

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deposed before?
A Yes, sir.
Q Okay. So I've got to ask you sort of the routine questions at the beginning, so let me ask you those. You've probably been asked them before, but you understand that this is a deposition that we're taking that could be presented in lieu of courtroom testimony?
A Yes, sir.
Q And that means that the questions and answers may be recorded by video and presented to a judge or jury later in a courtroom?
A Yes, sir.
Q So it's important for you to be full, accurate and complete to the best of your abilities?
A Yes, sir.
Q Okay. Is there anything -- and I've never really understood this question, but we have to ask it, is there anything that would prevent you from giving full, accurate and truthful and complete testimony today?
A No, sir.
Q Okay. And you're represented by an attorney at the deposition today?
A Monte Barton with the City of Austin, yes, sir.

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Q Okay. Okay. Now, let me ask you -- one second. Let me just get my notes organized, if you don't mind.
Okay. Let me just sort of ask you a little bit about your background if that's all right, Officer. I'll try and flag things for you so you know what subject I'm asking about. I try not to jump around too much, but if at any point you need clarification to my question, you don't understand my question, please just ask. I'm happy to rephrase it, put it in a different way, but if I don't hear that from you, I'm just going to assume that you understood the question and you answered it to the best of your ability; is that fair?
A Yes.
Q Okay. Good. It seems like my audio is working pretty well today. So that's a good thing.
How long have you been with the -- well, let me ask you, are you currently employed with the police department?
A Yes, sir.
Q Okay. And how long have you been with the Austin City Police Department?
A Since 2009.
Q Okay. And when did you go to the Academy and graduate?

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A I graduated in April of 2010.
Q All right. Let me sort of go a little bit in the background, not too far, but before you went to the Academy, what's your background, sort of occupational, educational background before you went to the Academy in 2009?
A High school. Went to high school in Massachusetts where I grew up, I'm a graduate of Penn State University and moved here after graduation and started the Academy after a little bit of time in the construction world.
Q Okay. How did you end up in Austin from Pennsylvania?
A I visited here before and liked it, so I applied and was accepted into the Academy so I moved here.
Q Okay. So high school and college in Pennsylvania sometime in --
A Massachusetts, yeah.
Q Massachusetts, I'm sorry. Then Pennsylvania?
A Correct.
Q Okay. And then a stint in construction and then the Academy in Texas?
A Correct.
Q Okay. How long did you work construction?

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Was that in the northeast or was that in Texas?
A No, that was in Philadelphia.
Q Okay.
A It was almost a year.
Q Okay. What kind of construction?
A It was just like general jobs. We did like general contracting, just building small, small jobs, flooring, anything. Really anything. And then also like lawn maintenance.
Q Okay. And it may seem like a weird question, but I do like to ask it, why did you become a police officer?
A It runs in my family and, you know, I wanted to serve the community, help people out.
Q How does it run in your family, father, grandfather?
A My two uncles are police officers back in Massachusetts or were, they're both retired now, and then I had a great grandfather in one of the federal agencies.
Q FBI?
A I believe so.
Q Interesting. Okay. What did you study in college?
A Criminal justice.

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Q Okay. And was that in anticipation of becoming a police officer or did you know yet at that point?
A I didn't start with that, but when I decided that I was going to try to go the police officer route, I transitioned to that major and then graduated with that degree.
Q Okay. And so that after construction, that takes us to the Academy in 2000 -- and moving to Texas, that takes us to the Academy in 2009?
A Correct.
Q Okay. After you graduated from the Academy, excuse me, geez, 14 years ago, where were you first positioned or stationed?
A I was first positioned in Baker Sector. So --
Q Center?
A Yeah, yeah. It's mostly centered around west campus, but it also comprised of areas like Lamar up to 183, the -- parts of 360, 2222 and Burnet Road.
Q And was that as a patrol officer?
A Yes, sir.
Q Okay. And are you still there or did you move after that?
A I was there for two years and then I worked downtown for ten years.

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Q Okay. So you went from the Baker Sector to downtown -- for about approximately two years, downtown and you've been there ever since?
A In April of last year I promoted and I've been violent crimes detective since the end of September of last year.
Q Oh, congratulations.
A Thanks.
Q So that was last year. Okay. So most of what we're going to talk about, Officer, just goes up to 2020, May 30th, 2020 specifically. There might be an occasion that something after that becomes relevant, but generally just to sort of help focus, you know, we're only going to mostly go up to May of 2020 for purposes of this case.
Let me ask you a question. Do you -- what's your understanding of why you're being deposed today?
A I'm being deposed in a lawsuit that stemmed from the protests around the end of May of 2020 and an individual who had been impacted during the protest.
Q And generally what was your involvement, and we'll just start really, you know, broadly what was your involvement on May 30th, 2020?
A So like I said, I was assigned to downtown. I had a regularly scheduled shift that day. We were asked

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to come in early, and so once my whole shift was there, we grouped up and were given tasks to, you know, be in certain areas at certain times for -- during the protests for, you know, crowd control and, you know, everything else that went on.
Q Okay. Let me ask you this. So let's sort of center around that weekend. I believe May 30th was a Saturday.
A I believe so.
Q Let's go a little bit earlier because I know that the shifts somewhat fluctuated during this time because of the protests. Fair?
A Fair, yes.
Q Yeah. So, you know, let's start a few days before that. Were you working -- I forget what it's called -- emergency shift or, you know, I was -- I waited tables, we call them a double or triple or something like that.
You know, during that week, what was your work schedule like?
A I couldn't remember to be sure. Usually we worked four 10-hour shifts. Like you said, we went into like, you know, emergency, we call it Alpha Bravo, but I don't remember exactly what day I started. I believe it was after that weekend.

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Q Okay.
A And that day I was probably scheduled to work at 5:00 or 6:00 o'clock in the evening as that would have been a normal time on a weekend.
Q Was that your -- these four 10-hour shifts per week --
A Correct.
Q -- was that your regular shift like approximately 5:00 in the evening to what, 2:00 in the morning or --
A It would have been -- yeah, 5:00 or 3:00 or 6:00 to 4:00.
Q Okay.
A Would have been a normal shift downtown on a Saturday.
Q Okay. You said "Alpha Bravo." What does that mean and what is that?
A Alpha Bravo is just -- it's a day split up into two. So you -- there's a group of officers working the A shift, which is the first 12 hours, and then a group of officers working the B shift, which would be the second twelve hours, which I think I started at 5:00 or 6:00 was the beginning. But like I said, that didn't start until I think it was like possibly Monday following that weekend.

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Q Okay. So bring it back to that weekend. On Friday, if you recall the day before, you know, this incident, do you recall what your shift was or what hours you worked, approximately?
A It would have been the same, 6:00, 5:00 to 3:00 or 6:00 to 4:00.
Q Okay. 5:00 to 3:00 or 6:00 to 4:00. Okay. And were you -- on Friday the day before, were your hours extended in any way or did you just work your regular shift?
A I don't believe so.
Q So just talking about hours still sticking on this topic. On Saturday, May 30th, 2020 to your recollection you were asked to come in a little bit earlier?
A Yes, sir.
Q What does that look like? Do you get a call or a page or --
A We get a page.
Q Okay. And so you get a page asking you to come in earlier and I assume report to the downtown police station?
A Yes, that's where I was stationed anyway.
Q Okay. So do you remember, and I know this is at this point, you know, three years ago, but do you

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recall what time you got that page or notification?
A I do not recall.
Q Okay. Do you recall approximately what time you came in to the police station?
A I don't recall. It would have been before my regular scheduled shift. Sometime in that early afternoon.
Q So walk me through a little bit what you recall when you got there. So a little bit before your shift, report to the downtown police station, what did you do then?
A We showed up, you know, in uniform, met with our shift with, you know, our supervisors, and then our supervisors were given, you know, whatever our assignment was and then we grouped up and, you know, performed those tasks.
Q Okay. Is that -- is that like called a briefing or something or is there some word for that or is that just your normal course of business, you come in --
A We usually call it show-up, but we have -- it would be like normal course of business every day we do that.
Q Show-up?
A Correct.

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Q Okay. I forgot to ask you a quick question, so I'm going to just jump back for a quick question.
You said you had been deposed before. What was the context of deposition that you gave -- well, how many times have you been deposed before?
A Just once.
Q Okay. And what was the context of that deposition?
A It was -- I was a responding officer to an officer-involved shooting.
Q Okay. All right. And when was that, approximately?
A Maybe 2019. When I was deposed or when the event happened?
Q Both.
A I believe the incident was in 2019.
Q Okay.
A Around then. And then I was deposed I believe it was maybe like a year -- a little over a year ago. Maybe less.
Q Okay. All right. And was that a case an officer-involved shooting that you were a witness, an eye witness or --
A No, sir.
Q -- were you the subject of the lawsuit?

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A No, neither. I was a responding officer.
Q Okay. All right. So you were being deposed as a witness to the shooting?
A No, sir. I was a responding officer after the shooting.
Q Oh, okay. All right. Yeah, that makes sense. Sorry, I just wanted to clarify.
Have you ever testified in court before?
A Yes, sir.
Q You probably do it a lot now as a detective now I imagine?
A I actually haven't done it as a detective yet, but as an officer, you know, DWIs is a common one that way, and then, you know, certain other felony cases.
Q Okay. How many times do you think you testified, ballpark?
A Just call it five to be safe.
Q Fair enough. Okay. Now, let me get back and I'm going to switch gears again. I try and flag it for you as much as I can, but I want to switch gears back to Saturday, May 30th, 2020. You came in a little bit early. Let me just ask you specific questions and then ask you more generally.
Was there a crowd outside of the police station when you showed up for your shift?

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A Yes, sir.
Q Okay. And how does that work? How do you get into the police station if there's crowds outside?
A I believe I had to go down Red River instead of the frontage road, and then we were allowed access to drive down Eighth Street into the exit gate, I believe, or into the garage across the street. I forget which one I parked in that day, but it was something like that.
Q Okay. And let me ask you this if you recall, was the crowd larger during the day than it was at night or was it the opposite, was it larger at night than it was during the day, if that question makes sense?
A I believe it was larger during the day.
Q Okay. And then sort of petered out towards the evening?
A Correct.
Q Okay. So you show up, and then what do you do now at the police station after you've parked your car and reported for your shift?
A Yeah. Like I said, we have that show-up meeting, we're getting our shift together -- excuse me -- and then the first thing we did is we were asked to go up on the 35 and stop people from walking onto the highway so that it could be kept open for traffic.

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Q Okay. Let's stop on the show-up meeting for a minute. What was discussed at the show-up meeting or what information was given to you at the show-up meeting?
A I couldn't tell you like for sure what exactly was said. Just like, hey, something to the effect of, you know -- I'm not even sure, sir. Just like how we're going to work that day, what we were going to do and then just get with this person to meet up and then you'll walk this way to the highway. Something to the effect of that.
Q Sure. And I'm not -- certainly not asking you to, you know, give verbatim or anything, I wouldn't expect anybody to remember that, but I guess I can maybe get more specific with my questions and you can tell me if you remember.
So at the show-up meeting, right, later -- so you cleared the overpass and then later you ended up in front of the police station, right?
A Yes. So I was there later in the day.
Q So here's what I -- what I want to know is if you remember at the show-up meeting did they say, hey, we're going to go to the overpass, we're going to clear it, we're going to clear the highway, and then we're going to come down and position in front of the police

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department or had that not developed yet?
Do you understand what I'm asking you?
A I do. I don't think it had developed yet. I think we were just taking it one at a time.
Q Right. One issue at a time?
A Correct.
Q And you at least remember being discussed that the first issue is that we're going to clear the highway?
A Yes, the first thing we do was went up onto the highway.
Q Okay. And so how does that work? Did you -- why don't you walk me through it.
Did you check out a shotgun? As you do the show-up and then I imagine you get your equipment and then you go up to the highway, walk me through that.
A I did not check out a shotgun. I believe like our shift might have had one at the shift. Yeah, we had all our protective equipment just like helmets. You know, obviously, we all wear our normal uniform, and then, yeah, we just got in like a row and walked up -- I believe we walked through our -- the area of our shop there, that's on the north side of Eighth Street and then up through the grass onto the highway.
Q Okay. So how many officers about in this

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group?
A I think it was two shifts. So somewhere call it 15 to 20.
Q Okay. One shift is about seven or eight?
A Full would be 10, but I probably didn't have a full shift.
Q Okay. And so you -- you check out your equipment. Did you have one of these shotguns, less lethal shotguns at the time that you left the police station?
A No, sir.
Q Okay. So what did you have on you to clear the highway? You said you checked out your equipment. So just --
A I would have like a helmet with face shield and I believe I had like a baton that I -- that would have been mine anyway.
Q Okay. And in this -- these two shifts that leave the police station and go up to the highway, it's daytime now, right?
A Correct.
Q You were -- you had a baton to utilize to clear the highway?
A Yes.
Q And you say you believe there was one of these

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shotguns for that group that was going up to the highway?
A Yes, sir.
Q Okay. What happens when you and your fellow officers go to the -- walk up the sort of grassy embankment onto the highway, what happened?
A I believe the first thing we did was we crossed into the northbound side. We formed like a line on the north side of Eighth Street to just stop people from walking up and entering the highway.
Q Okay. People blocking the highway and you're just preventing more from going up or had the highway been cleared and you're preventing --
A No, the highway stayed cleared at that time. There were people on the service road, but we were just more focused on keeping the highway open.
Q Okay.
A We were just -- we didn't even have to disperse people. It was already clear. We were just up there to make sure that it stayed clear.
Q Preventing further people from going up on the highway and obstructing it?
A Correct.
Q Okay. And how long did you all do that? We're staying on the issue of clearing the highway. How

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long, approximately again, you know, hours or whatever, how long did that take?
A One to two hours.
Q Okay. And during this chunk of time, right, leaving the police station to we'll just call it block off the highway, I know that's probably not technically correct, but you understand what I'm talking about when I say that?
A Yes.
Q Okay. Was there any -- did you engage in any use of force during this first chunk?
A I believe when I was on the highway the only use of force I used was OC spray.
Q Okay. And can you tell us about that?
A There was a group of people directly below me throwing rocks at the officers, and we dispersed them using OC spray so that they would stop throwing rocks.
Q Did it work?
A Yes, sir.
Q Okay. So how -- how did that work? OC spray, somebody who doesn't know what that means or what that entails, what does -- what does that look like?
A It's a canister. It's full of -- you know, it's -- the general term would be pepper spray, but it's OC sprays. It's a mist that contains a certain

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percentage of capsaicin and can cause -- you know, when it's dispersed, it can cause like irritation to the face or eyes or whatever part of skin that it comes in contact with for a temporary amount of time, and it's just meant to, you know, not -- it's to disperse the people that were doing that.
Q Now, is this one of those handheld canisters that people have attached to their key chain, you know, the small tin, or is this like a handheld grip that has a trigger that has a can attached to it?
A We don't have any key chain size ones. I believe I was using one of the larger ones that had the MK9 that has a handle. I probably would have been using one of those.
Q All right. And those can fire the pepper spray out for some distance, right?
A Those are actually misters. So it does spray it for a distance, but it's not a large distance. It's probably, you know, 15 or 20 feet max.
Q Okay. And so how far this -- was it a crowd that was throwing rocks or was it an individual?
A No. It was probably like three to five people in one area.
Q And they were surrounded by other people or were they just three to five?

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A Where they were, if my memory serves me correct, they were kind of like in their own little group where they were doing it. It was like -- like I was up on the bridge like I said north of Eighth Street and they would have been like directly below us under the bridge. Where like the part where it comes up and meets the roadway on the north side of the bridge.
Q Okay. And were you -- this chunk of time, we're still limited to this because we're going to move to the police station later, but this chunk of time blocking off the highway, were you hit by anything?
A Yes, sir.
Q Okay. Tell us about -- go ahead.
A Countless rocks, bottles, other objects. Like I couldn't tell you exactly what they all were. Bricks were thrown at us. Just all sorts of stuff.
Q Okay. And were you hit by all those?
A I was hit by bottles, I was hit by rocks. I don't remember if I ever got hit by a brick, but larger rocks for sure was probably the biggest thing I got struck with.
Q Okay. And was the shotgun used at any point during this chunk of time?
A By me or anyone, sir?
Q Anyone in the group, the two shifts?

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A Honestly, I couldn't tell you if anyone in our two shifts fired it at that time. I know like I said, I know we had one, but I can't tell you if it was used.
Q Sure. So in this blocking the highway period of time, what uses of force were used? Pepper spray was used, right?
A Correct.
Q And then batons, were those used to sort of hold people back or push them out of the way?
A No. I don't -- I don't remember anyone actually trying to cross the guardrail onto the highway, so I don't believe they were utilized.
Q Okay. Did you suffer any injuries from this period of time in which you're blocking off the highway?
A Nothing major.
Q So any bruises or injuries that would require medical attention?
A Most likely I had some bruises, but I never got medical attention for that time.
Q Okay. Okay. So at what point do you leave the highway or the -- you know, the ramp to the highway?
A Like I said, it was one to two hours. We would have gotten replaced by someone else and then went

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back into -- inside the headquarters.
Q And about what time is it now?
A I'm not sure. Later in the afternoon.
Q Still daylight out?
A I believe so.
Q Okay. So what happens now that you're back at the police station?
A We took some time to cool off. It was hot. You know, turned some water and then just waited for the next, you know, task.
Q Okay. And it's May in Austin, and it's pretty hot and you're wearing a lot of clothes, right?
A Yes, sir.
Q What else makes it hot?
A That's about it. You know, it's late May in Austin, it's probably somewhere in the 90s. You know, we're all wearing vests that are super hot to begin with, and we're standing out on pavement for two plus -- you know, one to two hours in the direct sunlight, so it was pretty hot.
Q And you had those helmets on with the masks too, right?
A Correct.
Q And those masks aren't ventilated, they're like a glass mask over your head, right?

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A Plastic, yeah, but --
Q Plastic, uh-huh. Yeah, that makes sense. Glass wouldn't be wise.
Okay. So -- so you're back in the police station. At what point do you get your directions or orders for the next task?
A Maybe like within the next hour.
Q And what are those directions?
A That we were going to swap out with a shift or team that was out on the front porch of the main.
Q How long had they been out there?
A I have no idea.
Q Is that sort of something that happened on this day, this period of time that different shifts would swap out to give people a break for water, for rest, for sitting down, et cetera?
A Yes.
Q Okay. And so you were given the direction to relieve this shift that had been standing outside of the police department?
A Yes.
Q Okay. So at what point do you get a shotgun?
A So like I said, I believe my shift or the group of officers at one, and we were just like pretty

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much like taking, you know, 20 or 30 minute shifts being the person to use the less lethal shotgun. I couldn't tell you exactly how many times, you know, it was my turn or anyone else, how many times anyone else used it, but that's kind of how our group functioned with that piece of equipment.
Q Okay. So when you're at this point, which we've moved away from the blocking the highway, obviously we're in front of the police station, your shift has been called in to relieve another shift, at this point how many officers are in front of the police station, approximately?
A Maybe 30 to 50.
Q And is it light or dark at this point?
A I believe the first time we went out there it was light.
Q Okay. Did you go out there more than once? Did you go out, come back in, go back out again?
A Yes.
Q Okay. All right. So we're on the first -- let's just call it the first shift. I don't want to get that term confused with the group of officers, number of officers, but how many shifts did you do standing in front of the police station?
A I couldn't tell you for sure.

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Q Okay. Like more than 10 or --
A No, I think we had spent longer than that. It was -- I -- maybe like three to five. Like, you know, 45 minutes to an hour long shifts as you would term them.
Q Sure. And then they would switch you out, give you some relief and then rotate it so officers have a chance to sit down, get water, use the restroom, whatever, I assume?
A Correct. Yeah, eat dinner, you know, depending on the time of day or, you know, yeah.
Q Okay. All right. So in the -- let me ask you this way because you said there's like three to five of these shifts in front of the police station.
Did the number of shot -- how many shotguns approximately to your memory were -- were -- I want to say issued, but that's not the right word -- did the officers have in front of the police station? Approximate number is fine.
A I have no idea to tell you the truth.
Q But again, I'm going to ask you to do this, I'm really not trying to be rude, but maybe a bracket. Like more than five but less than 20, can you give me a bracket?
A If there were 30 to 50 officers out there, I'd

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say there were looks like let's just -- because I'm not sure, I'll just say one per ten like our shift had, so maybe five at the most.
Q Okay. All right. And that's fine, I understand that's an estimate, but the one shotgun per shift is a general rule. I know that that's not -- but is that sort of like a general ratio?
A That's just what I'm using. Yeah, like I said, our group had one -- I believe they only had one. So I'd say if that holds true for the rest of the -- like say there were 30 to 50 out there, then I'd say, you know, three to five on the porch at that time.
Q In the three to five shifts that you did in front of the police station, were there officers at the overpass looking down on the crowd milling in front of the police station?
A Yes, sir.
Q For all the shifts or did they only show up for a period of time to your recollection?
A I remember them being there later. I'm not sure if they were there the whole day or not.
Q Sure. And so when the officers were positioned up on the overpass, you could see them, right?
About how far is that from you if you're

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standing in front of the police station where you were, what's an approximate distance as the crow flies between there and the overpass?
A Maybe like 100 feet.
Q Sure. And I understand it's an estimation. But you had visual, I'm going to call it contact, but just, you know, you had visual, you know, I'll call that contact with the officers on the overpass, you could see them, right?
A Yes, I could see them.
Q Okay. And did you -- did you all know or were you aware that the officers on the overpass also had these shotguns?
A I could see that they did, yes.
Q Okay. Now, let me ask you a little bit about that. Is there any -- because there's three to five shifts, so you came in the station and you went out. And I obviously, you know, want to talk to you about how the shifts, where the acts happened, right. I don't know exactly which one that was, but let me ask it to you this way.
Did anything -- was there any significant difference in those three to five shifts? And here's what I'm asking you. You know, was it one shift was totally different than the other shift or were they all

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pretty much the same?
A They were all pretty much the same.
Q Okay. And that just helps me because, you know, I don't know if things totally changed. Like one shift came out and nobody was out there and the other shift came out and there's 200 people out there, but is it safe to say that pretty much the crowd was out there for all these shifts and it was the same situation for this period of time more or less, right? I mean I --
A Yeah. I mean kind of like you said earlier, the crowd dissipated into the night. So there would have been more people at the beginning of the shifts and less people at the later shifts.
Q Okay.
A Behaviorwise, you know, operationalwise I can't -- I couldn't differentiate like the first, second, third, fourth, how many ever times I was out there by like what happened. Like I know, just, you know, on the time of day and the size of the crowd maybe.
Q Sure. I understand. So breaking it down and eliminating the highway block, which you utilized OC spray or pepper spray, right?
A (Nods head up and down)
Q Let's just take this block of time and say

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it's the guarding of the police station block, the three to five shifts out there.

Let me ask you, how long did that last? What time did you get off shift? What time did you get off work?

A I believe we didn't leave until 6:00 the next morning, but that wasn't all done at the main.

Q Oh, okay. Did you go to another location?

A There was some looting on Sixth Street, so we had to go clear Sixth Street later in the evening, like maybe like between midnight and 2:00 a.m.

Q Okay. And so you were dispatched to deal with the Sixth Street stuff. Besides that, did you leave the police station?

A No.

Q Okay. All right. So during this chunk of time guarding the police station, so we're eliminating the Sixth Street incident, we're eliminating the highway operation, how many uses of force did you personally have? Just for you, not other officers.

A I believe there was three.

Q What were those three uses of force?

A As I mentioned for OC spray the first time, the second time was also OC spray, and then I used the less lethal shotgun to impact one person.

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Q Okay. How many times did you fire the shotgun in front of the police station?

A I fired it twice at one individual.

Q Besides those two, you know, deployments, I think, deployment of the less lethal shotgun is what you call it, besides those two deployments, did you deploy the less than lethal besides that, besides those two?

A No.

Q Okay. Did you -- how long did you have this shotgun? So was it just sort of passed between officer and officer within your shift or was one person each shift charged with holding it, what do you recall?

A I don't know how other shifts were, like I don't know what their operation was, but within mine we took turns between like the group of us. So I couldn't tell you how many times like my turn came up, but like I said, it probably would have been like -- maybe like 15 to 30 minutes for each person and then, you know, hand it off to the next one.

Q Okay. And does everybody have the rounds on them that were -- or do those just stay in the shotguns?

A No, they just stay in the shotgun.

Q Okay. Did you have any rounds in case you needed to reload to your recollection?

A I had a couple. I couldn't tell you for sure.

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Q Okay. Do you recall ever having to reload your shotgun?

A I don't recall. I'm sure I did after I fired it, but other than that, I'm not sure.

Q Okay. I forgot to mention this, Officer, really quick, as a quick aside, if you need a break, again, just raise your hand and let us know. You know, a restroom break or whatever, you're welcome to do that. I don't want to force you to sit there if you need a break. So you just let us know.

Let me go through the two OC sprays first before we talk about the less lethal. Tell me about the first OC spray use of force in front of the police station?

A All right. Yeah, the first one was on the highway, we talked about that one. The second one was I was on the porch of the main. There was a group of I believe it was like two or three girls, they started an argument. I believe one of the girls was -- she wasn't like -- she was trying to either calm stuff down or wasn't liking what was going on, and then two other girls didn't appreciate what she was saying and they just started punching her in the face. So to break that up I used OC spray.

Q Okay. How far was that from the line on the

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porch?

A Like just below us.

Q Okay. Like approximate distance?

A Like maybe three feet, three to five feet.

Q Oh, okay. So right in front of the porch?

A Yeah, right in front. Right in front of the wall of the porch.

Q Okay. And that's the -- that's the area that you call the front of the police station is referred to as the porch?

A Yes.

Q All right. And now the porch has like a fence around it?

A Yes, sir. It has about a ten-foot iron fence around the whole thing.

Q But going back in time to May 30th of 2020 there was no fence around that area, right?

A Correct.

Q Okay. And that's I imagine part of the reason why officers were forming a line there is to protect the police station?

A Yes.

Q All right. Okay. What about the -- let's go to the second use of force, OC spray.

A That was the second.

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Q Oh, that was the second?
A Yeah.
Q What was the first?
A The first was on the highway.
Q Oh, okay. All right. I understand. So if we limit ourselves to the porch, you had two uses of force, OC spray for the fight between the females and the firing of the shotgun?
A Yes, sir.
Q Okay. Any other uses of force on the porch that you recall?
A Not that I recall, no.
Q Okay. Let me ask you this. Are you -- do you still have the mask? I'll call it like the helmet and the mask. Did officers still have those when they were on the line on the porch?
A Yes.
Q All right. And when you fired the shotgun twice, did you have your mask on or did you have it lifted up?
A I'm not sure.
Q Okay. Did you witness other officers shoot their shotguns from the porch?
A At the same time as me or any other time?
Q Any other time during the time you were on the

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porch?
A Yes, I believe so.
Q All right. Did those officers to your recollection have their mask down or their mask up?
A (Shakes head from side to side) I don't know.
Q Okay. Let me ask you a little bit about the directions that you were given when you first were sent out to the porch, so after the highway.
What -- did you have like the equivalent of a show-up, did anybody sort of give you information when you go out there, this is what your directions are?
A I'm sure we did. I couldn't tell you exactly what was said. We probably spoke of like how we're going to handle the less lethal shotgun and just like where we're going to stand, but I couldn't tell you for sure what was said.
Q Okay. Do you recall anything that was said about the shotguns? Like you said how to handle the shotguns. What does that look like?
A I don't recall. Could you rephrase? I'm not really sure what you're asking. How to handle it?
Q Well, I mean I was just sort of following up.
I mean were you given any directions on these shotguns? Like here's where you use them and don't use them under this scenario and you have authority to use

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them in these instances, but not these instances. That's what I'm asking.
Was there any discussion or directive given?
A You know, so they pretty much said, hey, you know, if people are throwing things at officers, you can -- you have the ability to use the less lethal shotguns or use of force or like other uses of force. That's pretty much what we were told.
Q Okay. So if I kind of understand it correctly, you know, as a patrol officer in your position on May 30th, 2020, there's a certain level of directions that you're given. Go to the highway and block it, form a line on the porch, crowd control, things like that.
Those are orders that you're given that you have to go to those positions and follow orders, right?
A Sure.
Q And with regards to the shotguns, there's like this -- you know, maybe I'm being too much of a lawyer, but there's this carve out for discretion.
You as an officer if you have a less than lethal shotgun have the discretion to use it, you know, if you see agitators throwing things, et cetera, right?

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A Correct.
Q In other words, you don't have to like turn to somebody and say, hey, can I fire, you have a certain level of discretion or the officer who has the shotgun has a level of discretion whether to fire or not?
A Yes, sir.
Q Okay. Was there any discussion to your recollection of when not to fire it? So did anybody say don't fire it if X, Y, Z?
A Not that I remember.
Q Okay. Let me switch gears a little bit and just talk about the shotguns and the training and certification and that piece of it.
What training -- and again, Detective, sorry, I was calling you Officer, but I realized it's Detective now. May 30th, 2020 and prior, okay, so we're in that time zone, not afterwards, what training and certification did you have with regard to these shotguns?
A Well, like all weapons we're trained within the Academy, and then every year we have a qualification with each less than lethal and lethal weapon that we have to partake in every year to be -- to stay current of a user of that weapon.
Q And the annual certification is kind of like

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an accuracy test, right? They have you fire at a target?
A The less than lethal?
Q Yes, sir.
A Yes, sir. Yeah, you're given I believe it's four rounds, and you fire at like a -- I think it's given to them by the company. There's like a silhouette of the front of a body with the areas painted and the impact zones, like green, yellow, red, and then the back of a person with the same colors. And then you take two shots from I believe it's the -- it's either the 10 or the 20 mark, and then you take two shots from the five mark at the areas that would be acceptable from that range.
Q Okay. And what, ten and five yards or feet?
A No, yards, sir.
Q Yards. Okay. So you fire the target every year for certification. You fire at the target from different distances in yards and you're tested for accuracy?
A Yes.
Q Okay. And what -- what distances are you trained are acceptable to fire at?
So, for example, do you get a threshold where it's like -- I'm making up numbers because I don't know

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-- but over a 100 yards, don't fire it within a 100 yards, that's your range?
A I believe at that time the acceptable range was 5 to 25 yards. That was the recommended range. They can be used outside of that, but you need to like be more selective with, you know, the areas that you're targeting.
Q Okay. All right. So to your recollection 5 to 25 yards is the recommended distance. You can go past that, but you need to take special precautions if you go past that?
A Yeah, and I think it's more that you need to take special precautions when you're closer.
Q Okay.
A Because obviously it's more, yeah, lethal at that range.
Q Okay. Right. The closer the subject is to you that you hit with the bean bag rounds the more injury it could be the farther away -- go ahead.
A Well, energy -- the closer you are to like anything, the more energy it has. So as that dissipates, then obviously the range -- the part of the body you hit is more acceptable because it has less energy at the time. So you want to be more selective closer to the person because the chance of injury is

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higher in that sensitive area.
Q The impact would be harder --
A Correct.
Q -- more or less like? So we can sort of focus in -- well, let me ask you this. So that's the certification process, you do that once a year.
How is that -- how is that graded? Is it pass/fail? What constitutes a pass and what constitutes a fail on the annual certification?
A It is pass/fail, and I believe the pass/fail is just targeting in the right area for that distance that you're shooting at.
Q Okay. Now, besides the certification, which is the annual test, right, and we're going from I think the Academy for you in 2009 to May 30th, 2020, what training do you receive? So besides the annual certification, what training do you receive on the shotguns?
A I believe that's it, sir.
Q Okay. So you're trained on how to use them in the Academy, and then after you graduate the Academy, you're on the police force, once a year you do the certification, the accuracy test to stay current and certified?
A Correct.

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Q Okay. Any further training after the Academy between 2009 and 2020 that you recall?
A Not that I recall.
Q Okay. So let me ask you about your use of weapons prior to. So we're cutting it off again at May 30th, 2020 and before, let's include May 20th (sic), 2020, so you've displayed the not less than lethal two times on May 30th, 2020, right?
A Correct.
Q Okay. So before that, right, from the Academy on, how many times approximately had you shot the less than lethal shotgun?
A Other than in the qualifications?
Q Yeah. Let's take the qualifications out of it, let's use real-life scenarios.
A Zero.
Q Oh. So from 2009 to 2020 you had never used the less than lethal or fired the less than lethal on duty?
A No, sir.
Q Why is that? That seems unusual to me. That's a big chunk of time.
A I just haven't had the -- I've utilized it, but like just by its presence I guess I've gained compliance, but never actually fired it at someone.

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Q Oh, okay. And what you mean I think, if I can unpack that, you correct me if I'm wrong, is that sometimes you show it to the individual who's not complying and them knowing that you might use it they gain compliance, they start cooperating?
A Correct.
Q Okay. But you had never had to shoot it at somebody between '09 and May 2020?
A Correct.
Q How often did you even get one, right? Because these shotguns are sort of checked out, right, by -- from the police station?
A Yes.
Q And did you -- let me ask you that. On May 30th, 2020, did you check it out or did some other officer check it out and then you guys just shared it and passed it around to give people breaks?
A I don't believe I checked it out. I believe someone else, maybe a supervisor, maybe it was another officer, I'm not sure. But like I said, we had one for like our shift. I couldn't tell you who checked it out. It wasn't -- I don't believe I -- it was me.
Q Sure. That makes sense. So in this 2009 to 2020 range that I'm asking you about, how often would you have one? How often would you, you know, have a

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less lethal shotgun at your disposal, at your use? Is it something you took out every patrol, is it something that, you know, you would only go and check out if you wanted to go check out? Why don't you explain that to us.
A I definitely don't take it out every patrol, but I usually carry it fairly often while -- when I was on patrol.
Q Okay. So let's sort of -- let's discuss firearms, right. We're not talking about the shotguns, the less lethal shotguns. We're talking about firearms. How many times have you discharged your firearm in the line of duty?
A Zero.
Q Okay. Now, excepting -- taking out the Academy and certifications and things like that, you've never fired your service weapon in the line of duty?
A That's correct.
Q Okay. So if I understand you correctly, on May 30th, 2020 was the first time that you had fired a weapon, and now I'm going to include service weapon and shotgun, even though, you know, we're talking about the shotgun. May 30th, 2020 was the first time in the line of duty that you had fired a weapon?
A Yes.

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Q Okay. Okay. All right. I want to switch gears on you and ask you about a car. Do you recall a car coming down that intersection and driving into the crowd?
A If my memory serves me correct, there were several at different points of the day that did.
Q Okay. And what happened -- how many cars, again, and ask you like more than five?
A I don't know. Maybe five at most.
Q Okay.
A There was, yeah, there was cars. There was a van that came down at one point. But yeah, there were several times where vehicles made its way into the crowd for whatever reason.
Q Right. And one of those times officers from the line on the porch came out and removed the driver from the vehicle, right?
A Sure. I never participated in that.
Q Okay. Did you ever witness officers leave the line on the porch and go into the crowd for any reason?
A Yes.
Q Okay. What were those?
A One time -- one time was to administer aid to someone who was injured, one time someone had lit a car

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on fire under the overpass so they were providing security for AFD. I believe -- I remember escorting a vehicle, not myself, but being down there, but I think that was the next day. I don't think that was the 30th.
Q Okay.
A So on the actual 30th, those are probably the only two times I remember officers going down into the crowd were those two.
Q Okay. At any point do you recall the shotguns being fired at someone who was driving a vehicle?
A No.
Q Were you or any other officers aware on May 20th (sic), 2020, right, going back in time, when you're on your shift that Saturday, were you aware of other incidents in other cities? And here's what I mean by that. I mean the police station being torched in Minneapolis, the police station in El Paso being vandalized, were you aware of that on May 20th -- May 30th, 2020?
A I'm aware of it. I couldn't tell you when I became aware of it. At some point.
Q Sure. Is it safe to say that, you know, because you're on the line on the porch of the police department, right, the downtown police station, that that sort of heightened officers' readiness?

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A Yes.
Q And I know that's a broad term, I appreciate you're answering it, and I want to be fair to you and not try and, you know, say something else, but in other words, you know, this crowd being in front of the police station made it a significant situation because that presents a dangerous situation if people were to enter the police department, right?
A Yes.
Q There's weapons in there, there's documents in there, that would be a catastrophic situation, right?
A Yes.
Q Okay. Do you -- I think you already answered this, it's just a question I ask, you don't have any military experience, do you?
A No, sir.
Q Okay. All right. Let me -- actually, you know what, could we take a -- for myself could we take just a quick four-minute break? I've got 9:11 Mountain, 10:11 Central, could we go to 10:15?
MR. BARTON: Sure. Yeah.
MR. DEMIK: Okay.
Is that alright, Officer, we'll take a four-minute break?
THE WITNESS: Yes.

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THE VIDEOGRAPHER: We're off the video record. The time is 10:11 a.m.
(Break taken)
THE VIDEOGRAPHER: We are back on the video record. The time is 10:16 a.m.
Q (By Mr. Demik) Okay, Detective, let me ask you about just in general the protests.
So on May 30th, 2020, we've been talking about that, but I want to sort of shift gears before that, had you had during this time period of time, and I'll, you know, call it May 2020, had you worked shifts where protests happen?
A Prior to or at any point or --
Q Prior to?
A I wouldn't say -- I'd probably say that's -- this is the -- not the only one. This period of time was the only time I've worked an actual protest.
Have I worked events with other large gatherings, yes.
Q Okay. So prior to May 30th, 2020, right, in front of the police station on the porch, had you ever had experience dealing with this type of crowd, this type of protest?
A No.
Q Okay. And what about that week, right, I

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believe the George Floyd death happened, you know, several days before, had you been on shifts or been on crowd control at all that week?
A I don't think there was any crowd before Saturday.
Q Okay. So on May 30th, 2020, this is the first time that you're showing up for duty for an active protest happening in front of the police station?
A Yes.
Q Or an active protest, you know, happening in the city of Austin?
A Of this type, yes. I mean there's been other like -- there's been marches, and I was here when -- what's it called? They're doing the whole Wall Street thing out here in front of the City Hall for like months on end, but an actual protest where, you know, there was like violence, this is the only one I can -- that comes to mind.
Q And what training or experience did you rely on, and I know that's a broad term, I mean it to be broad because I want to give you latitude to answer whatever you had, but May 30th, 2020, showing up for a protest that you said was violent, right, what training had you been given did you rely on in dealing with it on May 30th, 2020?

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A Going to the Academy we had a day or two of doing like crowd stuff. I was also a member of BPOT, and although we didn't utilize our bicycles at this point, we did on later days during the same, you know, event, but that has a lot -- that's all like crowd control. So that would probably be the most relevant training I had to deal with, you know, protests because that's what BPOT's all about.
Q Okay. Let me ask you, what is "BPOT"? I don't know what it is.
A It stands for Bicycle Public Order Team. It was created in -- I believe it was somewhere in Canada, Calgary, I believe. So it's pretty much using bicycles to support and deal with large crowds.
Q And what period of time were you on this BPOT team?
A Everyone who works downtown is trained on that. It wasn't implemented in 2012 when I went downtown, but probably sometime in the mid-2010s it was. So for several years I've been a member, trained on that, you know, technique.
Q Okay. And that's a technique dealing with bicycles or what is that technique?
A Yeah. So using police bicycles to deal with it, deal with crowds.

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Q Okay. And there were no bicycles on May 30th, 2020, right?
A There were -- there were some, but they were just -- they were using them to block the steps to the main.
Q Okay.
A Because like back then there was no fence or no anything. So they were just using them to like limit access, but that wasn't part of my shift's like duties or tasks.
Q Okay. So if I understand you correctly, May 30th, 2020, besides BPOT, the Bicycle Patrol -- I forgot, what's the acronym, Bicycle Patrol --
A It's Bicycle Public Order Team. Something like that.
Q The Bicycle Public Order Team. Besides the Bicycle Public Order Team in May 30th, 2020, you relied on your training at the Academy?
A Yeah. Besides the BPOT, yeah. Yes, sir.
Q Okay. And going into May 30th, 2020, did you understand what the protests generally were about?
A Generally, yes.
Q And can you articulate that in your own words?
A George Floyd was killed in Minneapolis and

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people across the country were -- felt the need to attack police around the country for it.
Q Did you have any personal opinions or beliefs on that issue prior to and during May 30th, 2020?
MR. BARTON: Object to the form. You can go ahead and answer.
THE WITNESS: I honestly didn't know too much about it at that time.
Q (By Mr. Demik) You didn't know too much about the George Floyd death?
A No.
Q All right. Did you -- were you watching the news at the time?
A Probably not.
Q Okay. Do you watch the news around this time, May 2020?
A No.
Q It's probably healthier for you.
A Probably.
Q Why don't you watch any news?
A It's just a lot of times I don't think it's accurate. It's just -- I mean the news, they're all -- they're businesses too. They're just trying to make their money. A lot of times it's sensationalized, a lot of times they're not telling the whole truth.

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I just choose to spend my time doing other things. To be honest, I just -- it's not entertaining to me.
Q Sure. So going into May 30th, 2020, if you weren't watching the news, where were you getting information on the issue?
I'm just going to call it "the issue."
A Probably from coworkers.
Q From coworkers?
A Yeah. I'm not -- I'm not even big on my social media or anything like that, so I wouldn't even know. Like I don't even remember. I couldn't tell you the first time I saw the video. It was probably around that time.
I know it had been on for -- I know it was like earlier in that week or maybe even the weekend prior. I forget when exactly it happened, but I don't even remember the first time I saw it. I don't think it was -- probably around the weekend that we're talking about, the 30th, the 31st.
Q Okay. Do you recall what circumstances you viewed it? Was it you going online, was it somebody saying, hey, watch this, what was it?
A Honestly I have no idea.
Q Okay. All right. Let me ask you about the

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overpass. I want to ask you, switch gears here and ask you about the sort of interactions between the officers on the overpass to your knowledge and the officers on the porch as we're calling them. Fair?
A Uh-huh.
Q Okay. So did you witness officers on the overpass fire shotguns into the crowd?
A Yes. I saw officers fire at individuals, yes.
Q And was there any communication between the officers on the overpass and the officers on the porch?
A Other than being on the same radio, there wouldn't have been any like direct communications between us, no.
Q Okay. And what kind of information was passing on the radio?
A I couldn't tell you.
Q Was there information being given to the officers on the overpass of what was happening underneath them, beneath the overpass?
A I'm not sure.
Q Okay. You're not aware of that?
A I'm not aware, and I can't remember what was said on the radio, no.
Q Okay. Were you on the radio? Do you remember

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saying anything on the radio?
A No, I don't remember ever saying anything.
Q Okay. Do you know if officers on the overpass were using flashlights or other illumination techniques to focus on people below?
A That was mentioned to me earlier. I didn't have any independent recollection of that up until then, but I do remember people at night using flashlights just so like pointing people out in the -- on the -- in the street.
Q Okay. Was there any kind of coordination between the officers on the porch and the officers on the overpass?
A No.
Q Okay. Let me ask you about -- well, let me ask you this. The officers on the porch, were they using any flashlights or illumination devices?
A Not that I remember.
Q Okay. And I guess I said "illumination devices" because I don't know if there's like a spotlight or something else.
What other means do they have at the police station?
A There's no spotlights. At that time it was poorly lit. Just if anyone was shining anything, it's

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sort of a normal flashlight.
Q Okay. So let's talk about that. It was poorly lit in front of the police station.
A No. The porch of the police station, what --
Q The porch to the police station at this time, May 30th, 2020 was poorly lit in front of the porch?
A The actual porch would have been poorly lit. There's streetlights that illuminate the street, but at that time there was -- the light, it was pretty dim up there. Since they've installed like very bright lights up there, but then they weren't up there.
Q Okay. On May 30th, 2020 they weren't up there?
A That's correct.
Q And so the porch area is dimly lit?
A Yes.
Q The street is lit by the streetlights?
A Correct.
Q Okay. When you fired your shotgun the two times on the porch, do you remember the individual that you -- that you impacted?
A I mean I don't know who it was, but I remember the -- like the purpose I guess you would say.
Q Okay. Sure. Can you walk us through that?
A So yes. I saw a male, he was somewhere like

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on east -- on Eighth Street, east of the service road. I believed I saw him light something in his hand and then walked, walked westbound towards the intersection and then started to attempt to throw whatever he had lit in his hand.
Q Okay. Did you -- did you -- did he throw it?
A Yes. He was able to throw the -- I called it like a -- some sort of incendiary device, but it landed somewhere like on Eighth Street north of where we were standing.
Q Okay.
A And then dispersed its -- whatever it had, smoke or whatever it was.
Q Okay. Let me break that down a little bit.
So did you observe this individual before he threw something or he threw it and then you --
A No. It was -- it was -- so I saw him light it, and then as he like was in his throwing motion, I struck him twice.
Q And how far away was he from you at that point?
A Um, maybe like -- I'm not sure. Call it maybe 40 to 50 feet. I'm not a hundred percent sure.
Q That's fine. And so when you shot him, did --

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had he already thrown the --
A Like I said, he was in his like throwing motion.
Q Okay.
A Like -- thinking like a pitcher, they have like a windup where, you know, they bring the ball like up and, you know, execute their throw over their shoulder. So it would have been in that motion.
Q Okay.
A So I would assume the intended target was where we were standing, but he missed assuming because he was impacted.
Q Okay. And where -- when you say "incendiary device," was this a firework, a smoke bomb?
A That's -- I didn't examine it after, but it caused smoke so I'm guessing it was some sort of -- just from what it looked like, I guess I would assume that it had to have been some sort of firework. I'm not sure what exactly it was but --.
Q And where did the firework go?
A It landed like I said like just north of the porch on Eighth Street.
Q Okay. And so you remember him in a windup to throw it, you shot him, what happened then to him in your line of sight?

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A If I remember correctly, he like turned around and went eastbound.
Q So he ran eastbound away from the porch?
A I believe so, yes.
Q Okay. What was this individual wearing?
A I don't remember.
Q Can you identify him by any article of clothing or other distinguishing factor?
A No, I couldn't.
Q And that's the only individual that you shot the less than lethal shotgun and hit? No, no, that you -- those are the only two times you shot the shotgun?
A Correct.
Q Did anyone assist the individual after you hit him?
A I don't believe so.
Q Did any other -- to your knowledge, did any other officers shoot the same individual?
A I believe the -- some officers on the overpass did, but I'm not sure how many or like who struck him obviously. I never talked to the guy. So --.
Q Oh, to the individual that you hit?
A Right.
Q Did you talk to the officers on the overpass?

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A No.
Q So this -- did you witness any other instances where officers on the porch shot somebody and officers from the overpass shot somebody?
A No, not to my -- like just -- I don't recall right this second. I couldn't tell you for sure.
Q Well, officers from the overpass were firing at people in the crowd, right?
A People on the street, yes, they were.
Q Okay. And officers on the porch obviously were shooting individuals in the crowd, right?
A Correct, but I couldn't tell you if that was the same time or not.
Q Okay. Was there any discussion by any officer at the time, and I -- again, I'm making it a broad question because, you know, I want to be thorough, did you participate in, witness, overhear any conversation by any officers, supervisors, anybody with the police force over a notion of crossfire between the porch and the overpass?
A Crossfire would be when you are shooting in opposite directions at each other, so that wouldn't have been an issue.
Q Maybe I used that term incorrectly. What would you call that where you had two lines?

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Let's say you had a 90-degree angle, I know this is a hypothetical, I'm going away from May 30th, 2020, but let's say you had an angle and officers or -- yeah, officers were shooting at the same individual from different angles, what do you call that?
A That's standard practice. You usually try to hit different angles, and that's the most safe. Like when you were saying there the L, because you're not in a crossfire situation.
Q It's also probably safer for officers if you're at different levels?
A Right. Yeah, that's like a different -- that's a whole different thing.
Q Sure. So that's sort of what I'm asking is that topic, and I know that -- I know that's super general, but that topic of like, hey, these officers are going to be on the overpass shooting at this angle with this field of vision or field of -- what do you call it, range?
A Field.
Q And the officers here at the police station are firing from this range and this vantage point, did you ever witness, overhear, participate in or have any knowledge of any conversation about that within the police on May 30th, 2020?

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A No.
Q So nobody brought that up to your knowledge on May 30th, 2020 before or during?
A Not to my knowledge, no.
Q Were you or any other officers to your knowledge -- because I can't ask you what was in somebody else's mind of course, right, but, you know, if I'm in a room and another person's in a room and I overhear somebody telling them something, I can say they probably knew about it because I witnessed that. Sorry for the detour. But were you aware personally or aware of any other officers having knowledge that there were deaf individuals in this crowd of people?
A How would you know?
Q Right. Was there ever a discussion that there might be deaf people in this group of people?
A Never a discussion of deaf people. I don't know. How would you know?
Q Sure. And "group of people," I mean the group of protesters that are milling around the front of the police station to be clear, to clarify. Fair?
A Fair. Yeah, no, there was no conversations like that.
Q Okay. There was never a conversation about the possibility that some of these people might be deaf?

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A Not that I took part in.
Q Okay. Or overheard?
A Correct.
Q Okay. Can you just give me one second, I think I'm done, but I just want to check my notes to be sure. Okay. All right. I do have another sort of topic to ask you about.
So in the firing of the shotguns, right, you made that decision on May 30th, 2020 based on what you observed?
A Correct, yes.
Q And so the only time that you fired the shotgun was when you observed an individual throwing or beginning to throw an object?
A Yes.
Q All right. Was there any other point that officers sort of directed fire at an individual? And what I mean is this. Were you present or overhear any instance where one officer sort of highlighted an individual to another officer?
A I mean like my supervisor is standing next to me just like kind of watching, keeping eyes out for me. I can't -- I'm guessing he was doing that for other people, but there was never a time where anyone was like, hey, impact that person or anything like that,

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heap force on that person. It was nothing like that. It would always be individual discretion.
Q So you don't recall officers directing, and I'm trying to find a better word for that, but I think you know what I mean, directing another officer, hey, hit that guy or, hey, shoot that guy?
A I mean even if they did do that, they don't -- it's not like they have to follow that request.
Q But what do you do? I can't ask you about other officers because you can't answer for them, but you personally, right, at the time, and I know you've moved on to detective, but at the time of a patrol officer, May 30th, 2020, did you hear -- if you hear another officer say, hey, impact that guy, what do you do?
A If they were asking me or telling someone else?
Q Saying it to you.
A No. I'd say like, okay, I'll, you know, I'll just make my own determination.
Q Okay.
A I've never -- I mean that's like as we mentioned, that's the only time I've ever impacted someone, and I did it on my own, you know, accord. So -- and my own decision-making. So I haven't ever

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fired on anyone after someone told me to, obviously.
Q Have you ever been in a situation May 30th, 2020 and prior, not after, you know, again sort of our timeline, were you ever in a situation where another officer did that? Said, hey, impact this person and obviously you didn't because the only time that you fired the shotgun was on May 30th, 2020.
Before that or on that date, have you ever been in a situation where another officer said, hey, impact that person and you didn't do it?
A I don't think so.
Q Okay. Do you receive any training on what to do or show-ups or information on what to do in that type of scenario?
A I don't think that's all that common, so no. I don't know why someone would be telling someone to impact anyone on someone else's behalf.
Q I'm sorry, I missed the first part of that answer.
A I don't know why someone would be -- an officer would be directing another officer to impact someone.
Q Okay. I think that's all I have, Detective. I always end here, and I just ask you, you know, I've been asking the questions and you've been answering

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them, thank you for your time and attention and thank you for answering my questions, but I like to give you an opportunity if there's anything that you think is important or anything that you think we should know about this case, this incident on May 30th, 2020. So I really -- it's like a catch-all question, I just give you an opportunity if there's anything that I didn't ask you about or something that you think is important to give you an opportunity to say it.
Was there anything like that here?
A I don't believe so.
Q I don't have any further questions. I don't know if Monte does, but thank you for your time. I appreciate it. I know it probably takes a chunk out of your day, so I appreciate it, Detective, and I wish you the best.
A Appreciate it.
MR. BARTON: Okay. I don't have any questions for the witness, but I do want to exercise the option to read and sign, and then I would like to order copies of the transcript and the video. And I've been told to request the expedited transcript.
THE REPORTER: Do you have a date you need it?
MR. BARTON: I think by the end of the month, but maybe the week before the end of the month. I don't

have my calendar handy, but --

MR. DEMIK: That's next week, I think.

THE REPORTER: Okay. Well, I'm all caught up so there's no problem.

MR. BARTON: And actually, I guess we're off the record.

THE VIDEOGRAPHER: We're off the video record. That concludes our deposition this morning. The time is 10:43 a.m.

(Deposition concluded at 10:43 a.m.)

DECLARATION ERRATA SHEET

Case Caption: TALLEY VS. CITY OF AUSTIN

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the above-captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

_____

BENJAMIN LYNCH

DEPOSITION ERRATA SHEET

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BENJAMIN LYNCH

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BENJAMIN LYNCH

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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)

I, Rebecca K. Quinn, CSR No. 5720, in and for the County of Santa Clara, State of California, hereby certify that the witness in the foregoing deposition was duly sworn or affirmed by me to tell the truth, the whole truth, and nothing but the truth in the within-entitled case; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, to the best of my ability, and was thereafter transcribed into typewriting under my direction and supervision.

IN WITNESS WHEREOF, I have hereunto set my hand.

Date: July 24th, 2023.

REBECCA K. QUINN, CSR #5720

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MODESTO RODRIGUEZ, *Plaintiff,*	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-01087-RP**
CITY OF AUSTIN AND JOHN DOES, *Defendants.*	§	

DECLARATION OF ROBIN HENDERSON

STATE OF TEXAS
COUNTY OF TRAVIS

I, Robin Henderson, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. My name is Robin Henderson, I am over the age of eighteen years, and I am authorized to make this declaration in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as the Chief of Staff for the City of Austin Police Department (APD). I have been the Chief of Staff for APD since December, 2021. I am a certified Texas law enforcement officer. Overall, I have been a professional law enforcement officer with APD since 1997. Prior to becoming Chief of Staff, I held numerous patrol, investigative, supervisory, and management positions with the Austin Police Department.

3. As the Chief of Staff, I assist the Chief of Police in managing the personnel, budget, and police operations for APD. The Chief of Police has final responsibility for setting the operational policies ("APD Policies"), hiring standards, and training standards for APD. I also have personal knowledge of how APD (and the City of Austin) investigates complaints against

officers and of the discipline of sworn APD officers. The Chief of Police has final authority over internal affairs investigations and police officer discipline, subject to State of Texas Civil Service laws and the Meet and Confer Agreement between the City of Austin and the Austin Police Association (the "Agreement"). Through my employment as the APD Chief of Staff, I have personal knowledge of the Agreement, APD work rules and APD policies, APD training requirements, personnel and hiring information for APD police officers, and APD investigative and disciplinary policies and procedures.

I. APD Hiring

4. The Chief of Police has final authority to hire new APD cadets. I know that all APD applicants must undergo and pass a written cognitive test, sit for an oral interview before a board of APD officers, pass a medical examination, and pass a physical fitness test. Additionally, before any new cadets are hired, APD's recruiting division conducts comprehensive employment, criminal, and military background checks. All applicants must also undergo and pass a psychological evaluation and a polygraph examination before hiring. APD does not hire any candidates whose background or psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work.

II. APD Investigations and Discipline

5. APD has policies and procedures in place to ensure that officers accused of violating APD policies are investigated and, if appropriate, disciplined. APD has a set of policies that all officers must obey. The APD policies govern all manner of officer conduct, including, but not limited to, pursuit of fleeing suspects, appropriate arrest procedures, reasonable suspicion and detention, use of APD computers, officer discipline, and use of force. Every APD officer is issued a set of these policies. As the APD policies are updated or revised, they are distributed to all

officers. All officers must acknowledge, in writing, receipt and understanding of any new policies. A copy of the policies in effect at the time of this incident is attached and incorporated herein (Austin Police Department General Orders valid 4/21/2020 to 5/31/2020). This includes the policies set out by APD General Order 200.1 Purpose and Scope, GO 200.1.1 Philosophy, GO 200.1.2 Definitions, GO 200.1.3 Duty to Intercede, GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, GO 206 Control Devices including kinetic projectiles and shot placement, GO 300.3 Crowds, GO 407 Emergency Management, GO 408 GO Mobile Field Force, and GO 609 Interpreter Services.

6. At the time of this incident, May 30, 2020, APD had policies in place specifically forbidding the use of excessive force. These policies specify when an officer may use force, and, when appropriate, the level of force that may be used. These policies are set out in Chapter 2 - Response to Resistance and Pursuit. APD policies also included a specific policy (GO 200.1.3) regarding the duty to intercede when an officer has a reasonable opportunity to prevent harm, and GO 200.2 De-escalation of Potential Force Encounters, GO 200.2.1 Assessment and De-escalation, GO 200.3 Response to Resistance, GO 200.3.1 Determining the Objective Reasonableness of Force, GO 200.3.2 Use of Force to Affect a Detention, an Arrest or to Conduct a Search, GO 200.5.2 Duty to Give Aid and Medical Care, GO 206 Control Devices including Kinetic Projectiles and Shot Placement.

7. Officers who violate the APD policies with respect to use of force are subject to discipline up to, and including, termination. APD's use of force reporting and investigation requirements are set forth in Policy GO 211. APD monitors its officers' use of force by requiring

all officers who use force to report their use of force. APD conducts a review of and inquiry into every reported use of force to determine whether it comported with APD's policies. APD employs a sliding scale to determine the extensiveness of review and inquiry into each use of force – less serious uses of force (e.g., those involving the use of chemical spray or use of a takedown technique) are reviewed by supervisors and the officer's chain of command, while more serious uses of force (e.g. use of lethal force or incidents resulting in an in-custody death) are reviewed by APD's Internal Affairs Division (IAD) and APD's Special Investigations Unit (SIU). An intermediate level of investigation is conducted for uses of force classified as "Level 2," which include weaponless blows to a subject's head. These uses of force require a detailed inquiry packet, review by the officer's chain of command, and review by the APD's Force Review Board.

8. If an incident involves different levels of force, a single review is conducted, and the incident is classified using the most serious level of force applied. For example, if an incident involves an in-custody death then the incident is classified as Level 1, and receives the most stringent review.

9. Following every Level 1 use of force, the APD's Special Investigations Unit (SIU) performs a criminal investigation into the police officer's actions. Officers selected to work in SIU are all experienced investigators who have experience investigating high-profile crimes. SIU detectives have the full panoply of APD resources at their disposal for the investigation—including crime scene specialists, firearms and trajectory analysis, DNA analysis, etc. SIU detectives work closely with the Travis County District Attorney (assuming the incident occurred in Travis County) to gather and present the evidence collected to a grand jury. At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases involving an APD police officer to a grand jury to consider

whether to indict.

10. APD maintains an internal affairs unit (IAD). IAD is responsible for investigating any violation of general orders by APD officers—including all in-custody deaths. IAD investigators are all experienced law enforcement officers who hold the rank of sergeant or above. All formal complaints about APD officers, whether generated internally or externally, are investigated by IAD. IAD is responsible for producing a report on the allegation and detailing the evidence collected, which includes compelled statements given by the officer (if officers refuse to give statements to IAD, they may be terminated from their employment). IAD also has complete access to all of the evidence gathered by SIU.

11. In cases of Level 1 uses of force, including all in-custody deaths, the Chief of Police reviews the IAD report. The Chief of Police also seeks the recommendations of the officer's chain-of-command (the sergeant, lieutenant, commander, and assistant chief) regarding whether they believe the officer violated policy based on their independent review of the evidence. When appropriate, the Chief of Police will conduct a disciplinary review hearing with the officer to get his or her side of the story. Following the hearing, if one is conducted, and after hearing the recommendations of the chain of command, the Office of the Police Monitor (now known as the Office of Police Oversight (OPO)), and the Citizens Review Panel (now known as the Community Police Review Commission (CPRC)), the Chief of Police determines whether the officer violated APD policies and, if so, the appropriate discipline.

12. Under Texas civil service law, and the Agreement, the Chief of Police can discipline officers by oral reprimand, written reprimand, unpaid suspension, demotion, or indefinite suspension (termination). The APD Chief of Police uses a "disciplinary matrix" to determine the level of punishment for particular offenses. APD has, in fact, disciplined officers

who were found to have violated APD policies regarding the use of force. A true and correct copy of APD's disciplinary matrix (APD GO Policy 903) is attached hereto.

13. APD maintains disciplinary records for its officers. Additionally, there is considerable citizen oversight of APD and IAD. The City established the Office of Police Monitor, now known as the Office of Police Oversight (OPO) in 2002. The Community Police Review Commission (CPRC) was established in 2018 and met for the first time in October 2020. At the time of this incident in May. 2020, the OPO monitored APD in several ways. For instance, OPO staff sat in on interviews conducted by IAD investigators to ensure that they are conducted fairly and impartially. The OPO received complaints from the public and ensured that they were investigated by IAD. The OPO also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

14. At the time of this incident, the CRP (Citizens Review Panel, now known as the Community Police Review Commission (CPRC)), was a panel of citizens selected by the Austin City Council to monitor APD. The CRP conducted public hearings, during which it received complaints from the public regarding APD, discussed completed IAD investigations, and it received information from APD and OPO staff. The CRP also reviewed ongoing investigations in closed sessions, and had complete access to IAD files. The CRP could vote to recommend discipline in certain cases or could request that the Austin City Manager hire an independent third-party firm to conduct a review of an IAD investigation or a specific incident.

15. APD has assessment tools in place that can identify officers who may pose an unusual risk for using excessive force. For example, APD uses an algorithm that will automatically send notifications to an officer's supervisors if the officer reports more than a specified number of uses of force over a specified period of time. (Supervisors may also be notified if an officer uses

excessive sick leave, is the subject of a number of complaints, or is involved in a number of vehicle collisions). If such a notification occurs, the officer's supervisors must re-review each of the officer's uses of force or citizen complaints to determine if the officer acted appropriately, or if the officer needs additional training, counseling, or disciplinary action. This process is followed even though every use of force and every citizen complaint receives a thorough review when it first occurs.

III. May 30, 2020 Protests

16. The protests on May 30, 2020 which took place in front of the Austin Police Department Headquarters and along the I-35 corridor were of an unprecedented scale and scope for the City of Austin and the Austin Police Department. While the Austin Police Department had handled many peaceful protests and demonstrations over the years, the Austin Police Department had not encountered prior protests and demonstrations with the degree of unlawful behavior of non-peaceful protestors, including throwing projectiles at police officers and blocking and taking over roadways, that was demonstrated on May 30, 2020.

17. In support of this declaration and Defendant City of Austin's Motion for Summary Judgment, the following Attachment[s] are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

Attachment 1: APD General Orders in effect 4/21/2020 to 5/31/2020.

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 25th day of July, 2021.

#3441

ROBIN HENDERSON

Exhibit 7 – Placeholder

Bates No. COA 37537 excerpt – Talley depo Exh. 1 [Confidential]

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or carol.smith@austintexas.gov for assistance with video exhibits.

Exhibit 7

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYREE TALLEY Plaintiff,	§	
v.	§	CASE No. 1:21-cv-249-RP
	§	Lead Case
CITY OF AUSTIN AND JOHN DOES Defendants.	§	

****

MODESTO RODRIGUEZ Plaintiff,	§	
v.	§	CASE No. 1:21-cv-1087-RP
CITY OF AUSTIN AND JOHN DOES Defendants.	§	

****

REMOTE ORAL AND VIDEO DEPOSITION OF

JUSTIN WRIGHT

JULY 21, 2023

****

REMOTE ORAL AND VIDEO DEPOSITION OF JUSTIN WRIGHT, produced as a witness at the instance of Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on JULY 21, 2023, from 10:08 a.m. to 2:47 p.m., before Lilia W. Walters, Certified Shorthand Reporter in and for the State of Texas, reported by oral stenography, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES
(Appeared Remotely)

FOR THE PLAINTIFF TYREE TALLEY AND MODESTO RODRIGUEZ:
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ALSO PRESENT: Jason Fifield, Videographer
Lilia Walters, Texas CSR No. 12390
Alexis Lopez, Paralegal
Priscilla Chavez, Paralegal

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REQUESTED DOCUMENTS/INFORMATION
NONE

CERTIFIED QUESTIONS
NONE

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the re
This begins video No. 1 in the deposition of Justi
in the matter of Tyree Talley versus the City of A
John Does in the United States District Court for
Western District of Texas, Austin Division, Case N
121-cv-249-RP and also in the matter of Modesto Ro
versus City of Austin and John Does, Case No.
121-cv-1087-RB.

Today is Friday July 21st, 2023. T
10:08 a.m. This deposition is being taken virtual
Zoom at the request of Hendler Law.

I'm Jason Fifield the videographer
Legal Services and the court reporter is Lilia Wal
of Magnum.

Counsel will be -- appearances will
on the stenographic record. And will the court re
please swear in the witness.

COURT REPORTER: Thank you. Office
I will now be swearing you in. Would you please r
right hand?

Do you solemnly swear or affirm tha
Justin Wright, located in Austin, Texas and that t
testimony you are about to give in the pending mat
be the truth, the whole truth, and nothing but the

help you God?

THE WITNESS: I do.

COURT REPORTER: Thank you. Counsel,
now proceed.

JUSTIN WRIGHT,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. JOSEPH:

Q. Good morning, Officer Wright, my name is Le
Joseph and I represent Tyree Talley and Modesto Rodri
these cases. I want to start off by thanking you for
here to allow us to ask you some questions about the
of May 30th, 2020.

A. Thank you, ma'am.

Q. Yeah. Have you ever given a deposition bef

A. No, ma'am.

Q. Okay. Just a couple of tips or pieces of i
before we get started. First, you're allowed to take
breaks. This may take a while just kind of depending
it goes. And if you need a comfort break, please ask
one.

If I'm right in the middle of a train
thought I may ask you to let me ask the next question
before we stop. But I'm -- I'm -- certainly want you
comfortable while we're here, okay?

Page 6

Also, I can -- I think a lot of us lawyers can ask pretty complicated and convoluted questions sometimes. So if you ever don't understand what I'm trying to ask you, please tell me. And I'll -- I'll try to rephrase it, okay?

A. Okay.

Q. If you do answer my question though, can we have an agreement that that means you understood it?

A. Yes.

Q. Okay. And you're doing great at this so far. I will point out that since Ms. Walters is taking down everything we say, there are a couple of things that we have to do to help her do that.

The first one is, to give verbal answers. And I see that you're doing that and appreciate that.

The second, is to try not to talk over each other.

A. Yes, ma'am.

Q. So -- yeah so, so far so good, but I'll try to -- to let you finish answering before I ask another question. And -- and I know that you'll do the same for me, okay?

A. Yes, ma'am.

Q. Now, I asked you before we went on the record if Mr. Laird was in the room with you. And you said, no, he's down the hall. Is anybody in the room with you right now?

Page 7

A. Not right now. Priscilla Lopez is in and out. She's the paralegal.

Q. Okay. Okay. And how did you prepare for this deposition today? Before you answer, let me tell you that I'm not -- if -- I'm not allowed to know private conversations between you and your counsel. So I don't want you to tell me details of those conversations. But just kind of generally, how did you prepare?

A. I came in a couple of days ago to Austin City Hall and met with Mr. Laird and Ms. Priscilla. Just to kind of go over what this would be like and some things to expect.

Q. Okay. Did -- did you watch any videos?

A. Yes. I reviewed one or two segments of my body camera.

Q. Okay. Did you watch any other videos, HALO footage, or anything like that?

A. No, ma'am.

Q. Okay. Just body camera from your own camera?

A. Yes, ma'am.

Q. Okay. Did you review any documents?

A. Yes, ma'am. I reviewed my supplements that were written after. Yes, ma'am.

Q. Okay. How many supplements did you write?

A. It looks like five, however, the -- the first one

Page 8

I don't know if it was just a -- if I wrote the fi supplement and then went in afterwards to add some I -- I'm sure I have end of original supplements tow middle of the -- of this supplement. So I don't k that counts as a new supplement or not.

Q. Okay. And --

A. So I think 5.

Q. Okay. And you have those in front of yo now?

A. I Yes, ma'am. They're -- they're right he

Q. And I see that confidential label which that -- that document probably also has a Bates labe Which is a little set of numbers and letters. Usu at the bottom right hand side. It may say COA and th numbers?

A. Yes, ma'am.

Q. Would you tell me the Bates label on fir last page of each of set? Each kind of separate d you have -- Just so that I can make sure I have tho questions. And I know they pertain to you.

A. Yeah. Just as clarification, it -- I ha have four different sheets. And it looks like a s second in each one.

Q. Okay.

A. Like, would you like each sheet? Or jus

Page 9

first and the last?

Q. Each sheet.

A. Okay.

Q. Thank you for the clarification. Yeah

A. Okay. So the first one I'm looking at COA 2292 -- 2292. The second is -- I'm gonna -- I'm gonna just say COA each time if that's okay?

Q. That's fine.

A. All right.

Q. Sure.

A. 2313. The third sheet that I have is the -- make sure I'm not skipping any on acciden The last one I have is 39441. Is it okay --

Q. Okay.

A. -- that that has more numbers than the

Q. It is okay.

A. Okay.

Q. Yes, thank you -- thank you, officer. anything else in front of you today? Other than supplements?

A. I have two blank pieces of paper just own notes in case I do need clarification. Or I like -- like when you discussed you might two questions finish your train of thought.

Q. Mm-hmm.

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A. It's going help me not -- try not to forget it. I'm not going to leave out one of those questions.

Q. Okay. Okay. And I should clarify that I'm not -- I'm not going to purposely ask you a number of questions at a time.

A. Understand.

Q. It's -- it's my intent to give you a chance to answer before I ask you another. So we'll see how I do.

And one other thing before we kind of get into it. I want to make sure we know what we're talking about when we use certain language today. If we talk about a kinetic projectile or a shotgun equipped with a beanbag round, do we kind of understand each other? That we're talking about the so-called less-lethal weapons that you guys had out there at the protest May 30th, 2020?

A. Yes, ma'am.

Q. Okay. And if I say "firearm" does that mean something different?

A. It would be semantics. So the less-lethal shotgun is a firearm.

Q. Mm-hmm.

A. We do not call it a firearm, specifically so that whether it be in reports or whether it be in communication, there is no misunderstandings that we are talking about the less-lethal shotgun or our -- our pistols or our rifles.

Page 11

Q. Okay. So I'm going to try -- I may ask you a question or two about what I -- you know, a gun that shoots standard bullets. And I'm going to try to use the word firearm when I do that.

A. That's fine.

Q. But if -- if you ever don't know what I'm talking about -- what type of weapon I'm talking about, let's clarify it, okay?

A. Okay.

Q. Okay. So I want to talk about kind of some of the rules that were in place on May 30th, 2020, when Modesto Rodriguez and Tyree Talley were out there responding to the protest event. And -- and then we can get into some of the specifics of the event.

I've looked at some of APD's general orders from that time. I just want to confirm that certain things were -- were in place. So I'm going to ask you about those.

I read in one of the general orders that -- that could be an appropriate circumstance to shoot the shotgun equipped with kinetic impact projectiles if the subject is engaged in riotous behavior or is throwing rock, bottles, or other dangerous projectiles at people and/or officers, creating a risk of injury."

And I'm quoting from something that was -- was given to me labeled, GO206.5.3. Does -- is that a policy or a rule that was in place governing your conduct as of May 30th, 2020?

Page 12

A. As far as I know, it was.

Q. Okay. I've also read in a -- a neighbo general order that using a shotgun equipped with impact projectile has to be reasonable. Was that a policy in place as of May 30th, 2020?

A. I believe so.

Q. Okay. Similarly, I believe it was a Al policy that an officer was not required to use a kinetic impact projectile. Is -- is that also, correct?

A. In -- in what -- in what circumstance c beanbag, ma'am?

Q. I thought you would ask that. So let m let you the place where I read that. Okay, so thi 2022 I'm reading.

"Officers are not required or comp use approved munitions in lieu of other reasonabl if the involved officers determine that deployme munitions cannot be deployed safely."

Did you understand that to be a ru policy governing you guys at -- at the time?

A. Yes, ma'am.

Q. Okay. Now another -- another one that "The safety of hostages, innocent subjects, and c takes priority over the safety of subjects engage

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perceived criminal or suicidal behavior."

I read that in 206.5.1. Did you und that to be a rule or policy governing your -- your at the time?

A. Yes, ma'am.

Q. Okay. I'm saying at the time, instead of as of May 30th, 2020, and -- and we both know what talking about, right?

A. Yes, ma'am. Understandable.

Q. Okay. Now, let me ask you specifically a Modesto Rodriguez and Tyree Talley for a moment. A familiar with who each of them is?

A. I am not.

Q. Okay. Other than -- other than their name as be about this lawsuit and deposition.

Okay. I'm going to show you some photogr so that we know what -- who we're talking about tod subject.

Let me share my screen.

Okay. Can you see a photograph on y screen? It's labeled Rodriguez, five zeros and the number five. And it has a gentleman on the ground has been red shirt pulled up?

A. Yes, ma'am.

Q. Okay. Let me introduce you to Modesto Ro

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So when we're talking about Modesto Rodriguez I'll just represent to you that that's who he is, okay?
A. If you don't mind just giving me one more second, I'm just getting writing down a little bit of the description so that I can remember as we --
Q. Sure.
A. -- as we move through this.
Q. And, Officer Wright, this isn't a test. I don't want you to be worried about you know, if -- if you don't remember the difference between the two plaintiffs or something like that, just -- just tell me. And we'll straighten it out, okay?
A. Yes, ma'am.
Q. Okay. This photograph labeled as Talley 0011 has a gentleman lying on his side on the ground with his hand over his face and that is Tyree Talley.
A. Yes, ma'am.
Q. And I'll -- okay -- I'll turn the page here so that you can see him a little better on Talley 1136. And it looks like he's kind of in a partial seated position. I'm not sure if some people might be helping him up. Are you able to see him there?
A. Yes, ma'am.
Q. Okay. So that's Tyree Talley. In the photograph that I showed you of Modesto Rodriguez you're able to see a

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couple of places where he's injured. And I'm going to go back to that one and just show you this injury here on his torso. And this injury down here around his ankle from?
Those will be the injuries that we're talking about today when were talking about Modesto, okay? And --
A. So Modesto is Rodriguez, correct?
Q. Correct.
A. Okay.
Q. Yes. Mr. Talley has -- was injured more times than he's alleging as a result of the shotgun rounds on this event. And I don't have photographs here of every single one of them. But just to give you a general idea of what we're talking about here are some photographs that are depicting some of Tyree Talley's injuries.
MR. LAIRD: And Leigh, would you mind just stating the Bates number? I -- I can't tell at the bottom. It's a little small.
MS. JOSEPH: Sure. No problem. So sometimes if I'm not looking at that o the first two. And then I'm also showing Talley 1150 and this compilation photo is Talley 1154.
MR. LAIRD: Great, thanks.
Q. (BY MS. JOSEPH) And I'll zoom in on that just a little bit, Officer Wright, so that you can see some of the injuries that Mr. Talley's complaining of.
Okay, so -- make myself a note real quick.

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Now, that we've seen the plaintiff and you've been introduced to them by -- by virtu photographs, let's talk about May 30th, 2020. Sc what time you came on duty that day.
A. I don't know the exact time that I came that day. We got a page toward -- around lunch t believe -- if I remember correctly -- that all av officers needed to come in for mobile field force
Q. Were you already working when you got t
A. I was not. I was --
Q. Okay.
A. -- near home.
Q. Was this your scheduled day off?
A. I honestly don't remember.
Q. Okay. But you know you weren't on when the call?
A. Yes. I -- I don't remember if -- if -- supposed to be going in already later that day. And it starts later in the day or if that was my - kind of
Q. Okay. And you said you were near home. remember where you were when you got the page?
A. Yes, I was on the 35 service road north Georgetown near I think it was Williams Drive -- to get something to eat from Chipotle. Or about --

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pull into Chipotle rather.
Q. Okay. And do you remember where you were from?
A. I do not.
Q. -- Okay. So you --
MR. LAIRD: Leigh. Leigh, I'm sorry you mind taking -- I mean, if you're finished askin the photographs can you take those down so --
MS. JOSEPH: Sure.
MR. LAIRD: -- I can see.
MS. JOSEPH: Yeah, no problem.
MR. LAIRD: And focus on the speaker
MS. JOSEPH: There we go. I've got
MR. LAIRD: Oh.
MS. JOSEPH: I -- yeah.
MR. LAIRD: No, that's fine.
Q. (BY MS. JOSEPH) All right. So you get t around lunchtime. Were you able to -- to get the C and eat it?
A. No, ma'am. I immediately drove home, dro at a -- but I had some -- I had just finished off, grabbed my gear, and drove to work.
Q. Okay. So you skipped lunch?
A. Yes, ma'am.

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Q. Okay. I guess all officer -- all officers then is a fairly urgent call I would expect.

A. Yes. And I -- I would like to say that -- I don't know if that was the exact verbatim language of the page.

Q. Mm-hmm.

A. But that was the generalized message that that was that any -- anybody who was available, whether you're working or not, needs to mobilize.

Q. Okay. So you drop off, you head down, where do you report?

A. I report to the North Sub -- sorry -- the North Substation off of Lamplight Boulevard [sic].

Q. And who do you report to when you get there?

A. At the time my sergeant was Sergeant Reid. I don't -- I -- I can't remember if I directly reported to him as soon as I got there. Once we got there -- I'm trying -- we'll call it the standing order was to collect a car, double up. So ride two officers in -- in each car. And head to the staging point which was in downtown Austin.

Q. Okay. And is that what you did?

A. Yes, ma'am.

Q. Are you at this point wearing a police uniform?

A. Yes, ma'am. I'm wearing my -- my police uniform, yes.

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Q. Okay. Does it have long sleeves or short sleeves?

A. I don't remember. I -- I think I had short sleeves that day because if I remember correctly, my body camera you -- my -- my arm is exposed in front of my body camera.

So I think I was wearing short sleeves that I had possibly rolled up my -- my long sleeves, but -- but I am fairly certain I was actually wearing short sleeves because we were supposed to bring long sleeves and I accidentally forgot it. If I remember correctly.

Q. Okay. And at this point, heading out of the North Substation are you wearing any additional tactical gear or anything beyond your -- your standard uniform?

A. I do not believe so. I -- I believe that that day I was wearing my standard outer carry vest. At the time, I did not have "police" written across the back. I had my gas mask with me, as well as, my helmet. But I had not put my helmet with the face shield on yet. It was just with me.

Q. Okay.

A. And -- and I'm sorry. I have also had the -- the less-lethal shotgun.

Q. Okay. So that was distributed to you at the North Substation?

A. Yes. When I got to the North Substation I -- I checked one out.

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Q. Okay. Were you directed to do that by s

A. Not directly. It was -- it was you know -- they're available, check them out. If they're not -- there you'll be without. And I --

Q. Okay.

A. -- I happen to get there early enough th -- before they had one available.

Q. Okay. I want to have a whole separate conversation about training, but just while I'm th about it, are you trained in MFF? Mobile field fo

A. Yes.

Q. Okay. And are you -- I may be asking th strange way, but are you also a part of that team -- are you a member of the mobile field force? If th -- Is a thing?

A. So the mobile field force is -- sorry -- I'm trying to think of the best way to explain thi

Q. Mm-hmm.

A. So the -- the mobile field force is not -- the directed team.

Q. Okay.

A. That would be the SRT team. The special -- uniform, I remember their acronym correctly.

Q. Okay.

A. They are the main kind of -- we'll call

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-- levels of security. So they -- they're there fo -- they're -- they're the ones who -- who are -- are at -- not anybody

Q. Mm-hmm.

A. Mobile field force is when a situation is -- -- even that I can handle. Mobile field force is patrol -- and detectives. Everybody else on the department who -- trained to come and assist them in crowd control.

Q. Okay. Thank you for explaining that. Is so you're not part of SRT?

A. No, ma'am.

Q. Okay. And you weren't then?

A. No, ma'am.

Q. Is mobile field force training part of the -- curriculum at the Academy?

A. Yes, ma'am.

Q. In your first -- okay. So if you're an API -- you should have taken mobile field force tra part of your academy curriculum?

A. As far as I know, yes. My academy got it. far as I'm aware the academy's before after me got i -- the North

Q. Mm-hmm.

A. I -- that I -- I -- I can't say for sure if single academy got it.

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Q. Okay. Okay. So you have checked out the less-lethal or the so-called less-lethal or the shotgun, do you have some of the beanbag ammunitions with you there at the substation? Do you get those too?
A. Yes.
Q. Okay.
A. So were given enough to load the weapon system to its capacity; however, I do not remember at the substation I was given additional less-lethal rounds or not.
Q. Okay. And the shotgun holds five rounds, is that correct?
A. I think so, but I -- I cannot remember for sure.
Q. Okay. Okay. So now you have the shotgun loaded with beanbag rounds?
A. Yes.
Q. Okay. And you are checking out a car with another officer. Who is the other officer?
A. Officer Christopher Williams.
Q. Okay. So where do you and Officer Williams -- A. We drive downtown to the staging area. It was called -- it was the parking lot across the street from Revolutionary Park. I think that's the name of the park.
Q. Okay.

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A. I don't remember the address. It was a fairly large parking lot in downtown. And I believe it's on Fourth Street, but I cannot be sure.
Q. Okay. And this is where -- this was kind of the gathering point. You call it the staging area?
A. Yes.
Q. Okay. What are you feeling in the car? Are you driving? Or are you in the passenger seat?
A. I'm in the passenger seat because at this time was still fairly new to the department and the city. knew -- I knew my sector well and the surrounding areas of my normal work area. But I still was not -- this day I'm not very versed -- especially, with downtown. So --
Q. Okay.
A. Officer Williams is a senior officer to me and he asked if I didn't mind him driving. And I said, yeah, how to get places better -- you know downtown because I do. Something along those lines.
Q. Okay. Okay. So I'm actually gonna interrupt myself for a second because I didn't ask you this yet. When did you join APD?
A. I -- my hire date is October 1st, 2018. graduated the Academy I believe it's May 10th, 2019.
Q. Does it typically take -- what is that -- about seven months to graduate from the Academy?

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A. Yes, ma'am. The Academy is roughly eight months long.
Q. Okay.
A. And there is three months of field training after you graduate the Academy you are with -- you are loaned -- what's called a PPO, a probationary police officer. And you ride with what is known as an FTO or field training officer.
And for roughly three months -- just a little over three months, you ride with different FTOs so that can teach you more in -- you know more in-depth -- about doing the job. Policies and procedures, reports, and --
Q. Okay. So you -- have you worked for another police department or law enforcement agency prior to APD?
A. No, ma'am.
Q. Okay. In your time at APD -- in the -- maybe about seven months that you had been driving on your own -- I believe even including those months when you were riding along with an F -- FTO -- have you ever been called to respond to a crowd protest event?
A. One other time. And I believe it was the night before.

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Q. Okay. Have you ever been called or heard on -- I mean you know, all officers we need you whether you're working or not calls prior to May 30th, 2020?
A. No. Not the all officers whether you're working or not. I do believe the night before they mobilized mobile field force as well. A little bit more of a condensed version because it was an unplanned protest was not on standby.
Q. Okay.
A. So -- If I remember correctly. And so they asked patrol officers to come and assist with crowd control and even outside of the Main.
Q. Okay. Okay. So on May 30th SRT was on standby and APD was expecting the protest?
A. I believe so.
Q. Okay. Tell me just kind of generally about -- you know, the night before. And I'll ask first, were you armed with a shotgun equipped with kinetic impact projectiles then?
A. I honestly do not remember.
Q. Okay.
A. 'Cause the -- as the rookie on the shift, I usually did check out the less-lethal shotgun. However, I do not remember if I had it that night or not.
Q. Okay. Do you remember what the scene was like

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that night? And if it all blurs together that's something I can understand too so just tell me you know, what you remember.

A. I remember -- I remember there being a decent-size crowd in front of the Main that was upset and very loud. And we were standing on the steps of the Main when they were screaming and yelling at us.

Q. Were they throwing things at you?

A. I don't remember.

Q. Okay.

A. A few objects may have been thrown, but I -- I don't remember.

Q. Okay. And how long were you out there that night before?

A. I -- I can't recall.

Q. Would it be hours? Some number of hours?

A. I think so. It was -- it was at least an hour probably.

Q. Okay. Okay. So approximately how much time passes between when you leave the steps of Main the night before and when you're in line at Chipotle with your husband the next day?

A. I -- I can't say for sure and I -- don't necessarily want to guess.

Q. Yeah, and I don't -- I don't want to pin you down

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by the minute.

A. Sure.

Q. I'm more looking for was it 12 hours or two hours?

A. It was -- it was more than 2 hours. It was at least -- it was at least six, if not more --

Q. Mm-hmm.

A. But I -- I -- I can't recall exactly.

Q. Did you sleep?

A. Yes, ma'am.

Q. Okay. Did you get what you consider a typical amount of sleep? For you?

A. I believe -- I believe so.

Q. Okay. Okay. So now we're going to go back to you and Officer Williams in the car heading down on May 30th.

Having been out there the night before, having been called in for the first time, hearing this all available officers we need you. What are you feeling as you're headed downtown with Officer Williams, sitting in the passenger seat?

MR. LAIRD: I object to the form, but you can answer officer.

THE WITNESS: I would say that I was feeling nervous and tense because I didn't know what to expect. I had watched you know, unruly crowds and protests that got out of hand both in training and in my -- in my private

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time.

And just was -- was nervous and w what -- what the next couple hours were going to be -- it was more of the anxiety of the unknown

Q. Do you remember saying anything specif husband as you -- as you left him to go report i

A. I don't remember anything specific, bu go to for -- if I have the time for higher inten incidences is I -- I tell them that I love him a will try to stay in contact as much as I can thr that day or the -- the incident.

Q. Mm-hmm.

A. And that currently I'm okay. Obviousl that because we were together.

Q. Mm-hmm.

A. And that I will -- I will let him know my way home.

Q. Mm-hmm. Were you guys able to stay in during the afternoon and evening of May 30th?

A. I believe I possibly -- I -- I possibl [we/husband] him a couple of times throughout the we -- when we did get a break.

Q. Mm-hmm.

A. And we were relieved for a short perio

Q. What kind of messages were you sending

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A. Just I love you messages and that I'm okay

Q. Mm-hmm.

A. And that things are chaotic.

Q. Mm-hmm. You mentioned being aware of some other protest events that had been going on in the co around that time. Were you aware that -- I think it El Paso -- a police station had been vandalized the nigh before?

A. I don't believe so.

Q. Okay. I think another -- another police st headquarters around the country had been set on fire night before. Did you know about that?

A. I -- that there had been attacks on police sta throughout the country.

Q. Mm-hmm.

A. I -- I don't remember any specific ones, at feeling because throughout the next couple of months th starting -- the -- So all of that is kind of bleeding together.

Q. Mm-hmm. Where do you get your news?

A. I -- I don't watch a ton of news. So a lot of passing or just YouTube videos of what's going on.

Q. Mm-hmm.

A. Fox News. I try to watch CNN on occasion that get a different perspective of things. And -- I think just stuff on Facebook feeds and Instagram feeds

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Q. Okay. Okay. So if you do turn it on, it's probably going to be Fox, the occasional CNN?
A. Yes.
Q. Okay. And then whatever the -- the algorithm sends you in your socials?
A. Yes, ma'am.
Q. Okay. Okay. So you're downtown with Officer Williams, you've reported to the staging area. Who do you report to?
A. We reported to a lieutenant, but I do not remember his name.
Q. Okay. And what orders did that lieutenant give?
A. I believe he said that we were going to -- we were going to wait until we had more people and then we were going to go to the Capitol and assist DPS. Because DPS was having trouble securing the Capitol.
Q. Is that what happened?
A. Yes, ma'am.
Q. Okay. Approximately what time did you head over to the Capitol?
A. Oh, I -- I don't know. I -- I -- it was around lunchtime. Probably between maybe 1:00 and 3:00.
Q. Okay.
A. Somebody brought us pizza. And so we -- we each got like two slices of pizza before we went over.

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Q. Was that a member of the public or -- or at the time.
A. No. I -- I -- I think it was an -- I believe it was an officer. It might have even been that lieutenant.
Q. Mm-hmm.
A. But I don't remember for sure.
Q. Okay. How many -- how many did you have in the group? Or how many did you wait for before you guys headed to the Capitol?
A. I -- I don't know.
Q. Okay. And what happened when you got there?
A. When we arrived at the Capitol we lined up at the front gate. In front of Congress and we -- my understanding was we were there to give DPS a little break because they had an incident.
Q. Did you -- did you all kind of march over there? Or drive over there?
A. We drove to parking garage on San Jac [verbatim], I believe.
Q. Mm-hmm.
A. And from there we formed up into smaller groups and -- and -- and semi-formally marched to the -- to the Capitol.
Q. How many in your group?
A. I don't remember.
Q. Okay. More than five?

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A. Yes, I believe so.
Q. Okay. Do you think more than ten?
A. Maybe it was -- it could've been groups of
Q. Okay. And you had, I'm assuming, the shotgun with you and your -- well, did you have the shotgun with
A. Yes, ma'am.
Q. Did you have your helmet at this point?
A. I don't know if I had my helmet on, at th I know that I put my helmet on once we got -- it mi don't remember where I actually doffed -- or donned
Q. Okay. So it was with you?
A. Yes.
Q. Okay. Okay. So you all march to the Cap lineup to help relieve DPS. What was the incident occurred that -- that caused them to need backup?
A. I think -- if I remember correctly one of an officer needed assistance situation.
Q. Okay. Like got into a fight with a prote
A. With -- if I -- if I remember correctly multiple protesters.
Q. Mm-hmm.
A. And they didn't have enough people at the

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believed was to keep the Capitol grounds clear.
Q. Wow, okay. Do you know who instigated kind of threw the first punch, so to speak?
A. No, ma'am.
Q. If it was a protester or the officer?
A. No, ma'am.
Q. Okay. Do you know who the officer was?
A. No, ma'am. I don't know who the troope
Q. Okay. Okay. So you're there sometime b 1:00 and 3:00. You're lined up on Congress. How we you stay?
A. I don't know. It could've been an hour could've been slightly less. It could've pushed hours. I -- I don't believe we were there more th hours though.
Q. Okay. And when you're lined up on Cong are you doing?
A. So I -- I -- I would like to clarify. lined up in front of Congress. Across the front Capitol.
Q. Okay. On the side -- sidewalk there?
A. Yeah, yeah, yeah. So --
Q. You're not in the street. Okay.
A. I'm not in the street. And -- and I wa

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that that's 11th. So we're lined up --
Q. Mm-hmm.
A. -- on the Capitol grounds. I cannot remember if we were in front or behind the fence. And we are lined up so that we are standing in front of the Capitol like this -- not like this (indicating.) I'm sorry I just did -- did hand motions even though we're -- the recording and I apologize.
Q. That's okay. So I think you are expressing that you were kind horizontal going across the front of the Capitol --
A. Yeah.
Q. -- as opposed to -- okay.
A. In line with the fence.
Q. Okay. Now, are -- I know sometimes people rally right there at the Capitol steps inside the fence and right -- the entrance of the Capitol. Were there protesters or ralliers there?
A. Yes. So DPS had pushed them -- pushed all of the protesters off Capitol grounds.
Q. Mm-hmm.
A. And so they had gathered in front of the Capitol at the sidewalk street-level outside of the gate.
Q. Okay. So is it accurate to say that you are kind of a physical barrier to prevent those individuals

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from reentering the Capitol grounds?
A. Yes.
Q. Okay. And that's kind of what your role was?
A. Yes.
Q. Okay. Did you fire the shotgun or discharge the shotgun at any point while you were at the Capitol?
A. No.
Q. Okay. Okay. So you stay there maybe an hour or so. And then what happens?
A. It -- we walked -- we cleared out, we walked back the way that we came. And there were large vans waiting for us. So we went to the east side of the Capitol towards where we had parked. And there were vans waiting for us. The large kind of taller, like Sprinter-style vans. And we filled them up and we were driven to the 35 service road, near the Main.
Q. Okay. Okay. And then what?
A. And then we lined up again and started moving towards the 35 proper to facilitate the removal of protesters on the highway.
Q. Okay. Have you been told that people are attempting to block traffic at this point?
A. I believe so.
Q. Okay. So everybody in your van went up to the I-35 overpass?

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A. I believe so. Some others could've bee
go other places, but I believe for the most part
we moved forward onto the 35.
Q. Okay. Do you know the names of any of
officers that were with you?
A. No. I --
Q. Are you -- I'm sorry, go --
A. I can't be sure.
Q. Are you still with Williams?
A. No. We had gotten separated at that po
Q. Mm-hmm.
A. So I was -- I was just in a van with a
of other people. I may have recognized some, but
Q. Mm-hmm.
A. I saw a lot of people that day that I r
can't -- I can't definitively say you know, if it
was that person at this time. Or if -- if it was that per
different time.
Q. What's the atmosphere in the van going
Capitol over to the 35 service road? Is it tense
jovial? What's -- what's going on in the van?
A. It's -- tensions are high so we're doin
first responders do and we're -- we're -- you kno
trying to, you know, make light of the situation s
we don't get too stressed. You know maybe

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some light jokes. You know like, oh, well at lea
too hot today. You know, being sarcastic because
was hot that day.
Q. Mm-hmm.
A. Stuff like that.
Q. Yeah.
A. You know or --
Q. So while --
A. -- it's supposed to be my day off. You
something -- you know, stuff like that.
Q. Mm-hmm. So y'all aren't just uncomfort
because of the situation. You're -- you're physi
uncomfortable too?
A. Yes.
Q. Okay. Now, who ordered you to go up to
bridge? The overpass.
A. I don't remember. When we got out of t
believe it was a corporal who said you know, line
we're going to -- we're going to push up to the 3
Q. Okay.
A. We -- we might have actually -- I belie
dropped off on the proper -- the southbound prope
a -- on an onramp and we're very close to the sou
proper.
Q. Okay. And your current title is SPO, s

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patrol officer?
A. My current title now is --
Q. Mm-hmm.
A. -- senior police officer.
Q. Police, okay.
A. At the time I was just police officer because I had not had two years on yet.
Q. Okay. It didn't have a "P" or an "F" in front of it. It was police officer?
A. Yes.
Q. Okay. We've been talking for almost an hour. I'm not quite. I think it might be a good time to take a comfort break, if that works for you. Just about five minutes?
A. Perfect. That would be great.
Q. Okay.
VIDEOGRAPHER: All right. The time is 10:58 a.m. and we are off the record.
(Recess was taken.)
VIDEOGRAPHER: Okay. We're back on the record. The time is 11:07 a.m.
Q. (BY MS. JOSEPH) Officer Wright, we took a short break. You understand that you're still under oath?
A. Yes, ma'am.
Q. And I didn't talk to you about this before, but you probably know that your testimony today is just as if you were in a courtroom. Even though we're not in that formal of setting right now?
A. Yes, ma'am.
Q. Did you speak to anybody during the break?
A. Yes, ma'am. I spoke to Mr. Laird.
Q. Did you guys have any conversation -- and don't tell me what it was -- about the deposition?
A. Yes, ma'am.
Q. Okay. Can you hear that awful sound coming from my end?
A. No, ma'am.
Q. Okay. Good. All right. So let's -- let's get back to it. I -- we've kind of been walking through your day on May 30th and we had gotten to the bridge -- the overpass.
Who is in command on the overpass when you arrive?
A. I do not recall.
Q. Okay. Is it multiple people or one person directing the entire line or if they had multiple supervisors out there.
A. I -- I don't recall. I don't know -- had ER and surgical capabilities that were limited t
Q. Okay.
A. -- if there was one person there directing the entire line or if they had multiple supervisors out there.
Q. Okay. Are you taking orders specifically from someone -- a high -- who is a higher rank than you?

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A. Yes, ma'am.
Q. Okay. And what are you directed to do?
A. If I remember correctly, when we exited the corporal instructed us that if someone is throwing ob that they are participating in riotous behavior. And be impacted to stop that riotous behavior.
Q. Okay. So the criterion given was throwing objects in front of
A. Yes. Because thrown objects can hurt the p who are trying to peacefully protest or us.
Q. Okay. Was there any specification about wh objects they're throwing? Like what objects they're throwing? Or thr anything?
A. Throwing anything, ma'am.
Q. Okay. And what about the direction that it being thrown? Was there any -- anything specified ab that?
A. No, ma'am. Not --
Q. Okay.
A. -- that I recall.
Q. Okay. Okay. So you received the instructi target anyone who is throwing something. And what do next?
A. We begin walking up to the 35 service road southbound. There is a line of semi-trucks that has

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stationary. I hear numerous -- very numerous amou objects peppering the sides of the semi's. It was l enough that I could hear it over the shouting. I co it over the semi engines. And it -- it reminded me it sounds like when you know, you're in an armored v don't get shot at.
Q. Have you had that experience before? Bein armored vehicle and -- and it was shot at?
A. I have had the experience of being in armo vehicles. And my vehicle was -- was not hit. But I heard armored -- armored vehicles be hit by rounds.
Q. Do you have a military background?
A. Yes, ma'am. I was a US Navy Corpsman whic medic. I spent roughly two years working in a Naval Hospital. And then I spent roughly two years with t Marine Corps as a combat medic.
I was assigned to a field hospital in Afghanistan for eight months in Helmand Province whe were Second Echelon Medical Care which just means th neurology.
We -- we did not have a neurologist o I participated in roughly 400 major traum situations where I participated in both ER and OR operations. So that's emergency room and operating

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operations where we had roughly a 98 percent survival rate.
Q. Wow, okay. When did you get back from Afghanistan?
A. September of 2012.
Q. Okay. And are you still in the reserves or did you remain in the military in some capacity?
A. No, ma'am.
Q. And when did you -- when did you completely discharge?
A. I discharged from active service in 2013. My contract specified, inactive reserve. Which is fairly common.
Q. Mm-hmm.
A. For another four years, I believe. And what inactive reserve means, is that I'm not checking in with anybody. I'm not doing anything military. It's essentially if World War III were to pop off they could pull me back in. And I am out that now so ...
Q. Okay. So you were still in inactive reserve mode for the first year or so you were on -- a member of the armed force?
A. No.
Q. Do I have the timing right?
A. No.
Q. No?

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A. I believe that -- I believe that my discharge from the inactive reserve was in 2017.
Q. Okay. Oh, and you -- I -- I had the wrong date in my head. I was thinking you started 2016. But you started in 2018 at APD?
A. Yes.
Q. Okay. Okay. Does anything else on the overpass or at the scene -- it -- on May 30th remind you of -- I'm gonna just kind of use the phrase -- of just kind of a war zone like you had experienced?
A. Yes. So to an extent somewhat even more so than I was in Afghanistan. Because I was in a --
Q. Mm-hmm.
A. -- medical unit. We were fairly sheltered from active attacks.
Q. Mm-hmm.
A. And so our -- our main thing was the medical people. This incident -- this riot felt -- felt like it had somewhat of a war zone.
Q. Mm-hmm. And in what ways?
A. We were mobilized to protect people who were attempting to exercise their legal rights to protest in a -- in a protest form. And a large group came out and chose violence in the form of throwing dangerous objects at us that had the potential to cause serious injury to us.

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Q. Okay.
A. So you're there to protect people and you risk?
Q. Yes.
A. I imagine if it was tense before, at this when you're on the bridge and you're hearing the bu the semi-trucks and -- and things like that --
Q. That -- they were rocks hitting the semi-
A. I'm sorry not bullets. You said it sound bullets.
Q. Yes.
A. It reminded you of bullets. I'm sorry. It's essentially -- try that again.
Q. Yeah, if it was tense before when yo on the overpass and you're hearing the rocks hit th semi-trucks and -- and seeing the crowd and kind of of the APD of them are interacting, I imagine there' element of fear at this point for you of what's goi happen next?
A. Absolutely.
Q. Yeah, yeah, okay. The groups -- you kind referenced some groups of protesters who decided to

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A. -- [illegible] --
Q. -- in danger people I think -- you know, in some of your words -- did that appear to be -- when y "group" are you -- did it appear to be kind of an org or a unit that was out there to take a different, more vi approach?
A. I would say that there was some level of organization to it. I -- I cannot -- I -- I -- I can't speculate on how organized it was. But we witnessed on a few occasions where you would have a group of pe who were peacefully protesting and you would have one of them come out, agitate by throwing things, and the back into that group so we couldn't intervene.
And from my perspective it -- it looke planned out. Like you had the small of group of peop were doing it the right way. And they were kind of t shield so that somebody could run out, try to hurt us other people, and then run back in and intermingle wi had control -- and they were essentially protecting tho people.
Q. Talking about throwing things, we kind of t about this a little bit earlier when we were talking people throwing objects, and that really that meant a objects. What kinds of things were people throwing?
A. Pardon me.
Q. Like to -- actually, just -- no, let me be

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specific and direct. Tell me everything that you remember seeing thro -- be thrown.

A. Throughout the whole day? Or just at a time?

Q. If you can, tell me throughout the day from the time that you were on the overpass. But I don't need -- you know like there was a rock 2:31. There was a -- just like what types of objects can you remember?

A. Mostly rocks and broken pieces of concrete. Broken bricks, bottles filled with water, frozen water bottles, water bottles filled with urine, fireworks were thrown. It seemed like any hard object that could be thrown with force, was thrown. That -- that was either at our feet or staged.

Q. And per direction from command, you guys were tasked with basically responding in the same way with the shotgun regardless of what was being thrown. Whether it was a rock, a water bottle filled with urine, a firework, a water bottle filled with water?

A. Yes, ma'am. Because it is almost impossible to know what is being thrown and the level danger that it could -- sorry -- I just -- I lost the word that I was going to use. The level of danger that it could possibly possess.

Q. And you say it's almost impossible to know what's being thrown, but you were able to distinguish things enough

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that you could give me a list just now.

A. So the -- the list I gave you is because of what we discovered later. So when I -- I only know that there were bottles of piss because we found them after they had been thrown. You know, I -- I -- I know that there was fireworks because I witnessed the fireworks explode at officer's feet.

Q. Mm-hmm.

A. Obviously the rocks are -- are self-explanatory and the broken bricks and stuff like that. But frozen water bottles, once they land we can -- you know, we can see that they were frozen water bottles.

Q. Mm-hmm.

A. So what I'm trying to get across is in the moment we -- we have no idea what that object is until it lands at -- or until it hurts somebody. So we have to assume based on that that everything that is thrown is dangerous. Because if we wait for it to land and then investigate it and inspect it, at that point it could be too late.

Q. Mm-hmm. Assume that everything that is thrown is dangerous. That was the kind of operating --

A. Yes, ma'am.

Q. Okay. I'm going to show you some video. Let me get my screen share on.

A. Yes, ma'am.

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Q. So this has been Bates labeled as COA 46 -- during the video you determine that that's not what identified to me as your body worn camera. If at please tell me. But I'm going to assume unless you otherwise that this is correctly labeled as your -- body cam, okay?

A. Yes, ma'am.

Q. Okay. And I'm going to jump around a little within the video. So what I'm going to try to show some of the time surrounding when Modesto Rodriguez Tyree Talley were impacted. At this point I think to be close to 9:00 p.m.

A. Okay.

Q. And I think based on the timeline that we've talked about, that you've probably been on the overpass at least five hours. Does that -- does that sound -- That -- that's very poss -- that's very possible. I -- I -- I was -- we sat on the -- I'm sorry. We sat on the north side of the proper for a while facing a row of -- an apartment complex. So we weren't -- we were on the 35 for a little bit of that time. It wasn't the -- the entirety wasn't on the bridge. It was the bridge overpass.

Q. Okay.

A. I -- I don't exactly which one it is. I -- I -- I don't know.

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Q. Okay. Once you were stationed on the bridge -- overpass with the -- the shotgun kind of looking out -- at the throwing objects, did you take breaks?

A. In -- in what sense do you mean? Are you -- did we take collective breaks? Like did we switch off -- or? Or individually, did we step back and -- and -- rest for a couple minutes at a time?

Q. Okay. More specifically about you. Whether -- you -- happened because a group was relieved or you stepped -- you can tell me. But did you personally take breaks -- you know, we -- If I remember correctly, we -- there was a -- where we went from the north side of the 35 down to -- building. Which is where a lot of our maintenance is -- at the moment.

Q. Mm-hmm.

A. And we were sat in the shade for a short period -- I assume before we moved back onto the bridge. However, -- I -- I -- I

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day or if it was both.
Q. Mm-hmm.
A. I know that there were multiple days where we would be on line and after a couple of hours we would come in and we'd -- we'd sit down and we'd rest at least in the shade for you know, 45 minutes or so.
Q. Okay. What if -- like what if you needed to go to the bathroom? Did you just hold it? Or what did you do?
A. I honestly -- I don't remember. I know -- I think when we -- when we -- when we took our break at 25 I used the bathroom in there.
Q. Mm-hmm.
A. I remember because -- I remember -- I -- I, but I'm not sure. least took a break in that bath -- and used that bathroom --
Q. Mm-hmm.
A. At some point throughout the multiple days getting protesting because it was so hot and they had one of those old-fashioned like round sinks where you'd press the foot pedal --
Q. Mm-hmm.
A. -- and it put water out all around. And I remember thinking to myself, it's hot enough that part of me wants to climb into this sink and just soak myself and cool off. And you know, face the judgment of my coworkers for climbing into a bathroom sink.

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Q. Yeah, yeah, okay. What about water or Gatorade or something. Did you have access to something to drink?
A. I believe that officers were coming up to our -- our patrol cars with bottles of water and -- and maybe Gatorade to -- to keep us somewhat hydrated.
Q. Mm-hmm. I wonder who got to have that role?
A. I wish -- I wish it would've been me.
Q. Yeah. Now, you ate some pizza when you first got to the staging area. Did you eat again before you went off duty?
A. I don't recall. I don't believe so. I -- I remember being --
Q. Mm-hmm.
A. -- incredibly hungry that night when we finally did get off.
Q. Mm-hmm. Okay. So here we are around nine o'clock. I'm going to scroll to about the 10:00 mark, if I can get there. So I'll start at 10:15 and I think that the incident involving Modesto is going to happen pretty quickly. I can replay this more than once for you, but I -- we can try to pay attention to what we see and what we hear.
A. Okay.
Q. Okay.
(Video playing.)

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Q. (BY MS. JOSEPH) I think I just heard some "red shirt." Did you hear that?
A. I actually don't have audio on my side.
Q. Because I probably didn't turn on audio. Let me try that share again. I'm sorry about that -- sound
Okay. Thank you, for telling me that and to try this one more time. Okay, starting again at -- do you hear the noise?
A. Yes, ma'am.
Q. Okay. Did you hear the "red shirt" that
A. Yes, ma'am.
Q. Was that you or someone else?
A. I honestly don't know. It kind of sounded
Q. Okay. It seems like somebody is saying th kind of say to the officers, that's somebody that I' And I'm getting, I want draw your attention to this person you think that's what's happening.
MR. LAIRD: Object to the form.
Q. (BY MS. JOSEPH) Let me ask you a differen Why would be somebody identifying a specific individ And in the line?
MR. LAIRD: Object to the form. You
THE WITNESS: It is common practice

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when we have you know, even one or two individuals, officers see somebody doing something that we belie need some sort of police action to be taken, for us to have some sort of identifiable marker so that the of can -- can all get eyes on. And so that seeing the same thing.
So that you know, we don't just say like "guy" and there's you know, 15 guys and now yo first or seven officers or even one other officer lik you went, What are you seeing? What are you seeing?"
Q. Mm-hmm.
A. -- we -- we try to -- to put out a descri we see something. And that's just to get everybody attention so that we kind of have that second, thir final eye that we are all seeing the same thing th happening.
Q. Okay. And that's what this sounds like t Somebody putting out a descriptor to draw at the officers?
A. Mm-hmm. Yes, ma'am.
Q. Okay. Do you know -- do you know at this who is standing next to you?
A. I don't -- I don't remember.
Q. Mm-hmm. And I know we've talked some abo you know the people in the van, stuff like that, bu

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know if I asked you with respect to here on the overpass. Do you know any of the folks around you at this point?

A. So if -- if I may, can I -- can I ask clarification? Are you asking if I -- if I know them like I've been standing next to them for the last hour or two? Or if I know them like I've run into them multiple times and had conversations with them?

Q. Good question. Do you know their name?

A. I don't remember.

Q. Okay. Okay.

A. And you know, it -- I -- I -- there was multiple members of my shift around me. You know maybe there were one officer away from me or a couple, but I -- I can't recall if I knew specifically the person who was next to me and their name.

Q. Okay. Can you recall any specific names of people who you knew that were also there? Whether they were next to you or not?

A. Yes, my shift. Everybody on my shift is someone I'm aware. And a few of the people that I went to the Academy with. I saw them you know, randomly throughout the day. I said hi.

Q. Mm-hmm.

A. I -- because of the military I have -- my knees get sore fairly easy if I just stand in a sing -- single spot. So I tried to walk around my area a little bit just to not get as much knee pain. And so throughout this time that I was up on the 35, I was walking back-and-forth and if I saw somebody that I knew I would say hi.

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Q. Mm-hmm.

A. And strike up conversation if -- if nothing -- nobody was actively doing anything that needed attention, humor, whether it be using sarcasm to cope with just how insane and chaotic things were. That's what the military taught me. That's what being a police officer's taught me.

And -- and that's -- that's how you -- that's how I and -- and many people in my profession are part of getting locked in too much to a very specific point. Because that can become dangerous. Does that make sense or do you need me to elaborate?

Q. I may need you -- you to explain the locked in part a little bit more. Yeah.

A. So hyper-focused, tunnel vision --

Q. Mm-hmm. Okay.

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A. -- upon a singular thing or topic --

Q. Mm-hmm.

A. -- that can be very dangerous in -- in our profession because we have to kind of look at the -- broader picture in order to maintain safety. If we -- too much on a singular issue or a singular thing, people take it advantage of that and hurt us or other people.

Q. Okay. Okay. So the -- the sarcasm or that's kind of a generally taught and accepted way of this sort of experience?

A. Yes.

Q. Okay. I'm going to play video some more. I think we'll see -- I don't think we're gonna see Mo -- I think we're going to hear some shots. But let's -- see what we're able to see.

A. Yes, ma'am.

(Video is playing.)

Q. (BY MS. JOSEPH) Actually I think that you are going to be able to see him kind of around here. So I'm going to draw your attention to that area of the video.

A. Okay.

Q. And I'm actually going to back it up a little bit, okay?

A. Okay.

Q. It's hard to see from your -- your body cam but I

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think you can hear, but after I heard "red shirt" I think while later I heard, "Red shirt on the ground." Do you hear that?

A. Kind of. I -- I don't -- I heard "red shirt" again, but I couldn't determine what was said after.

Q. Okay. Here I can play it again -- whoop -- like, red shirt on the ground, mumble, mumble, thr -- but -- excuse my language -- shit.

Is that -- do you hear that?

A. Yes, ma'am.

Q. Is that your voice?

A. I don't think that was my voice, no.

Q. Okay. We see in the clip that we just w -- I just now -- and I'm looking at the mark on the -- the -- is supposed to the mark on your body cam. From abo -- the 10:39 mark.

We saw the line of officers that yo -- apart from targeting and -- and discharging the shot -- right?

A. Yes.

Q. Did you fire your shotgun?

A. Yes.

Q. During that clip? Okay. Do you know ho -- locked in. times?

A. I believe it was just once.

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Q. Okay. And I think we saw the person next to you fire. Did you -- were you able to see that in the video?
A. Yes, ma'am.
Q. The person to your right?
A. Yes, ma'am.
Q. Okay. And we heard more than two shots?
A. Yes. I think so.
Q. Okay. Do you remember whether you fired at Mr. Rodriguez before or after he was on the ground?
A. I do not.
Q. Okay. So it could have been either?
A. It could've been.
Q. Okay. Let me -- well, let me ask you this -- did you see Mr. Rodriguez engage in any behavior before you began to target him?
MR. LAIRD: Object to the form. You can answer.
THE WITNESS: I -- I don't know.
Q. (BY MS. JOSEPH) Okay. It's possible that, but was one of those situations where someone on the scene saw something and called out to draw other eyes to it?
A. Yes.
MR. LAIRD: Objection to the form.
Q. (BY MS. JOSEPH) Okay. So it's possible that you didn't -- and I'll just -- we haven't said this out loud, but a lot of the conversation in this case is around Mr. Rodriguez throwing a water bottle. And is aware of that fact?
A. I am aware that there's video of one of -- one of both of the gentlemen throwing things.
Q. Okay. So you may or may not have seen Mr. Rodriguez throw something?
A. I decided very early on in this situation that I would not be firing unless I physically saw somebody throw something. I -- what's the word I want to use?
I -- I took the order to be what it was. If I see somebody throw something then I will impact that -- that I visibly saw somebody throw something.
Q. Okay. Even though you don't necessarily recall this particular instance that is the practice you were following?
A. Yes, ma'am.
Q. Okay. I can't see it on this video, Officer Wright, I have seen another video where it appears to me that I can see Mr. Rodriguez walk up to a water bottle that's on the street and pick it up before throwing something. And it looks, although, I can't see it in your body cam because various times it's covered up, it looks like you would have a vantage point to have been able to see

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what you
in the video? Do you remember when you first laid
Mr. Rodriguez? Whether it was before or after he
the bottle?
A. I -- I do not.
Q. But from your vantage point, it would ha
evident -- evident to you that what he had in his
and -- a water bottle as opposed to say a brick or a
A. I -- I don't know. That's fairly far.
I don't know that I would be able to identify it i
if it was a water bottle or something else.
Q. Okay. How far do you think that distanc
you -- where you're standing to where Mr. Rodriguez is --
were standing?
A. I couldn't --
Q. I'm actually going -- I'm sorry -- I rea
going to ask about two different points. So let m
first, just for estimate purposes -- I wish I coul
mark this, but I'm just kind of just -- here, let me se
make a mark.
Let's kind of estimate there as the
point. And then over here -- oops, there's a big
the second point. So how far do you think you are
A. I'm not entirely sure. Maybe 15 or 20 y

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possibly.
Q. Okay. I'm just -- give me just a mom
save -- am I showing my email right now? Okay,
going to try to save a picture that I just drew
us. Okay. And you said how many yards?
A. It could be possibly around 15 or 20
Q. Okay. Now, the "2" -- did I put it b
screen where you can see it again?
A. Yes, ma'am.
Q. How far do you think are from the 2?
A. Maybe just slightly farther. Just wi
the road curves, it could be slightly clos
Q. Okay. So a little bit closer of a li
farther?
A. Yeah. I -- I -- I can't really deter
you were --
Q. Okay.
A. -- the way the road curves and where
the median.
Q. Okay.
A. Wherever that is.
MR. LAIRD: I'm going to mark th
that we have it for reference as Exhibit two to
deposition.
(Exhibit No. 2 was marked.)

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Q. (BY MS. JOSEPH) What -- what is the maximum effective distance of this shotgun that you're holding, at the time?

A. I --

MR. LAIRD: Let me -- Leigh, let me make sure I understand what you're asking. Are you talking about the shotgun using the less-lethal munitions?

MS. JOSEPH: Yes. And I tried to clarify that, Gray. But thank you for --

MR. LAIRD: I just want to make sure.

MS. JOSEPH: -- for coming in. That's what I'm talking about. Mm-hmm.

THE WITNESS: I don't recall because since then we have changed munitions and changed out distances. At least once. So I -- I -- I cannot definitively say what it was at that time. I want to say it was no more than a hundred feet. But I can't -- I can't definitively recall.

Q. (BY MS. JOSEPH) Okay. When you changed the distances in munitions did the distances get shorter or longer?

A. Again, I -- I can't remember if the -- if the rounds that we got are -- can go further or -- or don't -- I don't think that they go as far because they are a lighter round.

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Q. Okay.

A. So I -- I -- I can't -- I can't remember.

Q. Okay. Do you have any understanding of the reasoning behind the change?

A. I -- I don't -- I don't.

Q. Okay. And do you know far the current rounds -- the maximum effective distance of the current rounds, whatever they are?

A. I -- I -- I do not because although I have been trained every year since on the rounds, I -- because of this incident, I really don't ever want to use these weapons again. So I qualify with them. And I don't check them anymore.

So I don't -- I don't lock those into my memory bank because I -- I don't check them out or use them anymore.

Q. Why don't you want to use them anymore?

A. This entire incident just created a lot of stress and anxiety for doing my job and doing what I believe that I was -- was right to protect people and this city.

And the hassle of that weapon system and how scrutinized it has become. I -- no offense to you I -- I don't want to go through this again.

Q. No offense taken. I -- yeah, yeah. When you see -- let me put it back up. Give me just a second.

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When you see what happened to Modest -- know, we just watched some -- some shots getting fi you feel like this is an appropriate consequence fo throwing a bottle of water?

MR. LAIRD: Object to the form. You answer the

THE WITNESS: As I stated before, th really no way for us to determine what is being thr is in those in bottles. From my prior experience, that for instance, a true Molotov cocktail is two c with a breakable device inside that once mixed expl it can look as innocuous as a water bottle.

I believe that this is an appropriat response to riotous behavior. When we, as I said b cannot determine in the split seconds that we have these objects being thrown of how much damage they potentially cause to not only the innocent people t trying to peacefully protest, but even other agitat other officers.

Q. A Molotov cocktail can't be in a plastic though can it? Doesn't it have to be in glass?

A. I No.

Q. Okay.

A. It can be in plastic bottle. That -- tha I was saying.

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Q. Okay.

A. A Molotov cocktail is commonly shown as liquor bottle with a rag in it that you have to l fire.

Q. Okay.

A. A true Molotov cocktail needs no fire. chemicals that are mixed together.

Q. Mm-hmm.

A. That when the -- when one of the chemic is broken on the inside --

Q. Mm-hmm.

A. -- and it mixes with those chemicals -- very --

Q. Mm-hmm.

A. -- it becomes an explosive. So it woul

Q. Mm-hmm.

A. -- effective way to put it in a water b as long as you could verify -- or as long you could that the -- the chemicals mixed.

Q. Have you seen that done before?

A. Not here in Austin, no.

Q. Okay. Would you classify Mr. Rodriguez rioter?

A. If he was throwing objects, yes.

Q. Okay. Would you classify him as a viol

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protester?
A. If he was throwing things, yes.
Q. Okay. And by throwing things we're talking about a bottle of water?
A. Anything, yes.
Q. Okay. Would you classify him as an aggressive resistor?
A. Again, if he's -- if he's throwing objects, yes.
Q. What's the difference, if any -- and I -- I took these words -- I think you said the words rioter, some of these other words I've taken from reports and from general orders -- the APD policy.
What's the difference between a rioter, violent protester, and an aggressive resistor, if any?
A. Give me those three terms again just because I want to make sure I get them correctly. So we have rioter --
Q. Rioter, violent protester, and aggressive resistor.
A. Okay. So I would say that a rioter and a violent protester are the same. A violent protester is what I believe to be the politically correct term that has been bestowed upon people who participate in riots to what's minimize what they're doing.
And an aggressive resistor is someone who --

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that that would be what I would consider a generalized term for like, use of force. In the sense that if we were trying to effect an arrest and they are actively resisting, not being aggressive, they're not just like pulling away from us, but they're actively trying to fight us.
Q. Okay. Now, I hear that, but if I understand you correctly, it raises another question for me. Because nobody tried to arrest Modesto Rodriguez at any point this night, right?
A. Not that I'm --
Q. You may not have that knowledge. Yeah, not that you're aware. Okay.
So if nobody's trying to arrest him, how can he be an aggressive resistor?
A. I -- I don't know. I -- I was -- I was linking those terms in my mind before I wrote them out and acted.
Q. Mm-hmm.
A. And -- and kind of took the time to define them myself.
Q. Okay. Do you believe that you had cause to arrest Modesto Rodriguez?
A. Yes.
Q. Okay. If you cause to arrest him and assume that you believe you had cause to detain him?

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A. Yes.
Q. Okay. But you didn't do either one of those things?
A. No.
Q. Did you go to his aid after he was injured?
A. No.
Q. Did you see any member of APD go to his aid?
A. No.
Q. Do you think that -- well, not do you -- was Modesto Rodriguez's behavior in throwing the bottle criminal?
A. Yes.
Q. Okay. And how was it criminal? What violation?
A. Participating in a riot.
Q. Okay. So I have the Penal Code definition in front of me from 42.02 and I want to ask you more about that.
MR. LAIRD: And Leigh, if -- are you finished with that --
MS. JOSEPH: I can take it down, yeah.
MR. LAIRD: Yeah. Just so it helps -- there we go, thank you.
MS. JOSEPH: Yeah. Uh-huh.

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Q. (BY MS. JOSEPH) Just if I think I'm playing -- if it's not on your screen tell me to put it back on the screen.
A. Absolutely.
Q. All right. Okay, so looking at the Penal Code definition of riot I see, "assemblage of seven or more persons resulting in conduct which," so first let me ask about seven or more because I see Modesto as one individual acting alone. Do you agree with that --
A. No.
Q. -- analysis? No.
Okay. So what seven -- what group of persons is he a part of here?
A. So he's part of the entire group of -- of everybody surrounding the Main and on Eighth Street.
Q. Okay.
A. Just because it is scattered out does not mean that it is a -- it is not a singular group.
Q. Okay. And does everybody in the group have to be engaging in the behavior that -- that is defined as riotous in order for it to be a riotous group? Or can it be just certain people?
A. It sounds like it is a minimum of seven.
Q. Okay. And it says, "which creates an immediate danger of damage to property or injury to persons."

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And these are some "or" statements. They say this or this or this.

So, "creates an immediate danger of damage to property or injury to persons."

When I ask about this I want -- I want -- I want you to note the difference between risk of danger and actual immediate danger. So in throwing the water bottle that you've already expressed to me opinions that I believe make me understand that you believe that created a risk of danger; is that right?

A. Yes.

Q. Okay. In throwing the water bottle did Mr. Rodriguez create immediate danger of damage to property or injury to persons?

A. I believe so, yes.

Q. Okay. Or "substantially obstructs law enforcement or other governmental functions or services."

In throwing the water bottle that landed on the ground did Modesto Rodriguez substantially obstruct law enforcement or other governmental functions or services?

A. I would say that he was a part of the entire group that was preventing us from maintaining law and order in the area.

Q. Okay. Just by virtue of being there?

A. Mm-hmm.

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Q. Okay.

A. So for instance, everybody standing in the street, they're obstructing the highway. You know, they were told to disperse multiple times.

Q. Okay. So that one gets kicked -- gets checked off not because he threw the bottle, but because he's there?

A. Because he's there and because he threw the bottle.

Q. Okay.

A. Because when situations did arise where we needed to bring in ambulances or other officers or fire departments we had to mobilize entire other groups to try to wade through the crowds so that those other first responders could -- could get to places. So I would say that the entire crowd is doing what you explained.

Q. Okay. Okay. So that one is by virtue of being a part of the crowd. Anybody who's there substantially obstructs law enforcement or other governmental functions or services?

A. Yes.

Q. Okay. And in the last one, the "or" -- "by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right."

Did -- does Modesto Rodriguez's behavior or throwing the water bottle meet that criterion?

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A. You did say disturbs other peoples rights peaceful protest, right? Or -- or --

Q. "Disturbs any person in the enjoyment of a right."

A. Yes. So -- so I believe that his actions -- I believe causing that to -- you know, being one of the people who caused that to be a riot is doing just th It's not allowing the people who are for the right reason. And for the reason to legally to enjoy that because of the agitators.

Q. Okay. Now, I'm going to circle way back. put this picture back up. And this time I' asking you about what you thought in the moment. I' you about now that it's over and you have more facts that you did in the moment.

Now, that you're sitting here in this deposition, you're looking at this picture of Modest Rodriguez, you know that what he threw was a water b with water in it. Do you think that this is an appr consequence for the behavior that he engaged in?

MR. LAIRD: Object to the form. You answer.

THE WITNESS: Yes.

Q. (BY MS. JOSEPH) You do?

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A. I do.

Q. Okay.

A. This was the only way for us to maintain som semblance of order.

Q. Okay. How do you feel about what happened t Modesto?

MR. LAIRD: Object to the form.

THE WITNESS: I feel like it was very e go there and make your voice heard without becoming an agitator. There were plenty of people who did it. Th are plenty of people who still do it. It looks like - waded

Q. (BY MS. JOSEPH) I have to follow -- sorry, I'm confused.

A. It -- it looks like he chose to be an agitat try to ruin that for everybody else.

Q. I have to follow-up on your choice of words. "Make your voice heard." Do you know that Modesto Roc is deaf? or

A. No. Actually, I'm sorry, yes. I -- I was t that.

Q. I'm going to give you some background. And is coming from me from what I've seen in the videos, s you know, as you will, with a grain of salt. But M Rodriguez, who's deaf, had just seen a vehicle driving at high speeds in a way that he testified, he felt was

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dangerous and threw the bottle after he saw that.
Does knowing that background about him change any -- I mean that's his testimony about his background, right? I'm just sharing with you what has been said. Does knowing that background about him change anything about the way that you evaluate his actions now after the fact?
MR. LAIRD: Object to the form. You can answer it if you can.
THE WITNESS: I -- that's -- I -- I don't know how to answer that because I -- I -- I'm not privy to [verbatim] to what he's thinking and why he's doing that. Or why he thinks that throwing a -- a bottle at a vehicle would somehow change that behavior.
Q. (BY MS. JOSEPH) Okay. Okay. I just wanted to ask. So let me go -- let me find our video. Do you -- would like to take another break, Officer Wright?
A. Do you mind if we take like -- like just ten minutes so I can use the restroom and -- and what not.
MS. JOSEPH: Sure. Let's take ten minutes. We'll come back at -- somebody do the math -- 12:15.
THE WITNESS: Sounds good to me.
MS. JOSEPH: Okay.
VIDEOGRAPHER: We're off the record. The time is 12:06 p.m.
(Recess was taken.)

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VIDEOGRAPHER: All right. We are back on the record. The time is 12:17 p.m.
Q. (BY MS. JOSEPH) All right. Officer Wright, we're back from a short break. And I'm going to share my screen and return to the video that we were looking at earlier.
A. Yes, ma'am.
Q. So we'll just pick up where we left off -- where we're at -- about 10:39 on the play bar.
(Video playing.)
Q. (BY MS. JOSEPH) What do you think is covering your camera?
A. It's probably my arm.
Q. Okay.
A. So by that time I had been holding a shotgun for a -- for a while and so my arms were -- were getting tired and my shoulders were getting tired. So I was kind of just moving around so I could hold the weapon in a way that you know, I could give certain muscle groups a break.
Q. Mm-hmm.
A. And it took me about -- took me a few minutes to realize that somehow my Pandora got activated and that's why there's music in my background. That was not intentional in any means. I had put my phone away and -- because my han -- my fingers -- fingers were sweaty it

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activated my Pandora. And I couldn't figure out where the music was coming from. I thought it was actually a body cam. So I apologize about that.
Q. Okay. You anticipated one of my questions down below.
A. And then I realized that my pocket was -- bumped up and, oh, okay. So my phone's --
Q. Okay.
A. -- here is projecting Pandora directly in -- I don't -- I didn't put on your -- your jams for the protest or anything.
Q. Okay.
A. No. Not at all.
Q. Yeah, okay.
A. As -- as a matter of fact I -- I think that you might hear me maybe utter a swear word, realizing that Pandora is on and being somewhat frustrated with myself about it.
Q. Okay. All right. Let me resume play here. You may have cut it off in the middle of the conversation that might have been the end. But I think I heard an exchange possibly between you and another officer. Kind of -- about who's looking where. Did you hear that conversation?
A. A little bit. If you don't mind just play it back. So -- I'm sorry -- I was trying to -- I was focused on looking at the screen to see -- I -- I was wondering if --

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Q. Sure. Okay. Yeah.
A. So now that I know what I'm supposed to listen for --
Q. Yeah. So for this part focus on audio.
A. Okay.
Q. Yeah. I'll go back a little bit. I went back --
A. Yeah, no, you're fine.
Q. Let me see here. Try there. I'm going to unmute and ask you kind of generally about that conversation, but unfortunately I have to switch my -- first. Give me just one second.
A. You're fine.
Q. Can you hear me?
A. Yes, ma'am. You are slightly -- slightly -- not as loud as you were before, but I can hear you.
Q. Okay. I think I have got it.
MS. JOSEPH: Can y'all hear me now?
THE WITNESS: Yes, ma'am.
MS. JOSEPH: See if I can hear you. Okay. Let's go off the record?
VIDEOGRAPHER: It's 12:24 p.m. We are off the record.
(Recess was taken.)
VIDEOGRAPHER: All right. We are b

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record. The time is 12:26 p.m.
Q. (BY MS. JOSEPH) All right. I had a little technical difficulty. I'm going to apologize in advance if you guys hear background noise since I don't have the AirPods in. But let me ask you now if you haven't forgotten what I just showed you.
Did you hear a conversation, Officer Wright, amongst some officers maybe talking about where to look or who was doing what?
A. Yes, ma'am.
Q. Okay. What was -- what was kind of going on there?
A. So I don't know who it was, but we collectively established that we realized that we had two or three less-lethal weapons in fairly close proximity to deploy to prevent all of us targeting the same person at the same time we set up the -- the only word I know is from the military it's -- it's called a field of fire.
And so from where you're standing kind of -- -- an outward cone shape. And so you have your lateral limits. So you have a right lateral limit and a left lateral limit. And your area of responsibility is within that cone. And kind of nothing else unless you know, there's an emergency.
So it sounds like we were setting up these kind of areas -- that -- that's what we'll call them.

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call them areas of responsibility to focus on so that we didn't have -- so we -- we -- we're communicating better so that we didn't have multiple people impacting the same person.
Q. Okay. Okay. So 'cause that was kind of my question. Is this a watch area? Or a target area? Or both? So you're -- it sounds like both.
A. Yes, ma'am.
Q. So you're not like watching over there and then someone calls out that they saw something the other way and you go over there and aim. You're focused on your kind of designated area?
A. Yes, ma'am.
Q. Okay. Okay. Let me continue the playback.
(Video playing.)
Q. (BY MS. JOSEPH) I have to stop there. I heard the conversation I think about some marijuana use?
A. I didn't hear that actually.
Q. Oh, okay.
A. That didn't come through.
Q. Let me -- you do hear the sound?
A. I do -- I hear your sound. I don't hear the video? Okay.
Q. Don't hear the video? Okay.
A. No, ma'am.
Q. Let me try again. Do you hear the sound now?

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A. Yes, ma'am.
Q. Okay. Did you hear that? "Somebody's bu[illegible] hemp"?
A. Yeah. That was me.
Q. Okay. I think that's a reference to some probably using some marijuana somewhere in your vic
A. Yes, ma'am.
Q. Did you arrest anybody for -- for drug po or use?
A. No, ma'am. That was actually the reason At the time, the -- I can't remember if i the State or the City of Austin itself -- had began [ve the transition of -- well, so the City of Austin decriminalizing marijuana even more than they al And I think the state had just enact something about they -- they allow hemp farming. A the general consensus was -- is if your and you burn marijuana you know, you really can't t a difference. And that that's what we were told you And so it became kind of a running j squad at that point that anytime we smelled what believed to be marijuana because the city didn't wa do anything about it in our department. Didn't rea them to do anything about it. You know we would make

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the situation of not being able to enforce the l policies.
You know, some -- oh -- or somebo T-shirts. Or somebody's making little tiny rope like that. You --
Q. Okay. Okay. Understood. Okay, let m playback.
(Video playing.)
Q. (BY MS. JOSEPH) Did you hear that exc
A. Yes, ma'am.
Q. What -- what was that exchange? What hear?
A. I heard -- I -- I believe it was me th think we both got the dude in the red shirt." A the other officer said, "Yeah, it looked like it Wooded"
Q. Okay. I think that's probably a relat somebody calling out red shirt. And then the -- targeted at Modesto. Do -- do you think so?
A. Quite possibly, yes.
Q. Okay. Okay. Now, I know -- let me ge right, I'm going to continue playback some more. 12:30.
Were you able to hear that?
A. Yeah, it sounds like I'm talking to so

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explaining why we fired our weapons.
Q. Okay. And it sounds like you weren't able to see that night that it was a water bottle that -- -- (crosstalk.)
A. Yeah, it sounds like it.
Q. Okay. All right. I'm going to skip ahead to see if we can get to the Mr. Talley incident. I'm going to about -- a little before 18:00 on this bar. 17:57.
So actually this is just before Mr. Talley. Something's actually going to happen, Officer Wright, of right in front of headquarters. And then you're going to see the crowd scatter. And I want to show you that and then ask if you know what happened.
A. Okay.
Q. Okay.
(Video playing.)
Q. (BY MS. JOSEPH) Is this still your body cam?
A. Yeah, unfortunately.
Q. Yeah. Okay. So I interrupted to ask you that question. Let me go back ten seconds. And -- and see what causes everyone to scatter. Do you have any idea what happened there?
A. I don't, but from looks of it, it looks like somebody threw an incendiary device and people

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might have fired less-lethal at them.
Q. Do you see -- do you see the incendiary device that you're thinking of here in the video?
A. I think so. If you look towards -- where the street light is and then you go to the -- yeah, right -- and right below that -- just a little bit more over. You see that pillar of smoke? No, other way, just a little bit up. You see that pillar of smoke?
Q. Is it this gray area here?
A. Yes.
Q. Okay.
A. So it's like right before that smoke starts happening you see a couple of flashes as if a firework, like mortar was thrown. And so it flashes for what -- what I would assume would be the propellant engine smokes and it might explode here if we continued the video. But it looks like some -- some -- something is now burning on the front steps. And it was a --
Q. Okay.
A. -- a bright red flame before.
Q. Okay. Do you remember somebody throwing an incendiary device?
A. Yes. I remember --
Q. In that area?
A. -- yes. I remember at -- at least

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multiple incendiary devices were thrown at the offic the steps.
Q. Mm-hmm.
A. As a matter fact, I don't remember if it w protester or somebody filming the event, got a fairl incredibly picture of it exploding at the officers f And I saw it a couple -- I saw the -- the picture a few times and haven't been able to find it since.
Q. Okay. Okay. Well, that was really just t Mr. Talley me because I wasn't sure what was happening So that gives me something to -- to look at.
I'm going to go just about 30 seconds and then see if we can identify Mr. Talley. Kind o area where I'm circling.
(Video playing.)
A. Okay.
Q. As he comes onto the screen. So it's just brief that I see him in your body cam. Were -- were able to identify him?
A. No. I was. I -- I -- I couldn't. There' a lot of people moving around. If you -- if you rewind it little bit I can -- I can try it again.
Q. So I think that I see Mr. Talley in a whit t-shirt and dark shorts kind of jog up over here bef he is occluded.

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A. Okay.
Q. We'll see if you see that. If you're a identify him as the target that you're shooting a so of my question.
A. Okay.
MR. LAIRD: And Leigh, Leigh would you specifying what the timestamp is? I can't see it
MS. JOSEPH: Yes. Right now I jus 18:52.
MR. LAIRD: Perfect. Thanks.
Q. (BY MS. JOSEPH) That time it was under figure how to get rid of this bar. I'm sorry, Of Wright, let me try again --
A. That's all right.
Q. -- on it -- and try to get that bar out of the w A. Why don't we go back like 15 or 20 seco when just watch it all the way through. That way we can maybe got that bar to disappear.
Q. Sounds good to me. So we're starting a There he comes.
A. I -- I'm sorry -- I.
Q. If -- you don't have to apologize -- (c
A. I'm not -- I'm not trying to be difficu There's -- there's a lot of people moving around one area. And so I'm not entirely -- I'm not entirel

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which one you're claiming to be Mr. Talley.
Q. Mm-hmm.
A. So and also unfortunately these -- these videos are really good, but they are still a little bit grainy when they get out to -- to that distance.
Q. Let's see if I can slow the speed. See if that helps us. When I move my mouse it makes that bar come up, but I'm going to try to point.
A. Okay.
Q. Okay. Right here, coming up.
A. You're saying right there in the very, very bottom of the screen?
Q. That's who I think your target was. Are you able to confirm that?
A. I -- I don't -- I don't know.
Q. Okay. All right, but you do -- and you can pause or continue play if needed -- you do fire the shotgun containing the beanbag rounds at this point?
A. I believe so because the first time we watched -- I -- I -- I saw myself fire.
Q. Okay. Okay. And do you know how many times you fired in this particular engagement?
A. I don't recall, but if we could watch the video we can verify.
Q. Okay. I turned the speed back to normal so that it -- the sound is more --

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A. Okay.
Q. -- like we would expect. And I'll just play through.
Were you able to approximate how many times you fired?
A. Not really. So I only see one shell eject from my firearm or from my less-lethal shotgun rather. So I honestly can't tell if I fired once or twice or many times. Do you mind just going back just 10 seconds. We can watch it one more time. I can -- I can try again.
Q. Sure. And the officer next to you, to your right, fires as well; is that correct?
A. Mm-hmm. I believe so, yes.
Q. I didn't go far enough. If -- do you think you can tell if you fired more that once?
A. I -- I honestly can't. I -- I can't tell. I -- I attempted to fire and my safety was accidentally engaged from bumping my vest and I instinctively jerked with the expected recoil. And then fixed the problem, and then fired, and then ejected the round. Or if I fired another -- I -- I honestly can't tell. I know for a fact I fired at least once.
Q. Okay. Okay. And throughout the day, the day that you fired multiple times at multiple different individuals?

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A. Yes.
Q. Okay. So I know we talked earlier about the videos you had seen. And we talked about your -- i body cam video. Is this some of the footage that watched before the deposition?
A. I actually -- I don't think we watched t portion. I think that we watched more of the -- w claiming to be the Modesto portion.
Q. Okay. Okay. But this does -- this is y cam?
A. Yes, ma'am, this is my body cam.
Q. Okay. And if what I'm telling you is co about who is Modesto and who is Tyree, then you di both of them?
A. I've would -- I would agree that it's ve possible that I fired at Modesto. However, I -- I who I -- who I am firing at based on what I c this video here.
Q. Okay.
A. I -- I don't know if it was somebody clo it was somebody further away. I -- I -- I don' because it's in the very corner of that -- of that and essentially as soon as I raise the less-lethal I -- I can no longer see the picture.
And so part of that, just so we're

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of on the same page, at the time I wore my body came the right side of my chest. I have since moved it t left side of my chest after this incident because af reviewing this video I realized that the way that I many times this arm (indicating) happens to cover my camera a lot. And I realized that that could be a p problem from my
So I So what that also means is when I get my shooting stance, although I'm facing this way (indic my body camera is showing more of the right side of body is facing. And not necessarily exactly where I looking right
And then again, when I go into my sho stance to properly prepare, I turn my body to make a think you, slimmer profile causing not only my arm to semi-block the camera, but the camera to turn toward my body is facing and not where my eyes and -- and h engaged
Q. Okay. Okay. That's helpful to know. Did someone instruct you to wear the camera in one posit two?
A. No. So I -- I will not be able to quote t policy verbatim. But our policy is essentially, mid the chest between the first couple buttons from the And then either to the right or the left, if you hav

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outer vest. Or if possible, direct center if you have the inner vest.

Q. Okay. Okay.

A. The camera -- (crosstalk.)

Q. Let me ask -- go ahead.

A. I'm sorry. The camera doesn't mount in the center for the outer vest because of the way the vest zips up.

Q. Oh, okay. Okay. Let me play just a little bit farther and I -- I think we're about through with the video.

A. Okay.

(Video playing.)

Q. Okay. Yeah, I'm -- I'm gonna take that off of your screen. So you haven't seen a video showing Mr. Talley's conduct immediately before he's shot?

A. I -- I have not seen a video, no.

Q. For purposes of our conversation, I'm going to represent that Mr. Talley threw a water bottle.

A. Okay.

Q. Okay. So assuming that that's a fact, is that conduct criminal?

A. In these circumstances, yes.

Q. Is it cause for arrest?

A. Yes.

Q. Did you arrest Mr. Talley?

A. No, ma'am.

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Q. Did you go to his aid?

A. No, ma'am.

Q. Okay. Is his behavior, assuming that he threw a water bottle you know, as I've described, riotous behavior?

A. Yes, ma'am.

Q. Let me pull some pictures up for you. And I'm gonna show you some pictures of Tyree labeled 711, 1147, 50, 43, 44, 42, 38, 47, 45, 46, 1149, 1139, 1152. So I'm also going to represent to you that Mr. Talley was impacted 12 times.

A. Okay.

Q. By -- by beanbag rounds. At the -- and these pictures contain some, but not all -- depictions of some, but not all of those injuries, okay?

So looking at Mr. Talley in the aftermath -- and I also don't know if you know this, but it's -- it's a photograph that I'm showing you. So I'm -- I'm also going to represent to you that Mr. Talley was also shot in the groin -- in the -- in the penis.

A. Okay.

Q. But that was another place that he sustained an injury.

A. Okay.

Q. Is this an appropriate consequence for throwing a water bottle?

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MR. LAIRD: Object to the form. You answer.

THE WITNESS: So I cannot account for officers from other vantage points seeing what Mr. was doing and taking the same action that I possibl this incident. So what I would say is, yes.

Q. (BY MS. JOSEPH) Being shot 12 times and his body covered in -- in bruises and cuts having l that and disfigurement -- that's appropriate conse for throwing a bottle of water?

MR. LAIRD: Object to the form. You answer.

THE WITNESS: So at max, I fired twi would say that that is appropriate.

Q. (BY MS. JOSEPH) Even if it was -- (cross

A. What I'm saying -- what I'm saying is -- cannot -- I cannot account for what any other offic from another vantage point. What I can say is that is impacting people who had been throwing things and that it was very evident that that is what our was.

So for people who continued to throw if they got impacted multiple times, I don't believ by different vantage points, I don't believe that t that is our fault. There's no way to coordinate fr

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many different vantages that we had and where we h officers you know, who was going to impact an indi It would probably impossible because of how the si behaving.

Q. So from your perspective, if he had been for any length of time that day Mr. Talley should been there,

A. I'm -- I would say that he been there for any l Mr. Talley should have been able to see what response was to people throwing things. And shoul realized that it was not -- it would not behoove h in any way to throw things at anybody or a

Q. Did you receive training on excessive fo person's right to be free from excessive force as your APD training?

A. Yes, ma'am.

Q. Does the fact that excessive force was u person and another may have seen it, mean that it' okay and the second person no longer has a right t of excessive force?

MR. LAIRD: Object to form, but you answer.

THE WITNESS: Okay. Can you please restate your question. I just want to make sure I right. And I'd like to -- to write it down so I'm

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I'm not forgetting any aspect of what you're saying.
Q. (BY MS. JOSEPH) Let me see if I can say it better because it's a little bit confusing. And I think I'm going to have to do it with kind of an example.
A. Okay.
Q. So I'm a -- I'm, you know, an American. I have a right to be free of excessive force, right?
A. Okay.
Q. Do you agree with that?
A. Yes.
Q. Okay. I see someone next to me do something and what I believe is excessive force is used on that person.
A. Okay.
Q. Okay. Does that mean that I have lost my right to be free from excessive force, if I engage in the same action?
MR. LAIRD: And object to form, but -- sorry, you can answer.
THE WITNESS: I -- I'm sorry. That actually made it -- it made it more confusing.
Q. Made it worse?
A. And -- and -- I -- I'm not trying to be difficult. So in that situation are you saying that the force is used on you? Or you witnessed somebody using force and you have the right to not have force used on you?

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Q. I witnessed somebody do something --
A. Okay.
Q. -- and the consequence is that force is used on them.
A. Okay.
Q. And I do the same thing.
A. Uh-huh.
Q. That the first person did.
A. Okay.
Q. Do I still have an independent right to be free from excessive force?
MR. LAIRD: Object to the form.
Q. (BY MS. JOSEPH) Even though I've seen what I've seen.
MR. LAIRD: Same objection, but you can answer.
THE WITNESS: I'm -- I'm sorry. I'm -- I'm -- I'm having -- I'm having trouble understanding what -- what you're trying to -- to portray. Are you saying that you witnessed somebody throwing something and excessive force is used on them. And then you do the same thing -- does that mean that you should receive the same consequence? Or you shouldn't?
Q. (BY MS. JOSEPH) Yeah, I'm not getting it correct. I want to ask you that so let me see if I can say it better.

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I'm gonna try -- I'll try one more time and then w
A. Okay. And -- and -- I -- I apologize.
Q. Not your fault. Yeah. And -- and what' prompting me to ask this is your remark about Mr. the protesters who were out there -- should have s was happening that day when objects were thrown. should have seen what the response was.
And so that's making me try to ask question. Does what I see --
A. Uh-huh.
Q. -- does what I see, alter my right -- my Amendment right to be free from excessive force?
A. No. But I don't believe that -- in this particular situation I don't believe that you coul excessive force was used. And here's why. So in sorry did somebody say something? Okay.
Q. No continue.
A. So in a situation where we have say five and we're dealing with one individual, okay? In t situation devolves into a fight. And hypothetical use excessive force on him, right? That is all of same exact area, focusing on the same exact person exact same time.
Am I echoing? 'Cause I -- I -- I h

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somebody.
MR. LAIRD: It sounded like there's feedback or something.
THE WITNESS: Okay. Okay. I -- I j I'm okay. So let me get back to where I was. So i situation when all of -- say the -- say officers ar together and excessive force is used then, yes, I w that that is excessive force.
In this particular situation what we we have an individual who is far away. And we have from multiple different angles who are using the mi amount of force, right? And as I said before there what I'd coordinate between everybody out there who had less-lethal weapons and the vantage points that the right?
So like I said, I fired maybe two ro I don't believe that that is excessive. Maybe the pe in standing also fired two rounds at that same person. T so that is not excessive. The person 15 people down w completely different vantage point who no idea that the same the individual, fired one round. That is excessive.
The cumulation of everything could b it received as excessive, however, there's no way for know that the other force was being used at the tim

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Q. Okay. I understand what you're saying. Go ahead. don't --
A. So --
Q. In your opinion an individual -- I'm sorry, I don't want to interrupt you. Go ahead.
A. No, it's okay. And I apologize, I'm not trying to talk over you. So the fact that he was impacted 12 times, that is tragic and that is -- that is sad. And I don't believe that that should have happened. But what sounds like is, is you're trying to claim that somehow we accumulated this idea of everybody in the area was going to shoot this same guy as a -- in an individual punishment for him. And that's just not the case.
Individual officers from different vantage points maybe all saw the same thing and reacted. And reacted in a reasonable way, with a reasonable amount of force to stop the riotous activity. The fact that it accumulated onto one person, that's -- I -- I believe that that's our fault. 'Cause there's no way to coordinate that in that particular situation or really in any situation.
Q. People always think that lawyers are trying to scheme some sort of -- you know, answer out of them. And I'm really not trying to do that. I'm just trying to ask you questions.

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A. Okay. I -- and I understand and -- and I think that you're trying to scheme -- I think that you're trying to make the point that, aggregate of 12 shots to Mr. Talley was excessive. I'm telling you that -- that impacts is a lot. And why, right? And what I'm telling you is, is that we need to look at it from a different paradigm and shoot. We can't blame a particular individual. We can't of it's not like we had 12 -- 4 officers line up and shoot -- that -- the -- the aggregate was -- was excessive. him 3 times each. You know, simultaneously. We had multiple officers who I had no -- you know I had no -- I had no ideas where these officers were. Because even on my video it only shows maybe a max of four shots, right?
Q. So this was not a coordinated effort by APD for people to make sure that Tyree Talley was shot 12 times?
A. Not at all.
Q. Okay.
A. This is individual officers observing a riotous act and taking the actions in which we were not only instructed, but we felt necessary to prevent further harm and disorder to the people in the -- the people in the area and the area. And unfortunately and sadly for Mr. Talley multiple people were -- multiple officers with less-lethal shotguns were observing for him at the same time. And took that same action.
Q. And in -- instead of a coordinated effort, it was actually the opposite. You guys were not able to coordinate?

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A. There's no way to coordinate. The only way we would've been able to coordinate, again, is if we all lined up and you know, somebody was like, that guy, ready, fire. And that --
Q. And that --
A. -- that wasn't really what -- it wasn't what happening.
Q. Okay. In that resulted in a number of -- how -- people were armed with these shotguns at that time? Do you have any idea? Like more than 20?
A. Honestly, I have no idea. I --
Q. Okay.
A. I -- I have no idea.
Q. Okay. So that resulted in some number of officers armed with these shotguns equipped with the ammunition all following the same order, shoot at somebody throwing an object?
MR. LAIRD: Object to the form.
THE WITNESS: Impact somebody who is -- is throwing objects.
Q. (BY MS. JOSEPH) Okay. And so in Mr. Talley's case, you know, your -- your view and what you're explaining to me is that one individual officer's actions were not excessive?

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A. No.
MR. LAIRD: Object to the form.
Q. I (BY MS. JOSEPH) Okay. But the cumulative, aggregate of 12 shots to Mr. Talley was excessive.
MR. LAIRD: Ob -- object to form.
Q. (BY MS. JOSEPH) Even though it's not -- it's not individual. We can't blame a particular individual. We can't -- you can't -- you can't -- I don't think you can combine all of these. Because as -- as you would have to -- it's -- it's individuals from different areas. I think that you would have to essentially make it each -- each thing, an -- an individual situation.
Q. (BY MS. JOSEPH) How many times do you think Mr. Talley needed to be shot in order to not threaten further harm to the people in the area --
MR. LAIRD: Object to the form.
Q. -- Mr. Talley?
THE WITNESS: I don't know because I'm not -- there, right now. I'm not looking at what's happening.
Q. (BY MS. JOSEPH) But you were then. I was seeing what you saw. Impacting the people that you

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and -- and targeting people who throwing objects. seh how many shots did it take to get somebody to comply?

MR. LAIRD: Object to the form. Speculation.

THE WITNESS: I'm sorry. Does that mean I answer? Or I don't answer? I'm sorry.

Q. (BY MS. JOSEPH) You still answer.

MR. LAIRD: Yeah, you answer if you can.

THE WITNESS: Okay. I'm sorry. So restate the question.

Q. (BY MS. JOSEPH) Yeah. When you were out there for hours you know, targeting -- under orders to target people who were throwing objects, right?

A. Ah, yeah, okay. I see what you're saying. Okay. So the less-lethal shotgun is not a -- is not an immobilization weapon. So it is indeterminate to tell how many shots it will take for someone to realize that that hurts, I should stop. Right? Because one, it depends -- on where you're hit. Two, it depends on how much of a blow you received. So for instance, if I missed or -- or it was just a glancing blow it's -- it's not doing -- something I'm happened.

Q. My screen back up. Yeah.

A. Something -- so if it's a glancing blow or that -- that might not gain com -- compliance. That might not make gain -- you know, make somebody realize that -- I

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need to stop this behavior. So it -- it depends. I'm seeing people get impacted four or five, six, seven, eight times and continue doing what they're doing.

It depends on each individual person's pain tolerance I suppose. If they're under the influence of anything. There are -- there a multitude of -- of reasons why one or two or -- or multiple impacts won't work.

It depends on the type of clothing they're wearing. It depends on if -- if they have anything under that -- that clothing. We -- we -- we could go on for a long time and to -- to say you know, all -- all the different reasons on why these -- these rounds might not work. Or would work. And there is -- there's no way to tell until the behavior actually stops.

Q. You said something that I want to go back to. You said glancing blow. So I want to ask you -- I'm showing these same pictures of Mr. Talley's injuries. Does this look like a glancing blow?

A. No. But could you go back to the first one?

Q. Yeah. I'll get there. Does this look like a glancing blow?

A. No.

Q. What about this one?

A. Nope.

Q. Okay. And we're just going backwards from there.

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How many I've been you today.

A. Okay.

Q. What about -- what about these on the hi -- I mean look like glancing blows?

A. They don't look like it, but they -- the be. Just -- but they don't look like it.

Q. Does that look like it hurts?

A. Absolutely.

MR. LAIRD: Object to the form.

Q. (BY MS. JOSEPH) Do these look like glan to target?

A. The one on the right side of the picture underwear looks like -- or no, sorry. So picture, right side of the leg that looks like it glancing blow. And again, glancing blow is -- is relative as well. How -- how much material is bei -- is being touched. It could be very mi of a -- a lot. And the other one does not look l glancing blow.

Q. What about -- what about the ones we see

A. So if I'm being --

Q. I think the new ones are the shoulder an

A. So if I'm being honest, the shoulder and -- I -- those look like road rash. Those look like

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Like rolling down and scraping.

Q. Okay. You wanted me to go back. It's p this picture of the ear?

A. No. It was the shoulder one.

Q. The shoulder?

A. But that looks like more like road rash, that -- that also looks like what -- road rash is of the glancing blow. It's a slide acrossed [verbat

Q. Okay. And I do have to ask you at this for -- for if you have particular training that enables identify the difference between a beanbag round in what not?

A. There's no -- I don't have any (audio distortion) -- I have any specific training to say (audio feedback)

Q. Yeah, carry on.

A. I don't have any training to specificall beanbag or road rash, however, through my training experience for five years as a military medic, bot stateside and in Afghanistan, I have seen a multit injuries and things that cause injuries and know w certain injuries look like.

Could this be a beanbag? Absolutel could be a beanbag. However, it also looks like i when -- if he fell down or when he fell down, he s shoulders. And possibly over here when he fell dow

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his ear and that's what made his ear swell.
Q. But you don't know. (Crosstalk.) You don't know one way or another?
A. No. I don't know one way or another either.
Q. Okay. They could -- these very well could be beanbag munition injuries?
A. Mm-hmm. They can also be him running into a wall (indicating) when he was finally running away. These two. And I'm not talking about the other ones. I'm talking about these two.
Q. Okay.
A. Is -- is -- a lot of -- a lot of the things could've caused some of these injuries. Could they be beanbags? Yes. Could they also not be --
Q. Okay.
A. Yes.
Q. Okay. You also talked about there being instances where it takes three to four impacts with a beanbag round before somebody stops in action.
A. Mm-hmm. Yes.
Q. Okay. I'll limit this question to May 30th, 2020, people who were throwing water bottles, okay? Of those people how many did you see reaching for a second object to throw again? After they threw the first one?

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A. So I can't specifically talk on only the individuals who threw water bottles. I -- I was -- was able to identify at least one? And that sounds like in Modesto. But there were multiple instances where we would -- I impacted somebody, they went down, they jumped back up, ran back around and then later I saw them grab objects again. But they were either too far away or I didn't have a clear enough shot. And it -- I decided I impact them again at that later time they would -- I could've possibly hit somebody who was not participating in that particular activity.
Q. So you didn't want to just stop the throwing happening? You wanted to stop these people from throwing again? Even if it was going to be ten minutes later?
A. No. I wanted to stop the behavior from happening and hopefully that would stop future behavior as well.
Q. Okay. So I mean, Modesto throws a water bottle, he didn't have an arsenal of water bottles. He picks one off the ground and he throws it. I mean, Tyree throws a water bottle. You know, I mean what I'm getting at here is these people are not water bottle, water bottle, water bottle. They're throwing one. I mean, did you see anybody kind of repeatedly throwing water bottles?
A. Absolutely. So what you're saying is --

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you're saying is, is these guys picked up a weapon of opportunity that was on the ground and immediately threw it? The ground was littered with weapons of opportunity. What could stop them from grabbing another weapon of opportunity and throwing it again.
Q. What's to stop them is -- is it what I'm -- I'm asking what you saw.
A. Yes. I saw people -- Q. So how -- how many people did you see walking about the street, picking up a water bottle, throwing it, and then picking up a water bottle again and throwing it?
A. -- a lot of -- Of -- On multiple occasions I saw people picking up off the ground and throwing them and doing that multiple times.
Q. All in a continued sequence? Bend down, bend down, throw -- you saw that happening?
A. Not necessarily a continued sequence. Some of them were. Some of them weren't. They would mean through the crowd and like I said, pick up weapons of opportunity as they found them and throw them.
Q. And so that gets to this distinction in terms of classification point that I don't quite get on what objective is. Are you trying to like take somebody -- they can't throw something again?

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A. No.
Q. Or you just trying to stop the action that was -- was happening in that moment?
A. We're trying to stop the action that's happening in that moment. And hopefully, they realize that it's a good idea and stop doing that action. I'm hoping that I make that decision. I'm not -- I'm not hoping that I -- I'm not hoping that I'm going to permanently incapacitate them from ever doing anything again.
Q. Yeah. I mean, I would hope not, but I just -- I want to make sure. And so in that moment Tyree Talley's throwing was single water bottle, right?
A. Sure.
Q. Okay. It didn't take 12 shots to deter him, it was -- it was well, actually let me -- let me go a different -- let me ask you something else. Had he already thrown a water bottle when you shot at him?
A. I -- I don't know. I -- I -- I don't remember. (Crosstalk.)
Q. Okay. Do you know on Modesto?
A. I don't know on Modesto. However, I think something in one of my supplements that might be -- okay, so -- all right, so this is -- this is reminding me of it. So I -- I this might be the incident we're discussing.

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So "At 18:55 mark in my video, Officer Wright observed what I believe to be a male subject standing in the 35 service road intersection with Eighth Street. The male was facing the Austin Police Headquarters. I observed the male throw an object towards the officers on the steps. By the time that I had brought my less-lethal up, the subject had turned around. I fired the first round at the subject -- I fired the first round at the subject as he started to run northbound on the service road."

"I aimed this round to impact the subject in the abdomen, however, due to him accelerating into a run this, this round impacted him in the upper body, near the shoulder. I reloaded with my second round and hit him in the lower body."

The reason -- now that I'm reading this I remember. So what was happening, at that time, what we were seeing was we were seeing people run out from under the overpass that we were standing on -- or under the bridge that we were standing on. They would grab something, throw it and then try to run back under the -- under the overpass so that we couldn't impact them. And then they would continually go back-and-forth and do that.

So the idea here was we -- it sounds like I observed him throw the object so I impacted him and as he started to try to run back in, I was attempting

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trying to prevent him from running back to try and get more things to throw at the Main at the officers there.

MR. LAIRD: And -- and, Justin, I -- I don't -- we can just identify the Bates number on the bottom of whatever page --

THE WITNESS: Yes.

MR. LAIRD: -- you're reading from?

THE WITNESS: That is 2469. And that's the middle paragraph that starts with, "at 18:55."

Q. (BY MS. JOSEPH) Okay. So is -- he has thrown the object already?

A. Yes.

Q. And is running away when you are targeting him?

A. Yes -- (crosstalk.)

MR. LAIRD: Objection, form.

MS. JOSEPH: Are you objecting to the word "targeting"? I got that from an officer yesterday. I -- that --

MR. LAIRD: That's part of it.

MS. JOSEPH: Okay. I'll -- I'll use a different word, yeah.

Q. (BY MS. JOSEPH) Okay. So Mr. Talley had thrown -- or the subject that you're reading about in this report had -- had thrown the object and was running away at the time that you were firing your shotgun armed with

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beanbag rounds?

MR. LAIRD: And I object to the form. And, Leigh, what I'm -- I'll tell you what I'm object -- is I think it's unclear when you say that he's -- by

MS. JOSEPH: Okay.

MR. LAIRD: Because he's --

MS. JOSEPH: Okay.

MR. LAIRD: I don't think that's what the subject -- the officer is -- is saying, but ...

Q. (BY MS. JOSEPH) Okay. Mr. -- Officer Wright -- I'll let you answer that question and you can of course, you know, if he's not running away you can -- you can do so.

A. So I don't -- I don't know what word I would -- what we based off of reading this, what I believed at the time -- is that he was actively trying to throw stuff -- to maneuver away so that he would not be impacted. And -- he essentially was trying to do this thing so we could do it and we wouldn't be able to -- to do anything about it. And so that's why I continued -- or I -- I fired the second round.

Q. Okay.

A. So the first -- the first round is I'm with -- I was throwing it. By the time I've raised the -- the

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beanbag shotgun and fired, yes, he has thrown it -- started to move. We -- the reactionary times that -- that's -- that's the way that it's -- it's going -- we you know, we -- we -- we can't ...

Q. So neither one of these shots is to stop throwing the water bottles?

MR. LAIRD: Objection, form.

Q. (BY MS. JOSEPH) The particular water bottle he had already released from his hand when -- when it was fired?

A. These shots are because -- the shots are because he threw the water bottle, yes.

Q. Because it had already happened?

A. Because it was happening and I reacted. At the time the reaction was finished, the bottle had -- the word --

Q. Okay.

A. And then he began to what -- I believe to us. Well, evade is not the right word. Tried to move away from us so that we couldn't impact him.

Q. Okay. And at least the second shot, if not the second shot was intended to be a deterrent from continued behavior?

A. Yes.

Q. We don't see in your body cam, but I've s

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other -- other footage that makes it look like there's a light aimed at Mr. Talley. Are you aware of somebody using some sort of lighting device to target particular subjects while you were out there on the 30th.

A. Not that I remember.

Q. Okay. Did you fear for your own safety when Mr. Rodriguez or Mr. Talley threw the bottle?

A. No. I feared for the safety of others in the crowd and the officers at the steps.

Q. I'm going to completely change tracks for a minute and ask you about the beanbag rounds themselves.

A. Okay.

Q. And I'm trying to push through, but like I said at the beginning, Officer Wright, if you need a break, please say so. Okay?

When you -- so I knew you were given some amount of munitions when you first checked out the -- the shotgun -- at North Substation.

A. Yes.

Q. How were those --

A. I believe so. I'm -- I'm pretty sure they -- they gave me -- they gave me at least one -- one load out.

Q. Okay. How were those packaged when they were given to you?

A. Okay. So the -- at that time the less-lethal

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shotguns -- now, I'm remembering this now. I apologize. So, at that time, the less-lethal shotguns came in a -- in a black gun case. Like a soft black gun case with a zipper pocket on the back. And -- or -- it -- towards the back of the case. In that -- in that case was the four or five rounds to fill the -- the weapon. The weapon system. Right?

And those were -- as far as I know, those were only replaced if somebody realized that they were expired or if they had expended.

Q. Okay.

A. So my initial load out was the rounds that it had been with the gun for however long.

Q. Mm-hmm.

A. And then after that we were handed -- I believe little white boxes.

Q. Okay.

A. And I don't know how many rounds were in each box.

Q. Mm-hmm.

A. But it was probably either five or ten.

Q. The ones that were in the case with the shotgun case --

A. Uh-huh.

Q. -- were those in a little white box or --

A. No. Those were loose because those are the ones that were loaded into it on a daily basis for -- when -- when -- when we checked out that particular weapon system.

Q. Mm-hmm.

A. They were -- I'm sure the first time they handed out -- in a -- in a white box. But after that, basically you would unload the -- the weapon system -- those loose shells would be placed in that pocket.

Q. Okay. And you mentioned that they would get changed out if they were expired or expended? Did anybody -- I think. I think expired.

Q. -- as the user -- okay. Yeah. And did you as the user have a way of knowing if -- if the rounds -- the beanbag rounds that were in the case with the shotgun had expired? Did you have a way of checking that?

A. I don't believe so because I -- I -- I don't believe that it's on the shell.

Q. Mm-hmm.

A. I don't remember being told that.

Q. Mm-hmm.

A. That we had to look at each individual shell. They -- I don't believe even to this day -- I think it was on the original box.

Q. Mm-hmm.

A. And so I -- I don't believe that there was -- for me to know if the shells that I was given were expired or did I know if they were.

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Q. Okay. Was any part of your training and -- with these weapons -- did any of it involve kind of checking the -- the -- the --

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A. -- so that it doesn't catch the -- the hook and the plastic is rolled over the top of that to secure fire. And then it is -- it's got another -- it's got another piece of cardboard at the very top, right, everything from not falling out.

The part that we were taught to check is -- the same part that we check with our regular shotgun rounds. And that's that slightly wider portion at the very base, but that the round doesn't fall too far into the barrel. And after continuous reload, what can happen because that's brass and that's a softer metal, is that can become deformed. And then the round slips too far into the barrel and it -- and it cannot be fired.

Q. Okay.

A. And so we are taught to inspect the back of the round to make sure that they are not deformed to where they would cause the weapon to be jammed.

Q. To make sure the weapon is still going to be operational?

A. Yes. But that -- as far as I remember, from only part of the shell that we inspect as individual officers on the street.

Q. Mm-hmm.

A. Somebody else in the department might be tasked with other inspections. I don't know.

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Q. Okay, okay. So as an officer on the ground you have an expectation that the munitions that are being given to you are not expired?

A. Not expired and that they are functional and that they're not you know, defective in any way.

Q. Okay. Okay. Talking further about training, I believe you mentioned earlier that you -- you were required to continue to be qualified in these type of so-called less-lethal weapons. Has there -- has there ever been a time during your time at APD that that qualification lapsed or was expired?

A. No, ma'am.

Q. Okay. And I understand that in your training using those, you're taught particular target areas. I think in kind of green, yellow, red system?

A. Yes, ma'am.

Q. So tell me what is green, what is yellow, and what is red?

A. So green is the optimal place for the most effective and safest target areas. So the -- the -- the legs, are green. I -- I can't remember if the arms -- are green. I think they changed the -- I think they changed the -- the model that we shoot at.

Q. Mm-hmm.

A. The back is green. The chest is yellow. And the

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if I remember.

Q. I'm going to stop you because I'm going to ask you some specific areas.

A. Oh, okay.

Q. So that way, you don't have to tell me -- I'm sure.

Q. So green is -- ideal place to target. Yellow, okay, but not as ideal. And red is try not hit t

A. Yes.

Q. Okay.

A. Red -- red is do not actively aim for t the arms.

Q. Okay. I think it's like unless it's a where you're authorized to use deadly force?

A. Yes, and, no.

Q. Okay.

A. So that's specifically the head --

Q. Okay.

A. -- right? So for example, the groin -- front of the groin is also a red area.

Q. Mm-hmm.

A. If I remember correctly.

Q. Mm-hmm.

A. Obviously that would be an inappropriat we feel that we need to use deadly force to activ

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around you.

Q. Mm-hmm.

A. Because that -- that would not do it.

Q. So she you should never target the groi

A. You should never actively target the gro

Q. Okay. So let me ask -- I'm going to pul the picture of Modesto because I've noticed there' disagreement on where one of his partic is. So I'm going to show you instead of a body part.

A. Okay.

Q. So I'm going to show you this area on hi

A. Okay.

Q. And ask you if that is green, yellow, or

A. I would say that that's kind of right in green and yellow.

Q. Okay. Okay. Is the -- the chest is red

A. I want to say, I honestly can't remember because ever since we got the new Taser syst have had another mat with different colors all over it and like I said, I -- I only see the mat onc at this point.

Q. Yeah, okay.

A. And so I --

Q. Okay.

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A. -- can't actually remember.
Q. Okay. What about the -- this ankle spot? Do you know what color that is?
A. I don't know. I believe it to be either green or yellow.
Q. Okay. And for Mr. Talley I'm going to -- I'm gonna try saying some body parts instead of looking through all the pictures --
A. Okay.
Q. But I'll pull one up if we need to. The -- and I'll just throw out a body part and you tell me what color zone it's in, okay? This is the portion of the deposition that's a test. But it won't last long. The -- the ear. What color zone is that in?
A. I would say the ear would be red.
Q. Red? Okay. And the penis?
A. Would be red.
Q. Okay. The chest?
A. As I said before, I can't remember if the chest is split between red and yellow. Or if it's just over the heart that's red.
Q. Mm-hmm.
A. Or -- I -- I honestly can't remember.
Q. Okay.
A. I would say probably yellow, maybe red.

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Q. Okay. And I think you already answered with regard to the buttocks, that you thought that was a green area?
A. I believe the buttocks to be the green upward green.
Q. Okay. And I think you said legs in general, that would include thighs and calves would also be green?
A. Yeah.
Q. Okay. What about shoulder?
A. I believe the -- so I believe the shoulder? Are we talking along the shoulder blade, the back? Or are we talking on the front of the shoulder? Like where the socket is or --
Q. Do you remember --
A. And I'm sorry, I'm not trying to be difficult.
Q. No, no --
A. Or are we talking on the -- on the -- like the area or the --
Q. Do you -- do you remember that picture we looked at and we said maybe -- you thought that could be road rash --
A. Maybe it could be road rash?
Q. -- but it also could be a beanbag round? I can pull it up again.
A. I do. I think that's the back of the shoulder.

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I would say that that would be green.
Q. Okay. And then you talked earlier a little about arms. My next ones would be forearms and upper arms. I think you weren't sure about arms anymore?
A. Yeah. I -- I'm -- I'm not sure. I -- I think they're yellow or green.
Q. Okay. So some of the areas at least for Mr. Talley some of the areas that he was actually hit, not talking about where people were targeting, but some of the areas where he was actually hit were red areas?
A. Yes, ma'am.
Q. Which leads me to believe that these shots -- not 100 percent accurate?
A. Yeah, that sounds fair.
Q. I rather think that then that you know, an officer was targeting a red area.
A. Yeah. Yeah, so there's officers -- their are not 100 percent accurate, as well as, we've already -- the fact that Mr. Talley was moving. Which means by the time we pull the trigger, he's still moving and where we're aiming we're doing our best to aim for the places that we are. But as he's moving around, the impact zone is changing.
Q. Okay. Did you observe inaccuracy of your rounds as you were shooting it that day? As you were using --

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A. Yes, I did.
Q. Okay.
A. I observed -- I observed my round were going upward. And so I purposely for the rest of the day that scared me -- I'm sorry -- for the rest of the engagement purposely aimed lower at the legs and the lower abdomen -- because of that.
Q. Okay. Okay. I want to talk a little bit about the formation out there. So I don't think the roads were blocked, is that right? Or maybe some roads were blocked and some weren't.
A. Which roads are we talking about? Actually on --
Q. Let me just --
A. So -- sorry two questions. So which roads are we talking? And when you say "blocked" are you asking if they blocked them as Austin Police? Or if the protesters or rioters blocked them?
Q. So what you're doing is pointing out extra defendants in my questions. Let me try again.
Did you -- APD officers -- did you or some other officer -- did any APD officers put up any barriers to block roadways around the headquarters?
A. So I think so. I -- I believe that at -- at

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point it was decided that you know, the -- it wasn't necessarily worth trying to keep them out of the -- for those who are being peaceful could stay there. I -- I do believe that we blocked off some roads. I don't know which ones though. I --

Q. Okay.

A. -- I can't recall which ones.

Q. Do you know with what?

A. I can't -- I can't say for sure. I -- I -- we used cars or if we used the barricades that are used on Sixth Street every weekend.

Q. Mm-hmm.

A. Or a combination of both. I -- I -- (audio distortion.)

Q. Okay. And you were on the -- the -- I -- I've talked about that. And we've also, I think at some point, referenced that there were other officers on the -- just to call is the "patio"? The front of the headquarters?

A. I think we call it the "steps".

Q. The steps?

A. If I remember correctly.

Q. What was the purpose of the officers on the steps?

A. I believe that the officers of the steps were there to make sure that we didn't have the same incident as -- as we discussed earlier. Some police department

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were getting overrun and -- and damaged on the inside.

Q. So --

A. So that was -- that was a safety measure because of what's inside of a police department, right? So not only are there weapons and stuff like that, but there is a -- a ungodly amount of personal information for people all over the city and all over the states. And even in different countries. And it would be very dangerous to allow an angry mob to get inside of that building and -- and -- and it could cause a lot -- a lot of damage. Not only physically, but -- but also in people's lives. Whether it be through other nefarious actions.

Q. Okay. So they were there to protect the perimeter from getting breached?

A. Yes, ma'am.

Q. And you said angry mob, but at the time that Modesto and Tyree were -- were injured, the times we looked at on your body cam, would you describe that as an angry situation?

A. I -- I would describe -- I would describe that as an intermix -- an intermixing of people who wanted to be an angry mob, agitators. And people who just wanted to yell and scream at us. And so like we did -- you know, unfortunately like we described before you know, that -- that does -- that does make the whole thing a bit

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We were trying to be as lenient as words that aspect of it. But so angry mob? Sure. Maybe -- but a little bit more -- might be -- it might -- I don't know it too strong. So the -- the protest that of agitators to prevent them from agitating further breach of the Main.

Q. Okay. And other than the police line of steps, what other measures did APD take to prevent breach of Main? For example, were there other ph barricades set up?

A. I honestly don't know because I -- I don't think -- I believe the closest I got to the Main was across the street at the 250 building. So I if they did anything inside. And I don't remember specifically when it comes to like the gates to the p or anything. It's just not -- I'm sorry -- just not something that I was paying attention to.

Q. Okay. Did you observe -- well, let me first. Did you personally kind of go down into t and interact with citizens one-on-one, at any poi

A. Not that day, no. Later on -- a couple later, yes, attempted to I guess mingle with the cr and talk and stuff like that. But on the question, I don't believe that I ever went down i crowd.

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Q. Okay. And to use a word, I think "min good way to describe what I'm asking about. Did anybody -- any other officers kind of mingling i that day, interacting one-on-one on the 30th?

A. I didn't. I -- I didn't.

Q. Okay. That mask that you had with you up and down, the shield -- the helmet --

A. Oh, yes. Yes.

Q. -- did -- when that was down did it in affect your ability to aim that shotgun?

A. I don't believe so, no.

Q. Okay. Did you just kind of move it up throughout the day on and off?

A. Yeah. It -- as I -- as I said before was really hot that day and -- and when the -- w shield was down it was a little bit more difficu wipe the sweat and stuff out of your eyes. So I constantly popping up and -- and stuff like that

Q. Okay.

MS. JOSEPH: Why don't we take te and I think this will be the last break that I n for... And I'll be able to wrap it up on our next Does that work for everyone?

THE WITNESS: Yes.

MR. LAIRD: Yes.

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VIDEOGRAPHER: We're going off the record. The time is 1:46 p.m.

(Recess was taken.)

VIDEOGRAPHER: We are back on the record, it's 1:57 p.m.

Q. (BY MS. JOSEPH) Officer Wright, we're back after another break. I'm glad to see you got some water.

A. Thank you.

Q. I'm going to ask you a few kind of random questions just picking up some pieces that I didn't get on here. So don't try to make them all go together because they may not.

A. Okay.

Q. Have you ever found yourself in a position where the use of deadly force was warranted or justified as an officer?

MR. LAIRD: And, Leigh, I want to make sure I understand. You're -- are -- you're not limiting to just using deadly force? I mean ...

Q. (BY MS. JOSEPH) Yeah, you may not have made the choice to use deadly force after fully analyzing the circumstances. But as an APD officer, have you encountered a scenario where it felt like it was something that could be done?

A. Yes. Would you like me to elaborate on that?

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Q. Yes, please.

A. Okay. The first one that comes to mind is when I went to a Super 8 in the sector that I work in, in the 35 service road southbound for a check welfare [verbatim]. For somebody who had made some suicidal ideations. And then just kind of stopped responding to people.

So we went to the hotel room. It was a bottom floor hotel room on the south side. So the -- was north-facing on the south side of the building. And we knocked on the door multiple times, announced ourselves, and nobody came to the door. Because we didn't have any sort of exigency because no plan or method or anything like that was -- was mentioned, we -- we did not have the exigency to -- to breach the room.

And so we decided to walk away. As we were walking away I heard the door latch. I turned around and the gentleman that we were there to check on comes out of the hotel room holding a steak knife. I drew my service weapon and actively targeted him and ordered him to drop the knife. And he -- he dropped the knife fairly quickly, but it was a long enough hesitation because he was looking at my partner not at me that when he turned to look at me holding the knife. And then pause, drop.

I felt in that moment that I was justified in using deadly force because of the distance that I was from the individual and how quickly somebody can close distance with an edge weapon. However, whether it be subconsciously or subconsciously I chose not to fire because I don't know if it was because of maybe how much of him was still in the hotel room or you know, how -- or -- the -- the look on his -- on his face or what his rea were. But I -- I chose not to fire at that time.

And it was the -- it was the correct decision. I believe that had I fired, it would've been a justifiable use of deadly force, but thankfully everything worked out.

The second incident that vividly comes to mind was an incident where we had simultaneous calls dispatched to APD. One was a crash. One was a possible burglary in progress. And one of the other responding officers was a gentleman on my shift. The other one was a gentleman on my sister-shift. And they determined that because of the proximity in which both calls happened and where they were that it was possible they were related.

And what ended up happening is a male encountered -- a male crashed his vehicle into the back of the residence and climbed in through the window. And took a mother and her son, who I believe was either eight or ten years old, as hostages. When the officers arrived on

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they made contact for the burglary first because as the -- the crash, nobody was by the vehicle. So they made contact at the residence.

And if I remember correctly, they could hear multiple voices. When the females that called in said that she and her -- she was the only one home. So because she heard multiple voices they -- and -- and one of them sounded to be in distress, they kicked the door open. And as they entered the residence, the gentleman that climbed in through the window fired a modified fully-automatic GLOCK 9-mm at my shift partner and my sister-shift's partner.

Later on we found out that one of those rounds struck my sister-shift partner in the gun belt -- specifically, on the Taser. Officers returned fire, but did not hit him and exited the residence. A few minutes later the man came out with a gun to that ten -- or that eight- or ten-year-old boy's head.

It initiated a SWAT call out. I was the second or third officer on scene. And I took up a position of tactical containment on that residence. And all I had was my shotgun -- my -- my lethal shotgun and my pistol. I was maybe 30 yards away. And I observed this man come out holding a gun to this child's head.

I -- at that moment I knew that I could deadly force. However, the tools that I had at the ti

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were not appropriate for that type of engagement. It was a very long pistol shot that I could not guarantee would not hurt the child and the shotgun was impractical because of the manner of shotgun shooting out multiple projectiles. Had I had a rifle there is a very high likelihood that I would have taken an open shot if I had it and used deadly force against that person.

Later on in that incident that is exactly what happened with one of our SWAT snipers. And he if I remember correctly -- we were handed a less-lethal shotgun which is always got orange furnishings. So, yes. So an orange front stock and an orange stock. And we are given two rounds. We will fire a round from a specified distance that is slightly further away. And aim for a green zone while you know, yelling the words "impacting." And then we will move closer to the target and do the same thing, yell impacting and aim for the green portion of the -- the rubber mat. And it's the rubber mat that's hanging with a -- a silhouette person with the different colors.

person was pronounced deceased and we saved that child and mother and -- I can't remember which one it was.

Q. Thank you for describing those two incidents to me. It sounds like based on your answer to my previous question that you have not actually implemented deadly force in the conduct of your duties at APD.

A. No, ma'am.

Q. Is that --

A. I'm sorry. I -- I -- I might have misheard your question. I apologize.

Q. No. You answered the right question. I was just asking a follow-up. Yeah. Have you ever shot a firearm?

A. No, ma'am.

Q. Whether in the military or not? No?

A. Well, kind of back to what we said earlier. So

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the less-lethal shotgun is a firearm, but it is designed so -- I -- I just don't want to be -- I just don't want to seem like I'm -- I'm lying or anything like that with a --

Q. Mm-hmm.

A. -- deadly firearm with a bullet projectile, no, I have not.

Q. Okay. And then the follow-up question, have you ever impacted other than as part of the -- what I'm going to call the Geor -- George Floyd protest here in Austin -- have you ever impacted an individual with a beanbag round? And I think you know what I mean when I say the George Floyd protests?

A. Yeah, yeah. No, absolutely. I -- I think so. I believe that the George Floyd protest that day was the first time and the only times that I have impacted someone with a less-lethal shotgun.

Q. As part of your training and using those weapons, I'm assuming you fired them. Tell me kind of what that training was like. What were you targeting and how did that go when you were learning to use those weapons, the less-lethals?

A. So for the less-lethal weapons they go through a quick distance verification. What is the closest distance you can shoot. And what is the suggested longest

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that you should shoot.

Q. Mm-hmm.

A. Before it becomes really ineffective.

Q. Mm-hmm.

A. And then kind of a brief you know -- as far as deadlier because it's a heavy -- a heavy projectile start to drop and stuff like that. So you do have to aim for things like that. And then we are handed a less-lethal shotgun which is always got orange furnishings.

Q. Okay. So before the George Floyd protests, it sounds like you had discharged one of these so-called less-lethal shotguns twice in your life?

A. I think that we did it a few extra times in the Academy, but I -- I can't remember.

Q. Okay.

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A. But as far as the less leas -- sorry -- less-lethal shotgun goes before the George Floyd riots that would be no more than ten rounds.

Q. Okay. I asked you about impacting others and I'm going to ask about yourself now. Have you ever been impacted with a -- a bullet from a firearm?

A. No, ma'am.

Q. And have you ever been personally impacted with a beanbag round?

A. No, ma'am.

Q. Okay. I said I was going to be jumping around a little bit now changing gears.

A. Absolutely.

Q. How many times has -- have you received a written performance review as part of your employment with APD?

A. I -- I think it's only been twice because of the way my employment timeline lined up. My first year was academy training so I don't believe that I got one for that -- I might have. So maybe three.

And then yeah my second year and then my third year. And I haven't received my fourth year, I -- God I want to say I've only signed two. One from Sergeant Leyva and one from Leyva. I don't think I had one from Fraser. I think it's only two.

Just because of the way where -- the w

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employment lined up, I think they're in done in like July or August or something like that. And I hadn't been out I think -- I think that was it -- the first one. I had been observed long enough to -- you know, I'd only been on for like a month or something like that and so --

Q. Mm-hmm.

A. It wasn't -- it wasn't done. I think probably isn't done yet. But then I have --

Q. So '18 probably wasn't done. 2023 probably isn't done.

A. Yes. So '18 definitely was not done because I was in the Academy.

Q. Uh-huh. Okay.

A. I don't think that '19 was done because by the time I hit street --

Q. Okay.

A. -- either that time had already passed or I hadn't been observed long enough for the evaluation to be final. So --

Q. Okay.

A. -- I should have got one '20, '21, and '22. Maybe I did get three. We'll say three. I don't know.

Q. Okay. Two or three. Maybe one was missing in there. But --

A. Yeah.

Q. Okay. And your expectation is that they're

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annual?

A. Yes.

Q. Okay. Have there been any like -- I don't want to use the word reprimand 'cause I know that's like a formal process within APD.

A. Sure.

Q. Has there been any sort of like deficiency that they've told you to work on in those evaluations?

A. No. I -- I've -- I've never been given anything like that would -- I've never been given anything less than a like meets standards of -- of the standard officer, however, they --

Q. Mm-hmm.

A. -- they describe it. There was you know, there's two things that aren't observed obviously like, in a leadership position. So you know -- you know, like leadership skills are observed you know, like taking command of their -- you know, like that sort of stuff. That shows as not observed.

But so everything is either -- it's above average or essentially where -- where the standard officer is.

Q. Okay. I'm going to try to speed up a little bit because I'm taking so much of your time. So I'm going to try to

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kind of faster. I've got it in my mind I want to be out of here.

A. You take as much time as you need. It's --

Q. And -- and thank you for that. Do you have -- aside from anything related to the George Floyd protests -- then we'll talk about that separately, do you have any history with IA or SIU?

A. I had -- I've one instance with internal -- It was when I was on FTO. When I was -- when I was training -- I was my field training officer and I was PPO.

Q. Mm-hmm.

A. We responded to a situation where somebody had stated they had been assaulted at a gas station -- by the -- arrived on scene. I interviewed the man. I called for him and once EMS got there, he's like, "I -- I don't want anything. I don't want to press charges. I just want EMS."

And so I was like okay. And then I -- that two of the other officers that responded with -- like walked away. And then so I -- I let the -- no -- was holding the gentleman, but the gentleman that was talking -- talking to left in the -- in the ambulance. And the next thing I know, the two officers from my shift that had walked away were walking back with an individual in handcuffs. I don't remember exactly what the charge was that --

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ended up being arrested that night and we brought him over.

They towed his car and they asked me -- fill out a tow sheet. The administrative form that says the Austin Police Department towed your vehicle. This is what's in it. This is what we found in it. This is the condition that in. And you know, it's -- it's basically a release saying that the Austin Police Department towed your -- anywhere it went, right?

So I -- while I was filling out that -- that sheet, because I was so new I was kind of slow at it -- other officers did the inventory of the vehicle. And -- when I started doing it for myself, the -- I was told, I know, that's already done. And I was like okay. Well, what -- I'm not like what -- did we find anything? And I was like, well, something of intrinsic value was found in the -- in the vehicle. Right?

Q. Mm-hmm.

A. So I wrote that on the tow sheet and I submitted it. That gentleman later complained that we illegally towed his car and that he was illegally arrested and he filed -- complaint with the OPO who turned it over to IA. IA investigated me for improperly filling out the tow sheet because basically what they send was nowhere in policy that says something has to have an intrinsic value to be

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documented on the tow sheet.
Q. Hmm.
A. So you need -- you need to document everything that -- that you found in the car. And I was like, okay. You know, absolutely. And so it didn't result in any sort of discipline. It was more just an investigation of the other things they found that I technically had violated a minor policy so we had a discussion about it. As far as I know, it was completely cleared up with no disciplinary action other than just a -- maybe an oral -- just an oral conversation with my Sergeant about you know, just -- just make sure you just document things slightly better.
Q. Okay. And were you disciplined at all with respect to your actions during the George Floyd protests?
A. No, ma'am.
Q. Okay. And I know we said that we both know what I mean when I say that. That I'm talking about the events surrounding the May 30th, 2020. The days before and the days after.
There are a couple of places within the documentation of those protests that I see remarks that people were throwing things, intending to hurt officers. And I want to talk to you about intent for a second. Are you able to tell in the moment when you're up

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overpass what someone's mental intention is?
A. I'm unable to tell what somebody's mental intention is. What I -- what I believe is that a reasonable person would say that if you throw an object at a person, even if it's a small object, you are intending to -- to -- if there's not an agreement to play catch you are intending to hit them with it. And therefore at least attempting to -- to cause them with throwing that object. And possibly even cause pain.
So I mean bodily injury is any pain or illness. But you know, when I'm seeing rocks thrown at people, the only time you throw rocks at people is to intentionally hurt them. The only time you throw fireworks at people, you know, is to intentionally hurt them. Unless there is a prior agreement that we're going to shoot fireworks at each other.
Q. It's my understanding that after these events occur you -- you guys -- you APD officers were instructed not to follow the standard written policy on response to resistance reports, but to do something different, is that correct?
A. Yes, ma'am.
Q. Could you kind of tell me what the difference is in what the policy would have required and what you were instructed to do?
A. Yes. So essentially -- sorry, let me start over.

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So policy states that for every response to resistance they're certain things that need to be done. You need to contact a supervisor. You need to contact EMS for the person that was involved in a response to resistance. There's things like we're required to take pictures of that person and ourselves. And anybody who was involved in the response to resistance.
And then as -- A -- what's called details page in our writing system is to be completed for every individual that is involved in a response to resistance. And then we are supposed to be interviewed by that supervisor. Whether sometimes it's on the phone. Sometimes depending on the severity of the response to resistance they will come and interview us in-person. And then we are to write a detailed, either a report or supplement based on the -- for service or whatever needed to be reported and that was due to resistance.
The way that I understand it is that this was an unprecedented event that the department did not have the resources to be able to do that. So it would have been impossible to every time I impacted or attempted to impact somebody to stop, call a supervisor, have the supervisor come out, pull me off the line, interview me, take pictures of -- of -- of everybody that witnessed it, take pic -- you know, interview everybody that witnessed it, try to talk to the people

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that was impacted or almost impacted, coordinate getting to them.
We -- we weren't able to do those things because, we were so overwhelmed with the crowd control -- trying to maintain as much of a -- a peaceful assembly as possible. So at the end of the night, I don't remember if it was a broadcast over the radio or if it was given to individual supervisors who just went around telling all that they could see, it was if had you had a response to resistance, write a supplement of roughly where you were, what you did. If you fired your less-lethal, roughly how many rounds you fired. And submit that under the case number that you were given.
So that was the -- that was the first -- after that it -- it became more detailed as we had the time, as we had the manpower to go through each of these instances, it -- we were required to go back and -- and -- every second of our video, and do a detailed supplement of everything that we did.
So that's why I have multiple supplements. So my first one is very generic, very vague. And then, hey, that's not quite enough, go back in and add a little bit more. Okay, that's fine, I'll go add a little bit more detail. And then, hey, give me another one, I need more detail. And then, hey, give me another one

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need -- and then it was just, hey, minute by minute, you go through tell -- you know, anytime you took any sort of police action, I want it timestamped. I want it -- you know, documented.

And so that's to the best of my ability -- that's -- is what I did. And that all went to a -- I don't remember what they call it. But it went to a -- a group of supervisors who went through each one of them and determined if it needed to go -- if -- if it was justified within policy and -- or if it needed to be looked at by IA -- sorry -- by IA. Or if it needed to be looked at by SIU.

Q. Okay. Do you know a former APD officer named Michael Harris?

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

Q. Okay. I wondered if by any chance he might have been the guy standing to your right in the body cam we watched. But you don't know?

A. I -- I don't know and I -- I'll be honest, I'm -- I'm really, really bad with names. So I --

Q. Okay.

A. -- I don't know.

Q. I Googled you.

A. Oh, no.

Q. And --

A. That's terrifying.

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Q. I think you're on the Board of Directors of the APAPAC; is that correct?

A. Yes. I'm -- I'm part of the Political Action Committee for the Austin Police Department.

Q. Okay. And as -- what is the kind of main objective of that group?

A. So the main objective of the Political Action Committee is to represent the Austin Police Department during legislative sessions and during different city and state elections so that we as a police department have representation at the state level, at the city level you know. And that we have -- we have help to you know, keep the -- you know, a lot of the -- the safety -- the safeties that are built into our job.

So for instance this last legislative session there was talk that people wanted to make us -- we're employees to the mayor. And so we as the PAC worked with legislators at the state level to try and help pass laws that would protect us from becoming at-will employees to the mayor and the city manager so that it wouldn't be one of those things where you know, one of our officers -- and I'm not saying our mayor would do this, that's not what I'm saying. But you know, as an example you know, somebody sees a speeding car, pulls it over and it happens to be the mayor and the mayor just goes, well, you know what, you're fired.

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Q. Yeah.

A. You know so it was it's -- it's -- it's those sorts of protections. I'm still fairly new to it. I've been -- I've been on it for about a year. And a lot of -- most of the stuff we've done is, hey, this person is running for -- for -- Williamson County you know, County Commissioner and he would -- you know, he wants our support and stuff like that. Or you know, different city council members who are -- who are running for position you know, and -- it's well, you know, do you support the police? And if you do then we absolutely would love to -- love to you know, throw our support to you. And stuff like that.

Q. Mm-hmm. Okay. How did you obtain your position on the board. Were you voted in? Was it just you volunteered and -- and you got it? How does that work?

A. I was -- I was suggested to the position by a Commander who has since retired from APD. His name is Commander Don -- or he was Commander Donald Baker. His -- was actually my -- my parents' realtor and so through the -- we -- we had many off-duty chats where he realized that had you know, some level of interest in politics, but also some level -- a much higher level of interest in, you know, making sure that my career here at the Austin Police Department was productive, and you know, protective.

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And so he actually asked me if I would -- to join. And I put him off for about a year because I didn't think that somebody so new should be, you know, representing like that. And he finally convinced me to join. And you know, he said, you know, just -- just be part of it so you can learn what it's about. And learn how all of this stuff works. And then, you know, time goes by you can get as active as you want to -- you don't like it you can leave. But not like in any way.

Q. So you got involved and then is there like -- to keep -- board? Or is it just people volunteer and -- safeties

A. Yes. So a name is suggested by a member -- there's an opening and the board votes yay or nay -- person should be allowed to -- to come in.

Q. Okay. I'm going to ask you a series of -- that I think can be kind of quick yes or no questions -- you feel like you need to elaborate, I'm not going to -- but hopefully they'll be kind of quick.

Is -- does APD strive through its -- to keep the public safe?

A. Yes.

Q. Does APD strive through its policies to -- its officers?

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A. Yes.
Q. Okay. Now this one is not a yes or no. Is there any indication within policy -- if it's one officer or a layperson citizen, who you're supposed to choose?
MR. LAIRD: Object to the form, but you can answer.
THE WITNESS: I -- I don't believe that there is any policy or -- I -- I don't believe that there's anything that is -- is determinant on you know, you should choose one or the other.
Q. Okay.
A. I think in those situations, intensive investigations are done to see who was in the right and who was in the wrong. And the outcomes have varied throughout the last couple years.
Q. Okay.
A. We've had a couple of officers who have overstepped and they have been fired or they have left.
Q. Okay. Back to the kind of yes or no. Is it APD policy to strive to protect the Constitution and the amendments thereto?
A. Yes.
Q. And would that include the exercise of First Amendment rights?

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A. Yes.
Q. And would that include ex -- the Fourth Amendment right to be free from excessive force?
A. Yes.
Q. All right. Walk me through your analysis as an Austin Police Department officer holding a shotgun equipped with beanbag rounds of whether to fire. I know that -- I know what the directive was or the order was. You told me about that. But what other questions do you need to ask in your mind you know, to go through your analysis to fire that weapon?
A. Are we -- and I -- just as point of clarification, are we asking in general or are we asking specifically for the events that happened on the 30th?
Q. If there's a difference, I'll will ask for the process. So why don't you tell me in general first?
A. So in general -- so the less-lethal shotgun is what is considered a pain compliance tool, right?
Q. Mm-hmm.
A. It is -- it is a standoff weapon. It is a weapon system that is used to try to gain compliance through pain. And that sounds archaic and barbaric, but the idea is, is that it is the -- the -- if somebody is putting themselves, or somebody else in danger, say they have a weapon. Right? Say we've got somebody right here on the Congress Bridge and they're walking up and down the -- with the knife in their hand. And you know, as people -- they -- you know -- kind of chasing them and -- and kind of like lunging the knife at them, right?
Q. Mm-hmm.
A. So theoretically, black-and-white you know, we have the ability to shoot that person. Right?
Q. Mm-hmm.
A. They're -- they're actively trying to hurt -- possibly kill people. But that's not our first step. Our -- our first step is to try to and gain compliance with -- we're, you know, we're going to be at a standoff distance with something in-between us. And we're going to announce -- we're -- we're gonna tell you to put that weapon down. If that weapon isn't put down then if available our next step is to try, if we -- again, if available, all of these -- also keep in mind, all of these situations are fluid. So they -- I'm not saying that it's going go every time, right?
Q. Okay. Mm-hmm.
A. The next step we can use is using that less-lethal shotgun to fire a beanbag round at the person to induce pain as a means to try to get them to stop that behavior that weapon, so that we can then approach and control them without taking it to a lethal level.

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Q. Mm-hmm.
A. Right? It is often used in the unknown. So we don't know if the person has a weapon or not, but we suspect that the person has a weapon. It is unsafe for us to move forward and go hands-on. So use the standoff -- the orders are not -- the orders that we -- that -- these people are not -- these individuals are not complying with, then our next step is if we're close enough to possibly use a Taser or to use a kinetic impact device -- the less-lethal shotgun. It is mainly to prevent us from using deadly force.
Q. Mm-hmm. Mm-hmm, okay.
A. But --
Q. It does sound like that's different from kind of the process engaged in on May 30th? Is --
A. Slightly.
Q. -- were there some differences?
A. Yes. So one of the issues that we ran into during the George Floyd riots is that we had such a large accumulation of people who were showing hostilities to us. Even the ones that weren't necessarily throwing projectiles
Q. Mm-hmm.
A. The aggressiveness in which they are screaming and shouting, and pushing against us made it very dif

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to coordinate, you know, doing arrest teams and arresting individual agitators. So at a standard, peaceful, lawful protest that somebody sets up, you know, SRT will go out there and they will have teams, different types of teams set up. You know you'll have your containment teams, you'll have your arrest teams and stuff like that. And the idea is -- is you guys can scream and shout and -- and let your voices be heard. Let your message be heard.

However, due to the mob mentality, we can't allow agitators to -- to cause people to start taking that to the next level. So as soon as we see that in a standard situation when it comes to protests and stuff like that, we engage an arrest team. Where the frontline will break open and four or five officers will -- they will single out -- they will all communicate which person is the agitator.

They will enter the crowd as a group with -- protect each other with two extra officers in the middle. And that will be their -- their hands-on people. They will surround that agitator, place them in handcuffs and remove them from the crowd. So that they don't intentionally stir that crowd up into doing something that the crowd doesn't necessarily want to do, but psychology and history has shown us that agitators can turn peaceful crowds violent, right? Even if it's just causing enough fear that they stampede each other, right?

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So that is what's done normally. Because we couldn't do that, because this was so large and because it was so -- what's the word I'm looking for? So -- less-lethal volatile. Complex. We couldn't form arrest teams. There was -- at the beginning there were so many agitators present we -- we couldn't wade into these crowds and arrest these individuals. We can't go after -- you know, we can't individually run after these people.

Through past mistakes made by officers not just here, but around the country and even around the world, we have seen that when you have a crowd that is already upset at you and an individual officer tries to wade into the crowd to arrest a singular individual, they become the ones that is -- the one that is surrounded. And it just takes one person to start some sort of physical altercation and everybody begins that physical alteration. And the officer is in danger of getting severely hurt or losing his life.

And that's why we do it in that group setting. So that we can protect those internal officers with that slight perimeter around them. Slightly pushing people back. And then bringing everybody back at the same time and then just allowing the crowd to go back to what they were doing without that -- that individual agitator.

When we have so many agitators -- we have

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thousands of rocks littering the 35 and we have water bottles, and we have fireworks, and we have all of these things going on at once, and then you have these agitators constantly moving from little group to little group, you know that even if we did start chasing after them, pretty soon we're going to be so far away from our own people that we are in a dangerous position. And then it leads us in a dangerous position because now, say it was me, I -- I'm -- and I'm suddenly surrounded. And these people are attacking me, right? Am I justified in just -- standing -- standing them? No, but I also have the right to protect myself, right?

So we get into this really, really scary area where you know, it -- it's -- it becomes so volatile that too many mistakes can be made, right? And so that's why we have to work as a team. That's why we -- we make everything set up in these arrest teams and in these proven SRT methods to remove the agitator while still allowing people to exercise all of their rights.

These George Floyd riots happened and it was unprecedented for us. We -- we couldn't -- we didn't have the teams. We didn't have the people. We didn't have -- it was so spread out. It was -- it -- there -- there was no way to safely try to effect arrests. So it was decided by the chain of command that the only way to proceed was to deter the agitative behavior by using standoff -- less-lethal weapons.

And as the night went on the -- the -- it lessened. They were still there the entire time, but it wasn't -- it wasn't anything like in the beginning.

Q. Do you think -- do you think it's accurate that APD was not ready for a situation like this?

MR. LAIRD: Object to the form.

THE WITNESS: I -- I can't -- I can't personally speak for the department, right? I can -- I didn't -- I don't seem like it.

Q. Mm-hmm.

A. Okay. Whether they were or they weren't, what I can say is, from a person on the ground -- and -- and that -- and seemed like we were behind the curve.

Q. Mm-hmm.

A. That is my personal opinion. And it is a personal opinion of somebody who had -- has zero control over that.

Q. Sure. Sure. Have policies on crowd control -- the use of force changed since the George Floyd protests?

A. Yes.

Q. And I can look -- I can compare the written documents, but I'll ask you just kind of general li

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you give me some general areas in which changes were made?
A. Yeah. So I don't remember which day, but whether it was a day or two after the 30th, the -- they changed how they wanted us to engage people with less-lethal weapons. I want to say they had designated people in designated places with those weapon systems. I believe that the ability to use crowd dispersion devices, such as smoke and gas, was taken away from SRT and was given strictly to SWAT.
Q. Mm-hmm.
A. And they were the only ones that could deploy those types of crowd control measures, if I remember correctly.
Q. Mm-hmm.
A. And then I think even after that that was further taken away to where we could not engage in any of those things. And that's -- that's when DPS troopers came and began assisting us. Because we -- we suddenly really couldn't do anything to try and stop agitative behavior, if it got out of hand.
Q. It sounds like that was an attempt to reduce the usage of the so-called less-lethals and the gas. Is that what you understood that change to be? An attempt to kind of reduce the use?
A. I don't -- I don't know if it was an attempt by

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the department to reduce the use. Or if -- I know that the city council got involved. And I -- I believe that they made some directives that forced us to change certain policies and -- and the way that we did things.
Q. Mm-hmm.
A. So I don't know if that was a result of the department necessarily wanting things to change or the department being forced to changed -- sorry -- forced to change by things that the city council enacted.
Q. Okay. I have to tried to be thorough, Officer Wright, but have I failed to ask you about anything that you think is important with regard to what happened out there on May 30th, 2020, that you -- you think should be known or should be considered?
A. I don't -- I don't think so, no.
Q. Okay. Have you understood all of my questions today? Or if not asked me to clarify and gotten to the point where you understood?
A. I believe so.
MS. JOSEPH: Okay. All right. I'll -- I'll pass the witness.
MR. LAIRD: And we'll reserve our questions until the time of trial. We -- we will want to read and sign. And then I also wanted to see, Ms. Walters, if we could get an expedited copy of the transcript. And --

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COURT REPORTER: Okay. Go ahead.
MR. LAIRD: And -- and I also will n
-- under a copy of the video as well.
COURT REPORTER: Okay. So you would
copy of the transcript and video, a read and sign,
want to see about possibly getting this expedited.
MR. LAIRD: Yes, that'd be great, if
COURT REPORTER: Do -- do you have a
how soon -- how quickly -- if you it were up to you
then I'll tell you if I can pull that off.
MR. LAIRD: Maybe --
VIDEOGRAPHER: Pardon the interrupti
we should go off the record here. It's the videogr
Is that okay with everyone.
MR. LAIRD: Yes.
VIDEOGRAPHER: All right. So the ti
2:47 p.m. and we're off the record.
(Proceedings concluded at 2:47 p.m.)

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CHANGES AND SIGNATURE - ERRATA
WITNESS NAME: JUSTIN WRIGHT DATE: JULY 21, 2023

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, JUSTIN WRIGHT, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
JUSTIN WRIGHT

THE STATE OF TEXAS)
COUNTY OF)

Before me, _____, on this day personally appeared JUSTIN WRIGHT (or proved to me under oath or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2023.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES:_____

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYREE TALLEY	§	
Plaintiff,	§	
	§	
v.	§	CASE No. 1:21-cv-249-RP
	§	Lead Case
	§	
CITY OF AUSTIN AND JOHN DOES	§	
Defendants.	§	

****

MODESTO RODRIGUEZ	§	
Plaintiff,	§	
	§	
v.	§	CASE No. 1:21-cv-1087-RP
	§	
CITY OF AUSTIN AND JOHN DOES	§	
Defendants.	§	

****

REPORTER'S CERTIFICATE
OF JUSTIN WRIGHT

****

I, Lilia W. Walters, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That the Witness, JUSTIN WRIGHT, hereinbefore named was at the time named, taken by me in oral stenograph on July 21, 2023, the said Witness having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter

reduced to typewriting by me or under my direction. The charge for the completed deposition is $_____ due from Plaintiffs;

( ) That pursuant to the Federal Rules of Civil procedure, the Witness shall have 30 days after being notified by certified mail, return receipt requested, by the deposition transcript is available in her office for review and signature by the Witness and if any corrections made are attached hereto;

( ) That by agreement of counsel, a reading condensed copy of the deposition transcript along with the full-sized original Changes and Signature Sheet has been sent to _____ on _____ for review and signature within 30 days and if any corrections returned are attached hereto;

( ) That by agreement of counsel, the deposition officer is instructed to release the original deposition transcript to _____ on _____, for review and signature, and the deposition officer is thereafter released of any further responsibility with regard to the original;

( ) That the witness shall have thirty (30) days for review and signature of the original transcript and if any corrections returned are attached hereto;

( ) That the signed transcript ( ) was ( ) was not

received from the Witness within 30 days;

( ) That the examination and signature of the Witness is waived by the witness and the parties;

That the amount of time used by each party at the deposition is as follows:

Ms. Joseph - 4 HOURS - 6 MINUTES
Mr. Laird - 0 HOURS - 0 MINUTES

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in this action in which this proceeding was taken to the best of my ability and under the circumstances, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 25th day of July 2023.

_____
LILIA W. WALTERS, TEXAS, 12390
EXPIRATION 3/31/2025
Magna Legal Services
Firm Registration No. 633
16414 San Pedro Avenue
Suite 900
San Antonio, Texas 78323
Phone 210.697.3400
Fax 210.697.3408

Exhibit 9

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

MODESTO RODRIGUEZ,

Plaintiff,

v. Civil Action No.

CITY OF AUSTIN and OFFICER JOHN DOE, 1:21-cv-01087-RP

Defendants.

TYREE TALLEY,

Plaintiff,

v. Civil Action No.

CITY OF AUSTIN and JOHN DOES, 1:21-cv-00249-RP

Defendants.

VIDEOCONFERENCE DEPOSITION OF

MICHAEL MALONEY

DATE: Wednesday, July 19, 2023

TIME: 9:05 a.m.

LOCATION: Remote Proceeding

Independence, MO 64050

REPORTED BY: Sidney Martinez, Notary Public

JOB NO.: 5949589

APPEARANCES

ON BEHALF OF PLAINTIFFS MODESTO RODRIGUEZ and TYREE TALLEY:

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(512) 439-3200

ON BEHALF OF DEFENDANT CITY OF AUSTIN:

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MONTE L. BARTON, JR., ESQUIRE (by videoconference)
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PO Box 1088
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ALSO PRESENT:

Priscilla Chavez, Paralegal, (by videoconference)
Alexis Lopez, Paralegal, (by videoconference)

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EXHIBITS

NO.	DESCRIPTION	PAGE
	(None marked.)	

DOCUMENTS REQUESTED

NO.	DESCRIPTION	PAGE
1	All correspondence Mr. Maloney/Hendler	9
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PROCEEDINGS

THE REPORTER: Good morning. My name is Sidney Martinez, and I'm the reporter assigned by Veritext to take the record of this proceeding. We are now on the record. The time now is 9:05 a.m.

This is the deposition of Michael Maloney taken in the matter of Modesto Rodriguez vs. The City of Austin, et al., on July 19, 2023.

The reporter is located in San Antonio, Texas, and the witness is located in Independence, Missouri.

I am a notary authorized to take acknowledgments and administer oaths in Texas. Parties agree that I will swear in the witness remotely outside of the State of Texas.

Is all -- everyone -- party in agreeance with that?

MR. LAIRD: Yes.

MS. JOSEPH: Yes.

THE REPORTER: Okay. Absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from this recording of this proceeding:

- is intended for all uses permitted

under applicable procedural and evidentiary rules and the laws in the same manner as a deposition recorded by stenographic means; and

- shall constitute written stipulation of such.

At this time, will everyone in attendance, appearing remotely, please, identify yourself for the record, beginning with Plaintiffs' counsel?

MS. JOSEPH: Hi, Leigh Joseph here with Hendler Flores on behalf of both Tyree Talley and Modesto Rodriguez.

MR. LAIRD: And I'm Gray Laird, along with Monte Barton and Priscilla Chavez, representing the defendant, City of Austin.

THE REPORTER: Thank you. Hearing no objections, I will now swear in the witness. Mr. Maloney, could you, please, raise your right hand?

WHEREUPON,

MICHAEL MALONEY,

called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE REPORTER: Thank you. You may put

your hand down. Mr. Laird, you may begin.
MR. LAIRD: Thank you.
THE REPORTER: You're welcome.
EXAMINATION
BY MR LAIRD:
Q Good morning, Mr. Maloney.
A Good morning, Mr. Laird.
Q I don't think we've ever met yet, but I'm just going to ask you a few questions this morning about your expert background and about your opinions in this case.
I don't think it's going to take very long, but just let me know if you need to take a break for any reason. And we'll be glad to accommodate that.
A Thank you.
Q First off, let me ask you. Have you given a deposition before?
A Yes, I have.
Q Okay. Do you know about how many depositions you've given?
A More than five, less than ten.
Q Okay. That's fine. So you, generally, know how this process works, I'm assuming.
But just let me know if I ask you a question that is not clear or you need me to rephrase it or

repeat it, or anything you need me to do.
And I'll be glad to do that. Is that fair?
A Certainly.
Q Okay. First off, let me ask you. We had served a notice of deposition for your deposition in this case, and it's just, basically, a document that has a list of items that we had asked you to bring or have available.
And have you seen that notice of deposition?
A I have.
Q Okay. And let me just go -- I'm not going to go through all of them, but just let me ask you about a few of the documents that we had asked you to have available.
The first one listed is "all 'materials' provided" to you, and I'll go through those in more detail based off your report.
But I'm assuming that you would have access to those today if we needed them.
A I would. I have to manipulate a couple screens, but, yes, I'd have access to them.
Q Okay, perfect. And another thing we had asked you to bring, of course, is your resume or CV. And I'll ask you some questions about that.
But you have a copy of that available if you

need it.
A I do.
Q Perfect. And then we had also asked you to bring copies of any correspondence between you and Plaintiffs' counsel as well as any other experts, including consulting experts.
Do you have copies of those available if we need it?
A I have copies of those available if needed.
Q Okay. And first off, let me ask you. Do you remember or have available just roughly about when you were retained as an expert in this case?
A Oh. I could find out. It would take a little bit of searching. I was already involved in another case with the firm, and they asked me to take a look at the Rodriguez and Talley case as well.
Q Okay.
A It's been quite a while.
Q Okay. That's fine. And when you say "the firm," I'm assuming you're referring to the Hendler firm, who represents the plaintiffs in these two cases.
A Yes, I am.
Q Okay. And do you remember who you were contacted by from the firm?

A It would've been the attorney I was discussing at -- with at that time. I'm going to do a quick search here. I believe it would've been Rebecca Webber [ph].
Q Okay. All right. And obviously, I'm assuming you've spoken with Ms. Joseph, who's here today from the Hendler firm as well, at some point.
A Yes. We've been speaking for probably a month or two. Yes.
Q Okay. Have you had any correspondence or discussions with any other attorneys at the Hendler firm, or really, from any other firm representing the two plaintiffs in these two cases?
A No, I haven't. I've had, obviously, Zoom discussions with -- with the attorneys and whoever they had on at that time. But, no. My contact's been limited to that firm.
MR. LAIRD: Okay. All right. And I guess what -- I mean, we don't have to necessarily go through it today.
But I guess what I would request, Leigh, is if y'all can produce copies of that correspondence to us. I think it should've -- it probably was covered by one of our discovery requests.
MS. JOSEPH: I'm confident we did,

Gray.
MR. LAIRD: Okay.
MS. JOSEPH: I can go back and find a date of production.
MR. LAIRD: That's fine.
MS. JOSEPH: But I'm confident you have it.
MR. LAIRD: That's fine. Okay. I'll double-check that as well, at some point.
MS. JOSEPH: Okay.
BY MR LAIRD:
Q And let's see. I'm assuming that any exhibit that you would ultimately use with your testimony at trial, more than likely, I would -- I guess my question is, have they been referenced in your reports in these cases?
And I understand that you may supplement your reports at a later time. But at least, as of now, would those at least be identified in your reports?
A My reports, right now, include the majority of the graphics within the report, within the body of the report.
Q Okay, all right.
A Once again, not limiting to that, but

that's --
Q Sure.
A Those are certainly the basis from which I would testify.
Q Okay. All right. And that's perfect. All right. Sir, let me go ahead and ask you a little bit about your background, and I have a copy of your CV that was produced to us.
And I'm assuming that that is -- you have a copy of it in front of you, the one that was produced to us.
A I do. As far as I know, I have the same one open. Yes.
Q Okay. All right. First off, let me just ask you. What areas do you consider yourself an expert in for the purposes of these two cases, the Talley case and the Rodriguez case?
A I consider myself an expert in crime scene or death scene, or injury scene reconstruction.
Q Okay.
A Photogrammetry --
Q I'm sorry. What was that?
A Photogrammetry.
Q Okay.
A It's how we got the measurements based upon

the video images.
Q Got you.
A And then wound dynamics and mechanism of injury.
Q Okay.
A Trajectory analysis.
Q Okay.
A And I'm trying to think if I used any of the other skill sets, but this -- I -- I think that's pretty comprehensive now when we cover a scene reconstruction.
Q Okay. So let me make -- I jotted these down. Let me make sure I've got them, crime scene reconstruction, photogrammetry.
A Yes.
Q Wound dynamics and trajectory analysis.
A No, wound dynamics and mechanism of injury. It's --
Q And mechanism of injury, okay.
A -- the same, but different.
Q Okay. All right.
A And also, I -- I think that's going to cover it.
Q That'll cover it. Okay.
A That's a broad enough net. If not, we can

certainly -- if I come up with something different where I'm rendering an opinion on, we can certainly discuss that.
Q Okay. Looking at your CV, the copy that I have doesn't appear to be page numbered. But it has a section on your education, and let me just ask you a few questions about it.
It's kind of toward the middle to the back of your CV.
A I'm there now.
Q Okay. It looks like you received a Bachelor of Arts from the State University of New York. What was your degree in? What field was it in?
A It was in -- oh, we're going all the way back to -- back to that. It was in -- I'm sorry. I just had a little mental blank. So give me just --
Q That's okay.
A I'm not sure if it was in -- there was a supporting concentration in biology and chemistry, and I believe it was under the auspice of government/criminal justice.
Q Okay. All right. And let's see. All right. And what you have listed here, at least on your resume, is supporting concentration in biology, chemistry, and criminology.

A Yes.
Q Does that sound right?
A Yes.
Q Okay. All right. And did you take any -- I'm assuming if you had a concentration, in part, in criminology, would you have taken law enforcement classes for your bachelor's degree?
A Yes, I did.
Q Okay. I know it's been a while. Do you remember any of those specific classes?
A They would've been the -- the required classes, plus probably some of interest beyond that. It's been quite a few years.
Q Right. I'm right there with you. All right. And then you have listed University of North Florida, completed coursework in 1990 towards secondary teaching certificate in biology and natural sciences.
A Yes.
Q Okay. And I'm assuming that that coursework looks like it was focused on kind of the scientific aspect of your education, biology, and natural sciences. Is that fair?
A It was to qualify me. I worked as a high school science teacher for several years.

Q Okay.
A So the classes were specifically in order to meet the State's requirements for being a secondary-level science teacher.
Q I see. Okay. And then next listed is George Washington University, where you earned your master of forensic sciences in 1995.
A That's correct.
Q Okay. And you list, on your CV, that you took coursework working on your master's in crime scene processing, advanced crime scene processing, forensic identification, forensic pathology, wound dynamics and evidence of injury, forensic laboratory procedures, DNA evidence, crime scene/forensic photography, trace evidence, impression evidence, friction ridge evidence, biological evidence, testifying as an expert witness, and constitutional law. Is that correct?
A That's correct.
Q Did you take any courses while working on your master of forensic sciences on police policies and police tactics that you can recall?
A No, I did not, not at the master's level.
Q Okay. While working on your master's degree, did you take any courses on law enforcement

use of force or response to resistance?
A No, I did not.
Q Okay. All right.
A Let me clarify that; I'm sorry.
Q Sure.
A For "response to resistance," define that.
Q Okay. It, basically, is the same thing as "law enforcement use of force."
Some departments call it different things. Some departments call it "response to resistance." Others call it "use of force." It's basically, the same thing.
A I'm more familiar with the "use of force" term, and, no, I did not receive classes in that as part of my master's degree.
Q Okay. Have you obtained any other degrees past your master's in forensic science?
A No, no other degrees.
Q Okay. All right. And then, looking at your CV, you have a list of publications there, on the second page.
A I am there.
Q Okay. And it looks like -- and I'm not going to go through all of these, but it looks like, at least under that section, you have four

publications. Are those actually books that you've written, or --
A Yes, those are books that I've written, and in one case, it was a series of chapters I contributed.
Q Got it. Okay. And it looks like, at least from the titles of these publications, that they all deal with crime scene investigation, death scene investigation, and kind of crime scene processing, those subject areas.
Is that fair to say? I mean, I know they probably include other subjects as well, but.
A In death scene investigation, that would be about a third of the book.
A third of the book would be wound dynamics and mechanism of injury, and a third of the book would be how to respond to specific scenes in order to be able to maximize the evidence which has been covered.
I'm going to change all my "thirds" to a "fourth" because I have one more.
And then a fourth of the book would cover the actual procedures for documenting blood stain pattern analysis, shooting trajectories, wounds to the body, things like that.
Q Okay.

A It's far more expansive in scope than a book on how to crime scene process.
Q Okay. Have you written any books or publications on police policies and tactics?
A No, I have not.
Q Okay. Have you written any books or publications on law enforcement use of force?
A I've done professional presentations on use of force, but I don't believe it's from the angle that you're looking at.
I've done presentations on police-involved shootings and how to be able to reconstruct and maximize what event and event analysis occurred during the shooting.
Q Okay.
A Or during the deployment of force.
Q So your publications would have addressed how to analyze the scene of officer-involved shootings. Is that fair?
A Yes.
Q Okay --
A And how to reconstruct them, yes.
Q Pardon, I'm sorry. I spoke over you.
A And how -- and how to reconstruct them.
Q Got it. Okay. They would not have -- they

would not have addressed the standards for uses of force or police policies regarding use of force. Is that correct?
A No, they would not.
Q Okay, all right. And I may speed this up a little bit. Let me ask the same question with regard to -- you have a fairly long list of professional presentations that you've made over the years.
And again, it looks like most of those deal with kind of the forensic science aspect of crime scene investigation. Is that fair to say?
A That'd be correct.
Q All right. Have you given any professional presentations addressing police policies or practices regarding use of force, crowd control, or those types of subject matters?
A I apologize for the hesitation. I'm trying to --
Q And feel free to -- you can look through your list if you need to. Feel free to do that.
A Yeah. Let me see what I have here on the list. I don't show any of those on the list. No, I don't.
Q Okay. When you say "any of those," you mean none of those subject matters.

A Correct. Once again, I've done presentations in law enforcement shootings and officer-involved shootings, but not on the policies -- on the policies that surround those situations.
Q Okay. Or the standards that are used to evaluate officers' uses of force, is that correct?
A Correct.
Q Okay. And same question with regard to your section on Professional Research and Publications, a couple of pages over, it looks like you have sections on Published or Presented Research as well as Research Completed in the Publication Preparation Stage.
Do any of those -- does any of that research or potential publications address use of force issues such as the standards used to evaluate uses of force or policies regarding uses of force?
A No, it doesn't.
Q Okay. And then you have also if I can find it, I believe, listed some training courses that you have developed over the years.
A Yes.
Q Same question for those, have you developed any training courses regarding law enforcement use of force and the standards used to evaluate uses of force?

A No, I have not.
Q Okay. Or law enforcement policies and practices regarding uses of force?
A No.
Q Okay. All right. All of the training courses you have developed have been in the forensic science field. Is that correct?
A Yes, the extended forensic field. Yes.
Q Okay. And then you also list your -- you have a section for Relevant Employment, and I know that you told us that you taught kind of in the high school level for a few years.
Was that straight out of college, or --
A No, that was actually out of the Marine Corps.
Q Okay.
A I did -- I did a term in the Marine Corps. When I left the Marine Corps, I started teaching high school while I was basically waiting to get on with a federal agency.
It takes a couple of -- back at that time, it took a couple of years to get on.
Q I see. Okay. And it looks like that your current employment is with Forensic Solutions in Kansas City from, it looks like, 2008 to the present.

Is that correct?
A That's my current employment. Yes.
Q Okay. And is that your company that -- it says you're the president of it. So I'm assuming that's your company for your consulting and expert work.
A Yes, it is.
Q Okay. And is that your full-time position now?
A Well, my wife would like it -- me to consider it my semi-full-time position. I'm semi-retired is how --
Q Oh, I see. Okay.
A But that is -- I don't do woodworking or anything else for pay or for hire or profit. So, yes, it would be other than my retirement and pension and such. This is what I do.
Q Okay. All right. And you state there in your CV that you provide training seminars on death scene investigation and crime scene investigation.
You also conduct case consultations and provide expert testimony for criminal and civil matters in death scene analysis, crime scene analysis, shooting incident reconstruction, and blood stain pattern analysis.

Q Okay. And when was that?
A Oh, I was certified -- matter of fact, I just retired my certification from Texas. I was certified as a law enforcement officer, a peace officer way back when I worked as a deputy sheriff in Tom Greene County.
Q Okay.
A And I'm going to come up with a year. No, I'm not, but I'm going to -- suffice it -- suffice it to say my initial law enforcement job was about 40 years ago.
Q Okay.
A And then I was also certified as a law enforcement officer and criminal investigator in the federal system.
Q Okay.
A As a federal LEL [ph] law enforcement.
Q Okay. That was a federal certification.
A Yes.
Q Okay.
A And then my most recent certification would've been as a law enforcement specialist for the federal government.
Q Okay. And what was that specialization in, what subject areas?

And you also develop and conduct training classes in, it looks like, those same subject areas. Is that correct?
A Yes.
Q Okay. Do you -- okay, I'm sorry. I jumped ahead of myself there on your resume.
Do you currently do any type of analysis or expert work in the subject areas of use of force by law enforcement as far as the standards for uses of force and policies and practices in evaluating law enforcement use of force?
A The third part of that I have difficulty with. There were three parts to that. So could we break that down?
Q Sure, sure.
A Or I can, if you'd like. On the policy -- on the policy, no, I don't do anything on that. Then there was a second area you asked about.
Q Yeah. If I can remember what it was, I think it was, basically, on the standards used to evaluate law enforcement uses of force.
A No, I do not.
Q Okay. All right. Have you ever been certified as a peace officer?
A Yes, I have.

A It was in crimes against persons, crimes against property. For the most part, that would focus on death scene investigations, forensic science, or forensic investigations and -- and sex crimes.
Q Okay. And can you give me -- I don't need exact dates.
But when you were a deputy sheriff in Tom Greene County in Texas, just roughly, you said it was about 40 years ago. Do you know how long you served as a deputy sheriff?
A I'm 63 now, and I was about 20, 21 when I did that. I served for about two years as a deputy sheriff. Then I moved up to Washington State, and I served with the police department there for about a year.
Q Okay.
A And then, I went into the Marine Corps after the barracks bombing in Beirut.
Q Okay. All right. And other than serving as a deputy sheriff in Tom Greene County, did you hold any other law enforcement positions in the State of Texas?
A No.
Q Okay. And then when you went to, you said, Washington State for a year --

A Yes, yes.
Q -- you were you an actual police officer, then?
A I was a police officer, yes.
Q Okay. And that was for roughly one year.
A About a year.
Q Okay. All right. Have you been an actual police officer or deputy sheriff, or state trooper in any other states besides what you've already told me?
A No.
Q Okay. All right. And then, you also state that you worked for the Denver crime lab from April 2018 to October 2018 as a crime scene supervisor. Is that correct?
A That's correct.
Q Okay. And you stated in pretty good detail about what your responsibilities were there, and it looks, to me, that they all involve kind of the technical or scientific aspect of crime scene investigating.
Is that a fair summary of your duties at the Denver crime lab?
A Yes, technical investigations and reconstruction.
Q Okay. And did any of those responsibilities

at the Denver crime lab involve evaluating law enforcement uses of force from a standards, policies, and practices standpoint?
A No, it did not.
Q Okay. All right. And I'm not going to go through all of your other prior employment. It looks like you have it all spelled out there. Would you mind just reading over that, just kind of looking --
A I'd like to go -- I'm sorry. I'd like to go back and make a correction.
Q Sure.
A Thank you. I apologize. I was in law enforcement in the State of Washington, but I was not in a sworn position.
Q Okay. What was your position there?
A I was a -- I was hired on as an officer to do parks and recreation areas. They have a variety of different areas like that, but I was not the arresting officer.
Another officer would have come to make the arrest, and I didn't want to give you the wrong impression on that. I apologize.
Q Yes, sir. No, no, no apology necessary. Thank you for providing that.
Is there anything as -- you can just look

over the employment you have listed, and just let me know if you think anything has been left out, unintentionally, I'm sure. But just let me know if that covers your prior employment.
A It does.
Q Okay. Great. And then you also provided, to Plaintiffs' counsel who provided it to us, a list of your prior court cases in which you've given deposition or trial testimony for the past ten years.
And do you have a copy of that handy that you can refer to?
A I will pull that up right now.
Q Sure.
A I have that.
Q Okay. And I'll just ask you a few questions about each of these. The most recent one, from 2023, that you have listed is State of Texas vs. Xavier Harrison in Harris County Juvenile Court.
A Yes.
Q Did you testify at trial in that case?
A Sorry, juvenile court confuses me as to what's trial and what's not --
Q Right. And --
A -- because I know they have -- they have different levels. And I'm not familiar with --

Q Yeah.
A I was sworn in, and I testified before a judge.
Q Got you. It could've been a hearing as opposed to a trial.
A Yes, absolutely.
Q And just generally, what was that case about --
A It was a child sexual abuse case.
Q Okay. All right. Did any of your -- and what subject areas -- well, first of all, I'm assuming you testified as an expert in that case.
A Yes, I did.
Q And what was the subject area of your expertise in that case?
A It was in sexual assault investigations.
Q Okay. All right. And I'm assuming that would've been more kind of the scientific or technical aspect of that particular crime.
A No, it encompasses the investigative process as well.
Q Okay. Got you. All right. And then, in 2022, you have listed Reynolds vs. DiPietro.
A Yes.
Q D-I capital P-I-E-T-R-O, and that was in the

State of Maine.
A Yes.
Q And that, it looks like you gave a deposition in that case.
A Yes.
Q Do you recall what that case was about?
A Yeah, it's still an active investigation. It's a -- a missing toddler.
Q Okay. And what was your subject -- or what is your subject area of expertise in that case?
A It was the forensic -- forensics involving the scene to include blood stain pattern analysis.
Q Okay. And then, the next case, in 2022, is Sahlin, S-A-H-L-I-N, vs. The Benson, B-E-N-S-O-N, Place Homeowners Association, and that looks like you testified by deposition in that case as well. Is that correct?
A That's correct.
Q All right. And what kind of case is that?
A For me, it was a blood stain pattern analysis case.
Q Okay. And in 2021, Commonwealth of Virginia vs. Bryan, that's B-R-Y-A-N, Carl Cage, C-A-G-E, and this was actually trial testimony.
A Yes, it was.

Q All right. And what kind of case is that?
A This was an officer-involved shooting and the reverse.
Several officers were shot during the execution of a search warrant, and I testified to the forensic reconstruction, who was there, who had what line of sight, who could see what, and which -- which weapons fired in which direction at which time.
Q Okay.
A So forensic reconstruction case.
Q Got it. Did you testify as an expert in the subject areas of the standards used to evaluate the officers' use of force in that case?
A No, I did not.
Q Okay. Were you accepted as an expert in any other field other than the forensic science aspect of it, which you've described for us?
A No.
Q Okay. And then next is State of Iowa vs. Buelow, B-U-E-L-O-W, which was in Iowa, and that was trial testimony. Is that correct?
A That's correct.
Q And what was that case about, if you recall?
A I semi-recall that one. Give me just a second 'cause I don't want to speak wrong or

incorrectly here. So give me just a minute on that one.
Thank you. That was a first-degree murder case, and it was an appeals case at that point.
Q Okay. And what was your subject area of expertise in that case?
A Forensic reconstruction, blood stain pattern analysis, who was where doing what, when.
Q Okay. All right. And then the last case that you have listed is from 2016, State vs. Gamache, G-A-M-A-C-H-E, it looks like from Washington State. Do you recall that one?
A Yes. I do. That was a homicide investigation or a -- a murder case at that point.
Q Okay. And what was your subject area of expertise for that case?
A Reconstruction, who was where doing what when.
Q Okay. All right. And do you recall any other cases that you've testified in that are not listed on this list?
A Well, this covers the last ten years. So anything before that --
Q Sure. Okay. All right. Have you ever been admitted by a court or a judge as an expert -- or, not

admitted as an expert, qualified as an expert for a court in the field of law enforcement use of force tactics or policies?
A No. I have not.
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q Okay. Do you know if you've ever been denied qualification by a judge or a court in any subject matter?
A I have not, to my knowledge, no.
Q Okay. All right. All right. Let's go ahead and look at the reports that you have provided for these two cases, the Talley case and the Rodriguez case.
And I know that these were two separate incidents, but, I mean, they really kind of involve the same issues. So I may kind of combine the questions to both of them, to the extent we can, just to kind of shorten the deposition.
But if at any time you need to distinguish between the two, just let me know, and we'll work it out where we're both on the same page.
But I'm going to start out looking at your report for the Modesto Rodriguez incident.
A Yes.

Q And on the second page of the report, you have a list of the materials reviewed and relied upon in forming your opinions in this case.
A Yes.
Q Okay. And let me just kind of go through these. First thing listed is scene LiDAR. Is that the correct way to pronounce that?
A That's the way to pronounce the acronym, yes.
Q Okay. And it's spelled L-I capital D-A-R, and you have scene LiDAR generated by Angelo Leiloglou. Help me with that --
A Your pronunciation will be as good as mine.
Q Okay. All right. Who is Mr. Leiloglou?
A He is a -- he's an expert on the use of LiDAR and generating LiDAR images. LiDAR is -- is laser imaging and ranging.
Q Okay.
A So he is someone that -- I do it on smaller scenes for myself, but as this scene involved quite a bit of area, I recommended bringing him in to do the LiDAR.
He also has the ability to integrate it with -- with drone coverage which I don't have.
Q Okay.

A So he -- he performed the technical mapping of the scene.
Q I see. Okay. And you've worked with him or consulted with him on prior cases or --
A Yes, I have.
Q Okay. All right. And would you have actually retained him, or would Plaintiffs' counsel have retained him?
A It depends on the case. I don't remember in his instance which of us retained him. I believe the plaintiffs' counsel did.
Q Okay.
A But I would not -- I wouldn't hold to that; on some cases, I do.
Q Okay. And then you also list a number of body-worn camera footage, and I'm not going to list each one.
It's certainly, you know, I don't know, 15, maybe 20 of the body-worn camera footage, and I assume those would've been provided to you by Plaintiffs' counsel.
A Yes, that's correct.
Q Okay. And then you also list, it looks like, about five bystander videos.
A That's correct.

Q And I'm assuming that you would've gotten those from Plaintiffs' counsel as well.
A Correct.
Q Okay. And then, on the next page, you have Medical/Documentation of Injury, and it looks like you have some Bates numbers, first off, for some medical records from South Austin Medical Center. Is that what that refers to?
A That's correct.
Q Okay. And the next is, it looks like, some protest injury photos of Mr. Rodriguez. I'm assuming those would've been provided by Plaintiffs' counsel as well.
A That is correct.
Q Okay. Are you aware of any other materials or documents or videos of any kind that you used to formulate your opinions in, let's just say with, Mr. Rodriguez's case?
A No, I'm not. Nothing comes to mind right now.
Q Okay. Did you review any Austin Police Department policies or reports regarding this incident or any other incident to formulate your opinions in this case?
A No, I did not.

Q Okay. Did you review any statements --
A I'm sorry. I'm going to ask you to hold on that.
Q Sure.
A I'm going to confirm that the information I just gave you is correct.
Q Sure.
A Okay. We can move forward. I forget the question now. I apologize, but --
Q That's okay. The question was, did you review any Austin Police Department policies or reports regarding the Modesto Rodriguez incident or any other incident to formulate your opinions in this case?
A No, I did not cover any policy or reports.
Q Okay. Did you review any Austin Police Department reports to formulate your opinions in this case?
A Once again, this is where the co-mingled cases can become a problem. I'm looking in Modesto Rodriguez now. I'm now going to take a look in Talley.
Q Okay. Sure. Take your time.
A Just bear with me for another moment or two. I want to make sure I'm giving you an accurate answer.

Q Sure, no problem.
A Okay. If you'll ask me that question again, I'm ready.
Q Okay. And why don't we do this? This may be easier to kind of keep the two cases separate. For the Rodriguez incident, did you review any Austin Police Department reports of any kind to formulate your opinions?
A No, I did not.
Q Okay. For the Rodriguez incident, did you review any statements, written statements, of any Austin Police Department officer to formulate your opinions?
A I did not.
Q Okay. For the Rodriguez incident, did you review any of the parties' discovery responses, like answers to interrogatories of either the plaintiff, Mr. Rodriguez, or the City of Austin, to formulate your opinions?
A Now, we're on Talley. Correct?
Q Well, let's stick with Rodriguez for now, and then I'll --
A I'm sorry. I thought you said "Talley."
Q That's okay.
A Okay. I don't show where I used them to

formulate my opinion.
Q Okay. All right. And then now, let's just look over on Talley just to make sure I've covered everything.
On the Talley report, you also similarly list the materials you reviewed and relied upon. And you have the scene LiDAR from Mr. Leiloglou, the body-worn camera footage, and then three bystander videos. Is that correct?
A That is correct.
Q And then you also list, under the heading Medical/Documentation of Injury, some medical records for Mr. Talley from St. David South Austin Medical Center, along with a couple of groups of injury photos and a video of the elbow injury. Is that correct?
A Correct.
Q All right. Did you review any Austin Police Department policies or reports in preparation of your opinions issued for the Talley incident?
A And I'm sorry. That's not as easy a question as it seems.
Q Oh, no. You take all the time you need. I know you've probably been given a lot of material.
A I was aware of and used the evaluation of ammunition that was done by the Austin Police

Department. It was provided to me in a different case, though, not in either of these.
Q Do you know which case that was provided to you in?
A Krisch.
Q Okay.
A K-I-R-S-C-H [sic], I believe.
Q Okay. Do you --
A And that was an evaluation by their training department, I believe, on the ammunition, the specific beanbag rounds that were being fired that day, their velocity, and their impacting energy.
Q Okay. Would you happen to have available the Bates numbers of whatever that documentation was from the Krisch case?
Or is that something you could find and then let us know later? You don't necessarily have to do it at this moment, but.
A I'm going to see if it's easy. If it's not, then we will --
Q Okay.
A -- later.
Q Okay.
A I'm just scanning through the report that I believe it was appended to.

Q Okay.
MS. JOSEPH: Do you guys mind if we take a short break after this question?
MR. LAIRD: Sure.
MS. JOSEPH: Or if we want to do it while Mr. Maloney's looking for the answer, whatever you want, Gray.
MR. LAIRD: Yeah. Why don't we just take it now? Yeah, we need a restroom break anyway. Sure. Take about five or ten minutes.
THE REPORTER: We are off the record at 9:59 a.m.
(Off the record.)
THE REPORTER: We are back on the record at 10:12 a.m. You may continue.
MR. LAIRD: Thank you.
BY MR LAIRD:
Q Mr. Maloney, I think where we left off is you were checking to see for, I believe, the Talley opinions that you've rendered, whether you had reviewed any APD officer statements or APD reports. Is that correct?
A Yes, that's where we were.
Q Okay. And were you able to find out --
A I was -- yes, specifically, I was referring

to reports and -- on the policies, procedures, et cetera. And, yes, I reviewed -- I can give you the number of it here.

Q Okay.

A It's under the Krisch investigation. It's COA2144 through 2610. Does that mean something to you?

Q I think so. We can track that down.

A Okay.

Q And would that have been the reports on the munitions that you referred to earlier before we took the break?

A It includes a lot of that. It is a confidential report from the Austin Police Department Special Investigations Unit involving use of force.

It covers the training that the officers were given on the shotgun on nonlethal -- or less than lethal, excuse me.

It includes their policies and procedures, and it includes their plan and tactics for the specific incidents that we're talking about.

So this would've been where I got background on policies, procedures, et cetera, for what Austin Police Department used.

So that's why it was confusing earlier

because I received it through this case, but I certainly didn't turn it off for these two cases as it involves the same several-day incidents.

Q Okay. Did you review any specific APD reports that address the Talley or Rodriguez incidents?

A No.

Q Okay. Did you review any specific APD officer written statements that address either the Talley or Rodriguez incidents?

A No. I did not.

Q Okay. Did you review any actual Austin Police Department written policies to formulate your opinions in the Talley and Rodriguez incidents?

A Yes, I did. They were included in the citation I just gave you.

Q Okay. All right.

A That's about a 500-page document. I think it's about 480 -- 480 pages.

Q Okay. All right. Okay. I think that covers it.

Is there anything else, any other documents of any kind, that you reviewed to formulate your opinions in the Talley and Rodriguez cases other than what's been listed in your reports and the Krisch

documents that you just referred to, anything else?

A No.

Q Okay. All right. Let's go ahead and turn to the reports in both of these cases, and I'm going to ask you a few questions about your opinions and what you have in your reports.

And first, let's look at the Rodriguez report.

A I have that.

Q Okay. And on the first page there, under the heading Background, you kind of give a short summary of the Rodriguez incident. Is that a fair way to describe what you have there under Background?

A Yes, it is.

Q Okay. And you start by stating that "Mr. Rodriguez was with a group of protestors near the corner of 8th Street and the I-35 frontage road, across from the APD headquarters."

And you described that there was one line of officers in front of the headquarters and a separate line standing on the I-35 bridge that kind of overlooks that intersection. Is that a good way to describe it?

A Yes, it is.

Q Okay. And you state that "Modesto,"

Mr. Rodriguez, "who is deaf, would have been unable to hear any verbal commands, shots being fired, or crowd verbal commotion."

What is the source of that information that you have in your report?

A His deafness.

Q Okay.

A -- deaf.

Q Okay. Do you know the degree of his deafness?

A I do not know the degree of his deafness.

Q So --

A I was told he was -- I was told that he was deaf.

Q Okay. Who told you that?

A I -- came through the -- it came through the attorney.

Q Okay. Would that have been Ms. Webber [ph] or --

A I don't remember at the time.

Q Okay. Are you making an assumption that he would've been unable to hear any verbal commands?

A I was going by the definition of "deaf" that was given to me. If you have other deaf -- if you have further information, I'd be happy to rethink

that.
Q What definition of "deaf" was given to you?
A That he was unable to -- that he was -- that he required sign language in order to be able to -- to hear -- not hear.
I'm butchering the words, but I'm hoping you know what I'm saying but that he was not capable of hearing and responding to audible speech, that he signed and used sign language.
Q Okay. And that information came only from the attorney. Correct?
A No. I believe it was also in the -- just a second. Let me find it here. That's the source of the information that I have available to me right now.
Q Was that it came from the lawyer?
A From the attorneys' office, yes. There's also --
Q Okay. All right.
A Hold on just a second. I'm sorry.
I believe there was also a notation in -- and this is where I have to make sure I've got the right -- cases right, the South Austin Medical Center report on Bates 00015 through 00021, also had comments concerning the status of his hearing.
Q Would that have been Mr. Talley?

A Mr. Rodriguez.
Q Mr. Rodriguez, okay, my fault. All right.
And then you also state that "Modesto was dependent on correctly interpreting the visual cues of those around him to determine if a disbursement of the crowd was ordered or taking place."
What is the source of that statement?
A The source of that statement is if you can't hear the commands, and if you can't hear the loud speaker and everything else, then you have to interpret the -- the visual cues.
Q Okay. Is that coming from -- but what I'm asking is, what is the source? Where did that information come from? Was it the lawyer?
A That's my opinion.
Q That's your opinion?
A That's my opinion.
When a deaf person is involved in a situation like that and can't hear, their only choice in being able to respond to the stimulus around them is to be able to view that stimulus other than perhaps the police sending them a text message saying, "We're disbursing this crowd." It didn't seem like a logical option.
Q All right. And what area of your expertise

does that come from? I mean, are you an expert in hearing deficiencies and visual cues of persons who have a hearing disability?
A I don't know if I'm an expert. I'm certainly experienced in it, as many of us are in life as we go through work with different people that are deaf.
Q And my point is the source of your information concerning the extent of Mr. Rodriguez's deafness came from the lawyer and whatever medical record you referenced. Is that right?
A That is correct.
Q Okay. And then, you took that information and made an assumption about his need for any visual -- or his need to interpret visual cues. Right?
A I'm not going to say "an assumption."
I'm going to say I rendered "an opinion" that, absent the availability -- absent the ability to respond to verbal or sound stimulation, that when we see him responding by moving, running, and doing other things like that, it would be a result of verbal stimulation, those things that he's seeing around him.
So I'm rendering my opinion based on what I saw, what I observed, and my past experience.

Q What you "saw" and what you "observed," where?
A Through the videotapes --
Q Okay.
A -- of the officers. You can see Modesto Rodriguez moving and responding.
Q Okay. And you were able to determine, through those videos, that he had to rely on visual cues. Is that correct?
A No, that's not what I said.
Q Okay. What are you --
A I said, I used my experience. I used the videos that I watched. I used my training and others to make that determination. So, no, it wasn't based on a single source of information.
It was based on a deaf man who, earlier in the video, is seen standing and watching someone who's doing sign language.
There was, obviously, a group of deaf people there, not just a single deaf person, and there was someone giving them sign language directly in front of the building.
So, yes, all of those, the preponderance of all of those events led me to form the opinion that he was dependent upon visual cues.

Q Okay. Based on your review of the videos, and any other documents that you reviewed, and your expertise, are you aware of any way or method that an Austin Police Department officer there at the scene would have known that Mr. Rodriguez was deaf?
A Yes, from --
Q What is that?
A Well, I mean, if they sufficiently focused on identifying him as an individual, they had a group of people directly in front of, I'm going to call it, "Police Plaza," that elevated section in the pie-shaped cutout in front of the police headquarters, where all of those officers, or many of them, were, there was a group of individuals that had their back turned to that police line while someone else was signing for them.
And this took place on and off earlier during the day.
So there certainly was the opportunity for the police to be aware that there were deaf people within the -- within the crowd. Whether or not they specifically noted Mr. Rodriguez or not, I don't know.
Q And that's based on an assumption, isn't it, that anyone standing in or near that group was deaf?
A No.

Q That's not based on that -- so are you --
A I didn't say that anyone -- I didn't say that anyone standing near or with that group was deaf. I said there was clearly, targeted interpretation taking place for a group of individuals. I didn't say every individual that was in that area.
Q Okay.
A There was clearly sign language being used to communicate with a group of individuals.
Q Right. And how would a person know that Mr. Rodriguez was in that group?
A I don't know that they visually recognized him. They wouldn't -- I believe I said that earlier.
I can't say that the police recognized that he was a member of that group, but they recognized that there was a group of hearing impaired that were present at the rally.
Q You say that they recognized that there was a group of hearing-impaired people. What source did that come from, that they recognized that?
A I have no source on that.
Q Okay.
A I have the proximity of where there was a group of people being signed to, a group of people that do not appear to be verbally answering the person

signing, and that that takes place within several yards of the police line where those police officers are there.
And those police officers are specifically charged with being observant as to the group of people in front of 'cause they're looking for potential threats.
So, yes, it would've been -- whether or not they recognized it, the actions were present in front of them that could have been recognized. Perhaps that's a better way of wording it.
Q Okay.
A That there were hearing impaired within the crowd.
Q All right. And there was a crowd. There was a lot of people there. Right?
A Yes, there were.
Q Okay. Other than perhaps being a member of that group that you've described, are you aware of any other way that a police officer there at the scene would have known that Mr. Rodriguez or Mr. Talley are deaf?
A No.
Q Okay.
A I'm not aware of any other method.

Q All right. Then continuing on, in the Background Section, you state that "At approximately 9:09 p.m., Modesto moves into the roadway, picks up a plastic water bottle, and throws it towards the police line in front of the police headquarters building." Is that correct?
A That's correct.
Q Okay. And that was based on what you observed in the videos that you watched. Correct?
A Correct.
Q Okay. And similarly, in the report that you repaired for Mr. Talley, you state that "At approximately 9:17 p.m., Tyree, Mr. Talley, is illuminated by a spotlight. He picks and throws a water bottle towards the police line in front of police headquarters." Is that correct?
A That's correct.
Q Okay. And again, that's based on the videos that you've watched.
A That's based on the videos. There is some -- there is some question as to the exact timing as you -- as to whether it was 8:09 or 9:09 because we're transferring from Greenwich Mean Time to Texas time.
But, yes, that was the timespan, and those

were the events that were observed.
Q Okay. It's very clear from those videos that both Mr. Rodriguez and Mr. Talley threw a water bottle toward the police officers. Correct?
A Correct.
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q Okay. Were those actions by Mr. Rodriguez and Mr. Talley reasonable?
A I have no basis to form that opinion.
Q Why is that?
A 'Cause I guess I really don't -- "reasonable," by what standards?
Q Reasonable conduct of a person at a protest.
A So you're asking me whether or not, in my view -- sorry --
Q You're a member of -- you're a citizen of Missouri. You've been a citizen of Texas. Is it reasonable conduct for a person at a protest to throw an object toward police officers?
A It's certainly appeared unwarranted.
Q Unwarranted by Mr. Rodriguez and Mr. Talley.
A Yes.
Q Okay. It's not appropriate conduct. Is it?
MS. JOSEPH: Objection, form.

BY MR LAIRD:
Q You can answer.
A It's not appropriate conduct in the context that I saw within the videos.
Q Right, right. Are you aware of any context in which that would've been appropriate conduct?
A Yeah. I could -- I could certainly think of several situations.
If the police were being overly oppressive and applying force that didn't need to be applied and the protestors were trying to slow their incursion in, then it becomes a self-defense issue.
So, yeah, I -- that's why I'm not going to say that there's no circumstances under which a protestor throwing an object towards a police line is --
Q But --
A -- is not justified. Certainly, for self-protection, self-defense, but as I stated, in the context of this, I do not see where it would've been warranted.
Q Right. That conduct by Mr. Talley and Rodriguez, based on everything that you've reviewed, the videos and the other documents, was not warranted in these two incidents. Correct?

A No. It wasn't.
Q Okay. And it also wasn't peaceful. Was it?
A No.
Q That's not considered "peaceful protesting." Is it?
A No, it's not.
Q Okay. All right. Now, on the first page of both reports, the Talley report and the Rodriguez report, kind of in the upper right-hand corner as you look at the report, you have kind of a gray, shaded box there.
And you have "Victim: Modesto Rodriguez Martinez," and then, in the Talley report, "Victim" is "Tyree Talley." Correct?
A Correct.
Q And the manner of injury, you say "Aggravated Assault." Right?
A Correct.
Q Let me ask you. Who would've been the victim of Mr. Rodriguez's nonpeaceful behavior in throwing the water bottle?
A Whoever it impacted.
Q Right. It could've been a police officer. It could've been a member of the group of deaf people or any person there at the scene who was impacted by

the object thrown by Mr. Rodriguez and Mr. Talley.
They would've been the victims of their actions. Right?
A Absolutely.
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q And actually, if we think about it, the actions of Mr. Talley and Mr. Rodriguez -- I mean, you're a former Texas Peace Officer. Those were unlawful actions themselves. Right?
A I'm not familiar with the current Texas Penal Code on that, but it would certainly seem that throwing a water bottle at a police officer would be an unlawful action in any state.
Q Okay. All right. If we turn -- well, first off, down at the bottom, still under the Background Section, you state that "Modesto was shot twice with impact munitions by officers."
And then it says "Despite obvious debilitating injuries, he is never approached by APD to render aid or affect an arrest."
What is the source of your comment that these were "debilitating injuries"?
A The fact that he collapsed to the ground and needed assistance and help. I think that's the

definition of "debilitate."
Q Okay. And you've included some photographs of his injuries in your report, and I'll ask you some questions about that here in a minute.
But are you aware of the actual extent of his injuries that he received in this incident? I mean, as far as what his diagnosis --
A Yes.
Q -- what his medical treatment was.
A I -- I'm aware that he suffered blunt force impact to his left chest and also to the -- I believe it was inside of the right ankle. I'm -- I'm aware of that.
Q Have you seen any medical record or report that indicates that any of Mr. Rodriguez's injuries were "debilitating"?
A Once again, that's -- no, I have not.
Q Okay. All right. And let me go ahead -- let's go ahead and turn over to Page 3 of your report for Mr. Rodriguez, where you have some photographs of his injuries.
A Yes.
Q And the heading you have is Wound Dynamics.
A Yes.
Q And you state there that -- you have the

statement "Multiple gunshot injuries (from impact munitions fired from shotguns)."
And I just want to make sure that I'm understanding. Are you saying that there were more than two injuries that he received, or just two?
A Well, there's two that we see there.
Q Okay. All right. And the photographs that you've included in the report show his injuries. Are you aware of any other photographs that show other depictions of his injuries that you've been provided?
A I am not.
Q Okay. All right. And then let's turn -- if you'll turn to the next page --
A Well, wait a minute. I'm sorry. I believe I chose these out of the references that I gave you earlier.
So we're not saying these are the only photographs. These were the best to illustrate what we have there.
Q Okay. Well, let me just ask you.
Who would be the best source for information for a determination of any long-term effects of the injuries on Mr. Rodriguez? Would it be his treating medical doctors or you?
A Long-term effects would certainly be his

medical doctor.
Q What about short-term effects?
A I'm not sure of the question.
Q Okay. The question is, who is the best source, or who is the best expert, to determine the short-term effects of Mr. Rodriguez's injuries? Would it be his treating physicians or you?
A His treating physicians.
Q Okay. All right. Then if we turn over to the next page, I think it's Page 4 of your report.
And let me ask you that same question regarding Mr. Talley.
Would you agree with me that his treating physicians would be the best source for information concerning his short-term and long-term effects of his injuries rather than you?
A I'm not going to agree with that completely.
Q Okay.
A If the -- if the physicians were shown the video as to what the response was when Mr. Talley was struck multiple times and when Mr. -- or when Mr. Rodriguez was struck, then that would certainly give them an idea of the instant effect of that injury.
So I -- I won't defer that. I mean, the --

the viewer themselves can determine what the instant effect was by looking at the video and by looking at the whole purpose of the beanbag round.
The beanbag round's purpose is not to allow the person to -- to wave and run off into the -- into the sunset.
It's meant to put them onto the ground so that an arrest can be affected or so that an illegal action that threatened someone else can be stopped.
Q And we'll get to that in just a second, but you bring up a good point.
Anyone, a layperson, can watch the video and see Mr. Rodriguez's and Mr. Talley's actions and what they do after they were impacted to determine a short-term effect of being struck by the munition. Right?
It doesn't require any sort of expertise to make that determination.
A To make the determination that they fell after being shot, no, that doesn't take expertise.
Q Okay. And then my next question is, do you agree or disagree that, as to any actual medical prognosis, long-term or short-term prognosis, Mr. Talley's and Mr. Rodriguez's treating physicians are in the best position to render opinions on those

prognoses? Correct?
A I'm going to ask that -- I'm going to ask you to ask it again because there were several stages.
Q Sure. Would you agree that Mr. Talley's and Mr. Rodriguez's actual treating physicians are in the best position to render opinions on their long-term prognoses, rather than you?
A Long-term prognoses, yes.
Q All right. But you disagree on any kind of short-term effect of their injuries.
A Correct.
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q Okay. All right. If we turn to the next page, Page 4 of your report, I think it's Page 4 for both. Let me double-check. Well, actually, it looks like the same images, but on Page 4 of the report for Rodriguez.
A Yes.
Q And under the Mechanism of Injury, you have a couple of looks like photographs, of, on the left side, you have labeled capital C-T-S 12-gauge kinetic round. Do you see that?
A I do.
Q All right. Where did that image come from?

A Austin Police Department.
Q Okay. Was that contained in those materials from the Krisch case?
A Yes. I believe I gave you the right reference on that, but as I said, it's almost 500 pages. I'll certainly take a look, and if it wasn't contained within those, I'll forward on where it was contained.
Q Okay. And I'm assuming that the image from the Def-Tech, that's D-E-F dash T-E-C-H, 12-gauge kinetic round, would've come from the same source.
A Yes.
Q Okay. All right. And you state there, under the Kinetic Defect Evaluation, that "The contusion/abrasion injuries caused by the kinetic impact rounds are circular/elliptical in nature."
And first off, the injuries that Mr. Rodriguez and Mr. Talley received, they were abrasions or contusions, which a "contusion" is another word for a "bruise." Correct?
A Correct.
Q Okay. Are you aware of any other physical injuries that they received other than contusions and abrasions?
A Such as underlying fractures, no, I'm not.

Q Okay. All right. And you reviewed some of the medical records, but I'm assuming you're not planning on testifying as a medical expert on the extent of their injuries. Is that right?
A No. I'm certainly not.
Q Okay. All right. And --
A I'm sorry. Going back, though, with the wound dynamics and mechanism of injury, I would be completely comfortable testifying that blunt force trauma, the resulting injury from that is abrasions, contusions, possibly lacerations, and underlying fractures and that we have two of those present which makes it consistent with the rounds that the Austin PD were firing.
So that is something I'm very comfortable testifying to.
Q All right. But I just want to make sure I'm clear. You're not aware of any actual underlying fractures.
A No, I am not. And if there were -- if they were there, I'd be very surprised 'cause they weren't noted in the medical.
Q Okay. All right. And then, really the same question for the two images of the 12-gauge kinetic impact rounds that they have there, did those come

from those same materials from APD?
A Just a second, let me look.
Q Do you see what I'm referring to?
A I believe they came from APD.
Q Okay.
A There was a -- there was an image that had these -- I believe it had these two, plus also a 40-millimeter impact type round. And I cut from those. So I believe those from APD.
If not, then I actually looked up the -- I looked up the round as identified by APD and pulled the picture down from the manufacturer. I'd have to go back to see which of those I did.
Q And that's kind of what I'm getting at -- is I'm just trying to find out if you did any independent research on these particular rounds. Or did it all come from the APD materials that you were given?
A No, I did independent research on the rounds.
Q You did?
A Yes.
Q Okay. And do you recall where you did that research, I mean, what sources you looked at?
A I went to the manufacturer's -- manufacturer sheets on the components of the round, how they're put

together, the manufacturer's -- what the maximum velocity for a different distance is.

I did that run of research on those. I then also cross-referenced to see if there was any outstanding research that was out there that actually tracked their velocity in flight.

I couldn't find any of that. So we set up a protocol to try to determine that. That ended up not being able -- not being feasible.

So let's see. What else did I do? And I looked up -- this was involving the Krisch case, once again, because we're looking at the same type of munitions.

I looked up the -- any pertinent articles on blunt force impact trauma to bodies from the same type rounds.

Q Did you keep any of those materials or sources for the research that you conducted?

A I have them all available and referenced. Yes.

Q Okay. Is that something that you can send to Plaintiffs' counsel in this case so that they can produce it to us?

A I'm making a note to do that now.

Q Perfect, okay. And, I mean, it's my

understanding that the sources that you researched were primarily direct sources from the manufacturer.

A And also from -- there's a variety of -- not a variety.

There's several articles in the forensic pathology field that are out there as to the underlying injuries from impact of these types of rounds.

The Military did some study that was available and is out there. There are YouTube videos in slow motion of these impact rounds striking different objects.

So I -- I looked at a variety of sources, and I'll provide all of those.

Q Okay, perfect.

A A majority of the impact ones were, of course, not this specific type of munitions. So after reading through it, it may not apply. So I -- I'll give you what I looked through, whether or not that applied to what I did was background research.

Q Okay. And really, the same question, I guess, for the statements you have under Mechanism of Impacting Projectile, as far as the weight of the projectiles and the maximum velocities, would that have come from the material you researched from the

manufacturer as well?

A Yes. We had hoped to do independent testing, but that wasn't possible. So that comes from the manufacturer.

Q Okay. All right. All right. Looking at the Rodriguez report, and you really have the same -- and again, you have the same information, understandably, for the Talley report.

Under the heading Establish Shooter and Victim Location/Positions, which is on Page 5, I believe, of both reports, you noted that you reviewed multiple body-worn cameras.

And you and Mr. -- oh, I forgot his name now, Mr. Leiloglou, however -- I hope I'm saying it correctly, performed the scene LiDAR measurements.

And you state that "Exact firing locations and the collapsed locations of Mr. Rodriguez and Mr. Talley could not be established."

So the measurements that you have in your report are approximate. Is that right?

A Absolutely.

Q Okay. And you have a diagram there that shows where the line of officers was in front of headquarters as well as the line of officers that were on the I-35 overpass.

And I just want to make sure that I'm following what you are saying. In that diagram, you also have a yellow kind of circular area labeled "No. 1." Do you see that?

A I do.

Q And what does that particular circle, No. 1, represent?

A This is where we pick him clearly up -- pick Mr. Rodriguez clearly up on video and can identify him in the scene. Then it moves on to 2 and then on to 3.

Q Okay.

A So that's showing the sequence of his movement.

Q Okay. And what does the circle with "No. 2" represent?

A That represents the second position where he's then going to reverse his position, and that's where he's seen throwing the water bottle towards the police squad.

Q Okay. So No. 2 is where he throws the water bottle.

A Right.

Q And then what is "No. 3"?

A No. 3 is where he's impacted.

Q Okay. All right. Are you aware of how many

seconds passed from the time he threw the water bottle until he was struck by the less lethal beanbag?
A I am, but I can't bring that to mind.
Q Okay.
A I'd have to go back and look through my notes.
Q Okay. All right. And that's fine. And same question for Mr. Talley --
A Same answer.
Q Okay. And that's a good point. I would also ask you if you could send -- when you say "notes," are those handwritten notes or typewritten notes?
A They're typewritten notes.
Q Can you send those to Plaintiffs' counsel to produce to us?
A Done.
Q Okay. And I guess same question for the diagram on Mr. Talley.
It looks like you have a -- it's a little -- my eyesight is pretty bad, but it looks like a yellow circle, No. 1, No. 2, and then No. 3 again. Is that correct?
A Yes.
Q Okay. And is that similar for Mr. Rodriguez

as to where you -- No. 1 would be where you first were able to identify him. No. 2 would be the location where he threw the water bottle, and then No. 3 would be where he was struck by the less lethal --
A Yes, that's correct.
Q Okay. And I assume the same answer for Mr. Talley for the question, are you aware of how many seconds passed from the time he threw the water bottle until when he was struck, same response?
A Correct. It's -- it's something that I did at one point.
Q Okay. All right. All right. Let's see.
Mr. Maloney, would you agree that Mr. Talley and Mr. Rodriguez, when they threw the water bottles, they posed a threat to whoever was in the direction that they threw the water bottles?
A Yes.
Q Okay. And that's a threat of injury or bodily harm. Correct?
A Correct.
MS. JOSEPH: Objection, form, and say to the last one, I apologize. I was muted.
BY MR LAIRD:
Q Okay. And you've watched a number of the videos of both of these incidents, I mean, a lot of

body-worn camera video.
And it's true, isn't it, that there were a lot of objects being thrown during the course of these protests? I mean, did you see other objects being thrown of any kind?
MS. JOSEPH: Objection, form.
THE WITNESS: I -- I don't know that I can classify "a lot." There were certainly and throughout the -- the days that this occurred, objects, which appear to be water bottles, being thrown. Yes.
BY MR LAIRD:
Q Okay. And it wasn't just water bottles. Was it?
A I don't know. The ones that I could see on video appear to be water bottles.
Q Okay. Well, first off, with regard to Mr. Rodriguez and Mr. Talley, do you have any information that they were struck by any type of less lethal munition prior to them throwing an object toward police officers?
A No. I do not.
Q Okay. Now, you noted in your report for Mr. Rodriguez that, after he threw the water bottle, he then moved away from the officers that were

standing in front of police headquarters. Right?
A Can you tell me where you are?
Q Sure, sure. I'm looking at --
A Give me a page number, I think, and I'll --
Q It looks like Page 6.
A Okay, Page 6, and we're on Rodriguez.
Q You state that -- it's about the, let's see, about the sixth bullet point down, I believe. You say "The officers fired in the direction of Modesto Rodriguez with gun fire." I mean, it was less lethal munitions. Right?
A Being fired from a gun, yes.
Q Right. "While he was moving from the roadway and moving away from the police line in front of the Police Plaza," correct?
A Correct.
Q All right. And he may have been -- you would agree with me that he may have been moving away from the officers in front of headquarters, but he was actually moving closer to any officers that would've been on the I-35 overpass. Right?
A Correct.
Q Okay. You reference, down below, under the Decision to Shoot or Not to Shoot -- and, again, you're not an expert in that area. Are you?

MS. JOSEPH: Objection, form.
THE WITNESS: I have been trained. I have trained others.
When we discussed my curriculum vitae earlier, there was quite a bit under Experience and such that we didn't go over, particularly that when I served with NCIS.
But I have been involved in shoot/no shoot policy policy formation.
And that policy formation, specifically for civil protests and other things like that, I have been trained annually and given my officers training, my federal law enforcement officers training on the use of force.
I'm not claiming to be an expert on that like someone that teaches it daily, but I am certainly very familiar with the decision-making process behind pulling a trigger, having been an armed officer for 20 years of my career.
BY MR LAIRD:
Q So are you an expert in the standards used to evaluate law enforcement uses of force? Are you claiming to be an expert in that area?
A No. I'm not.
Q Okay. And are you claiming to be an expert

in the area of law enforcement policies regarding use of force?
A Define "expert."
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q Sure. And --
A If I'm using the legal definition is -- which is, I would have more knowledge than the common man concerning those, then in that case, absolutely.
Q Right, right. But are you an actual -- are you holding yourself out as an expert in the policies and standards of law enforcement uses of force?
A No, I am not.
Q Okay. All right. Now, you reference, under that section, Decision to Shoot or Not to Shoot, you said "Had the situation elevated along Austin Police Department's Use of Force Matrix" --
A I don't know where you are. I'm sorry.
Q Oh, I'm sorry, my fault. Under the heading Decision to Shoot or Not to Shoot --
A Yes.
Q -- under Subsection 1, the third bullet point --
A Yes.
Q -- it reads, it's a question "Had the

situation elevated along Austin Police Department's Use of Force Matrix to where less lethal ammunition is justified?"
I did not see in any of the documents that you reviewed the Austin Police Department's Use of Force Matrix. Have you reviewed that to formulate your opinions in this case?
A I don't have an opinion. I asked that question. Someone that is -- someone that is well-informed of the Austin Police Department's Use of Force Matrix would be the one to answer that question.
Q Right. So as I understand it, you're not testifying as to whether or not the Austin police officers, for the Talley or the Rodriguez incidents, acted in accordance with the Austin Police Department's Use of Force Matrix. Is that right?
A I am not.
Q Okay. Or whether they acted in accordance with the Austin Police Department's policies regarding use of force. Correct?
A Correct, unless it's a yes/no. In other words, in the -- the larger document that I referenced earlier, there's very clear yes/no questions in their policy as to when use of force can be applied and when it can't.

For instance, to stop the illegal action that could harm somebody else, so those situations are put out there.
So when it's a yes/no question such as, to affect an arrest, was an arrest affected? No, they didn't arrest him. So that's a yes/no toggle.
So if that is within their policy and within their written policy, which it was as I was provided, that doesn't take expertise in the policy.
That just takes was that adhered to or wasn't it, and it wasn't. He wasn't arrested, and he wasn't rendered aid.
Q Well, first of all, we've established that Mr. Talley's actions and Mr. Rodriguez's actions, I mean, actually were unlawful actions in throwing the objects. Right?
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q We've been over that. Correct?
A We've been over that. So that would be something that should lead to an arrest.
Q All right.
A -- unlawful action.
Q And one of the things that -- one of the factors that officers must consider in whether to make

an arrest following an unlawful action like Mr. Talley's actions and Mr. Rodriguez's actions is whether it's safe to do so. Correct?
A That's correct.
Q All right.
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q And whether there is sufficient manpower to make an arrest in that situation, correct?
A That is correct.
Q Okay. And you haven't reviewed any statements of the officers, of the APD officers, regarding these two incidents.
A No, they've not --
Q How about whether or not it was reasonably safe to make an arrest, correct?
A No, I've not reviewed any of their statements. They haven't been made available to me.
Q Okay. And then on the next page, at least of the report regarding the Rodriguez incident, you discuss, or you ask the question "Were they able to visually identify and target those body areas on the protestor that are authorized for impacting?"
That's the first question on that page. Do you see that?

A Yes, I do.
Q All right. And the body areas that you're referencing, what is the source -- or is there a source that tells what body areas are authorized for impacting with less lethal munitions?
A That's the training lesson plans that I referenced earlier within that 480-some-page document.
Q Okay. It came from the Krisch materials.
A Yes.
Q Got you. Okay. All right. And same with the next bullet point, discussing or asking a question about the operational limitations of his weapon and munitions deployment criteria.
The criteria that you reference, is that the APD materials from the Krisch case, too?
A Yes, it is.
Q Okay. You're not referencing any non-APD criteria for using these weapons.
A No. I am not. I am also, however, using the maximum effective firing distances and other things as provided by the manufacturer.
Q Okay. All right. I just want to make sure I've got all of the sources that you used.
A Yeah. So I wasn't using the Portland Police protocol.

Q Exactly.
A Exactly.
Q Got you. All right. You make the statement in the -- let me see. I guess, do you see the third paragraph that starts "The individual officer is responsible"?
A Yes.
Q The last sentence there, where you discuss it, you say "Additionally, the officer is responsible for bringing the individual they shot into custody as the justification for them shooting is caused by felonious actions on the part of the individual they shot."
So the actions of Mr. Rodriguez and Mr. Talley, we've already established they were unlawful, unreasonable, and they were felonious. Correct?
MS. JOSEPH: Objection, form.
THE WITNESS: I'm not saying they were felonious. What I'm saying is that --
BY MR LAIRD:
Q Why did you use this term?
A Because under the Austin PD's policy, that is the -- under the Austin PD policy, which I read, those are the conditions under which -- they don't

deploy less than lethal for a misdemeanor offense.
Q Okay.
A So in the perspective of the officers, it would be a felonious offense, stopping him because he's an immediate threat to someone or could harm someone else, and that's a felony occurring in your presence which would lead to an arrest.
Q Okay. All right. And then down midway on that page, under Officer John Doe Officers Deployed on Police Plaza, you state that "Officers were deployed" --
A Just a second, let me get there. I'm sorry.
Q I'm sorry.
A Okay, I'm there.
Q Got it. It says "Officers were deployed as a part of protest suppression efforts by the Austin Police Department."
Now, are you aware of any actual efforts or information that suggests that the officers were trying to suppress peaceful protest?
A No. So that was a poor choice of wording from me.
Q Okay. I mean, because from watching the videos and what we've already discussed, the officers were suppressing or attempting to suppress the

unlawful actions of Mr. Talley and Rodriguez. Right?
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q All right. You can answer it.
A Again, it was a poor choice of words for me, and it would've been better "were deployed as a part of protecting citizens and property" or something like that.
Q All right.
A So, yes, that was a poor choice of a word.
Q Okay.
A I, certainly, did not mean to imply that they were in any way out there suppressing a lawful protest.
Q Okay. Because what it certainly -- based on everything that you've reviewed, the videos, and everything else, it appears that what the officers were attempting to do was to suppress the unlawful actions of Mr. Talley and Mr. Rodriguez. Correct?
MS. JOSEPH: Objection, form.
THE WITNESS: I wouldn't -- I wouldn't specify it to the two of them. I would specify it to just exactly what we said.
The police were trying to suppress any actions that could cause harm to other citizens or

damage property.
BY MR LAIRD:
Q Right. And examples of those actions that could cause injury to people were the actions of Mr. Talley and Rodriguez in throwing the bottles. Right?
A Correct.
MS. JOSEPH: Objection, form.
BY MR LAIRD:
Q All right. All right. Let's turn to the last page of Mr. Rodriguez, and actually, I think it's very similar to the last page of the report on the Talley incident. Under your Conclusions Section --
A Yes.
Q -- you state that, in the first paragraph, you state that "The officers on the overpass effectively set up an ambush with the protestors sandwiched between the two opposing" --
A One second, I've got to get to where you are.
Q Oh, I'm sorry. It's kind of right in --
A Yes, I'm there. I'm there now.
Q Okay. First of all, are you aware, from watching any of the videos, or any of the other materials you reviewed, that the officers in front of

APD headquarters were hidden in any way?
A No.
Q Are you aware from watching the videos or reviewing the materials that the officers on the APD overpass were hidden in any way?
A No. I was not.
Q So anybody attending the protests would've -- I mean, should've been able to see the officers in front of the headquarters and on the overpass. Right?
A Correct.
Q Okay.
A I've lost sound.
Q Oh, I'm sorry. I actually didn't say anything. I'm reviewing your report.
A Okay.
Q Down --
MS. JOSEPH: Gentlemen -- sorry, Gray, I don't want to interrupt your train of thought. I will need to ask for another break at some point soon.
MR. LAIRD: Okay. Why don't we go ahead and take just a short ten-minute break? Does that work?
MS. JOSEPH: Sure, even five is fine with me, whatever you'd like.

MR. LAIRD: Let's go ahead and do that now.
MS. JOSEPH: Okay.
THE REPORTER: We're off the record at 11:12 a.m.
(Off the record.)
THE REPORTER: We are back on the record at 11:22 p.m. [sic] You may continue.
BY MR LAIRD:
Q All right. Mr. Maloney, maybe just a couple of short questions left, I think, still looking at the Conclusions Section, I'm looking at the Rodriguez report.
But I believe it's the same for Talley and Rodriguez. You state that "The deployment of less lethal munitions is guided by APD's internal guidelines" --
A Would you give me -- would you give me a paragraph?
Q I'm sorry, the paragraph that begins "The deployment of less lethal munitions." It's the third paragraph in that section. Yeah.
The internal guidelines that you referenced there, are those the guidelines that you received in the Krisch case?

A Correct.
Q Okay. All right. So whatever guidelines you reviewed, that's where it would've come from.
A Correct.
Q Got you. Okay. And then under the last sentence, under The Caveat --
A Yes.
Q -- you state that "This report is based on the information, reports, photographs, and data received to date."
The reports, I mean, are there any specific reports that you're reviewing to?
A No, this is a standard wording I use.
Q Okay. I thought so. I just wanted to make sure because other than any reports that you've already referenced coming from the Krisch case, I don't think you reviewed any reports from the Talley or Rodriguez incidents. Correct?
A No. I haven't. But I -- one of the reasons I have that in there is I reviewed the medical record. That would be a report sort of thing, yes, but other than any specific that I reviewed on these two, that's correct.
Q Got you. And let's see. Mr. Maloney, are you aware of how much -- I mean, I have your fee

schedule. Are you aware of how much you have charged for your work on these two cases so far?
A I can look that up if you'll bear with me for a moment.
Q Sure.
A This won't necessarily be how much I'll charge, but this is how many billable hours that I have up to today. For Modesto Rodriguez, I have $5,337.50.
Q Okay.
A And now, let me go to Talley. And on Tyree Talley, I have $7,262.50.
MR. LAIRD: Okay. And let me look over -- I'm going to look over the report for Talley. I think pretty much everything was very similar, but let me make sure I didn't miss anything.
I think that's all I have. I pass the witness. Thank you, sir.
THE WITNESS: Thank you.
MS. JOSEPH: Mr. Maloney, I have a couple of questions for you, but my AirPods just died, so if y'all will give me just a couple of seconds to try to connect a different set.
MR. LAIRD: Certainly.
MS. JOSEPH: If you can hear me now and

don't mind the possible occasional background noise, I can just move forward like this. Does this work for you?
THE WITNESS: It's fine with me.
EXAMINATION
BY MS. JOSEPH:
Q Okay. All right. So I'd like to ask you a couple of questions following up on the conversation that you had today with Mr. Laird. I'll reserve the remainder for trial, but just a few follow-ups today.
Before I do that, I just want to clarify, on the record, I think it was very obvious from the questions and answers as they went forward that this deposition pertains to both the Modesto Rodriguez case and the Tyree Talley case.
I know when Ms. Martinez initially read us on, she mentioned the Modesto Rodriguez case. So just for clarity, we all understand that we're all here on both cases and like I said, that was obvious from the conversation.
Okay. So I want to go back to a conversation that you had kind of throughout the deposition with Mr. Laird relating to use of force and policies and standards surrounding that.
Do you remember kind of that theme coming up

during the deposition today, Mr. Maloney?
A I certainly do.
Q And where I specifically want to focus, as we talk about this, is the section of your report entitled Decision to Shoot or Not to Shoot in both reports.
So you have expressed some opinions about what kinds of questions the officers need to be asking when they're deciding whether to engage the shotguns and shoot beanbag rounds at protestors at this event.
And what I want to talk to you about is the background that you have that you kind of used to glean that understanding from and develop those questions from.
So I'll start by just asking. These questions that you've laid out for the officers to be asking themselves in the Decision to Shoot or Not to Shoot Section, where do they come from?
A I formulated the questions based on a condensation of what -- model use of force, Austin has its own specific policy. I don't know what that is, but there is a model use of force. It's put forward federally. It's also put forward in states.
So each department doesn't create its own use of force necessarily. They go from one that's

been polished, and that's been researched from somebody else. And following the model use of force, these are the types of questions you ask.

And once again, I have a background, which we didn't go into, on the other side. I have a -- I have a long background in law enforcement, 20 years as a law enforcement officer or as a supervisor.

And as a supervisor, certainly, the use of force was something that I discussed regularly with those that were -- that fell underneath me particularly when I was heading up a criminal investigation's office in both Hawaii and then a -- I have to be careful how I word this, a threat -- a threat mitigation unit in the Middle East. Well, leave it at that. Okay?

There was constant policy that was going over on what is our overarching policy in use of force and how does that apply to the ground today.

For instance, when I was working as a supervisor in Hawaii, it usually involved what use of force are we doing during the execution of a warrant, the execution of a raid, or bringing a dangerous felon into -- into custody.

When I was in the Middle East, it was what's our use of force when we are protecting Naval and

other installations from a terrorist threat or from an insurgent threat. How are we responding to peaceful protests, and how are we responding to protests that go nonpeaceful very quickly?

And so these sort of decisions, both internally for myself, because I carried a weapon for those 20 years, and I certainly had to know when it was appropriate to deploy it and when it wasn't and then also on policy and guidance for those that work for me and for policy and guidance for within the Naval Criminal Investigative Service which is who I worked for.

We also have, as a subordinate unit to us but not part of us, we have the Military Police from the Marine Corps, of course, and we also have the Naval Master at Arms, which is their equivalent.

So I would work with their chief, an equivalent of a police chief, on determining what is our response, how are we going to respond if a car rolls up to a gate and refuses to stop, very different situation than if you have that happen back in the States in a particular area unless it happens to be at the White House.

So use of force and policies and such, I certainly never put those together for the City of

Austin, nor do I claim to, but I've certainly been involved at a supervisory level and at a strategic decision-maker level on use of force.

And we always followed what was generally considered to be the model use of force which was put out federally, and then we would tweak that to the specific situation that we had on the ground.

And we used these -- I was involved in the decision-making during Military investigations under NCIS for -- we didn't call it "use of force" there. We called it "rules of engagement."

In Iraq, when Iraqi civilians were killed, that's a use of force. Did the American servicemen follow the guidelines and the rules of engagement, same as use of force model at policies, that were necessary?

So it wasn't just an investigation into this bullet came from here at this time, but it was an investigation into what was their thought process, how did they go about doing that, what was the threat to them, had they properly identified a threat, and did it meet the circumstances where it was a clear and present danger or present threat, or could they cause harm to someone else?

So by just going through my academic record

and my other, I don't think it showed the scope of knowledge, and, you know, I certainly do consider myself an expert. I don't hire out as that.

A majority of my work is in forensics, but in general police procedure and in those areas, I certainly have what the Court would consider an expertise. I certainly have more knowledge than the common man in those areas, and I've exercised it in real-world situations.

I imagine, for Austin, this is probably the first demonstrations of that size that had occurred in, I don't know, perhaps generations, perhaps since the '60s, where we were involved in these sorts of protests on a weekly basis when I was headquartering up an office we had based around the 5th Fleet Headquarters in Bahrain of the Military.

Q Okay. So I want to see -- thank you for that. I want to see if I can break down a little bit of what you said. And you talked for a moment -- you referenced kind of educational versus, in my mind, practical application of certain principles.

And I kind of think about experts in different buckets. Like, you know, you've got your academic who's really trained in a certain area and knows how to apply the formulas and do the

calculations.
You've got your, you know, experienced practitioner in an area who has, you know, lived it, boots on the ground, and sometimes, those overlap. And sometimes, they don't.
I think when you were talking about your forensic science experience and the application of that expertise to this case, you fall more into my kind of education track bucket. Right?
But would you say that, and I think you did just say that based on your practical experience, you do have expertise, a different type of expertise, within the area of use of force decision-making by police officers?
A Yes.
MR. LAIRD: Object to the form.
MS. JOSEPH: I would've been shocked if you hadn't.
BY MS. JOSEPH:
Q So through practical training and experience applying use of force standards, supervising others in use of force decision-making, in a law enforcement career that lasted for over 20 years, would you say that you developed a certain level of expertise in those areas?

MR. LAIRD: Object to form.
THE WITNESS: Yes, I think I've developed a very -- I've developed a level of practical and applicable expertise.
BY MS. JOSEPH:
Q Okay. Now, you talked some about being a supervisor, I think, with respect to when you were in Hawaii.
While you were a supervisor, was it part of your duties to make sure that those you were supervising engaged in appropriate decision-making when deciding whether to use use of force?
A Yes, I was.
Q And was it also within your duties as a supervisor to sometimes review those decisions and discuss those after the fact?
A Yes, it was.
Q Okay. I'm not sure what department it was. Hawaii PD, who were you with?
A It was -- it was with the Naval Criminal Investigative Service in Hawaii.
Q Thank you. So the Naval Criminal Investigative Service in Hawaii then relied on you to have those kinds of training-type conversations with your subordinates both before and after they engaged

in the use of force.
MR. LAIRD: Object to form.
THE WITNESS: Yes.
BY MS. JOSEPH:
Q Okay. You referenced while you were talking a couple of times "model use of force standards," and I believe you said those are federal standards.
Are you able to, off the top of your head, point us to any specific document or collection of materials that compromise those model use of force standards?
A Yes. What usually happens is, typically, the FBI forms a working group, and they bring in state, local, and others. And then they come up with a model, and if you were to do a -- I'm going to do it right now while we're talking.
I just Googled "use of force model standards," and the very first one I came up with was a Department of Justice publication on use of force and when it's appropriate: Office of the Justice Program Model Use of Force Policy and Model Legislation, Overview of Police Use of Force by the National Institute of Justice, 1 through 16 Departments of Justice Policy on Use of Force.
So, yes. It's -- it's pretty standard, as I

said, and most states base it off of that because it's already been tested for legal sufficiency.
Q Okay. Now, you talked with Mr. Laird. I think he asked you several times, "Are you an expert in use of force policies and standards?" And I believe the answer that you gave him was, "No."
I want to ask you a slightly different question. Are you an expert in use of force decision-making in the field?
A Yes.
Q Okay. And what is that expertise based on? And forgive me if I'm being a little redundant.
A As a supervisor and as a -- as a trained special agent for the government, for the United States Government, I've received annual and countless trainings on the use of force and use of force model, the use of force continuum, and ladder.
We stay up with it. Whenever there's a change to it, we -- we do those policies.
It is certainly my role to make sure that those that work with me and for me are familiar with that that they received the training that they need to receive on it, and in after-action reviews, did they follow our policies.
So I'm not an expert in the formulation of

the policies and doing the research and the other.
But I certainly consider myself a seasoned expert on its application throughout law enforcement or certainly through the officers that worked for me, its application on the streets, the context in which they use it within the streets, not citing an academic journal that says, "Out of the 3,587 incidents over the last year, 80 percent of them" -- no.
That's not me. It's clear from the earlier questions I'm not published in that area, but I'm a practitioner.
It's something that is -- one of the most critical functions a law enforcement officer has is the ability to take someone's life.
And it's certainly one of the most critical functions a supervisor has is to make certain that that is trained and applied appropriately.
Q Now, in this section of your report, Decision to Shoot or Not to Shoot, you're expressing opinions, basically, of what questions the officers should be asking, what data they should be analyzing in order to come to that decision to decision to shoot or not to shoot. Is that accurate?
A That's correct.
Q And I believe you said this earlier, but to

be clear, you're not formulating an opinion and expressing an opinion as to whether these particular officers followed APD procedure in this instance. Is that right?
A No, I am not.
Q Okay. But these questions that you've provided here, even though you haven't studied whether the officers strictly followed APD procedure, are the questions that you've posed here in the Decision to Shoot or Not to Shoot Analysis, would they aid the jury in making a determination as to whether the use of force by these officers in this instance was justified?
MR. LAIRD: Object to the form.
THE WITNESS: Certainly, because there's a distinction between "The organization has authorized me to shoot under these circumstances" and "The context that I'm in right now justifies me shooting in these circumstances."
And too many people don't see the two different decisions.
A flag where the organization says, "Yes, you can shoot if Criteria A, B, C, and D are met," is not the same as the flag that the officer then raises by pulling the trigger, which is, first

off, "Yes, A, B, C, D and -- are met," and, "I can do it safely. It's for this purpose," et cetera.
So I think they would definitely help in the decision-making.
BY MS. JOSEPH:
Q I see this in Item 2 of this section. You talk about if officers were situationally authorized to use less lethal force.
And that makes me wonder, you know, in addition to situational authorization, is there an element of personal decision-making here?
A There is, but personal decision-making cannot take place until situational authorization has occurred.
Q Okay.
A To go back to the simplest -- to go back to the very simplest would be a Military sniper model. The fact that he has a target in sight and can execute that target is not the same as he's now been given a green light to do it.
Q Okay.
A And in this case, the fact of does the circumstances facing that officer at that moment meet the institutional criteria for the use of less lethal force, and if it does, then it falls on the officer to

determine, "Yes, and I will apply that in this situation."
Q How is an officer who has been situationally authorized to use force, who finds themself in a loud, chaotic, potentially scary environment, able to ask themself these questions and make these decisions within seconds?
A Within less than seconds, you're looking down the sight, and you're sighting your weapon. Is someone in the way? Are you going to hit a bystander?
All of those are trained, and officers qualify and shoot annually, or quarterly at least, where they're -- where they're practicing the situations.
Is the person a threat? If their back's turned to me, how much of a threat are they to me? But are they a threat to somebody else? Are they within the operational limits of my weapon?
If -- if I've only shot this at 40 yards on the range, am I now trying to shoot it at 100 yards and hoping that I can hit my target?
So, yeah, it's a lot of data going through their mind, but it's decisions they make probably with the same ease that you raise an objection because you don't have to sit and study out everything for why

you're raising an objection.
You've been in this situation so many times that those triggers are pulled, and you make your objection. And it's the same for the officer, and they train in loud, noisy environments.
I remember doing my basic training, and we would fire at night. And then suddenly, they'd turn the flashing lights and the sirens on, and, yeah, the first couple times, it's very disorienting.
Officers are trained -- this. Officers are entrusted with this. So, yes, it is a decision, but it's one that we recognize when we hand them a weapon and say, "You can apply lethal or less lethal force; it's one that we feel you're trained to make."
Otherwise, we'd be doing this by AI. You wouldn't need an officer at all, and I don't think anyone wants that.
Q No kidding. Okay. So as you're describing that for us and explaining that, I'm thinking about how, in certain professions, even in certain law firms, you know, a lawyer can speak to this.
You kind of finish your training, and then you get thrown there. Okay. You've seen it done once. Now, you've read the book. Now, go take a deposition. Go try a case.

Do we expect officers to have a certain level of experience before they're put in a situation like we saw on May 30, 2020? Let me ask you that first.
MR. LAIRD: Object to the form.
THE WITNESS: They certainly go through time with a training officer and a field training officer. It's unlikely during that field training period, they were put into a situation like what occurred during those days.
But once again, it's important to realize they're not in isolation. In each of these cases, you don't have the rookie right off of probation standing alone, making these decisions. They're in a line of experienced officers.
You can see on the body cameras the sergeants walking back and forth. You can see the corporals. You can see there's a chain of command structure there.
So there is -- that has its benefits. It also has its distractions during events like that, but, yes. Those officers on that day were exposed to something they hadn't been exposed to before, I would dare say, in most of their lives, that level of protest, roads being blocked, and things like that.

But they're trained to handle that, and they have the support of officers next to them that are also trained to handle that, perhaps with more experience.
BY MS. JOSEPH:
Q So we would still expect them to be able to ask the appropriate questions and make the appropriate decisions before pulling the trigger.
MR. LAIRD: Object to the form.
THE WITNESS: Where we don't see that is what we refer to in the Military and others as "contagious fire," and that's when the officer to your right and left starts shooting. So you assume all those questions are answered, and you start shooting.
And we -- we see a lot of that, unfortunately, here because we hear one or two shots go off, and then it's boom, boom, boom, boom, boom.
So -- so that is one of the problems that we have in these situations, and it's one of the ones that we would drill into our people is, "Your decision's not made by the person standing next to you. You have to make that decision for yourself."
The fact that they're shooting doesn't give you blanket authority to shoot. So as I said, it works positively, and it also works negatively. It's

an incredibly difficult situation for an officer to be in.
BY MS. JOSEPH:
Q And you referenced something you described as "contagious fire," having seen it here.
Could you tell us a little bit more about how you're able to determine that that's happening in the body-worn camera footage those this incident that you watched?
MR. LAIRD: Object to form.
THE WITNESS: We see, and we hear -- I'm not saying that it occurred.
BY MS. JOSEPH:
Q Okay.
A But there are certainly indicators that it did. You -- for instance, in, I believe, it was Talley, yes. In Talley, he was spotlighted at one point.
That already gives the officers on the overpass, "This is a person of interest," and they're focused in on him. And then you have someone that's actually, I believe, calling the commands, "This guy there, this guy there, this guy there," and he shoots.
Then you hear two or three other weapons discharging at nearly the same time. So you have to

ask yourself, "Is -- is each of those officers making an independent decision that this is a threat that I need to negate or this is a felon that I need to bring into custody, or are they reacting to the officer on their right or their left that has already broken that threshold by pulling the trigger and firing the first round?"

Q Okay.

A And -- variety of the law enforcement officer shootings or Military base shootings that I've investigated.

Q So in this case, you're not making a conclusion one way or the other as far as whether a specific officer engaged in this contagious fire, but you do see that it's appropriate to raise those questions. Is that accurate?

MR. LAIRD: Object to form.

THE WITNESS: Certainly.

BY MS. JOSEPH:

Q Okay. Okay. I'm going to change gears a little bit. Mr. Laird asked you about kind of a laundry list of documents and whether you reviewed them, and I want to go back to that for a minute.

Do you remember talking about whether you reviewed the parties' discovery responses and written

statements by officers and things like that in this deposition?

A I remember I think I said that I haven't reviewed the officers' statements. I'm looking at the documents that I've written here, and part of the problem can be for me, I receive multiple files.

I received a Talley file, a Rodriguez, and I had a Krisch file. And there was a lot of overlap in each. So I know I've read statements from officers, but I'm not comfortable, during this deposition, saying that it was for Rodriguez and Talley or that I read them during Krisch.

They're just three events that happened within, what, 48 hours of each other that are very, very similar. So -- so I -- that.

Q Okay. Let me ask you this. For those items that you did not review, like I think you said earlier, written discovery responses, interrogatories exchanged between the parties in this case --

A I've --

Q Let me start over. Let me ask you a different question. What else did you need to see, if anything, that you didn't see in order to form the opinions that you're expressing in this case?

I know you talked about not being able to

conduct a weapons munitions test.

MS. JOSEPH: Can y'all still hear me? It looks like you're all frozen.

MR. LAIRD: Yes, I can.

MS. JOSEPH: Okay. Okay. Mr. Maloney, are you still there, or did you freeze on us?

MR. LAIRD: Yeah, he looks frozen on my --

THE REPORTER: Okay. We'll go ahead and go off the record real quick. We are off the record at 11:56 a.m.

(Off the record.)

THE REPORTER: We are back on the record at 12:02 p.m. You may continue.

BY MS. JOSEPH:

Q Mr. Maloney, we just had a short interruption, and I think I had asked you a really long question that I have now forgotten before that break.

So I'm going to move on from there and ask you something different if that's okay with you.

A Certainly.

Q All right. Are you willing to review additional materials in this case if either party, you know, wants to provide them to you?

A Absolutely.

Q Okay. I know that you mentioned earlier not being able to conduct any testing of the munitions and the shotguns that were being used.

If you were able to do that, is it something that you would consider helpful to your opinions in the case?

A Yeah. I think it would certainly hone down the opinions considerably, but in the Krisch case, I was made aware that it's not possible.

Q Okay. Having not been able to physically get your hands on those munitions and shotguns, were you still able to perform -- I don't think that's the word I wanted.

Were you still able to form valid and correct opinions as to what happened out there that day?

A Yes.

Q Okay. Let's talk about the fact that Modesto and Tyree were deaf for just a moment. Does Mr. Rodriguez's or Mr. Talley's deafness affect your forensic opinions in this case?

A No.

Q Okay. So you would come to the same conclusions as far as who shot from where at what

time, regardless of whether either plaintiff was deaf. Is that correct?
A That is correct.
MR. LAIRD: Object to form.
BY MS. JOSEPH:
Q Okay. Are you holding yourself out to be an expert in deafness?
A Absolutely not.
Q How, if at all, does the fact that the plaintiffs are deaf impact your Decision to Shoot or Not to Shoot Analysis?
MR. LAIRD: Object to the form.
BY MS. JOSEPH:
Q Let me try again; just forget that one. Would you still be asking the same questions in the Decision to Shoot or Not to Shoot Analysis that you're asking whether the plaintiffs were deaf or not?
A Yes.
Q Okay. Let's talk about the water bottles. Was part of your work in this case to evaluate the trajectory or direction of the water bottles that were thrown by the plaintiffs?
A Yes. It was.
Q Okay. Did the water bottle thrown by Modesto Rodriguez hit anyone?

A Not that I could see as we tracked the water bottle, and we tracked it very effectively, frame by frame.
Q Okay. Same question for Mr. Talley, did the water bottle thrown by Mr. Talley hit anybody?
A Not that I could see, and we tracked it frame by frame as well.
Q You talked with Mr. Laird about the direction that the water bottles were thrown. Do you know, sitting here, where each plaintiff was aiming when he threw his bottle?
A No, I don't think that's something I'd be able to ascertain. We know how he was positioned when he released the bottle and what direction it went in.
Whether he was aiming specifically to miss people or whether he was aiming specifically to hit one person, we have no way of knowing.
Q Okay. And during your conversation today with Mr. Laird, he referenced a number of times that he believed it to be "unlawful" that the plaintiffs threw the water bottles.
MR. LAIRD: Object to the form.
BY MS. JOSEPH:
Q Do you recall that conversation?
MR. LAIRD: Object to the form.

THE WITNESS: I do.
BY MS. JOSEPH:
Q Having been a peace officer and having had a lot of experience in law enforcement over the years, are you able to explain what considerations come into play when determining whether a particular action is "unlawful"?
A It's -- it's very simple. There's a Texas Penal Code. It has a definition under "assault" and "aggravated assault."
Each of those definitions then have elements or elements of those crimes, and the elements were even -- either met or they weren't. I am not currently familiar with the Texas Penal Code for assault or aggravated assault.
I know from general knowledge that it generally involves an action or intent that puts another in fear for their life or bodily harm or injury. So that's a -- that's as far as I can go on that.
Q Okay. So you are not expressing an expert opinion today as to whether the actions of Mr. Talley or Mr. Rodriguez were lawful or unlawful.
MR. LAIRD: Object to the form.
THE WITNESS: I'm not.

BY MS. JOSEPH:
Q Okay. Are you expressing an opinion today as to whether Mr. Rodriguez's action in throwing the water bottle was lawful?
A No, I am not.
Q And are you expressing an opinion today whether the action of Mr. Talley in throwing the water bottle was lawful?
A No, I am not.
Q Okay. Did you need to review the written discovery exchanged by the parties in these cases in order to form your opinions?
A I'm not sure what you're asking. I apologize.
Q That's okay; thank you for telling me.
Did you need to review an incident report written by the police officers stationed on the scene in order to form your forensic opinions in this case?
A No, I didn't.
Q Did you need to review such an incident report in order to formulate the questions that you posed to help determine whether to shoot or not to shoot?
A No. I didn't.
Q Okay. If there was something else that you

needed in order to form your opinions in these cases that you've expressed, would you have asked for it?
A Yes. I would have.
Q Okay. And, in fact, you did ask for testing of the munitions, but you were able to work around that. Is that right?
A Yes.
MS. JOSEPH: Okay. Okay. I will pass the witness. Thank you, Mr. Maloney.
EXAMINATION
BY MR. LAIRD:
Q Mr. Maloney, just a few follow-up questions, first of all, the CV that you provided us, is that an accurate listing and description of your qualifications as an expert?
On whatever subject areas you're claiming to be an expert in, is it all contained in here?
A No.
Q It's not.
A No.
Q Where would it be -- where would I find that?
A I don't know that it's -- I don't know that it's not contained in there. The line of questioning that we followed or that you followed didn't perhaps

bring those areas up.
Q Okay.
A Certainly, I list the areas when I was a supervisor in law enforcement, where I worked, and what sort of things I did. Do I specifically state that -- state that? No, I don't.
Q Right. And a good example of that is when you discussed being a supervisory special agent in Hawaii. Here's what you say in your CV.
"I was the supervisory special agent/resident agent in charge of the criminal investigations office at NCIS office at," I'll mispronounce this, "Kaneohe."
A Kaneohe.
Q K-A-N-E-O-H-E, "Bay Marine Corps base in Hawaii, I directly supervised eight agents that conducted felony-level investigations aboard the base and those that affected Navy/Marine Corps personnel.
"I established office budgets, coordinated training, wrote job descriptions, interviewed potential hires, chaired hiring boards, evaluated personnel, handled disciplinary problems in accordance with HRO regulations, counseled personnel, facilitated personnel in achieving their career goals.
"I was responsible for the management and

security of secret information, the onsite armory as well as the evidence facility, and maintaining appropriate chain of custody."
That's the description that you provide in your CV. Right?
A Yes. It is.
Q Right. It doesn't mention anything about being an expert in use of force or use of force decision-making. Does it?
A No, it doesn't.
Q And, in fact, none of the descriptions anywhere in your CV mention anything about expertise in use of force for law enforcement personnel, including use of force decision-making in the field. Does it?
A No. It does not.
Q Okay. Now, as I understand it, based on -- all I have to go by is your report, and I don't see anything in your report rendering any opinions about APD training or supervision of the officers that were there at the protest. Is that correct?
A I'm not sure what the question is.
Q The question is, are you rendering any opinions regarding APD's training or supervision during the protests?

A No, I'm not.
Q Okay. Because I don't see any in your report, and I just want to make sure --
A There are none of those opinions in the report.
Q Pardon me?
A No. You're correct. I don't render any opinion on those in the report.
Q Okay. Now, the fact that the water bottles thrown by Rodriguez and Talley did not actually hit anybody does not mean that that was not a threat, a threatening action. Correct?
MS. JOSEPH: Objection, form.
BY MR. LAIRD:
Q Is that correct?
A Yes. That's correct.
Q Okay. It also doesn't mean that it was not an unlawful action. Correct?
A I am going to completely disassociate myself from "lawful" or "unlawful" absent the Texas Penal Code and the elements of the crime. That's best addressed by the lawyers or the prosecutors at this point.
Q Okay. But in your report, you use the term "felonious actions." Right?

A Take me there again, but, yes.
Q I mean, a "felonious action" would be an "unlawful action." Right?
A Yes. It would, but I don't use it in the context that you're saying. I use it in the posing of the question that, if a felonious action occurred in their presence, what would they be authorized to do.
So I believe with -- unless you want to point me directly to where that is in the report, I believe that's a misapplication of context.
Q There is no doubt that the action of throwing an object near a crowd, in the direction of a crowd, is an "unreasonable action." Correct?
MS. JOSEPH: Objection, form.
BY MR. LAIRD:
Q You've already told us this.
A I don't believe I have told you that. I believe I've told you that there are circumstances where that may be a reasonable action. I did not see where they --
Q Okay, right. You didn't see any of those circumstances in any of the videos that you reviewed, though. Right?
A No, I didn't.
Q Okay. All right. And from the perspective

of an officer at the scene, it doesn't matter if a water bottle actually hit someone or not.
That's still an action that Rodriguez and Talley took that could reasonably be seen as a threat of bodily harm to anyone in that crowd. Right?
MS. JOSEPH: Objection, form.
THE WITNESS: Right.
BY MR. LAIRD:
Q Okay. And as I understand, I just want to make sure I'm clear. The concept of "contagious shooting" that you described, you're not rendering an opinion as to whether or not that occurred here. Correct?
A No, I'm not.
Q All right. And since you have not reviewed the statements of any of the officers that were there at the scene during the Talley and Rodriguez incidents, you can't say one way or the other why they fired their weapons. Right?
A No. I can just say that they did.
Q Right. You don't know whether it was some kind of contagious shooting or if they were responding to the actions of Talley and Rodriguez in throwing the bottles. Right?
A I don't know what was in their mind at the

time they chose to engage. That's correct.
Q Right. That's certainly something that's relevant. Isn't it?
A Yes, I don't know that that would be brought forward through me, but it is relevant.
Q I'm sorry. I didn't catch that.
A Well, you asked whether it was relevant. Are you asking -- and I'm sorry. Were you asking -- was that a question when you said, "That certainly is something that would be relevant"?
Q Yes, that was a question.
A Yes, it would be relevant to someone. Yes.
Q Okay. Now, you mentioned that you aren't familiar with the Austin Police Department policy for the use of force. Right?
A I believe I did say that. Yes.
Q Okay. And I think you stated that you weren't rendering any opinions on whether or not the officers' actions were consistent with the APD use of force policy. Right?
A I think I do render those opinions in my report, and I'm sorry. You're confusing me, and I'm trying to be clear here because we discussed use of force in so many different directions.
And we've discussed policy in so many. I've

reviewed the use of force as it's contained within that 487-whatever pages that was there for the Krisch case.
Q Okay.
A I believe I was responding to specific questions, "Did -- was that material provided for you in this case?" So I thought we cleared that up. If we didn't, I'd certainly like to clear that up now.
Q Okay. And in fact, there is a national standard for the use of force, a federal standard for the use of force established by the United States Supreme Court. Correct?
A I -- there may be.
Q Do you know what that standard is?
A No, I know what the federal one is. I don't know that it was interpreted by the Supreme Court or not.
Q And are you familiar with Graham vs. Connor?
A No. I'm certainly not.
Q Are you familiar with Tennessee vs. Garner?
A I can say "no" to all of them as you go down the list.
Q Okay. It's just two cases, U.S. Supreme Court cases, but you're not familiar with those or any standards that they set forth.

A No, I would assume that the Department of Justice standards are in compliance with the Supreme Court.

MR. LAIRD: Okay. All right. I think that's all I have. Thank you, sir.

THE WITNESS: Thank you.

MR. LAIRD: And, Ms. Martinez, I will need to order an expedited copy of the transcript if I can.

THE REPORTER: How quickly do you want it?

MR. LAIRD: Would, let's see, maybe five days be possible?

THE REPORTER: I can do that.

MR. LAIRD: Okay, great. Thank you.

THE REPORTER: Absolutely, you're very welcome. Ms. Joseph, are you going to order a copy of the transcript?

MS. JOSEPH: I'm not right now, but I believe Mr. Maloney's -- you can send the read and sign to me. And I'll get it to him.

THE REPORTER: Okay, I will do that.

MS. JOSEPH: Did you also need that in five days, or is ten business days good for you?

MS. JOSEPH: I don't want to pay you to

expedite it, but if you are already preparing it for Mr. Laird, then I would appreciate receiving it on the same timeline.

THE REPORTER: Okay. I will put that in the notes, "don't want to be charged." I'll have to make sure that that's okay. If not, I will email you and let you know if that is or is not okay.

MS. JOSEPH: That's fine.

THE REPORTER: And we'll just go for ten standard if we're not going to charge. Okay?

MS. JOSEPH: That's fine.

THE REPORTER: Okay. So we'll go off the record at 12:22 p.m.

(Signature reserved.)

(Whereupon, at 12:22 p.m., the proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, SIDNEY MARTINEZ, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

July 25, 2023

SIDNEY MARTINEZ

Notary Public in and for the

State of Texas

[X] Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, AMY DAMOTH, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

July 25, 2023

AMY DAMOTH

FURTHER CERTIFICATION UNDER RULE 203 TRCP

I, SIDNEY MARTINEZ, the officer before whom the foregoing proceedings were taken, do hereby certify:

That the deposition transcript was submitted to the witness or to the attorney for the witness for examination and signature on _____; or

[ ]examination and signature was waived;

That the transcript [ ]was/[ ]was not returned by the witness, and if so, on _____;

That, if returned, the attached Changes and Signature page contains any changes and the reasons therefor;

That the transcript was delivered in accordance with Rule 203.3;

That the amount of time used by each party at the deposition is as follows:

Mr. Laird - 02 HRS: 10 MIN

Ms. Joseph - 00 HRS: 35 MIN

Mr. Barton - 00 HRS: 00 MIN

That $ _____ is the deposition officer's charges to the Defendant for preparing the original deposition transcript and any copies of exhibits;

That a copy of the certificate was served on all parties on _____, and filed with the Clerk.

Certified this _____ day of _____, 202___.

SIDNEY MARTINEZ
Notary Public in and for the
State of Texas
Veritext Firm Registration No. 571

LEIGH A. JOSEPH, ESQUIRE
ljoseph@hendlerlaw.com

July 25, 2023

RE: Rodriguez, Modesto v. City Of Austin, Et Al
7/19/2023, Michael Maloney (#5949589)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at errata-tx@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

Rodriguez, Modesto v. City Of Austin, Et Al
Michael Maloney (#5949589)

ERRATA SHEET

PAGE_____ LINE_____ CHANGE_____
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REASON_____

_____ _____
Michael Maloney Date

ACKNOWLEDGEMENT OF DEPONENT

I, Michael Maloney, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

Michael Maloney Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20___.

_____

NOTARY PUBLIC

Exhibit 10 – Placeholder

Officer Justin Wright Body-worn camera video
[Bates No. COA 4621 - Confidential]

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or carol.smith@austintexas.gov for assistance with video exhibits.

Exhibit 10

Exhibit 11 – Placeholder

Video of Officer Justin Wright deposition testimony [this is the 5th video of 5]

This video exhibit will be hand delivered to the Court

Please contact paralegal Carol Smith at 512-974-2147 or carol.smith@austintexas.gov for assistance with video exhibits.

Exhibit 11

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants	§	

DEFENDANT CITY OF AUSTIN'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE EXPERT OPINIONS AND TESTIMONY OF MICHAEL S. MALONEY

TO THE HONORABLE ROBERT PITMAN:

Defendant City of Austin files its Reply in Support of its Motion to Exclude Expert Opinions and Testimony of Michael S. Maloney pursuant to Federal Rules of Evidence 401, 403 and 702 as follows:

A. Introduction

Contrary to Plaintiff's assertions in his response,[1] the only concepts that have been "muddled" with regard to Mr. Maloney are his qualifications and role as an expert in this case, which were not muddled by Defendant but by Maloney himself. Stuck with Maloney's admissions in his deposition and lack of any description of any expertise on use of force in his C.V., Plaintiff argues that Maloney's opinions do not address the standards used to evaluate uses of force. Instead, Plaintiff argues, Maloney's opinions only address "use of force decision-making." (Doc. 48, pp. 2-4) But, these are "distinctions" that are not distinct, no matter how Plaintiff tries to argue that they are nuanced concepts.

[1] (Doc. 48, p. 2)

B. Maloney is not qualified to render opinions regarding the standards used to evaluate the use of force.

First, Plaintiff does not attempt to argue that Maloney is an expert in the standards used to evaluate law enforcement uses of force, and it is understandable why he does not. Maloney unequivocally stated in his deposition that he is not an expert in the standards used to evaluate law enforcement uses of force. (Ex. 2, P. 74) He also testified that in his work as a consultant and expert, he does not perform any analysis or perform any expert work in the subject area of the standards used to evaluate law enforcement uses of force. (Ex. 2, p. 23)

Not surprisingly, or perhaps a little surprising given Maloney's "practical experience" in law enforcement, Maloney is not familiar with the standards used to evaluate an officer's use of force set forth in *Graham v. Conner,* 490 U.S. 386 (1989) or used to evaluate an officer's use of deadly force set forth in *Tennessee v. Garner,* 471 U.S. 1 (1985). (Ex. 2, pp. 121-122) Simply put, Maloney's self-described expertise in "forensic consultation and analysis on complex death investigations, sexual assault investigations and crime scenes of violence" does not make him qualified to testify on the standards for law enforcement use of force, which necessarily include "the decision to shoot or not shoot." (Ex. 1)[2]

C. Maloney's Opinions in this Case Stray Far Beyond his Qualifications and Should be Excluded.

Plaintiff evidently recognizes Maloney's admissions, and now argues that Maloney only opines on "use of force decision-making" and not the standards used in evaluating and assessing the use of force. Plaintiff contends that Maloney in fact has expertise in "factors and considerations an officer on the ground needs to be thinking about before discharging a weapon…" (Doc. 48, p.

---

[2] It should be noted that Plaintiff has designated another expert, Jeffrey J. Noble, as an expert on law enforcement and policing procedures including "use of force and civil rights violations." (Ex.5, Plaintiff's Rule 26(a)(2) Expert Disclosure). Plaintiff has provided no explanation of the need for two experts on the use of force.

2) Plaintiff argues that Maloney provides expertise on whether "the context surrounding the use of force justify the officer's decision to shoot." (Doc. 48, pp. 3-4)

The problem with this argument is that the factors and considerations that an officer evaluates before using force are the standards established by the U.S. Supreme Court in *Graham v. Connor* that a reasonable officer on the scene should consider before using force, i.e. the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. Maloney is not an expert in these standards and admits it. (Ex. 2, pp. 11-13; 74-75). Neither Plaintiff nor Maloney explains how the officers' "decision to shoot or not shoot" and the "assessments that officers were faced with when making the decision to fire" (for which Maloney claims to be an expert) are different from the standards used to evaluate law enforcement uses of force (for which Maloney admits he is not an expert).

Maloney is likewise not qualified to offer the opinion that the officers on the overpass "failed to exercise good judgment and control." Nothing in Maloney's scientific, technical or other specialized knowledge will help the trier of fact determine whether officers failed to exercise good judgment or control. This opinion is nothing more than an impermissible opinion on the officers' state of mind. An expert is in no "better position than the jury to draw conclusions about a defendant's state of mind." *Sanchez v. Gomez,* No. 17-CV-133-PRM, 2020 WL 3316990, at *11 (W.D. Tex. June 17, 2020)(quoting *Marlin v. Moody Nat'l Bank, N.A.,* 248 F. App'x 534, 541 (5th Cir. 2007).

With regard to Maloney's opinions that Talley and Rodriguez did not pose a threat to officers, and that officers could have safely arrested Talley and Rodriguez, Plaintiff argues that Maloney is qualified to render these opinions because he bases these opinions on his expert review

of the video footage. (Doc. 48, pp. 5-6) Specifically, Maloney opines that there was no threat to the officers since the video footage purportedly shows them moving away from the officers. (Doc. 48, p. 6) He also opines that the officers could have safely arrested Talley and Rodriguez based on his observations of the crowd and officers on the video footage. (Doc. 48, pp. 5-6) These opinions are not based on Maloney's specialized knowledge, training or education since the content of the videos is within a factfinder's lay knowledge and does not require specialized knowledge, training or education. See *Anderson v. City of McComb,* 539 F. App'x 385, 388 (5th Cir. 2013). Accordingly, these opinions should be excluded.

Prayer

For the reasons discussed above, Defendant City of Austin respectfully requests that the Court grant its motion and that Plaintiffs' expert Michael S. Maloney be excluded from providing any opinions or testimony regarding law enforcement use of force standards, practices and policies and the specific opinions of Maloney cited above. Defendant further requests any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

/s/ Monte L. Barton Jr.
MONTE L. BARTON, JR.
Assistant City Attorney
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City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2409

Facsimile: (512) 974-1311

Counsel for Defendant
City of Austin

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 14th day of August, 2023.

Via CM/ECF:
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Austin, Texas 78723
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ATTORNEYS FOR PLAINTIFF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

Exhibit 5

IN THE NITED STATES DISTRICT CO RT
FOR THE WESTERN DISTRICT OF TE AS
A STIN DIVISION

Tyree Talley,	§	
Plaintiff	§	
v.	§	
	§	**Case No. 1:21-cv-00249-RP**
City of Austin and	§	
John Does,	§	
Defendants.	§	

PLAINTIFF'S R LE 26 a 2 E PERT DISCLOS RE

COMES NOW Tyree Talley ("Plaintiff"), pursuant to Fed. R. Civ. P. 26(a)(2) and hereby provides the following disclosures for witnesses that Plaintiff may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

I.

A. RETAINED E PERTS

Pursuant to Fed. R. Civ. P. 26(a)(2)(B), Plaintiff identifies the following individuals who have been retained or specially employed to provide expert testimony in this case:

1 Jeffrey J. Noble
24 Calle atrina
Rancho Santa Margarita, CA 92688
949 279-4678

Mr. Jeffrey Noble in an expert in a wide range of law enforcement and policing procedures including but not limited to misconduct, corruption, use of force, pursuits, police administration, training, police operations, criminal and administrative investigations, interviews and interrogations, civil rights violations, and crowd control. His qualifications are set out more fully in his expert report and curriculum vitae. By way of example and not limitation, Mr. Noble will testify as to his opinion that a reasonable police officer would not have used any force against Plaintiff and further that the use of force in this case was inconsistent with generally accepted police practices and so inappropriate and contrary to accepted police practices that it is outrageous and shocking to the conscience. Mr. Noble will also testify that the Austin Police Department policies in place regarding the use of less lethal kinetic projectile weapons and use of force during the events at issue were highly dangerous. A report containing Mr. Noble's opinions, along with his curriculum vitae, publications, and prior testimony list, has been served on defense counsel along with these disclosures. Mr. Noble charges a flat rate of 2,500.00 for the first four hours of deposition or trial testimony, plus 600 per hour for every additional hour and 400.00 per hour for travel, "stand by" time, and other work.

2 Michael S. Maloney, MFS
1107 West College Street
Independence Missouri 640 0
816 908-2080

Mr. Michael Maloney is an independent forensic consultant and trainer. He is an expert in a variety of forensic disciplines including death investigations, death/crime scene reconstruction, death/crime scene processing, wound dynamics/evidence of injury, blood stain pattern analysis, firearms/trajectory analysis and post blast investigations. Mr. Maloney will testify, among other things, to his opinions regarding the positions of the officers who shot Plaintiff and the appropriate decision process for deciding whether to shoot. His qualifications are set out more fully in his expert report and curriculum vitae. A report containing Mr. Maloney's opinions, along with his curriculum vitae, publications, fee schedule, and prior testimony list, has been served on defense counsel along with these disclosures.

3 Jean F. Andre s, Ph.D.
12 19th Street
eaumont, Texas 77706
409 3 1- 216

Dr. Andrews is an expert who specializes in speech and hearing sciences. She has presented and written extensively on deafness. She will testify regarding her opinion as to effective communication with Plaintiff during the encounter at issue and during the case proceedings as well as her evaluation of Austin Police Department policies for working with deaf citizens. Her qualifications are set out more fully in her expert report and curriculum vitae. A report containing Dr. Andrews's opinions, along with her curriculum vitae, publications, fee schedule, and prior testimony list, has been served on defense counsel along with these disclosures.

4 abriel I. Lomas, Ph.D.
800 Florida Ave, NE
Washington, DC 20002
832-746-2432

Dr. Lomas is professor at Gallaudet niversity and the Director of the Counseling Programs for the School of Human Services and Science. He has particular expertise in the area of mental health in the deaf population. Dr. Lomas has a background in clinical counseling and psychology. His qualifications are set out more fully in his expert report and curricula vitae. Dr. Lomas will testify about the traumatic impact of the events giving rise to this action on Plaintiff. A report containing Dr. Lomas's opinions, along with his curriculum vitae, publications, prior testimony list, and an invoice reflecting his fees in this case has been served on defense counsel along with these disclosures.

. NON-RETAINED E PERTS

Pursuant to Fed. R. Civ. P. 26(a)(2)(C), Plaintiff identifies the following individuals who have not been retained or specially employed to provide expert testimony in this case, but who may provide expert testimony as non-retained experts as permitted by the Federal Rules of Civil Procedure and the Federal Rules of Evidence:

1. Treating Medical Providers

The following are medical providers, including physicians, technicians, nurses, radiologists, physician's assistants, healthcare providers, records custodians, clinics, hospitals and their agents, representatives and employees, where, or by whom Plaintiff received medical care and treatment. They will testify consistently with their medical records, that their treatment was reasonable and necessary, that the expenses they charged were reasonable, and that the injuries they treated were caused by the use of force at issue in this case based upon the information they received and collected during their treatment as well as any other documents they have reviewed relating to this case. The health care providers listed below are not within the control of Plaintiff and have not been retained by Plaintiff as expert witnesses (and therefore have not provided to Plaintiff any specific written report other than their respective medical records and narratives where applicable); therefore, for the mental impressions held by and the opinions of and facts known by any of the following witnesses, please refer to their medical records of Plaintiff, narratives, and any deposition testimony given or to be given by any such healthcare providers.

St. David's South Austin Medical Center
901 West Ben White Boulevard
Austin, Texas 78704
(512) 816-7138

Ascension Seton Medical Center
1201 W 38th St, Austin, T 78705

(512) 324-1000

Luke Machen, MD
7700 Cat Hollow Drive, Suite 106
Round Rock, Texas 78681
(512) 444-1414

Texas rology Specialists
 yle T. eys, MD
901 West 38th Street, Suite 200
Austin, Texas 78705
T: (512) 421-4235
F: (512) 454-4575

Dr. eys is expected to testify about the effects of the injury to Plaintiff's genitalia sustained in the shooting incident, the future care expected within a reasonable degree of medical probability, the costs of such care, and the cause for the need of the same. Dr. eys's treatment is ongoing, and his opinions are still being formed as he evaluates the results of medical tests he has ordered for Plaintiff. Plaintiff will provide Dr. eys's medical records as soon as they are received.

To the extent it is necessary to call live at the trial of or deposition in this cause any custodian of records for any of the above health care providers, Plaintiff identifies any such custodian as a person who may have expert knowledge regarding issues related to the incident in question, including the reasonableness of the costs of care provided to Plaintiff and the reasonable certainty of future medical care.

2. La Enforcement Officers and Investigators

Plaintiff reserves the right to elicit expert opinions from Austin Police Department police officers and/or investigators who may testify in depositions or at trial in this case. Plaintiff reserves the right to elicit expert opinions from such witnesses that are related to each witness's personal knowledge of facts relevant to this case. Plaintiff also reserves the right to elicit expert testimony from such witnesses by showing them evidence produced in this case, including (without limitation) video recordings, audio recordings, still photographs, witness statements, investigative materials, or other evidence related to the incident giving rise to this lawsuit. Plaintiff reserves the right elicit such non-retained expert opinions from any law

enforcement officer or investigator called as a witness by Defendants, and Plaintiff specifically identifies the following individuals as potentially providing non-retained expert testimony:

- Officer Benjamin Lynch (AP6802), Officer Gadiel Alas (AP7835), Officer Timothy Cobaugh (AP8383), Officer Darrell Cantu-Harkless (AP8516), Officer Michael Harris (AP8542), Officer Joseph Hethershaw (AP9073), Officer Gregory Cherne (AP8196), and Officer Justin Wright (AP8976)

- Law enforcement personnel in the chain-of-command of Officer Benjamin Lynch (AP6802), Officer Gadiel Alas (AP7835), Officer Timothy Cobaugh (AP8383), Officer Darrell Cantu-Harkless (AP8516), Officer Michael Harris (AP8542), Officer Joseph Hethershaw (AP9073), Officer Gregory Cherne (AP8196), and Officer Justin Wright (AP8976) who have reviewed their actions with respect to Plaintiff in connection with the incident giving rise to this lawsuit to determine if any of these officers violated Austin Police Department policy or applicable law.

- Internal Affairs (IA) personnel who investigated the conduct of Officer Benjamin Lynch (AP6802), Officer Gadiel Alas (AP7835), Officer Timothy Cobaugh (AP8383), Officer Darrell Cantu-Harkless (AP8516), Officer Michael Harris (AP8542), Officer Joseph Hethershaw (AP9073), Officer Gregory Cherne (AP8196), and Officer Justin Wright (AP8976) with respect to the incident giving rise to this lawsuit.

- Austin Police Department Special Investigations nit (SI) personnel who investigated the conduct of Officer Benjamin Lynch (AP6802), Officer Gadiel Alas (AP7835), Officer Timothy Cobaugh (AP8383), Officer Darrell Cantu-Harkless (AP8516), Officer Michael Harris (AP8542), Officer Joseph Hethershaw (AP9073), Officer Gregory Cherne (AP8196), and Officer Justin Wright (AP8976) with respect to the incident giving rise to this lawsuit.

Plaintiff cannot provide additional detail regarding the substance of the non-retained expert testimony that each of these witnesses may offer because none of these witnesses are under Plaintiff's control.

3. City of Austin Representatives

Defendant City of Austin is expected to designate one or more individuals to testify as an organization representative pursuant to Fed. R. Civ. P. 30(b)(6). Plaintiff reserves the right to elicit non-retained expert testimony from any such witness. Plaintiff may elicit expert testimony related to any such witness's testimony based on personal knowledge and/or given in the witness's capacity as a representative under FRCP 30(b)(6). Plaintiff also reserves the

right to elicit expert testimony from any such witness by showing them evidence produced in this case, including (without limitation) video recordings, audio recordings, still photographs, witness statements, investigative materials, or other evidence related to the incident giving rise to this lawsuit. At this time, Plaintiff cannot provide additional detail regarding the substance of the non-retained expert testimony that such 30(b)(6) witnesses may offer because Defendant City of Austin has not yet designated any individuals, and any such 30(b)(6) representatives will not be under Plaintiff's control.

4. **Attorneys' Fees**

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Telephone: (512) 439-3200
Facsimile: (512) 439-3201

Rebecca Webber
4228 Threadgill Street
Austin, Texas 78723
Tel: (512) 669-9506

Plaintiff's counsel has knowledge of the hours worked and reasonable hourly rates for Plaintiff's claims for attorneys' fees pursuant to 42 SC §1988. They will testify that the hours were worked on this case and were necessarily incurred to reach the ultimate result. Plaintiff further reserves the right to supplement with expert testimony by other attorneys in the relevant market(s).

II.

Plaintiff reserves the right to supplement these disclosures as permitted by the Federal

Rules of Civil Procedure.

Plaintiff reserves the right to offer expert testimony at trial from any retained or non-retained expert identified by any of the Defendants in this case.

Plaintiff reserves the right to call undesignated rebuttal expert witnesses, whose testimony cannot reasonably be foreseen until the presentation of the evidence against the Plaintiff.

Plaintiff reserves the right to withdraw the designation of any expert and to aver positively that any such previously designated expert will not be called as a witness at trial, and to re-designate same as a consulting expert, who cannot be called by opposing counsel.

Plaintiff reserves the right to elicit any lay opinion testimony at the time of trial which would be truthful, which would be of benefit to the jury to determine material issues of fact, and which would not violate any existing Federal Rule of Civil Procedure or Federal Rule of Evidence. Specifically, Plaintiff reserves the right to elicit such testimony from persons with knowledge of relevant facts who have been identified in response to discovery propounded to Plaintiff.

Plaintiff reserves all additional rights he has with regard to experts pursuant to the Federal of Civil Procedure, the Federal Rules of Evidence, the case law construing same, and the rulings of the trial court.

Dated: May 8, 2023

Respectfully submitted,
HENDLER FLORES LAW, PLLC

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An

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to all know counsel of record via the Court's CM/ECF e-filing system on May 8, 2023.

s ei A. ose
Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
	§	
Plaintiff,	§	**Case No. 1:21-cv-249-RP**
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
	§	
Defendants.	§	

PLAINTIFFS' RESPONSE TO DEFENDANT CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff Tyree Talley, by and through the undersigned, and hereby files his Response to Defendant City of Austin's Motion for Summary Judgment (Dkt. No. 43).

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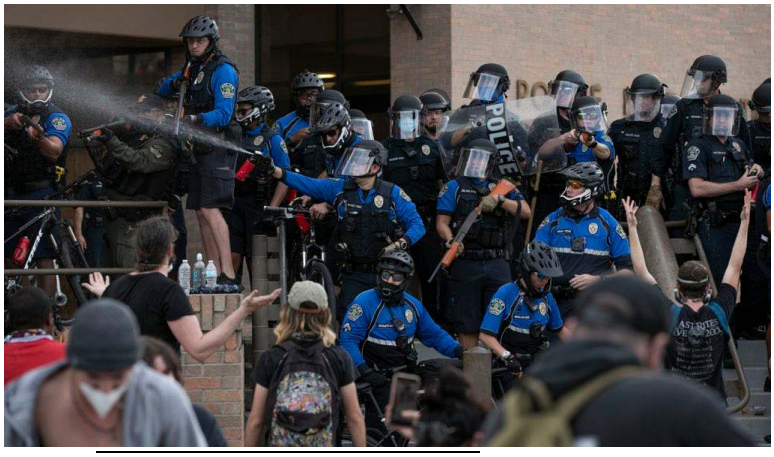
I. Introduction

On May 30, 2020, the coronavirus death toll in the U.S. had just passed 100,000 people.[1] And the country was reeling from the murders of Breonna Taylor and George Floyd, as well as Michael Ramos in Austin, Texas. In pain and solidarity, Americans took to the streets in cities across the country to have their voices heard. In Austin, several protests were arranged. Instead of ensuring a safe environment for people to protest, police reacted by donning Kevlar helmets and deploying weapons. Overworked, inadequately trained, and understaffed, police officers resorted to violence and intimidation. The recipe for disaster was set. Instead of instilling calm, the police escalated the intensity.

Why? Despite its lip service to "community policing," the Austin Police Department's policies, training, and practices instructed its officers to fire modified Winchester shotguns containing "kinetic energy projectiles" at protesters. Videos of the May 30, 2020 protests are replete with the repeated sounds of the shotguns. News reports covered the devastation the shotguns caused. As evidenced by the photos below captured by Austin American Statesman photographers on May 30, 2020 showing protesters in t-shirts facing police,[2] the police response was disproportionate and militaristic.



[1] The Coronavirus Pandemic: A Timeline - The New York Times (nytimes.com) (last visited 8/16/23).

[2] June – 2020 – Collective Vision | Photoblog for the Austin American-Statesman (last visited August 16, 2023).

The people of Austin expressed serious concern at the behavior of their police department; they demanded accountability and change. The police met the people's outward expression of concern with shotguns, pepper spray, and violence that injured people. Tyree Talley is one of those people. On May 30, 2020, Austin police shot him twelve times with kinetic energy rounds, even after he fell to the ground and lay prone in the street. The shots impacted all over his body, including the groin. Austin police deliberately injured Tyree, and the City and its responsible officers must be accountable for the practices, training, and policies that led to its officers' excessive use of force and violation of Tyree's constitutional rights.

II. Facts

Austin police officers shot Plaintiff Tyree Talley twelve times all over his body— in his ear, arm, groin, and legs.[3] Ex. 1, Talley Incident Video (COA 4620). They shot him without warning, without justification, and without issuing any orders that he could comply with. Officers stationed on the I-35 overpass shot down at the crowd, outside the protestors' line of vision. Tyree, who is deaf, was shot at from several unknown vantage points. He tossed a water bottle into the air after police injured his deaf friend, Modesto Rodriguez. In a retaliatory and punitive action, officers continued to shoot Tyree after he was on the ground in the fetal position trying to protect himself. Ex. 2, Talley Tr. 54:16-18.

Officers shot Tyree using modified shotguns containing kinetic energy projectiles (also referred to as bean bag rounds). Over time, the bean bag munitions can harden, resulting in a harder impact from an expired round and potentially exacerbating the resulting injury. This would help explain the severe injuries. Evidence suggests some of the rounds fired at Tyree may have been expired. Ex. 3, Manley Tr. 149:7-23, 155:3-9; Ex. 4, Solutions Memo (COA 4584-4587).

[3] Defendants do not challenge these facts.

Austin police policy on May 30, 2020 led officers to shoot any protester who threw anything. The officers and the City on the fact that Tyree threw the plastic water bottle during the protest as justification for shooting him repeatedly. Ex. 5, Cantu-Harkless Tr. at 88:07-18. However, this was not an "assault" on anyone, much less police. The plastic bottle was thrown in a high arc that hit no one. The policy promoted targeting individuals with weapons as opposed to de-escalation and encouraged officers to shoot without considering the specific circumstances. Austin Police Department policymaker, Chief Brian Manley (now retired) knew officers were liberally shooting protesters, and he allowed it to continue for at least two days. Manley Tr. at 49:17-25, 190:23-191:03. He later defended the officers' conduct and stated that their actions fell within policy, even though he was aware of the numerous injuries to citizens. Manley Tr. at 50:25-51:09; Ex. 6, Press Conference Excerpt (COA 40834).

The department also failed to properly train its officers using these shotguns. The only substantive training on firing the weapons is a hands-on training consisting of four opportunities to fire the weapon at the police academy (two shots each from two different distances— 20 feet and 40 feet). Ex. 7, Lesson Plan Excerpt at 2 (COA 3167). To continue to "qualify" with the weapons, officers annually fire the shotguns four times at designated distances, the longest being 40 feet. Ex. 7, Lesson Plan Excerpt at 3 (COA 3168). Importantly, the department does not order additional rounds for independent range training, meaning the officers get extremely limited experience firing these weapons without opportunity for further practice. Ex. 8, Munitions Order Notes (COA 4536-4538). Testimony from the City's corporate representative confirmed same rounds circulate indefinitely until used without being taken out of circulation when expired. Greenwalt Transcript (forthcoming).[4]

[4] Plaintiff was unable to acquire this transcript before today's response deadline but will supplement as soon as it becomes available.

Training materials on the shotguns, which are only shown during the academy, include identification of preferred target areas, acceptable target areas, and target areas to avoid, unless deadly force is warranted due to their potential for serious injury or death. Ex. 7, Lesson Plan Excerpt at 2 (COA 3167). These areas are identified as zones, either green, yellow, and red, respectively, or 3, 2, and 1. *Id.* Notably, the officers here shot Tyree in multiple red zones (ear and groin). Ex. 7, Lesson Plan Excerpt at 2 (COA 3167).

III. Legal Standard

42 U.S.C Section 1983 provides an avenue for municipal liability when it is the policies or customs of the city, as opposed to independent employee actions, that deprive a plaintiff of his constitutional rights. *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658 (1978). A plaintiff bringing a *Monell* claim must prove: (1) an official policy or custom, of which (2) a policy maker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose "moving force" is that policy or custom. *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 435 (5th Cir. 2017).

To prevail on their motion for summary judgment, Defendants, as movants, must show that there is no genuine issue as to any material fact and they are entitled to judgment as a matter of law. *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996) (citing Fed. R. Civ. P. 56). "If the movant produces evidence tending to show that there is no genuine issue of material fact, the nonmovant must then direct the court's attention to evidence in the record sufficient to establish the existence of a genuine issue of material fact for trial." *Id.* (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 321–323 (1986)). In analyzing a motion for summary judgment, courts review the facts and draw all inferences in the light most favorable to the nonmovant. *Id.*

For the court to conclude that there are no genuine issues of material fact and grant a motion for summary judgment, the court "must be satisfied that *no reasonable trier of fact* could have

found for the non-movant[.]" *Cano v. State Farm Mut. Auto. Ins. Co.*, 425 F. Supp. 3d 779, 786-87 (W.D. Tex. 2019) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (emphasis added). Therefore, to defeat summary judgment, Plaintiff must only raise a genuine fact issue with regard to each element of his *Monell* claim.

IV. Argument & Authorities

A. The City's practice and custom with respect to use of kinetic energy weapons on May 30, 2020 resulted in an unconstitutional deprivation of Plaintiff's civil rights.

An official policy generally takes one of two forms:

> (1) A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or
>
> (2) A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy.

Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir. 1984); *see also Burge v. St. Tammany Par*., 336 F.3d 363, 369 (5th Cir. 2003). The Austin police rely on their written policies to justify their actions in shooting Plaintiff. They point to General Order 206.5.3, titled "Examples of Circumstances Appropriate for Deployment," which reads in pertinent part, "Examples include, but are not limited to, the following types of situations where the subject . . .(c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury."

Officers must consider whether the specific circumstances warrant using a weapon against an individual rather than firing at someone simply because policy said they could. Ex. 9, Miller Tr. at 144:10-155:23; Ex. 10, Maloney Tr. at 99:6-13, 100:5-100:14. General Order 206.5.3 ignores the need for officer consideration of the specific circumstances by authorizing the use of kinetic energy weapons any time a "subject" is throwing "dangerous projectiles" in a way that

"create[es] a risk for injury." This is the first problem. Without delineating the specific circumstances, the policy promotes constitutional excessive force violations. *E.g.*, *Deorle v. Rutherford*, 272 F.3d 1272, 1280 (9th Cir. 2001) (shooting plaintiff with kinetic energy projectile excessive under the circumstances); *Ciminillo v. Streicher*, 434 F.3d 461, 463 (6th Cir. 2006) (finding fact question as to whether shooting the plaintiff with a kinetic energy projectile during what both parties agreed was a riot was excessive under the circumstances).

Examples of the many important circumstances to consider are (1) whether the officer personally saw the subject throw something, and (2) when to stop shooting. In this case, at least one officer admits that sometimes other people called out who to shoot, and leaves open the possibility that he may have shot without witnessing a precipitating act. Ex. 11, Wright Tr. at 58:13-22; *see also* Ex. 12, Cherne Tr. at 118:4-7. And the absence of a "brake" on the policy leaves only a gas pedal— promoting and encouraging excessive uses of force, like officers shooting Tyree twelve times.

The second problem is how the Austin Police Department put General Order 206.5.3 into practice on May 30, 2020. Officers passed around the shotguns at will,[5] uniformly shooting at anyone who threw anything, without regard to (1) whether the item was a "dangerous projectile" or (2) whether the item was *in the process of being* thrown or *had already been* thrown. Ex. 11, Wright Tr. at 40:2-20, 46:15-23; Ex. 13, Lynch Tr. at 39:22-40:08; Ex. 12, Cherne Tr. at 71:18-72:01. This practice of shooting anyone who threw anything was so pervasive on May 30, 2020, that it was undoubtedly Austin Police Department policy. *See Grandstaff v. Borger*, 767 F.2d 161, 171 (5th Cir. 1985) ("The evidence does prove repeated acts of abuse on this night, by several officers in several episodes, tending to prove a disposition to disregard human life and safety so

[5] Several officers testified that they never "checked out a shotgun," rather the shotguns were handed off to them. Ex. 12, Cherne Tr. at 78:14-23; Ex. 13, Lynch Tr. at 20:14-18, 28:22-29:06; Ex. 14, Hethershaw Tr. at 47:14-48:18.

prevalent as to be police policy or custom."); *Backe v. City of Galveston, Tex.*, 2 F. Supp. 3d 988, 1001 (S.D. Tex. 2014) (finding conduct of 20 Galveston police officers on the night of the events in question created pattern sufficient to establish custom).

The custom was later ratified by the policymaker himself, the then Chief of Police Brian Manley. For example, Chief Manley told the press and the public the following on June 1, 2020:

> Our response to resistance policy is very lengthy and it is on the public drive that you can go and look at it, but we do have specific considerations that have to be met for both the use of impact munitions and the use of any chemical agents to include CSS gas. And those criteria were met, uh, under the policy restrictions, uh, when they were used during this event, uh, again, having tragic outcomes in, in the few situations that we are aware of.

Ex. 6, Press Conference Excerpt; *See also* Ex. 3, Manley Tr. at 50:25-51:09.

As the Fifth Circuit held in *Grandstaff*, "the subsequent acceptance of dangerous recklessness by the policymaker tends to prove his preexisting disposition and policy." 767 F.2d at 171. That the Austin Police Department steadfastly stands behind its officers' shooting protesters like Plaintiff further evidences its ratification of the kinetic energy weapons practice in use on May 30, 2020. *Id.* at 171. The City admits to weapons not performing as expected and expresses sympathy for protesters who did not throw any item, but stands by its actions against people like Plaintiff, who officers targeted with excessive force for a minor action. *E.g.,* Ex. 6, Press Conference Excerpt; Ex. 3, Manley Tr. at 50:25-51:09; Greenwalt Transcript (forthcoming).

Plaintiff asserts that the kinetic energy weapons policy reflected in General Order 206.5.3 was unconstitutional on its face because it compelled officers to fire on an overbroad category of people, while lacking consideration of the specific circumstances in choosing whether to shoot, along with how many times or when to stop shooting. If the Court were to find the policy facially constitutional, however, Plaintiff's *Monell* claim on this policy could still move forward upon a showing of deliberate indifference to its known or obvious consequences. *De Luna v. Hidalgo*

Cnty., Tex., 853 F. Supp. 2d 623, 641 (S.D. Tex. 2012); *Backe* 2 F. Supp. 3d at 998. "[T]his standard is an objective one; it considers not only what the policymaker actually knew, but what he should have known, given the facts and circumstances surrounding the official policy and its impact on the plaintiff's rights." *De Luna*, 853 F. Supp. at 641.

Chief Manley knew his officers were engaged in the practice of shooting people for throwing trash and other harmless items on May 30, 2020. He knew that the Austin police were causing severe injuries with kinetic energy weapons on May 30, 2020. He knew that officers were shooting peaceful protesters, and he knew of at least one severe head wound from a kinetic energy weapon Ex. 15, (COA 40034-40037). If he knew anything about constitutional excessive force law—which he should have—then he knew excessive force was being used. Chief Manley knowingly allowed these shootings to go on for at least two full days. (Manley Tr. at 49:17-25, 190:23-191:03.)

The Austin police policy to shoot anyone throwing anything, whether the officer observed it or not, is the driving reason, or moving force, behind why the police shot Plaintiff. They shot him, twelve times, for throwing a plastic water bottle, thereby violating his constitutional right to be free from excessive force. They also violated his First Amendment rights.[6] Some policy changes have been made since May 30, 2020, further evidencing that change was needed. Ex. 16, Policy Redlines. But something does not add up. Policy changes have taken years. *Id.* The City has talked and talked publicly about limiting the use of these weapons, not using these weapons in crowds anymore, and only allowing SWAT to carry them. *See* Ex. 17, City Council Resolution No. 20200611-95. But on November 3, 2020, the police department *ordered an extra 10,000 bean bag*

[6] For further discussion of why the officers' conduct toward Plaintiff violated his constitutional rights, Plaintiff refers to and fully incorporates his Response to Defendants' Combined Motion to Dismiss and in the alternative, Motion for Summary Judgment as to Claims Premised Upon Actions by John Doe(s). [filed contemporaneously with this response.]

rounds above and beyond what it needed for training purposes and which it had not ordered in prior years. Ex. 18, Munitions Order Table (COA 4539-4540).

B. The City's training with respect to the use of kinetic energy weapons resulted in unconstitutional deprivation of civil rights.

To prevail on a failure to train theory, Plaintiff must establish "(1) that the municipality's training procedures were inadequate, (2) that the municipality was deliberately indifferent in adopting its training policy, and (3) that the inadequate training policy directly caused the violations in question." *Ybarra v. Davis*, 489 F.Supp.3d 624, 634 (W.D. Tex. Sept. 24, 2020). "Deliberate indifference" occurs when it is obvious that the likely consequence of the training failure will be a deprivation of constitutional rights. *Rhyne v. Henderson Cty.*, 973 F.2d 386, 392 (5th Cir. 1992). Plaintiff can show deliberate indifference in one of two ways: "(1) demonstrate a pattern of violations fairly similar to what ultimately transpired in the instant case, or (2) demonstrate that 'single-incident' liability exists because it was highly predictable that a constitutional violation would result from a particular failure to train." *Dawes*, 2021 WL 1200229, at *4.

Single-incident liability exists here because it was highly predictable that excessive force violations would result from the City's failure to train its officers to safely fire the kinetic energy shotguns. *Id.* at *4 (citing *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 n. 10 (1989)) ("[B]ecause it is obvious that a city must train police officers in the constitutional limitations on the use of deadly force, a failure to do so is deliberate indifference.").

On May 30, 2020, the kinetic energy shotguns were mostly carried by "rookies" who had less experience with the weapons since they had fired them fewer times. Ex. 11, Wright Tr. at 25:16-24; Ex. 5, Cantu-Harkless Tr. at 15:04-12. None of the six officers deposed had ever fired one of these shotguns in an actual police response until the May 2020 protests, at least one of them

having been a police officer for almost ten years. Ex. 19, Alas Tr. at 16:14-17; Ex. 12, Cherne Tr. at 14:19-15:6; Ex. 13, Lynch Tr. at 45:10-16; Ex. 20, Cobaugh Tr. at 22:14-17; Ex. 14, Hethershaw Tr. at 33:15-34:01; Ex. 5, Cantu-Harkless Tr. at 58:22-25. They were ill-trained, ill-experienced and the pattern was pervasive.

To qualify to wield a shotgun loaded with kinetic energy projectiles, a cadet at Austin Police Academy shoots a target labeled with red, green, and yellow zones from two different distances: 40 feet and 20 feet. Ex. 7, Lesson Plan Excerpt at 3 (COA 3168). Although only a hit in the green area passes at 20 feet, from 40 feet away, both green and yellow hits pass. *Id.* The cadet needs only two passing hits at each target distance. After that, an officer need only fire four rounds per year under the same conditions (two passing hits at 20 and 40 feet) to continue to "qualify" on the weapon. Ex. 8 Munitions Order Notes (COA 4536-4538). *Four rounds*. While the City purchases extra ammunition for firearms so that its officers may engage in target practice, it purchases no extra rounds of kinetic energy munitions for officer practice. Ex. 8 Munitions Order Notes (COA 4536-4538). Further, some of the deposed officers had not fired the weapon since 2019 when the protests occurred; they skipped qualification in 2020 due to COVID. *E.g.*, Ex. 19, Alas Tr. at 17:05-18.

Given the low bar to achieve "qualification," it is shocking to learn that the chief of police—whose job it was to ensure proper training—was not even qualified to use the weapon himself. Ex. 3, Manley Tr. at 32:13-25, 34:06-10. Nor did he review the investigation into this incident as part of his regular duties. According to the Henderson Declaration attached to Defendant City of Austin's Motion for Summary Judgment (Dkt. No. 43) as Exhibit 1, the chief only reviews "level 1" uses of force, and the police department labeled this incident a "level 2."

The Austin police officers' inadequate training is evident from their conduct May 30, 2020 and their lack of knowledge evidenced during their depositions. *The officers did not know which parts of the body fall into each color zone, even years after March 30, 2020*. They fail to distinguish yellow from green, and they are confused about what zones are red, *i.e.*, must be avoided unless deadly force is justified.[7] Ex. 12, Cherne Tr. at 129:25-130:03, 132:22-24. Here, some of these same officers shot Plaintiff in the red zone twice (his ear and groin). Ex. 7, Lesson Plan Excerpt at 2 (COA 3167); Ex. 19, Alas Tr. at 122:10-15. In other words, *officers impacted him with deadly force*. Deadly force for what, by their own allegations, constituted a misdemeanor at most. They know neither the distance from which they were firing on May 30, 2020 nor the maximum effective distance of the rounds they were firing (75 feet). *Id;* Ex. 13, Lynch Tr. at 43:03-13; Ex. 5, Cantu-Harkless Tr. at 30:21-31-23. Nor did they consistently know the effect of firing at an increased distance beyond the maximum. *E.g.,* Ex. 12, Cherne Tr. at 25:01-17.

In fact, the officers shot Talley from approximately 65 to 80 feet away, nearly double the maximum distance they trained (40 feet), and in some cases beyond the manufacturer's 75-foot maximum distance for the rounds. Ex. 21, Maloney Report at 5. Training police officers at closer distances is inadequate when those same police officers are directed to fire on people from much longer distances. They have no experience with the weapon's performance at those distances.

Further, the City does not train the officers to ensure the rounds they discharge have been safely maintained. Most police officers simply carry extra rounds in their pockets, exposing them not only to the ambient Texas heat, but without storing them in any kind of protective or preservative casing.

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[7] Because of the potential for severe or even deadly injury, a subject should only be impacted in a "red zone" if deadly force is justified. *Id.* at 1 (COA 3167). Green areas are preferred. Ex. 7, Lesson Plan Excerpt at 3 (COA 3168).

Actions taken and analysis conducted after the events of May 30, 2020 further evidence the training deficiencies. A presentation to the Special Response Team compiles "lessons learned," and identifies the need for "more training," and "better training." Ex. 22, SRT Slide (COA 4026). The Office of Police Oversight published a report containing areas for improvement. Ex. 23, *Redefining Resistance and Considering Alternatives*, April 2021. The task force that reviewed the video footage of the protests also noticed the need for more and better training. Ex. 24, Review Task Force Final Report at 9. And the current Chief of Police, Joseph Chacon, released his After Action Report, more than two years after the protests, identifying numerous areas for improvement. Ex. 25, After Action Report.

Plaintiff has presented sufficient evidence to at least raise a fact issue as to inadequate training—the officers had limited experience with the weapons, they were ignorant of the appropriate target areas of the body, and they were inadequately trained on firing distance and effect. The police chief's deliberate indifference is evidenced by his own ignorance of the weapons system, as well as the blatantly deficient training he had in place. This lack of training led Austin police officers to shoot Plaintiff in a "red zone" twice, and from an unsafe distance, both of which violated his right to be free from excessive force.

V. Conclusion

As the Fifth Circuit has held:

> Peace officers stand at the front of law and the ordering processes of society. They restrain the violator, protect the compliant, and represent constituted authority in the scenes of both peace and turbulence of community life. We depend heavily upon their skill and disposition. They deserve and require the understanding and support of judges as well as of all citizens. Where any officer fails—whether for lack of courage, judgment, integrity, or humaneness—all the community suffers. We suffer because vested authority has failed to prevent some harm or because authority has been sullied and abused. With any abuse of authority the entire ordering process is weakened. The public trusts the entire process less, and antagonism to all figures of authority rises. No one should be more alert to the cost of failure than responsible law enforcement officers and we who work in the courts.

> We must do what we can to avoid the failures, to prevent their reoccurrence, and—at all times—stay true to the requisites of honesty and accountability imposed upon all who are at once representative of the law and subject to it.

Grandstaff v. City of Borger, Tex., 767 F.2d 161, 166 (5th Cir. 1985).

The Court should deny Defendants' Motion and allow a jury to decide the fact issues based on the evidence.

Dated: August 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record on August 22, 2023 via the Court's CM/ECF system.

Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
	§	
Plaintiff,	§	**Case No. 1:21-cv-249-RP**
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
	§	
Defendants.	§	

PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS AND, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS PREMISED UPON ACTIONS BY JOHN DOE(S)

COMES NOW Plaintiff Tyree Talley, by and through the undersigned, and hereby files his Response to Defendants' Combined Motion to Dismiss and, in the Alternative, Motion for Summary Judgment as to Claims Premised Upon Actions by John Doe(s) (Dkt. No. 44).

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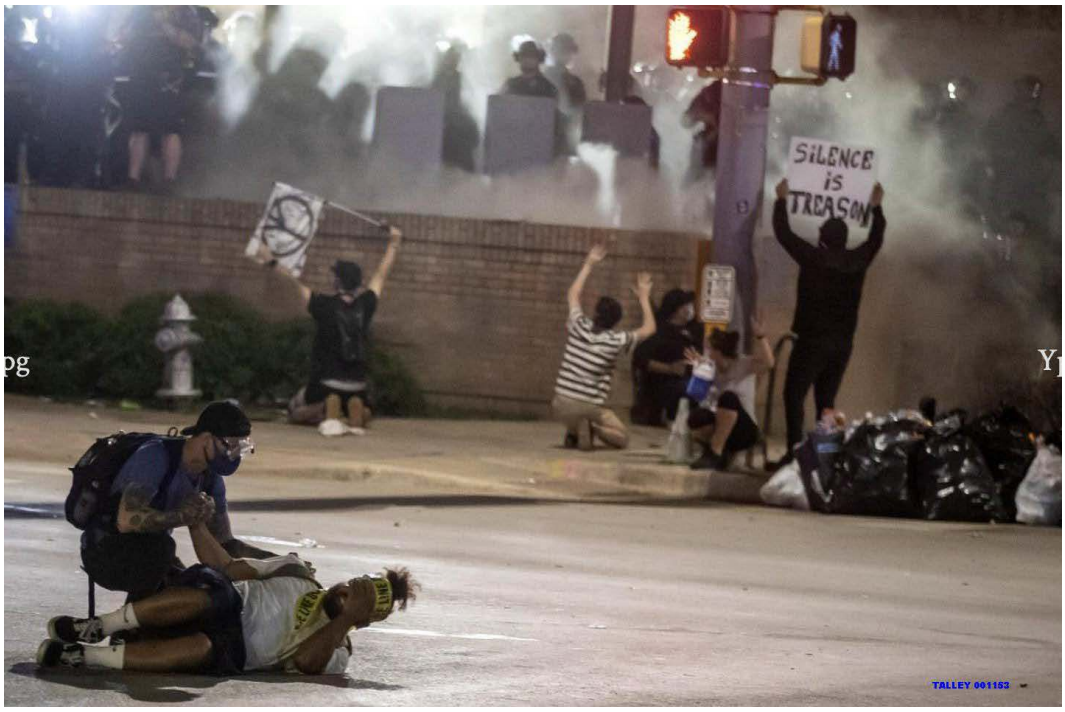
I. Introduction

On May 30, 2020, Tyree Talley joined a protest opposing police misconduct after George Floyd's murder in Minneapolis and Mike Ramos's murder in Austin. The protesters gathered outside of Austin's police headquarters. Tyree, who is deaf, left the protest that day injured and bloody because of exactly the type of conduct he was there to protest—excessive force used by Austin police. Austin City police officers formed two lines of officers armed with modified 12-gauge shotguns, hemming in the protesters—one in front of police headquarters and another on the overpass above the protesters. The second "overpass" line hovered out-of-sight over the protestors, many of whom did not know of their presence. Austin City police officers from both

lines shot Tyree at least twelve times with bean bag munitions from those shotguns. He was impacted on areas throughout his body, including his genital area. The officers later attempted to justify this excessive use of force by claiming Tyree engaged in "riotous" behavior by throwing a plastic water bottle.

The photo below depicts a bystander coming to Tyree's aid immediately after the shooting while officers stand elevated on the platform outside police headquarters holding shields. Despite his injuries, no officers attempted to come to Tyree's aid or check on him, much less contact medical personnel, despite the fact they had moved into the crowd earlier without incident.



Plaintiff brings 42 U.S.C. Section 1983 First Amendment retaliation and Fourth Amendment excessive force claims against the officers and the City of Austin, as well as a claim against the defendants pursuant to the Americans with Disabilities Act (ADA), Pub. L. No. 101-336, 104 Stat. 328 (1990) and Rehabilitation Act (RA), Pub. L. No. 93-112, 87 Stat. 355 (1973), and a negligence claim against the City for its use of expired munitions.

II. Facts

Austin police officers shot Plaintiff Tyree Talley twelve times in the ear, arm, groin, buttock, hip, and legs with kinetic energy projectiles (bean bag rounds). The officer(s) continued to shoot Tyree even after he was on the ground in the fetal position trying to protect himself. Ex. 1. A fellow protester's cries echo after the senseless shooting— "You got him. You got him. You got him." Ex. 1. Ironically, along with hundreds of thousands of protesters around the world, Tyree was protesting police brutality.

This was not an isolated incident. Over the course of three days, Austin police recorded more than 700 separate incidents involving the use of these shotguns. Ex. 2, Manley Tr. at 105:5-11. Many of the incidents involved multiple shots, like this one. The police department fired so many bean bag rounds on May 30, 2020 that the next day they scrambled to rush order more and borrow from other agencies. Ex. 3 and 4, B. Manley Text Msg. (COA 40017, 40031).

Video footage from before the shooting shows protesters in summer clothes calmly milling around in front of police headquarters and police officers in face shields, armed with kinetic energy shotguns and chemical dispersing weapons. Ex. 5, LULAC Video Excerpt (Talley001524). It also shows Tyree Talley tossing a single plastic water bottle in a high arc in the general direction of the police. The bottle did not hit anyone, falling harmlessly to the pavement. *See* Ex. 6, Maloney Tr. at 111:4-7.

The video evidence does not show any attempt by Austin police to communicate with Tyree, verbally or otherwise. Officers gave no orders to Tyree, and they issued no warning to Tyree before shooting him. Ex. 1. Nor did officers approach Tyree after pelting him with bean bag rounds. *Id.* Tyree is deaf. While hearing people could not escape the "pop pop pop" sounds from the shotguns as police fired them throughout the day, Tyree could not hear it. And, even in light

of Austin's large deaf population, the City provided no communication aids or services for deaf individuals present that day. Ex. 7 (forthcoming), Greenwalt Transcript.[1]

With protests happening around the country, the Austin Police Department was on notice protests were coming. The chief of police at the time, Brian Manley, had days to work with his team in preparation. Ex. 7 (forthcoming), Greenwalt Transcript. Instead of reviewing de-escalation techniques and other non-violent means of crowd control, they discussed ear plugs and vehicle placement. Ex. 8, B. Manley Text Msg. (COA 40010-40011). On May 30, 2020, Austin police officers arranged into two lines, one in front of police headquarters, and one on the I-35 overpass. Ex. 9, Alas Tr. at 90:3-7. This configuration hemmed in the protestors. Both lines of officers shot at Tyree. Ex. 10, Maloney Report at 5-6. The shots from the overpass rained down on him from at least 65 feet away. Ex. 10, Maloney Report at 5.

Evidence suggests the rounds used on Tyree may have expired. Ex. 2, Manley Tr. 149:7-23, 155:3-9; Ex. 11, Solutions Memo (COA 4584-4587). Over time, the munitions can harden, resulting in a harder impact from an expired round and potentially exacerbating the resulting injury, which might help explain the severity of Tyree's injuries. In addition to shooting him with potentially hardened rounds, officers shot him in prohibited areas of his body—areas designated to avoid unless the situation warrants deadly force. Ex. 12, Lesson Plan Excerpt at 2 (COA 3167). Evidence also suggests that the police department failed to prepare officers for the protests. When they shot Tyree, the officers had been in the Texas heat for hours, wearing long sleeves and extra equipment. Ex. 9, Alas Tr. at 76:4-21. Many of them had not planned to be there but were called in while off duty or transferred to the protest location. *E.g.*, Ex. 13, Wright Tr. at 16:1-20.

[1] Plaintiff was unable to acquire this transcript before today's response deadline but will supplement as soon as it becomes available.

III. Argument and Authorities

A. Defendants' Motion to Dismiss claims arising from the conduct of the officers should be denied.

The City's motion to dismiss claims premised upon the officers' conduct should fail because justice requires equitable tolling of the statute of limitations against the officers. As explained below, dismissing Plaintiff's claims against the officers based on strict application of statute of limitations and scheduling order deadlines would yield an inequitable result.[2] The doctrine of equitable tolling addresses this very issue. "The doctrine of equitable tolling preserves a plaintiff's claims when strict application of the statute of limitations would be inequitable." *Green v. Doe*, 260 Fed. Appx. 717, 719 (5th Cir. 2007) (quoting *Lambert v. United States*, 44 F.3d 296, 298 (5th Cir.1995)).

Since May 30, 2020 everyone has known that Austin police used the shotguns. What was unknown, and what Plaintiff spent much effort to discover, was which specific officers fired the rounds that injured Plaintiff. The officers knew if they fired the weapons. The City presumably knew (and definitely should have known) which officers were armed with the shotguns at the time Plaintiff was injured. And the City, as opposed to Plaintiff, has had unfettered access to interview officers, review video footage (including from officers' body worn cameras), and conduct and study internal investigations and reports. The City has an obligation to its people to determine which of its officers fired their weapons on the weekend of May 30-31, 2020, especially considering the large number of claims made against it by injured people.

[2]Plaintiff addresses the City's argument with respect to the Court's scheduling order deadlines in his separate Motion for Leave to File First Amended Complaint (fully incorporated herein), which he respectfully requests that the Court consider alongside Defendants' Motion.

But the City did not publish or reveal its conclusions regarding who shot Tyree until July 5, 2023, over three years after the event. Even more, the City's efforts are questionable. The City did not hire a forensic consultant to review the video footage, nor attempt any reconstruction. Ex. 7 (forthcoming), Greenwalt Transcript. The City's list of shooters is incomplete, as compared to the list compiled by Plantiff's forensic expert, Michael Maloney. The City's claim of "we don't know," when it chose not to find the answer, is unquestionably unfair. This is precisely the type of case where equitable tolling is appropriate.

The City shirked its obligation to thoroughly investigate this incident, while Plaintiff expended substantial resources to figure out which officers shot him. Upon receiving body worn camera footage in September 2022 (more than two years after the incident took place), Plaintiff initiated a review of the videos to determine the shooters' identities. When it became apparent that the video analysis would benefit from an expert eye, Plaintiff retained Mr. Maloney for that purpose. Maloney combed through voluminous video footage to determine the shooters' identities, which he presented in his expert report dated May 4, 2023.

The expert report put Defendants on notice of who Plaintiff believed the shooters to be, and Plaintiff immediately asked for the depositions of those same officers. Defendants did not object to the depositions, but delayed in providing dates. Plaintiff's counsel had to ask repeatedly over the course of several months to schedule the depositions. The last "shooter" deposition is currently set for August 22, 2022. In addition to delaying depositions, Defendants have yet to provide discovery on the training and background of the shooting officers, despite Plaintiff's request.[3]

[3]Plaintiff served discovery related to what he believed to be the universe of potential shooters. Then Defendants—who have not been able to reliably identify all of the shooters themselves—argued the discovery was overly broad and too burdensome.

Despite having much less access to information than Defendants, Plaintiff diligently worked to identify the shooting officers with the resources he had. Plaintiff is entitled to equitable tolling of the May 30, 2022 statute of limitations because he diligently worked to identify the shooters, in the face of the City and Austin Police Department's dilatory efforts, despite having extensive information to draw from. Not only did Plaintiff diligently work to identify the shooters, but he started that work well before the expiration of the statute of limitations, which, according to the Fifth Circuit, is further justification for equitable tolling. *See Green*, 260 Fed. Appx. at 719-20 (finding that plaintiff filed complaint well in advance of the statute of limitations supported equitable tolling); *Heckford v. City of Pasadena*, No. 4:20-CV-4366, 2021 WL 2517405, at *2 (S.D. Tex. June 18, 2021) (applying equitable tolling to allow naming of Doe officers). Plaintiff filed his complaint on March 15, 2021, more than fourteen months before the two-year statute of limitations was set to expire on May 30, 2022. Not allowing Plaintiff to sue the officers now that he has identified them would effectively nullify the legitimate function of the "John Doe" process— "giving a plaintiff the opportunity to identify, through discovery, unknown defendants." *Green,* 260 Fed. Appx. at 719. It would also reward Defendant's delay and indifference.

"As a discretionary doctrine that turns on the facts and circumstances of a particular case," the Fifth Circuit has held, "equitable tolling does not lend itself to bright-line rules, but we draw on general principles to guide when equitable tolling is appropriate. We must be cautious not to apply the statute of limitations too harshly." *Fisher v. Johnson*, 174 F.3d 710, 713 (5th Cir.1999). In the interest of fairness and justice, Plaintiff is entitled to have his statute of limitations equitably tolled to allow substituting the shooting officers in place of the John Doe defendants.

B. Defendants Motion for Summary Judgment should be denied.

1. Legal standard for summary judgment.

As an alternative to dismissal, Defendants argue that they are entitled to summary judgment on several of Plaintiff's claims, including Plaintiff's First Amendment retaliation claim, Plaintiff's Fourth Amendment excessive force claim, and Plaintiff's claims under the ADA. Motion at 8-10.

To prevail on their motion for summary judgment, Defendants, as movants, must show that there is no genuine issue as to any material fact and they are entitled to judgment as a matter of law. *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996) (citing Fed. R. Civ. P. 56). "If the movant produces evidence tending to show that there is no genuine issue of material fact, the nonmovant must then direct the court's attention to evidence in the record sufficient to establish the existence of a genuine issue of material fact for trial." *Id.* (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 321–323 (1986)). In analyzing a motion for summary judgment, courts review the facts and draw all inferences in the light most favorable to the nonmovant. *Id.*

For the court to conclude that there are no genuine issues of material fact and grant a motion for summary judgment, the court "must be satisfied that *no reasonable trier of fact* could have found for the non-movant[.]" *Cano v. State Farm Mut. Auto. Ins. Co.*, 425 F. Supp. 3d 779, 786-87 (W.D. Tex. 2019) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (emphasis added). Mere conclusory allegations are not competent summary judgment evidence, and such allegations will neither win *nor defeat* a motion for summary judgment. *Id.* (emphasis added). In short, the defendants' burden is very high to prevail, and they must prove that there are no material fact questions.

2. Defendants are not entitled to summary judgment on Plaintiff's First Amendment retaliation claim.

Multiple material fact questions persist as to Plaintiff's First Amendment claim, and therefore, Defendants' motion for summary judgment as to this claim should be denied. Defendants fail to show that Plaintiff was not engaged in constitutionally protected activity as a matter of law. Defendants seem to recognize that for summary judgment to be appropriate on this issue, the evidence would need to conclusively establish that Plaintiff threw the bottle *at officers* with a *violent* intent. Defendants' post-hoc bald arguments that Plaintiff was engaged in an "act of violence" or a "riot" are insufficient. Defendants say that Plaintiff admits that he threw the bottle in the direction of officers. Motion at 8. This is not an admission that Plaintiff *violently* threw the bottle *at the officers.* There is no fact in the record proving Tyree's intent other than his own testimony that he did not throw the water bottle to injure anyone. Ex. 24, Talley Depo. Tr. at 13:4-8, 14:3-5, 50:23, 54:20. As discussed further below, whether Plaintiff's conduct was "riotous" is a material fact for the jury to decide. The officers' saying so simply does not make it so. What the facts do conclusively show, and defendants do not deny, is that Austin police shot Plaintiff twelve times on May 30, 2020.

Defendants rely on *Singleton v. Darby*, 609 Fed. Appx. 190 (5th Cir. 2015) to support their argument that Plaintiff was not engaging in constitutionally protected conduct when Austin police shot him. *Singleton* involved dissimilar conduct by protesters of the Keystone XL Pipeline. In *Singleton*, protesters blocked a Sheriff's Department truck from proceeding down the road on which they were demonstrating. *Singleton*, 609 Fed. Appx. at 192. The protesters banged on the truck door, jumped on the truck, and forced open the door. *Id.* Then, despite being told to leave the roadway, protesters, including Singleton, "nevertheless remained in or entered the road to prevent the" truck from moving forward. Officer Darby walked to those protesters, confronting

them directly, and asked them to leave. When they refused, he pepper-sprayed them, including Singleton. *Id.* at 192-93.

This case is not like *Singleton*. Plaintiff in this case was not obstructing traffic, nor was he ordered to disperse. He did not disobey any order from police officers. In fact, officers never gave him any orders to obey. He threw a plastic water bottle while he was participating in a protest. He did not throw the water bottle with an intent to riot or assault anyone, nor did it hit anyone. Ex. 24 at 13:4-8 and 14:3-5. Moreover, in *Singleton*, unlike in this case, the officer used a proportional, or reasonable, amount of force to achieve his end of clearing the road. He did not shoot Singleton twelve times with a shotgun while he lay prone in the fetal position.

This case is more like *Alsaada v. City of Columbus*, 536 F. Supp. 3d 216, 268 (S.D. Ohio 2021). In *Alsaada*, the district court granted a preliminary injunction in favor of the protesters and against the City. Regarding First Amendment protections, the plaintiffs in that case (who were protesting police brutality) acknowledged that, though the protests were passionate and some individuals "launch[ed] objects" at the police, they were largely peaceful. *Alsaada*, 536 F. Supp. 3d at 268-69. The court explained, "[T]he proper response to potential and actual violence is for the government to ensure an adequate police presence, and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure." *Id.* (quoting *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996)).

Similarly, in *Berg v. County of Los Angeles*, No. CV 20-7870 DMG (PDX), 2021 WL 4691154, at *11 (C.D. Cal. May 28, 2021), the district court stated, "Less than deadly force that may lead to serious injury may be used only when a strong governmental interest warrants its use, and in such circumstances should be preceded by a warning, when feasible." The court should consider "the availability of less intrusive alternatives and whether warnings were given." *Id.* The

"most important factor is whether the individual injured by governmental force posed an immediate threat to the safety of the officers or others." *Id.* (citing *S.B. v. Cnty. of San Diego*, 864 F.3d 1010, 1013 (9th Cir. 2017)). There was no warning here, and there was certainly no threat to the safety of officers or others.

The fact that Plaintiff threw a water bottle has not been established as "violence" as a matter of law that would preclude a finding that Plaintiff was engaging in protected conduct when he was shot. The bottom line is that a material fact question exists whether Plaintiff was engaged in constitutionally protected conduct when he was shot twelve times by Defendants.

Even considering the Defendants' post-hoc excuse for shooting Talley twelve times, a material fact question persists as to whether Defendants acted primarily because he was engaged in constitutionally protected conduct, or primarily because he threw a water bottle. Plaintiff does not accept the latter as fact and puts the matter squarely in dispute. Each of the officers armed with a shotgun had the discretion to decide whether to shoot or not. Ex. 14, Hethershaw Tr. at 85:11-15. Some shot. Some did not shoot. And some shot multiple times.

The general attitude of many of the armed officers throughout the day on May 30, 2020 reflects frustration and animosity toward the protesters. Video evidence even suggests that at least one officer wanted to deploy chemical irritants on the entire group of protesters so that they would leave, and he could go home. Ex. 15, Cherne BWC Excerpt (COA 4588). This attitude present within the officers' ranks raises a genuine material question of how the officers felt and their subjective motivations in shooting Plaintiff twelve times. That issue is for the jury, not the Court, to decide. The jury might well conclude that the officers' conduct was retaliatory in nature—they were hot, tired and likely irritated. *See* Ex. 9, Alas Tr. At 76:4-21. Defendants' motion for summary judgment with respect to Plaintiff's First Amendment claim should be denied.

3. Genuine material fact issues prevent summary judgment on Plaintiff's excessive force claim.

It is undisputed that Plaintiff was injured from the impact of bean bag projectiles shot by Austin police officers. To defeat summary judgment on his excessive force claim, again, Plaintiff need only raise a genuine issue of material fact as to whether the force used by Austin police officers – shooting Plaintiff repeatedly with bean bag rounds – was unreasonable. *See Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 1871, 104 L. Ed. 2d 443 (1989) (holding that excessive force is analyzed under Fourth Amendment "reasonableness" standard). To evaluate whether an officer used unreasonable force, courts objectively review the facts and circumstances of each case, including (1) the severity of the crime at issue; (2) whether the plaintiff posed an immediate threat to the safety of the officers or others; and (3) whether the plaintiff was actively resisting arrest or attempting to evade arrest. *Id.* at 396.

There is a factual dispute as to whether a reasonable officer would think repeatedly shooting Plaintiff with "less lethal" rounds after he tossed a single plastic water bottle was reasonable force. Kinetic impact munitions like the bean bag rounds used by Austin police on May 30, 2020 can cause serious, even fatal injuries. Although less forceful than a firearm, kinetic impact weapons are high on the use of force continuum. *Deorle v. Rutherford*, 272 F.3d 1272, 1280 (9th Cir. 2001). Such force is "not to be deployed lightly." *Id.* Indeed, courts have found uses of kinetic impact weapons to be excessive in several situations.

In *Deorle* (not a protest case), a police officer shot the plaintiff (known to be an emotionally disturbed individual) in the face with a kinetic weapon, without warning, when the plaintiff was walking toward him at a "steady gait." *Id.* at 1275. Before he was shot, the plaintiff had been carrying an unloaded plastic crossbow, but he put it down when ordered to by the officers. *Id.* at 1276. However, he continued to carry a can or a bottle of lighter fluid as he approached the officer

who shot him. *Id.*at 1277. In the time leading up to the shooting, the plaintiff had not attempted to harm anyone or attempted to escape. *Id.* at 1282. The officer had a clear line of retreat and could easily have avoided a confrontation. *Id.* The court explained that determining whether the officer's use of force was objectively reasonable requires considering whether the degree of force used was necessary; in other words, was the degree of force used warranted by the governmental interests at stake. *Id.* The *Graham* factors identified above help to answer that question. *Id.* at 1280.

Based on the facts of *Deorle*, the first and third Graham factors easily weighed in the plaintiff's favor. Regarding the second *Graham* factor, the Ninth Circuit compared the large number of police officers present to the nature of the plaintiff's conduct, holding that walking in the officer's direction with a can or bottle in his hand was insufficient by any objective measure to justify the force deployed. *Id.* The court also emphasized the length of time the officer had to contemplate discharging the weapon before he did so, noting that use of force decisions are often "split-second" judgments. *Id.* at 1283.

The court considered both the time when the plaintiff started walking toward the officer, and when the officer arrived on the scene, some 30 minutes before. *Id.* Finding the officer had not engaged in split-second decision-making, the court gave an example of the type of incident that requires "split-second" decision-making: "a lone police officer suddenly confronted by a *dangerous armed felon* threatening immediate violence." *Id.* (emphasis added). The feasibility of and lack of a warning before the officer fired also weighed in favor of finding his action unreasonable. *Id.* at 1284. The court reversed the grant of summary judgment for the defendants on both excessive force and qualified immunity. This Court should follow suit by denying Defendants' Motion.

In *Ciminillo v. Streicher,* the Sixth Circuit reversed a grant of summary judgment in favor of the officer who shot the plaintiff with a bean bag propellant during what both parties agreed was a riot. 434 F.3d 461, 463 (6th Cir. 2006). What the plaintiff was doing when he was shot and what the officers did afterward were disputed facts, which the court viewed in the light most favorable to the plaintiff. *Id.*at 463-64.

In reviewing the first *Graham* factor, the court assumed based on the plaintiff's version of the facts that he was not engaged in a crime when he was shot. *Id.* at 467. The court recognized that a plaintiff having committed no crime clearly weighs against a finding of reasonableness. *Id.* The court again assumed the plaintiff's version of events when it evaluated the second *Graham* factor. *Id.* Based on the plaintiff's claim that he was approaching the officer slowly with his hands up when the officer shot him, the court found the second factor weighed in the plaintiff's favor, despite the officer's claim that the plaintiff had thrown something. *Id.* The fact that the incident took place during a riot did not render the officer's conduct reasonable. *Id.*

In *Nelson v. City of Davis*, officers responded to a massive party at U.C. Davis comprising approximately 1,000 people. 685 F.3d 867, 872 (9th Cir. 2012). Partygoers were parking illegally, engaging in underage drinking, rocking a car, and breaking bottles. *Id.* at 873. They overwhelmed a police vehicle—some even threw bottles at it—and officers were forced to abandon it. *Id.* Several officers then assembled in riot gear, some of whom were armed with pepper ball guns. *Id.* Plaintiff was with a group of students attempting to follow orders to disperse when he was shot in the eye with a pepper ball. *Id.* at 874. The court found that both the risk of harm and the actual harm to the plaintiff were significant and required justification with "substantial government interests." *Id.* at 879.

In evaluating the first *Graham* factor, the court noted that at most, the plaintiff's conduct was a misdemeanor (trespassing), and considered it a minor infraction that would only justify minimal force, if any. *Id.* at 880. Recognizing that some partygoers were throwing bottles (presumably glass beer bottles) at officers, the court pointed out that, *even considering all the partygoers as a single entity,* the force used was not sufficiently justified. *Id.* at 883. Obviously, there are several factors here that make this case even easier to judge—namely that Plaintiff contests whether this was a "riot," and he did not throw a glass bottle, nor did he (or the crowd) overwhelm police.

a. The first *Graham* factor weighs in Plaintiff's favor because Plaintiff was not committing a crime when he was shot repeatedly by Austin police.

It is undisputed that Plaintiff was never charged with a crime for anything that happened on May 30, 2020. There was no assault, or other charged felony or even misdemeanor offense. There is no evidence that the plastic water bottle hit anyone or threatened anyone with imminent bodily injury. *See* Tex. Penal Code §22.01. Defendants want to conveniently classify Plaintiff as a "rioter," but have not established conclusively that Plaintiff violated Section 42.02 (or any other section) of the Texas Penal Code. To be convicted of "riot," a person must have knowingly acted *with others assembled* to create an *immediate danger* of damage to property or injury to persons. *See Faulk v. State*, 608 S.W.2d 625, 632 (Tex. Crim. App. 1980) (approving jury charge that expressly included consideration of whether the alleged conduct occurred "while [] assembled and acting together" "in furtherance of the purpose of the assembly"); *Hirschi v. State*, 683 S.W.2d 415, 418 (Tex. Crim. App. 1984) (finding charge insufficient where it did not require the jury to find that the defendants "acted with those so assembled in creating an immediate danger.") Were the Court to view the evidence in the light most favorable to the defendants, perhaps it could

determine that there was a "riot" and Plaintiff was a "rioter." But the analysis turns in the opposite direction, and the Court must view the evidence in the light most favorable to Plaintiff.

Defendants have not proven that Plaintiff knowingly acted with others to create an immediate danger of injury to persons. As is obvious from the video footage of the incident, Plaintiff acted alone. Ex. 1. There was no coordinated conspiracy or riot. Officer testimony cannot establish that Plaintiff acted riotously—a term used loosely by officers in their post-hoc justification for shooting unarmed protestors—after shooting Talley, one of the officers shot a woman for acting "riotous" because she was spray-painting the sidewalk. Ex. 16, Cobaugh Tr. at 79:7-14. What is more, even if Defendants were to prevail in their position that Plaintiff's conduct was riotous (which it was not), that would at most constitute a misdemeanor under the facts at hand. *See* Tex. Penal Code §42.02. Misdemeanor conduct, under the first *Graham* prong ("severity of the crime") does not support the high level of force the officers used here.

Finally, Plaintiff was not shot while throwing the plastic bottle, as the evidence shows. Even though Plaintiff contends that throwing the bottle was not a crime, the evidence will show that he was not in the act of committing it when he was shot. Ex. 10, Maloney Report at 1. Any claim that officers shot Tyree for "officer safety" is belied by the fact that they continued to shoot him, repeatedly, after he was on the ground, another piece of evidence allowing the jury to conclude that officer shot him in a retaliatory and punitive fashion.

b. The second *Graham* factor weighs in Plaintiff's favor because Plaintiff was not a threat to anyone when he was shot.

Plaintiff maintains that the facts show his conduct was not sufficiently threatening to anyone to justify the level of physical force used against him, and he has raised sufficient facts to create an issue for the jury. A plastic water bottle simply does not do enough damage to constitute a threat. Even if it did, Plaintiff did not have the reach to impact any police officers with the plastic

water bottle. They were at least 65 feet away from him. Ex. 10, Maloney Report at 5. While many of the officers now allege an undefined fear for their safety or the safety of others, there is no evidence to that effect at the time of the incident, which was recorded on no less than six different sources *See* Ex. 9, Alas Tr. at 128:11-15. Further, that type of subjective, self-serving testimony is not enough. *Deorle,* 272 F.3d at1281. The officers' post-hoc insistence that it was reasonable to think Tyree might have something harmful, like a Molotov cocktail, is a disputed fact issue for the jury, who can assess the credibility of those claims.

Courts evaluate the objective evidence under the *Graham* test. The other protesters' response to Plaintiff wasn't to cower in fear of him and his water bottle. There is no statement or remark about anything remotely approaching "officer safety" on the videos.[4] The other protesters largely ignored Plaintiff until they saw the officers' egregious conduct, at which point they came to his aid. Ex. 1.

The officers also knew to say that this was "split second" decision making. But even a cursory review the evidence reveals that the officers had plenty of time to decide they were going to shoot Talley and others, and made zero attempt to warn them before doing so.[5] This was not a lone police officer suddenly confronted by a dangerous armed felon threatening immediate violence like the example given in *Deorle*. 272 F.3d at 1283. These officers were out there for hours, presumably thinking about how they would handle various types of conduct they might be faced with, like the throwing of objects. The Defendants have not presented a sufficient argument that no genuine issue of material fact exists as to the second *Graham* factor.

[4] In fact, the officers' demeanor on these videos, for the most part, can be described as nonchalant and unconcerned, even amused.

[5] This fact is especially troubling, given that Plaintiff is deaf, and the officers were shooting from a vantage point where he could not even see them or be aware of their presence. One can only imagine what he felt, being struck repeatedly by these bean bags from different angles.

c. The third *Graham* factor weighs in Plaintiff's favor because Plaintiff could not have been resisting or evading an arrest that was never attempted.

The third *Graham* factor is easily disposed of in Plaintiff's favor. Officers never attempted to arrest Plaintiff, so he could not have been resisting or evading an arrest. Ex. 13, Wright Tr. at 67:21-68:03. Notably, officers did arrest others that weekend; they arrested 56 people between May 29 and June 2, 2020 for "civil unrest-related offenses." Ex. 17 (COA 40835). Even more, Plaintiff did not flee the scene or make arrest infeasible or impossible. Ex. 24, 19:18-20.

The *Graham* factors support a finding that the officers' shooting Plaintiff numerous times was unreasonable under the Fourth Amendment and therefore excessive. But Plaintiff is not required to prove excessive force was used on him to defeat summary judgment. Plaintiff only needs to establish that there are genuine and material fact issues for the jury. There are many.

4. The officers are accountable for unreasonably shooting Tyree Talley twelve times and cannot shield themselves with qualified immunity.

a. Defendants' attempt to hide behind qualified immunity is too little, too late.

Qualified immunity balances the need to hold public officials accountable when they exercise power irresponsibly against the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Questions of qualified immunity require the courts to analyze two factors: whether the plaintiff suffered violation of a constitutional right; and whether the right was "clearly established" at the time of the defendant's conduct. *Id.* at 232. It is within the Court's discretion to choose which factor it analyzes first. *Id.* at 236.

Defendants cite *Bernini v. City of St. Paul,* 665 F.3d 997 (8th Cir. 2012) in support of their argument that Plaintiff cannot meet his burden of establishing that the officers violated clearly established law. But *Bernini* is easily distinguished. In *Bernini,* the police conducted a mass arrest of a large group of protesters who had been marching together as a unit. *Id.* at 1002. Before the

mass arrest, many of the protesters refused to obey commands and marched toward the police in a line, despite audible orders to stop. *Id.* at 1004. Some of them wore gas masks and the group appeared to be preparing for a confrontation with the police. *Id.* at 1004. The plaintiffs complained about the mass arrest. *Id.* at 1003. They had either been detained at a park by police and released or taken into custody and released within 72 hours. *Id.* at 1002. The plaintiffs also complained that the officers' use of less-than-lethal weapons constituted excessive force, but there was no evidence in the record that any defendant directly used force against any plaintiff. *Id.* at 1006. The force was used to direct a non-compliant crowd. *Id.* No one was shot, like Talley here. Much less shot ten times while they were on the ground.

In the case at hand, the protesters were not disobeying the police—the police were not issuing any orders to them. Ex. 1. Talley was not wearing any protective gear and did not appear to be working with a group to prepare for a large-scale confrontation. He was not arrested or handcuffed. Officers shot him from a distance repeatedly with bean bag rounds. Ex. 1. What happened to Plaintiff is not what happened to the plaintiffs in *Bernini*, and the case is distinguishable.

In determining whether the officer violated a clearly established right, the Court considers reasonableness, but the evaluation is not a reiteration of the *Graham* test. *See Deorle v. Rutherford*, 272 F.3d 1272, 1285 (9th Cir. 2001). For this analysis, the Court must determine whether, viewing the facts in the light most favorable to the plaintiff, the officer made a "reasonable mistake as to the legality of his actions." *Id.* at 1285-86 (quoting *Saucier v. Katz*, 533 U.S. 194 (2001) (cleaned up)). In other words, "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 1285 (quoting *Katz*, 533 U.S. at 195). In *Deorle* (discussed above), the court answered that question in the affirmative on the facts before it. *Id.* at

1285-1286. Even in the absence of direct precedent involving kinetic impact weapons, the court held, the law was clearly established, and it was "by no means a borderline case." *Id.* The City of Austin includes a slide devoted to *Deorle* in its training materials. Ex. 18, Training Slide (COA 4043).

In *Ciminillo* (discussed above) the court reversed the grant of summary judgment in favor of qualified immunity for the officer. 434 F.3d at 461. The court held that "it was clearly established law in [the Sixth] Circuit at the time of the underlying events that individuals have a right not to be shot unless they are perceived as posing a threat to officers or others." Id. The court referenced another case, *Adams v. Metiva,* where it held that summary judgment was inappropriate for an excessive-force claim against police for using pepper spray when it remained disputed whether the plaintiff had committed a crime, whether he posted a threat, and whether he was resisting arrest. *Id.* (citing *Adams v. Metiva*, 31 F.3d 375, 385 (6th Cir. 1994)).

Not every excessive force case winds its way through the court system, providing an identical set of facts. Like the plaintiff in *Deorle*, Plaintiff cannot point to "a prior case prohibiting the use of this specific type of force in precisely the circumstances here involved." *Id.* at 1285. But cases from federal circuit courts like *Deorle* and *Ciminillo* are close enough to put a reasonable officer on notice that the conduct here—shooting Plaintiff multiple times *after* he threw an innocuous object—was a violation of his constitutional rights.

b. Qualified immunity for Section 1983 claims was born of mistake and should no longer be an available avenue for avoiding responsibility.

Justice Willett recently explained in his concurrence in *Rogers v. Jarrett*, No. 21-20200 (5th Cir. Mar. 30, 2023), that qualified immunity is flawed because it rests on a mistake. *Id.* (citing Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 CAL. L. REV. 201 (2023)).

Qualified immunity has aways been without basis based on the plain text of Section 1983 as passed.

The original text of what is now Section 1983 contains a clause explicitly negating background immunity. It made state actors liable for constitutional violations "any such law, statute, ordinance, regulation, custom, or usage of the state to the contrary notwithstanding." 17 Stat. 13, § 1 (1871) (quoted portion, omitted from the U.S.C., referred to as the "Notwithstanding Clause"). By simple accident, this Notwithstanding Clause was omitted when the law was codified in the first Revised Statutes. R.S. § 1979.

Unwittingly, the Supreme Court based its original qualified immunity decision on the mistaken, codified version of the law. Unaware of the omitted Notwithstanding Clause, the Supreme Court reasoned that, had the Congress that passed what is now Section 1983 wished to do away with the common law immunity doctrines then available to state officials, it would have said so explicitly. *Pierson v. Ray*, 386 U.S. 547, 554-56 (1967). Because Congress hadn't explicitly negated background law, the Supreme Court reasoned, those background principles still applied.

But Congress did explicitly negate background law, and now that this mistake has been discovered, it must be rectified. While recognizing that qualified immunity is widely accepted without inspection or question, Plaintiff nonetheless asks the Court to hold that qualified immunity defenses are barred by the plain language of the Notwithstanding Clause of the 1871 Civil Rights Act, which has never been repealed or amended. Alternatively, if the Court finds itself bound by precedent to reject this analysis, Plaintiff preserves for appeal the issue that the cases applying qualified immunity defenses to Section 1983 actions were wrongly decided and must be overruled.

5. Fact issues preclude summary judgment on Plaintiff's ADA/RA claims.

Defendants' motion for summary judgment fails to sidestep genuine disputes of material fact with respect to Plaintiff's ADA/RA claim. For example, none of the following assertions from

Defendants' motion have been proven as a matter of law—all are questions of fact—to which genuine disputes exist:

a. "[I]t is clear that the bean bag munitions deployed by the unnamed officers were objectively reasonable."

The City argues, "[I]t is clear that the bean bag munitions deployed by the unnamed officers were objectively reasonable." Motion at 15. Plaintiff strongly disagrees. The *Deorle* court held that the use of bean bag munitions there "was excessive" and "the defense of qualified immunity [was] unavailing." *Deorle*, 272 F.3d at 1286. Here, too, as described in section B.2 above, shooting a non-violent Plaintiff twelve times with less-lethal munitions is not "reasonable;" it is excessive force. In the Fifth Circuit, whether Defendants' actions and omissions in responding to Plaintiff were "objectively reasonable" is a fact question for the jury. *See, e.g. Jacobson v. City of N. Richland Hills*, No. 4:04-CV-421-Y, 2006 WL 1317014, at *5 (N.D. Tex. May 15, 2006) (stating that the fact finder will ultimately conclude whether force was excessive or reasonable); *Mitchell v. Cervantes*, No. 3:10-CV-0030-K-BH, 2010 WL 4628003, at *7 (N.D. Tex. Oct. 12, 2010), *report and recommendation adopted*, No. 3:10-CV-0030-K, 2010 WL 4627728 (N.D. Tex. Nov. 2, 2010), aff'd, 453 F. App'x 475 (5th Cir. 2011) (noting that with regard to police official's use of force that "Under Plaintiff's version of the facts, a fact-finder could find that the officers' actions were not objectively reasonable[.]"). There remains a genuine question of material fact with respect to the reasonableness of force used in this case—accordingly, summary judgment is not appropriate at this stage.

b. "This incident occurred on a public street during a riot[.]"

The City argues, "This incident occurred on a public street during a riot[.]" Motion at 15. Plaintiff disagrees, as discussed above in section B.3. No facts have established that Plaintiff was shot during a "riot," as that term is defined in the Texas Penal Code. Anyone viewing even a

portion of the videos would disagree. Ex. 5, LULAC Video Excerpt (Talley001524). The police Special Response Team did not respond according to their training for riot situations. They did not contain and arrest Talley, which they could have done using an arrest team according to their riot training protocol. Ex. 19, SRT Training (4166-4170, 4111). Council Member Leslie Pool reflected, "I was actually surprised (and grateful) it wasn't worse to be honest." Ex. 20, L. Pool Text Msg. (COA 40411). There remains a genuine question of material fact as to whether the protest in this case was a "riot." Accordingly, summary judgment is not appropriate.

c. "The decision to stop the Plaintiff was obviously made for the safety of those at the scene."

The City argues, "The decision to stop the Plaintiff was obviously made for the safety of those at the scene." Motion at 15. Plaintiff disagrees and puts this claim squarely into dispute. First, Defendants use of the word "stop" is misplaced—officers did not "merely "stop" Tyree, they shot him numerous times and seriously injured him. Whether Defendants violently attacked or retaliated against Plaintiff "for the safety of the scene" is a fact question for the jury. *See supra*. Law enforcement "code words" and empty verbiage do not enjoy any presumption of validity or accuracy. A reasonable jury could find that Plaintiff was shot out of retaliatory animus, a misunderstanding of his disability, a desire to punish, or an impulse to make an example of him to the other protesters. There remains a genuine question of material fact as to why Defendants shot Talley, and as the Plaintiff here there is no requirement that he accede to or accept the defendants' post-hoc opinions or justifications. Accordingly, summary judgment is not appropriate.

d. "It is clear that the limited use of force was not by reason of Plaintiff's alleged disability, but only in response to his objectively verifiable criminal misconduct."

The City further argues that "It is clear that the limited[6] use of force was not by reason of Plaintiff's alleged disability, but only in response to his objectively verifiable criminal misconduct." Again, Plaintiff disagrees, and this is a material fact in dispute. The officers intentionally shot Plaintiff, but whether they intentionally discriminated against him due to his disability is arguable. It is not clear that he was not singled out due to his disability. Plaintiff and the deaf companion he attended the protest with were both shot by police. *See Rodriguez v. City of Austin, et.al,* No. 1:21-cv-01087-RP (also pending before this Court). There remains a genuine question of material fact as to why Defendants shot Plaintiff and whether it was motivated by his disability. Accordingly, summary judgment is not appropriate.

There is also a genuine issue of material fact as to whether the ADA required the City to provide communication aids and services. [I]f an event is hosted by an organization that is considered a place of public accommodation pursuant to the ADA and/or receives federal funding making it subject to Section 504 of the Rehabilitation Act of 1973, then the organization and its events are mandated by these laws to be accessible including for deaf and hard of hearing people. *Position Statement on Communication Access at Marches and Protests*, NAT'L ASS'N OF THE DEAF, https://www.nad.org/position-statement-on-communication-access-at-marches-and-protests/ (last visited Aug. 9, 2023).

Plaintiff asserts that Defendants were required under the ADA to provide communication aids and services and should have arranged for the presence of communication aids and services *before* the protest. Plaintiff should not be blamed for the fact that Defendants allowed the scene to

[6] The excessive use of force was only "limited" in the sense that it was not deadly, a short shift on the use of force continuum.

become what they term an "exigent" and/or "emergency" situation before they had discharged their responsibilities under the ADA. Failing to prepare until an emergency arises should not be a means to escape liability under the ADA. Moreover, depending on the type of protest this was, and whether it was planned, Defendants may have had non-negotiable duties under the ADA to make the event accessible to those with hearing disabilities. The City knew in advance that the protest was coming. Ex. 21, S. Cronk Text Msg (COA 40555); Ex. 22 B. Manley Text Msg.(COA 40024); Ex. 7 (forthcoming), Greenwalt Transcript. Defendants' failure to meet these duties may establish that Defendants intentionally violated the ADA by not making the required accommodations. Defendants' motion for summary judgment regarding Plaintiff's ADA claims should be denied.

C. Defendants' arguments fail to dispose of Plaintiff's negligence claim.

1. Plaintiff's negligence claim is well-plead.

"The standard for Rule 12(c) motions for judgment on the pleadings is identical to the standard for Rule 12(b)(6) motions to dismiss for failure to state a claim." *Waller v. Hanlon*, 922 F.3d 590, 599 (5th Cir. 2019). In the Fifth Circuit, such motions "are viewed with disfavor and are rarely granted." *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 231 (5th Cir. 2009) (quoting *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 570 (5th Cir. 2005)); see also *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011). A court evaluating a motion to dismiss must take the plaintiff's allegations as true and construe the facts in the light most favorable to the plaintiff. *Alexander v. Verizon Wireless Servs.*, L.L.C., 875 F.3d 243, 249 (5th Cir. 2017).

Defendants move to dismiss Plaintiff's claim that the City negligently exacerbated Plaintiff's injuries by using expired munitions. Defendants ask the Court to dismiss the claim, asserting that the Complaint "is devoid of any factual allegations that, if true, would entitle Plaintiff to relief." Motion at 17. This is simply not the case.

Plaintiff's Complaint includes the following allegations that plausibly state a claim for the City's negligence:

- "Upon information and belief, the City armed its police on May 30 with expired munitions which had hardened over time and thus caused more severe injuries than munitions used within the manufacturers' recommended time frames." Compl. ¶24.
- "The City had a duty to every Austinite, including Tyree, to maintain and keep its stockpiles of police equipment functional and up to date. The City had a duty to Tyree and every other protester not to arm its police with expired munitions that become more dangerous with age when its police were sent to control crowds during demonstrations." Compl. ¶47.
- "Upon information and belief, Tyree's injuries were more serious because the projectile was expired and had hardened." Compl. ¶48.

These allegations state a plausible claim for negligence. Plaintiff has also included additional details in the First Amended Complaint attached to his Motion for Leave to File First Amended Complaint and filed concurrently with this Response.

2. TTCA exclusions do not apply or at the very least contain fact questions for the jury.

The Texas Tort Claims Act (TTCA) places limits on governmental immunity by identifying circumstances allowing for tort claims, along with certain exclusions. Tex. Civ. Prac. & Rem. Code §101, et seq. The City claims immunity under TTCA exclusions, but those arguments fail to dispose of Plaintiff's negligence claim because a myriad of fact issues exist as to whether the claimed exclusions apply.

Section 101.055 of the TTCA excludes claims arising "from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others." Tex. Civ. Prac. & Rem. Code §101.055. Whether the police protest response was a "reaction to an emergency situation" is a fact question central to a determination of whether Section 101.055 applies.

Over the course of the day, Chief Manley had time to consult and plan various non-emergent things, including officer ear protection and vehicle placement for the next day. Ex. 7, B. Manley Text Msg. (COA 40010-40011). Even more, the Austin Police Department did not make use of all available resources. Juan Ortiz, director of the Austin Office of Homeland Security and Emergency Management, had "folks standing by if it is needed" on the night of May 30, 2020. Ex. 23, B. Manley Text Msg. (COA 40026).

Defendants do not present any evidence in their Motion to support their apparent assumption that the protest response constituted an "emergency." This evidence would be readily available and widely known to Defendants, such as the COVID-19 measures put into effect around the country in 2020. The absence of any such ordinance or order is telling. There was no such "emergency situation" that would protect Defendants here.

In fact, the City's corporate representative testified that the Austin Regional Intelligence Center (ARIC) should have had days' advance knowledge of the likely protest situation. Ex. 7 (forthcoming), Greenwalt Transcript. He was not able to flesh out the details of that group's knowledge or of the protest planning, despite his claim that he was prepared to testify in response to all topics on his deposition notice. Ex. 7 (forthcoming), Greenwalt Transcript. The jury is entitled to know the facts surrounding the City's planned response and must determine based on those facts whether the situation rose to the level of "emergency."

Section 101.057(1) of the TTCA excludes claims "based on injury . . . connected with any act or omission arising out of civil disobedience, riot, insurrection, or rebellion[.]" Tex. Civ. Prac. & Rem. Code §101.057(1). Again, application of this Section turns on a genuine issue of material fact—was Plaintiff injured connected with an act arising out of civil disobedience, riot, insurrection, or rebellion? No one alleges any insurrection or rebellion anywhere. And, as

discussed above, while the defendants may argue Plaintiff's conduct was "riotous," they have not presented conclusive facts to that end. Simply calling Talley a "rioter" and labelling the protestors milling around the police station a "riot," does not make it so. The jury is not instructed to accept such conclusions as true or give them any presumption of validity. Neither should this Court. Plaintiff has raised multiple genuine and material fact questions for the jury.

Nor does Section 101.057(2) apply to Plaintiff's claim that the City negligently armed its officers with expired munitions. While it is true that a plaintiff cannot circumvent the intentional tort exception by couching their claim in terms of negligence, that is not the case here. In their discussion of this issue, Defendants fail to recognize important and significant differences between the cases they rely on and the present case.

In the line of cases relied on by Defendants, the plaintiffs are attempting to reframe intentional conduct as negligence. In *Harris County Texas v. Cabazos*, cited by Defendants, the plaintiff tried to reframe the officer's intentional conduct – shooting and arresting the plaintiff – as negligence. 177 S.W.3d 105, 108-111 (Tex. App.—Houston [1st Dist.] 2005, no pet.) The "intentional act" exclusion to the TTCA applied there because the tortfeasor (the officer who shot and arrested the plaintiff) was the governmental employee whose conduct was the subject of the complaint.[7] *Id.* at 111. In describing the standard of review for this issue, the *Cabazos* court recognized:

[7] This was also the case in the other cases cited by Defendants. *Texas Department of Public Safety v. Petta*, 44 S.W.3d 575, 580 (Tex. 2001) (alleged negligence was officer's conduct in continuing to pursue plaintiff and shooting at her); *City of Laredo v. Nuno*, 94 S.W.3d 786, 789 (Tex.App.-San Antonio 2002, no pet.) (alleged negligence was officer's failure to properly apply handcuffs and place plaintiff in vehicle and failure to follow police procedure); *Tarrant County Hosp. Dist. v. Henry*, 52 S.W.3d 434, 450 (Tex.App.-Fort Worth 2001, no pet.) (complaining of intentional acts by rapist leading up to the rape); *Medrano v. City of Pearsall*, 989 S.W.2d 141, 144 (Tex.App.-San Antonio 1999, no pet.) (lacking specific factual allegations and only generally alleging negligent supervision-type claims); *Huong v. City of Port Arthur*, 961 F.Supp.1003, 1008–09 (E.D.Tex.1997) (rejecting attempt to reframe intentional tort of shooting as negligence); *City of Watauga v. Gordon*, 434 S.W.3d 586, 589 (Tex. 2014) (officer's conduct did not appear to amount to an intentional tort and a fact issue remained as to whether the conduct was negligent).

> Although a governmental unit is immune from claims arising out of intentional torts, an injured party may still pursue a separate negligence claim arising out of the same facts. *Young v. City of Dimmitt,* 787 S.W.2d 50, 51 (Tex.1990) ("Although a governmental unit is immune from claims arising out of intentional torts, petitioners' negligent employment and entrustment claims arise out of the alleged negligence of the city employees supervising the officer, not out of the officer's intentional tort.") (citations omitted).

Cabazos, 177 S.W.3d 105 at 109.

The *Cabazos* court's discussion of *Delaney v. Univ. of Houston,* 835 S.W.2d 56, 60 (Tex.1992) is instructive.

> In *Delaney,* the Texas Supreme Court held that a negligence action by a rape victim against a public university was not barred by sovereign immunity where the plaintiff's cause of action was based on the university's alleged failure to provide her a secure residence and to fix a broken lock. *Id.* The supreme court noted that section 101.057(2) of the TTCA precludes the extension of the TTCA's waiver of immunity to claims "arising out of assault, battery, false imprisonment, or any other intentional tort." *Id.* at 59. ***However, it stated that the phrase "arising out of" in section 101.057(2) requires a certain nexus for the provision to apply; that nexus is between the claim and an intentional tort, and the intentional tortfeasor must be the governmental employee whose conduct is the subject of complaint***. *Id.* In that case, the intentional tortfeasor, the rapist, was not the governmental employee whose conduct was the subject of Delaney's claims against the university. ***Distinct negligence claims that focus on the actions of the governmental defendant are not barred.*** *Id.*

Cabazos, 177 S.W.3d at 111 (emphasis added).

At first blush, the present case may appear to be more akin to the *Cabazos* facts than those in *Delaney*. But a critical analysis reveals the contrary. In *Delaney*, the conduct at issue in the negligence action was not the rape itself; it was the failure to fix the plaintiff's broken lock. The intentional tortfeasor (the rapist) was not the governmental employee whose conduct was the subject of the negligence complaint. Although arising out of the same facts, the conduct was distinct. Such is the case here.

The conduct at issue here in Plaintiff's negligence claim is the City's failure to ensure that expired munitions were taken out of circulation within the department. No one who has been deposed in this case (shooting officers included) claims responsibility for overseeing the quality

of the munitions and making sure they were not expired. In fact, the City's corporate representative could not even testify with certainty whose responsibility that was. Ex. 7 (forthcoming), Greenwalt Transcript. Plaintiff's negligence claim relates to distinct conduct by a different individual. Defendants' failure to understand the law should not cause the Court to incorrectly dismiss Plaintiff's claim. The TTCA does not prohibit or exclude Plaintiff's negligence claim from going forward.

IV. Conclusion

For the reasons stated above, the Court should deny Defendants' Motion in full.

Dated: August 22, 2023

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record on August 22, 2023 via the Court's CM/ECF system.

Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
	§	
Plaintiff,	§	**Case No. 1:21-cv-249-RP**
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
	§	
Defendants.	§	

SUPPLEMENT PROVIDING EXHIBIT 26 TO PLAINTIFFS' RESPONSE TO DEFENDANT CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

When Plaintiff filed his Response to Defendant City of Austin's Motion for Summary Judgment (Filed under seal at Dkt. No. 55), the deposition transcript of Jeffrey Greenwalt, the City of Austin's corporate representative, was not yet available. Accordingly, in his Response, Plaintiff referenced deposition testimony of Assistant Chief Greenwalt as "forthcoming." Plaintiff hereby submits Exhibit 26, the Greenwalt Deposition Transcript, and provides specific references to the portions cited below:

Response Location	**Text**	**Cite to Ex. 26**
P4	Testimony from the City's corporate representative confirmed same rounds circulate indefinitely until used without being taken out of circulation when expired.	37:02-23
P8	The City admits to weapons not performing as expected and expresses sympathy for protesters who did not throw any item, but stands by its actions against people like Plaintiff, who officers targeted with excessive force for a minor action.	26:09-15; 128:03-07, 09-19; 129:16-20, 22-130:05

Plaintiff respectfully requests that the Court consider this Supplement, along with Exhibit 26, and, for the reasons stated within Plaintiff's Response, deny Defendants' Motion in full.

Dated: August 29, 2023

Respectfully submitted,

HENDLER FLORES LAW, PLLC

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record on August 29, 2023 via the Court's CM/ECF system.

Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, PLAINTIFF	§	
V.	§	CASE NO. 1:21-CV-249-RP LEAD CASE
CITY OF AUSTIN AND JOHN DOES, DEFENDANTS.	§	
MODESTO RODRIGUEZ, PLAINTIFF	§	
V.	§	CASE NO. 1:21-CV-1087-RP
CITY OF AUSTIN AND JOHN DOES, DEFENDANTS.	§	

****

ORAL AND VIDEOTAPED DEPOSITION OF
ASSISTANT CHIEF JEFFREY GREENWALT
AUGUST 2, 2023

****

ORAL AND VIDEOTAPED DEPOSITION OF ASSISTANT CHIEF JEFFREY GREENWALT, PRODUCED AS A WITNESS AT THE INSTANCE OF THE PLAINTIFFS, WAS TAKEN IN THE ABOVE-STYLED AND -NUMBERED CAUSE ON THE 2ND DAY OF AUGUST, 2023, FROM 9:07 A.M. TO 1:26 P.M., BEFORE KAREN GONZALEZ, COMMISSIONED NOTARY, IN AND FOR THE STATE OF TEXAS, REPORTED BY MACHINE SHORTHAND, REMOTELY FROM DALLAS COUNTY, TEXAS, PURSUANT TO THE TEXAS RULES OF CIVIL PROCEDURE, THE TEXAS SUPREME COURT EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER AND THE PROVISIONS STATED ON THE RECORD OR ATTACHED HERETO.

A. YES, MA'AM.
Q. AND THE BEANBAG ROUNDS THAT IMPACTED TYREE TALLEY, WERE FIRED BY APD OFFICERS?
A. THAT'S CORRECT.
Q. AND I DON'T THINK THIS IS NECESSARY, BUT JUST FOR THE RECORD, WHEN I SAY APD WE BOTH UNDERSTAND THAT I MEAN AUSTIN POLICE DEPARTMENT?
A. UNDERSTOOD.
Q. OKAY. APD OFFICERS WERE FOLLOWING ORDERS WHEN THEY SHOT TYREE TALLEY?
A. THEY WERE FOLLOWING THEIR TRAINING, I DON'T KNOW THAT THEY WERE ORDERED TO NECESSARILY SHOOT SOMEBODY ON THE SPOT, BUT THE POLICY THAT THEY -- THAT THEY WERE GOVERNED BY AND THE TRAINING THAT THEY RECEIVED WAS HOW THEY MADE THEIR DECISIONS THAT DAY.
Q. TYREE TALLEY WAS IMPACTED TWELVE TIMES BY BEANBAG ROUNDS.
A. IS THAT A QUESTION?
Q. YES.
A. I SAW A LOT OF BRUISES ON HIM, I DIDN'T COUNT THEM, SO I COULDN'T TELL YOU HOW MANY TIMES HE WAS -- IT WAS NUMEROUS, I'LL TELL YOU THAT.
Q. OKAY. AND TYREE TALLEY WAS INJURED?
A. CORRECT.
Q. OKAY. GO THROUGH THOSE SAME BASIC QUESTIONS WITH

THE RIOT AND PROTESTS OR BEFOREHAND?

Q. BEFOREHAND?

A. SO, JUST OUT OF EASE OF TRANSPORT THEY WOULD BE SENT TO THE SUBSTATIONS IN THE BOX, AND THEN THE PROPERTY CONTROL OFFICER, OR TECHNICIAN THIS IS A CIVILIAN, WHO HANDS OUT THE PROPERTY IN ORDER TO PREPARE THE EQUIPMENT, THEY WOULD TAKE IT OUT OF THE BOX --

Q. UH-HUH.

A. -- RUBBER BAND IT, AND GET IT READY. AND THEN AT THE END OF THE DAY, WHEN THE OFFICER IS DONE THEY HAND THE AMMUNITION BACK IN THE SAME FORMAT, AND THEY GIVE IT TO THE NEXT OFFICER. SO YOU MAY HAVE THE SAME FIVE AMMUNITIONS BE HANDED OUT, CHECKED OUT AND TURNED BACK IN DOZENS, AND DOZENS, OF TIMES.

Q. UH-HUH.

A. AND THE BOX --

Q. OKAY --

A. -- AND THE BOX IS LONG GONE. SORRY TO INTERRUPT YOU, BUT THE INITIAL BOX IT CAME IN, WOULD BE LONG GONE.

Q. OKAY. SO AT THAT POINT THERE'S NO WAY OF KNOWING, FOR EXAMPLE, WHETHER THEY'RE EXPIRED, OR NOT, OR WHEN THEY EXPIRE?

A. EXACTLY.

Q. OKAY. AND SO IS THERE A ROOM OR A STORAGE UNIT SOMEWHERE WHERE THE -- KIND OF STOCKPILE OF BEANBAG

BEING REVENGEFUL, AND THAT'S JUST NOT TRUE. AND I THINK WE HAVE A RESPONSIBILITY TO PUT THAT OUT THERE.

Q. SO, IS IT TRUE THAT APD HAS -- HAVE MADE PUBLIC STATEMENTS SAYING, "YES, THE OFFICERS BEHAVED APPROPRIATELY," OR "FOLLOWED POLICY," OR SOMETHING TO THAT EXTENT?

A. YES.

MR. BARTON: OBJECT TO THE FORM.

Q. (BY MS. JOSEPH) WITH RESPECT TO THE DISCHARGE OF THE SO-CALLED LESS-LETHAL SHOTGUNS?

A. YEAH. AND I CAN'T REMEMBER THE EXACT WORDS THAT WERE USED SO, I DON'T REMEMBER IF THE WORDS WERE THAT EVERYTHING WAS WITHIN POLICY. BUT I REMEMBER THAT CHIEF CHACON DID MAKE A PUBLIC STATEMENT IMMEDIATELY AFTER THE INDICTMENTS WERE ANNOUNCED BY THE DA'S OFFICE. AND HE SAID SOMETHING OVER THE LINES OF, NOT UNDERSTANDING WHY ANYTHING AMOUNTED TO A CRIMINAL VIOLATION, I JUST DON'T REMEMBER HIS EXACT WORDS. BUT, YES, IT WAS AN ENDORSEMENT OF THE OFFICERS.

Q. OKAY. DO YOU KNOW APPROXIMATELY WHAT MONTH AND YEAR THAT STATEMENT WOULD HAVE BEEN MADE?

A. IT WAS 2021 AND -- NO, HOLD ON. I REMEMBER IT BEING ON AN ANNIVERSARY, OR JUST BEFORE AN ANNIVERSARY. AND SO I WANT TO SAY IT WAS LIKE MAY/JUNE TIMEFRAME. I'M JUST GETTING MIXED UP ON '21 VERSUS '22.

Q. OKAY.
A. IT WAS -- IT WAS IMMEDIATELY AFTER THE DA ANNOUNCED -- INDICTMENTS. AND IT WAS RIGHT AT THE SAME -- IT WAS THE EXACT SAME TIMEFRAME WHERE SOME OF THE CIVIL SUITS HAD BEEN WITHHELD.
Q. OKAY. OKAY. DO YOU REMEMBER ANYBODY ELSE OTHER THAN CHIEF CHACON, THAT YOU COULD THINK OF WHO HAS -- ON BEHALF OF APD, APPROVED OF THE OFFICER'S CONDUCT WITH RESPECT TO THE LESS-LETHAL SHOTGUNS?
MR. BARTON: OBJECTION TO THE FORM.
A. CAN -- CAN YOU SAY THAT AGAIN?
Q. (BY MS. JOSEPH) YES. SO WE'RE TALKING ABOUT WHO HAS KIND OF SPOKEN ON BEHALF OF APD TO SAY, YES, THIS WAS WITHIN POLICY, OR WHATEVER WORDS THEY USED, TO SAY, YOU KNOW, WE THINK OUR OFFICERS DID RIGHT. AND I -- YOU TOLD ME ABOUT CHIEF CHACON. SO THE QUESTION IS, IS THERE ANYBODY ELSE YOU CAN THINK OF WHO HAS SPOKEN ON BEHALF OF APD, OR WHO IS A HIGHER UP AT APD WHO HAS SPOKEN OUT AND SAID A POSITIVE AFFIRMATION OF THE USE OF THE LESS-LETHALS?
MR. BARTON: OBJECT TO THE FORM.
A. I DON'T HAVE LIKE A COMPLETE LIST. I KNOW CHIEF DID IT ON THE NEWS THAT DAY. I'VE DONE IT, IN SEVERAL SETTINGS WHERE I WAS ASKED TO SPEAK AND PEOPLE ASKED QUESTIONS, I JUST TELL THEM EXACTLY, YOU KNOW, WHAT I

THINK ABOUT LIFE, AND DISHONEST, AND TRANSPARENT. SO I TOLD THEM WHAT I THOUGHT, SO OTHER THAN ME AND HIM, I DON'T KNOW WHO ELSE, BUT I'M NOT SAYING THAT IT DIDN'T HAPPEN IN ANY OTHER TYPE OF FLUID SITUATION WHERE A CONVERSATION OCCURRED.

Q. (BY MS. JOSEPH) OKAY. HOW ARE FORCE COMPLAINTS AGAINST AN INDIVIDUAL OFFICER TRACKED? LIKE, COULD I GO AND SAY, I WANT TO KNOW HOW MANY TIMES CHIEF GREENWALT HAS, YOU KNOW DEALT WITH A RESPONSE TO RESISTANCE SITUATION AND HAD A COMPLAINT FILED AGAINST HIM. IS THERE AN EASY WAY FOR ME TO LOOK AT THAT?

A. YEAH. I MEAN, THE VERSE X YOU CAN TRACK AND SEE HOW MANY TIMES A SPECIFIC OFFICER HAS BEEN INVOLVED IN AN R2R, OR USE OF FORCE. THAT'S PRETTY SIMPLE --

Q. UH-HUH.

A. -- TO FIND.

Q. UH-HUH.

A. BUT THE SECOND HALF TO YOUR QUESTION WAS KIND OF A DIFFERENT QUERY AND THAT'S AND INVOLVED WITH A COMPLAINT, RIGHT? SO NOW WE HAVE TO --

Q. UH-HUH.

A. -- CHECK WITH INTERNAL AFFAIRS ON, HOW MANY COMPLAINTS, AND THEN MATCH IT UP TO THE USE OF FORCE, TO ANSWER YOUR QUESTION.

Q. OKAY. SO IT WOULDN'T BE EASY TO SEE, YOU KNOW,

I FURTHER CERTIFY THAT PURSUANT TO FRCP RULE 30(F)(1) THAT THE SIGNATURE OF THE DEPONENT:

X WAS REQUESTED BY THE DEPONENT OR A PARTY BEFORE THE COMPLETION OF THE DEPOSITION AND THAT SIGNATURE IS TO BE BEFORE ANY NOTARY PUBLIC AND RETURNED WITHIN 30 DAYS FROM DATE OF RECEIPT OF THE TRANSCRIPT. IF RETURNED, THE ATTACHED CHANGES AND SIGNATURE PAGE CONTAINS ANY CHANGES AND THE REASONS THEREFOR;

WAS NOT REQUESTED BY THE DEPONENT OR A PARTY BEFORE THE COMPLETION OF THE DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES OR ATTORNEYS IN THE ACTION IN WHICH THIS PROCEEDING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY OR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

CERTIFIED TO BY ME THIS 22TH DAY OF AUGUST, 2023.

KAREN A. GONZALEZ
NOTARY IN AND FOR THE
STATE OF TEXAS
NOTARY: 132644762
MY COMMISSION EXPIRES:
AUGUST 26, 2024
MAGNA LEGAL SERVICES
866-624-6221
WWW.MAGNALS.COM

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants	§	

DEFENDANT CITY OF AUSTIN'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant City of Austin, Texas files this Reply in Support of its Motion for Summary Judgment (Doc. 43) as follows:

1. Plaintiff has not established a policy or practice of using excessive force or using excessive force during peaceful demonstrations.

A. APD's Less-Lethal Munitions Policy is not Facially Unconstitutional.

Plaintiff contends that APD's policy addressing the use of less-lethal munitions is facially unconstitutional. Plaintiff specifically complains of APD Policy 206.5.3 which provides:

206.5.3 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

Examples include, but are not limited to, the following types of situations where the subject:
(a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
(b) Has made credible threats to harm himself or others.
(c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury.
(d) There is reasonable suspicion to believe that the subject has already committed a crime of violence and is refusing to comply with lawful orders.

(Ex. 3, COA0071)

Plaintiff provides no legal precedent which has held that a similar policy is unconstitutional. Instead, Plaintiff argues that this policy promotes unconstitutional excessive

force violations since it does not delineate the specific circumstances that officers should consider before utilizing less-lethal munitions. (Doc. 55-1[1], pp. 6-7) According to Plaintiff, the policy compelled officers to fire on an overbroad category of people while lacking considerations of the specific circumstances in making the decision to use the less lethal munitions. (Doc. 55-1, p. 8)

Plaintiff's argument is without merit. First, Plaintiff conveniently omits the very next section of APD's policy which, in fact, lists several considerations that officers are to consider before deploying less-lethal munitions. Policy 206.5.4 provides:

206.5.4 ADDITIONAL DEPLOYMENT CONSIDERATIONS
(a) Before discharging projectiles, the officer should consider the following factors:
1. The subject's capability to pose an imminent threat to the safety of officers or others.
2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
3. The credibility of the subject's threat as evaluated by the officers present, and the subject's physical capacity/capability to carry out the threat.
4. The availability of other force options and their possible effectiveness.
5. Distance and angle to target.
6. Type of munitions employed.
7. Type and thickness of subject's clothing.
8. The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

(Ex. 3, COA0071-72).

Thus, APD's policy provides a comprehensive list of factors officers should consider before deploying less-lethal munitions. The policy does not "promot[e] and encourage[e] excessive uses of force as Plaintiff claims. Policy 206.5.3(c) does not eliminate the need for officers to evaluate the specific circumstances of each incident. Instead, it requires officers to determine if the suspect is engaged in riotous behavior or "is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury." As a result of this language, an officer must first determine that the suspect is throwing a dangerous projectile and

[1] Doc 55. Plaintiff's Response filed under seal as attachment to Plaintiff's Motion for Leave.

creating a risk of injury. This does not give officers unbridled discretion to use less-lethal munitions without regard to whether the object was a dangerous projectile as Plaintiff claims. Moreover, Policy 206.5.4 provided officers with eight specific factors to consider before deployment. Simply put, this policy is not facially unconstitutional.

B. APD's Use of Less-Lethal Munitions is not Unconstitutional.

Plaintiff also contends that APD's policy is unconstitutional as a result of how APD put the policy in practice on May 30, 2020. He argues that the officers' practice of "shooting anyone who threw anything" was so pervasive on May 30, 2020 that it was undoubtedly APD policy. He contends that since occasionally another officer would call out descriptions of individuals throwing objects, it leaves open the "possibility" that an officer may have deployed weapons without witnessing a precipitating act. These arguments are not supported by the evidence. Each officer deposed in this case testified that they did not deploy less-lethal munitions on the date of this incident unless they saw an individual throw an object which presented a risk of injury. (Ex. 4, Wright depo., p. 59; Ex. 5, Lynch depo, pp. 59-61; 66-68; Ex. 6, Depo. of Hethershaw, pp. 61-65; Ex. 7, Depo. of Cantu-Harkless, p. 32; 39-40; 44; 47; 81; Ex. 8, Depo. of Alas, pp. 117-119). The officers described the variety of objects that they saw being thrown at officers including rocks, bricks, frozen water bottles, bottles filled with urine and bleach, fireworks and other incendiary devices and explained why these objects, including water bottles, presented a serious risk of bodily injury. (Ex. 4, Wright depo, pp. 46-47; 64;70; 91; 114; Ex. 5, Depo. of Lynch, pp. 25; Ex. 6; Depo. of Hethershaw, p. 54-60; Ex. 7, Depo of Cantu-Harkless, pp. 20; 22; 34-35; 74; Ex. 8, Depo. of Alas, pp. 25-26; 31; 42; 60-61; 120-121)

Plaintiff admitted that he threw a bottle in the direction of officers, although he now attempts to justify his actions by arguing that this action was not dangerous since he threw the

bottle "in a high arc" and the bottle allegedly did not hit anyone.[2] For the reasons expressed by the officers, and viewed from their perspective of a reasonable officer at the scene, a water bottle thrown in the direction of others presented a risk of bodily injury. Plaintiff has not demonstrated that APD had a practice of shooting individuals that did not present a risk of bodily injury or a practice of shooting individuals who had already thrown objects and were no longer presenting a risk of bodily injury. Even if an officer impacted Plaintiff with less lethal munitions a second or two after Plaintiff released the bottle, Plaintiff has presented no evidence of this happening on numerous prior occasions similar to the violation alleged in this incident sufficient to constitute a policy or practice. *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 850-851 (5th Cir. 2009).

C. No Deliberate Indifference.

Plaintiff's argument that APD was deliberately indifferent to the known or obvious consequences of this alleged policy or practice is also without merit. A showing of even heightened negligence does not suffice to demonstrate deliberate indifference. *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 407 (1997). Plaintiff argues that Chief Manley knew that APD officers were engaged in the practice of shooting people for "throwing trash and other harmless items on May 30, 2020, and that he knew of at least one severe head wound from a kinetic energy weapon. (Doc. 55-1, p. 9) Yet, as discussed above, there was no policy or practice of deploying less-lethal munitions on May 30, 2020 at individuals throwing harmless items. Plaintiff's argument that Manley was deliberately indifferent to injuries is not supported by the evidence either. Manley testified that on the Monday or Tuesday following the May 30-31, 2020 weekend protests, APD leadership prohibited the use of less-lethal munitions in a crowd after APD learned of injuries from less-lethal

[2] Plaintiff's argument that a bottle must hit someone before it presents a risk of injury is completely illogical. Following this [il]logic, an officer would have to wait to see if the bottle hit someone before attempting to take action to stop the suspect. If the officer waited and saw that the bottle did hit someone, no doubt the Plaintiff would then argue that the threat was already over, and the officer should not have fired.

munitions during the protests. (Ex. 9, Depo. of Manley, pp. 49-50)[3] These actions actually demonstrate that APD was not deliberately indifferent.

Plaintiff also contends that APD ratified the alleged unconstitutional conduct and cites *Grandstaff v. Borger,* 767 F.2d 161 (5th Cir. 1985) in support. Yet, *Grandstaff* is easily distinguishable from this case. In *Grandstaff v. City of Borger,* 767 F.2d 161, 165 (5th Cir. 1985), police officers opened fire on a landowner after the police engaged in a high-speed chase with a suspect who drove onto the landowner's ranch. The officers "poured" gunfire into the landowner's truck and killed the landowner without any evidence suggesting that he was the suspect involved in the high-speed chase. *Id.* The Fifth Circuit characterized the actions of the officers and supervisors as an "incompetent and catastrophic performance, there were no reprimands, no discharges, and no admissions of error." *Id.* at 171. The Fifth Circuit held that the City could be liable under §1983, noting that if an "episode of such dangerous recklessness obtained so little attention and action by the City policymaker, the jury was entitled to conclude that it was accepted as the way things are done and have been done in the City of Borger." *Id.* The Fifth Circuit has stated that the theory of ratification is limited to "extreme factual situations." *Peterson v. City of Fort Worth, Tex.,* 588 F.3d 838, 848 (5th Cir. 2009); *Snyder v. Trepagnier,* 142 F.3d 791, 798 (5th Cir. 1998). Similarly, *Backe v. City of Galveston,* 2 F.Supp.3d 988, 1001 (S.D. Tex. 2014, also cited by Plaintiff, is also distinguishable. There, the court characterized the incidents on the night in question as a "truly extreme factual scenario" involving thirteen alleged victims, twenty alleged perpetrators and forty-nine separate alleged acts of police brutality. *Id.* The actions of the officers

[3] Plaintiff's Exhibit 15, which is a compilation of text messages from both known and unknown senders, is inadmissible hearsay and is subject to Defendant's separately-filed Objections to Plaintiff's Summary Judgment Evidence. The compilation also contains no information to demonstrate that the injuries discussed in the text messages occurred before the Talley and Rodriquez incidents, or that they were substantially similar to the Talley and Rodriguez incidents.

here in deploying less-lethal beanbags at Plaintiff after he threw a bottle in the direction of police officers are a far cry from the actions of the officers in *Grandstaff* and *Backe.* As a result, the facts of this case do not support liability of the City under a ratification theory.

2. Plaintiff's inadequate training claims should be dismissed.

A plaintiff seeking to recover on a theory of failure to train must prove that: "(1) [the city's] training policy or procedures were inadequate, (2) [the city] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the plaintiff's injury]." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). Plaintiff's response fails to meet all three of these elements.

Plaintiff attempts to prove the first element by criticizing the APD Training Academy's requirements for cadet qualification on less-lethal shotgun rounds, suggesting that APD has a "low bar" for qualification. A review of APD's Lesson Plan for the less-lethal shotgun instruction, which Plaintiff attaches as Exhibit 7 to his response, reveals that the training is far from inadequate. Cadets receive four hours of training on the shotguns with a goal of having the students "qualify with the less lethal shotgun & have an understanding of the capabilities of the DS 23 Drag Stabilized bean bag round and a [sic] understanding of APD's policy and procedures in use and deployment of the less lethal shotgun." (P's Ex. 7 at COA3155) The training consists of classroom instruction on a number of learning objectives including effective ranges, target areas and risks as well as an evaluation phase at the firearms range for qualification which includes feedback from the instructors. (P's Ex. 7 at COA3167-3168) Plaintiff cites no comparative evidence from other law enforcement agencies demonstrating how APD's training is inadequate and provides no expert testimony explaining how APD's less-lethal shotgun training is inadequate. Plaintiff's counsel's opinions expressed in the response are not close to constituting sufficient evidence of inadequacy

of the training.

Plaintiff also fails to meet the second element of an inadequate training claim: that the City was deliberately indifferent in adopting its training policy. Plaintiff does not attempt to prove deliberate indifference by demonstrating a pattern of similar violations. Instead, Plaintiff argues that single-incident liability exists because it was highly predictable that excessive force violations would result from the City's failure to train. (Doc. 55-1, p. 10) This "single-incident" path is "difficult, although not impossible," for plaintiffs to successfully follow. *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). This is because it is not sufficient for a plaintiff to show that additional training may have avoided the injury, but a plaintiff must show that the training was so inadequate that it would pose a "patently obvious risk of recurring constitutional violations." *Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 485 (5th Cir. 2014).

Plaintiff attempts to prove the single-incident path of deliberate indifference by pointing out that officers who were deposed in this case had not fired a less-lethal shotgun in an actual police response until the May 2020 protests. First, it seems as though that would be considered a good thing: that officers are not having to utilize the shotguns in actual police responses frequently, if at all. Second, all of the officers testified that they had qualified for annual certification on the less-lethal shotguns and some even had additional training and qualification during SWAT training. (Ex. 10, Depo. of Cherne, pp. 14-15; Ex. 8, Depo. of Alas, pp. 16-17; Ex. 5, Depo. of Lynch, pp. 44-45) The fact that an officer, such as Officer Wright, may have been a "rookie" and carried a less-lethal shotgun is also not evidence to support a finding of deliberate indifference. Rookie officers had undergone the APD Academy training on less-lethal shotguns just like more experienced officers, and there is no evidence to suggest that a "rookie" officer would be more likely to use excessive force than a more experienced officer. Likewise, Plaintiff's suggestion that

deliberate indifference is supported by the fact that Chief Manley was not qualified on the less-lethal shotgun is absurd. No police department of a major U.S. city would expect its police chief to be out on the front lines deploying less-lethal shotguns. Further, the fact that the deposed officers may not have remembered in their deposition every detail from the APD lesson plan from their training on less-lethal shotguns does not equate to a finding of deliberate indifference in APD's training. Plaintiff simply has not proven that APD's training was so inadequate that it posed an obvious risk of recurring constitutional violations.

Moreover, the fact that APD conducted reviews and analyses of the May 2020 protests does not support a finding of deliberate indifference. In fact, it demonstrates that APD was not deliberately indifferent. The Special Response Team presentation does include "more training" and "better training" as "lessons learned," but does not specify any details to suggest that APD's less-lethal shotgun training was inadequate in the first place or that APD was deliberately indifferent to the need for improvements in training. The Office of Police Oversight's report containing suggestions for improvement, including more "scenario-based training," also demonstrates that the City was not deliberately indifferent to its training, and instead was seeking to improve training. (P's Ex. 23, p. COA39941) Likewise, Chief Chacon's After-Action Report, which identified areas for improvement, and also documented the riotous behavior of non-peaceful protestors and assaults on officers during the protests, further demonstrates that APD and the City were not deliberately indifferent. (P's Ex. 25, p. COA39877) Simply put, Plaintiff has not proven that the City was deliberately indifferent in adopting its training policy. As a result, Plaintiff's inadequate training claim fails.

As to the third element of an inadequate training claim, Plaintiff offers no evidence and no argument that the alleged inadequate training directly caused the violations in question. Plaintiff

does not specifically state how he contends the training directly caused his injuries. If officers impacted Plaintiff with less-lethal munitions from further than the maximum distance they were trained on, it does not mean that the training directly caused the injuries. Plaintiff has not proven direct causation and, as a result, his inadequate training claim fails.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss the Plaintiff's claims against it with prejudice with all costs assessed to the Plaintiff. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 5th day of September, 2023.

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Exhibit 3

de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

206.5.1 DEPLOYMENT
Approved munitions are justified and may be used in an effort to compel individuals to cease their actions when such munitions present a reasonable option for resolving the situation at hand.

(a) Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officers determine that deployment of these munitions cannot be deployed safely.

(b) The safety of hostages, innocent subjects and officers takes priority over the safety of subjects engaged in perceived criminal or suicidal behavior.

206.5.2 VERBAL WARNINGS
A verbal announcement of the intended use of the kinetic energy projectile should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

(a) The purpose of the warning is for the following:

1. Provide the individual with a reasonable opportunity to voluntarily comply.

2. Provide other officers and individuals with warning that a kinetic energy weapon may be deployed.

(b) The fact that a verbal and/or other warning was given, or the reasons it was not given, shall be documented in any related reports, as well as any responses by the subject.

(c) When the less lethal kinetic energy projectile is deployed on scene, the officer carrying the weapon shall announce over the air as soon as practicable that the less lethal shotgun/40mm weapon was deployed and be acknowledged by the dispatcher.

(d) When given, the verbal warning should be "IMPACTING" to prevent any confusion as to which weapon system is being deployed.

206.5.3 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT
Examples include, but are not limited to, the following types of situations where the subject:

(a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.

(b) Has made credible threats to harm himself or others.

(c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury.

(d) There is reasonable suspicion to believe that the subject has already committed a crime of violence and is refusing to comply with lawful orders.

206.5.4 ADDITIONAL DEPLOYMENT CONSIDERATIONS

(a) Before discharging projectiles, the officer should consider the following factors:

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1. The subject's capability to pose an imminent threat to the safety of officers or others.
2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
3. The credibility of the subject's threat as evaluated by the officers present, and the subject's physical capacity/capability to carry out the threat.
4. The availability of other force options and their possible effectiveness.
5. Distance and angle to target.
6. Type of munitions employed.
7. Type and thickness of subject's clothing.
8. The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

(b) The use of Kinetic Energy Projectiles should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, and the officer reasonably believes that the need to control the individual outweighs the risk of using the Kinetic Energy Projectile.

1. As a breaching tool for windows in vehicles, especially when the vehicle is occupied.
2. As a breaching tool for windows of a structure, especially if it places occupants at risk of injury.

(c) An officer who is currently assigned to Special Operations Command and who has been trained in the use of Kinetic Energy Projectiles as a breaching tool may use that technique in a way that is consistent with their training.

206.5.5 SHOT PLACEMENT AND DEPLOYMENT DISTANCES

Officers should generally follow their training instructions regarding minimum deployment distances and target areas. The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The head and neck should not be intentionally targeted, however any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death to officers or others.

206.5.6 REPORT OF USE

All kinetic energy projectile use shall be documented in the related incident report/supplements and notification made to a supervisor in compliance with General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(a) Specific information on the use of a kinetic energy projectiles should include, but is not limited to, the following:

1. Articulable reasons for the use of the kinetic energy projectile weapon.

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Exhibit 4

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYREE TALLEY Plaintiff,	§ §	
v.	§ §	CASE No. 1:21-cv-249-RP Lead Case
CITY OF AUSTIN AND JOHN DOES Defendants.	§ §	

****

MODESTO RODRIGUEZ Plaintiff,	§ §	
v.	§ §	CASE No. 1:21-cv-1087-RP
CITY OF AUSTIN AND JOHN DOES Defendants.	§ §	

****

REMOTE ORAL AND VIDEO DEPOSITION OF

JUSTIN WRIGHT

JULY 21, 2023

****

REMOTE ORAL AND VIDEO DEPOSITION OF JUSTIN WRIGHT, produced as a witness at the instance of Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on JULY 21, 2023, from 10:08 a.m. to 2:47 p.m., before Lilia W. Walters, Certified Shorthand Reporter in and for the State of Texas, reported by oral stenography, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

(Appeared Remotely)

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ALSO PRESENT: Jason Fifield, Videographer

Lilia Walters, Texas CSR No. 12390

Alexis Lopez, Paralegal

Priscilla Chavez, Paralegal

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REQUESTED DOCUMENTS/INFORMATION
NONE

CERTIFIED QUESTIONS
NONE

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record. This begins video No. 1 in the deposition of Justin Wright in the matter of Tyree Talley versus the City of Austin and John Does in the United States District Court for the Western District of Texas, Austin Division, Case No. 121-cv-249-RP and also in the matter of Modesto Rodriguez versus City of Austin and John Does, Case No. 121-cv-1087-RB.

Today is Friday July 21st, 2023. The time is 10:08 a.m. This deposition is being taken virtually via Zoom at the request of Hendler Law.

I'm Jason Fifield the videographer of Magna Legal Services and the court reporter is Lilia Walters also of Magnum.

Counsel will be -- appearances will be noted on the stenographic record. And will the court reporter please swear in the witness.

COURT REPORTER: Thank you. Officer Wright, I will now be swearing you in. Would you please raise your right hand?

Do you solemnly swear or affirm that you are, Justin Wright, located in Austin, Texas and that the testimony you are about to give in the pending matter will be the truth, the whole truth, and nothing but the truth, so

help you God?

THE WITNESS: I do.

COURT REPORTER: Thank you. Counsel, you may now proceed.

JUSTIN WRIGHT,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. JOSEPH:

Q. Good morning, Officer Wright, my name is Leigh Joseph and I represent Tyree Talley and Modesto Rodriguez in these cases. I want to start off by thanking you for being here to allow us to ask you some questions about the events of May 30th, 2020.

A. Thank you, ma'am.

Q. Yeah. Have you ever given a deposition before?

A. No, ma'am.

Q. Okay. Just a couple of tips or pieces of insight before we get started. First, you're allowed to take breaks. This may take a while just kind of depending on how it goes. And if you need a comfort break, please ask me for one.

If I'm right in the middle of a train of thought I may ask you to let me ask the next question or two before we stop. But I'm -- I'm -- certainly want you to be comfortable while we're here, okay?

Also, I can -- I think a lot of us lawyers can ask pretty complicated and convoluted questions sometimes. So if you ever don't understand what I'm trying to ask you, please tell me. And I'll -- I'll try to rephrase it, okay?

A. Okay.

Q. If you do answer my question though, can we have an agreement that that means you understood it?

A. Yes.

Q. Okay. And you're doing great at this so far. I will point out that since Ms. Walters is taking down everything we say, there are a couple of things that we need to do to help her do that.

The first one is, to give verbal answers. And I see that you're doing that and appreciate that.

The second, is to try not to talk over each other.

A. Yes, ma'am.

Q. So -- yeah so, so far so good, but I'll try to -- to let you finish answering before I ask another question. And -- and I know that you'll do the same for me, okay?

A. Yes, ma'am.

Q. Now, I asked you before we went on the record if Mr. Laird was in the room with you. And you said, no, he's down the hall. Is anybody in the room with you right now?

A. Not right now. Priscilla Lopez is in and out. She's the paralegal.

Q. Okay. Okay. And how did you prepare for this deposition today? Before you answer, let me tell you that I'm not -- if -- I'm not allowed to know private conversations between you and your counsel. So I don't want you to tell me details of those conversations. But just kind of generally, how did you prepare?

A. I came in a couple of days ago to Austin City Hall and met with Mr. Laird and Ms. Priscilla. Just to kind of go over what this would be like and some things to expect.

Q. Okay. Did -- did you watch any videos?

A. Yes. I reviewed one or two segments of my body camera.

Q. Okay. Did you watch any other video, HALO footage, or anything like that?

A. No, ma'am.

Q. Okay. Just body camera from your own camera?

A. Yes, ma'am.

Q. Okay. Did you review any documents?

A. Yes, ma'am. I reviewed my supplements that were written after. Yes, ma'am.

Q. Okay. How many supplements did you -- did you write?

A. It looks like five, however, the -- the first one

I don't know if it was just a -- if I wrote the first supplement and then went in afterwards to add something to it. 'Cause I have end of original supplements towards the middle of the -- of this supplement. So I don't know if that counts as a new supplement or not.

Q. Okay. And --

A. So I think 5.

Q. Okay. And you have those in front of you right now?

A. Yes, ma'am. They're -- they're right here.

Q. And I see that confidential label which makes me think that document probably also has a Bates label on it. Which is a little set of numbers and letters. Usually in the bottom right hand side. It may say COA and then four numbers?

A. Yes, ma'am.

Q. Would you tell me the Bates label on first and last page of each of set? Each kind of separate document you have. Just so that I can make sure I have those documents. And I know they pertain to you.

A. Yeah. Just as clarification, it -- I have -- I have four different sheets. And it looks like a supplement is on each one.

Q. Okay.

A. Like, would you like each sheet? Or just the

first and the last?

Q. Each sheet.

A. Okay.

Q. Thank you for the clarification. Yeah.

A. Okay. So the first one I'm looking at is COA2292 -- 2292. The second is -- I'm gonna -- I'm not gonna say COA each time if that's okay?

Q. That's fine.

A. All right.

Q. Sure.

A. 2313. The third sheet that I have is 2469 and the -- make sure I'm not skipping any on accident -- the -- the last one I have is 39441. Is it okay --

Q. Okay.

A. -- that that has more numbers than the others?

Q. It is okay.

A. Okay.

Q. Yes, thank you -- thank you, officer. Do you have anything else in front of you today? Other than those supplements?

A. I have two blank pieces of paper just to take my own notes in case I do need clarification. Or I don't -- or like when you discussed you might two questions just to finish your train of thought.

Q. Mm-hmm.

A. It's going help me not -- try not to forget or leave out one of those questions.

Q. Okay. Okay. And I should clarify that I'm not -- I'm not going to purposely ask you a number of questions at a time.

A. Understand.

Q. It's -- it's my intent to give you a chance to answer before I ask you another. So we'll see how I do.

And one other thing before we kind of get into it. I want to make sure we know what we're talking about when we use certain language today. If we talk about a kinetic projectile or a shotgun equipped with a beanbag round, do we kind of understand each other? That we're talking about the so-called less-lethal weapons that you guys had out there at the protest May 30th, 2022 [sic]?

A. Yes, ma'am.

Q. Okay. And if I say "firearm" does that mean something different?

A. It would be semantics. So the less-lethal shotgun is a firearm.

Q. Mm-hmm.

A. We do not call it a firearm, specifically so that whether it be in reports or whether it be in communication, there is no misunderstandings that we are talking about the less-lethal shotgun or our -- our pistols or a rifle.

Q. Okay. So I'm going to try -- I may ask you question or two about what I -- you know, a gun that shoots standard bullets. And I'm going to try to use the word firearm when I do that.

A. That's fine.

Q. But if -- if you ever don't know what I'm talking about -- what type of weapon I'm talking about, let's clarify it, okay?

A. Okay.

Q. Okay. So I want to talk about kind of some of the rules that were in place on May 30th, 2020, when you were out there responding to the protest event. And -- and then we can get into some of the specifics of the event.

I've looked at some of APD's general orders from that time. I just want to confirm that certain things were -- were in place. So I'm going to ask you about those.

I read in one of the general orders that, "It could be an appropriate circumstance to shoot the shotgun equipped with kinetic impact projectiles if the subject is engaged in riotous behavior or is throwing rock, bottles, or other dangerous projectiles at people and/or officers, creating a risk of injury."

And I'm quoting from something that's been given to me labeled, GO206.5.3. Does -- is that a policy or a rule that was in place governing your conduct as of

May 30th, 2020?

A. As far as I know, it was.

Q. Okay. I've also read in a -- a neighboring general order that using a shotgun equipped with a kinetic impact projectile has to be reasonable. Was that a rule or a policy in place as of May 30th, 2020?

A. I believe so.

Q. Okay. Similarly, I believe it was a APD rule or policy that an officer was not required to use a kinetic impact projectile. Is -- is that also, correct?

A. In -- in what -- in what circumstance do you mean required, ma'am?

Q. I thought you would ask that. So let me try to get to the place where I read that. Okay, so this is what I'm reading.

"Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officers determine that deployment of these munitions cannot be deployed safely."

Did you understand that to be a rule or policy governing you guys at -- at the time?

A. Yes, ma'am.

Q. Okay. Now another -- another one that I read is, "The safety of hostages, innocent subjects, and officers takes priority over the safety of subjects engaged in

perceived criminal or suicidal behavior."

I read that in 206.5.1. Did you understand that to be a rule or policy governing your -- your conduct at the time?

A. Yes, ma'am.

Q. Okay. I'm saying at the time, instead of saying as of May 30th, 2020, and -- and we both know what I'm talking about, right?

A. Yes, ma'am. Understandable.

Q. Okay. Now, let me ask you specifically about Modesto Rodriguez and Tyree Talley for a moment. Are you familiar with who each of them is?

A. I am not.

Q. Okay.

A. Other than -- other than their name as being attached to this lawsuit and deposition.

Q. Okay. I'm going to show you some photographs just so that we know what -- who we're talking about today, as were talking. Let me share my screen.

Okay. Can you see a photograph on your screen? It's labeled Rodriguez, five zeros and then the number five. And it has a gentleman on the ground with his orange or red shirt pulled up?

A. Yes, ma'am.

Q. Okay. Let me introduce you to Modesto Rodriguez.

So when we're talking about Modesto Rodriguez I'll just represent to you that that's who he is, okay?

A. If you don't mind just giving me one more second. I'm just getting writing down a little bit of the description so that I can remember as we --

Q. Sure.

A. -- as we move through this.

Q. And, Officer Wright, this isn't a test. So I don't want you to be worried about you know, if -- if you don't remember the difference between the two plaintiffs or something like that, just -- just tell me. And we'll straighten it out, okay?

A. Yes, ma'am.

Q. Okay. This photograph labeled as Talley 001153 has a gentleman lying on his side on the ground with his hand over his face and that is Tyree Talley.

A. Yes, ma'am.

Q. And I'll -- okay -- I'll turn the page here 'cause you can see him a little better on Talley 1136. And it -- he's kind of in a partial seated position. It looks like some people might be helping him up. Are you able to see him there?

A. Yes, ma'am.

Q. Okay. So that's Tyree Talley. In the photograph that I showed you of Modesto Rodriguez you're able to see a

couple of places where he's injured. And I'm going to click back to that one and just show you this injury here on his torso. And this injury down here around his ankle.

Those will be the injuries that we're talking about today when were talking about Modesto, okay? And --

A. So Modesto is Rodriguez, correct?

Q. Correct.

A. Okay.

Q. Yes. Mr. Talley has -- was injured more times than he's alleging as a result of the shotgun rounds on this event. And I don't have photographs here of every single one of them. But just to give you a general idea of what we're talking about here are some photographs that are depicting some of Tyree Talley's injuries.

MR. LAIRD: And Leigh, would you mind just stating the Bates number? I -- I can't tell what it is down at the bottom. It's a little small.

MS. JOSEPH: Sure. No problem. So I said the first two. And then I'm also showing Talley 1150 and this compilation photo is Talley 1154.

MR. LAIRD: Great, thanks.

Q. (BY MS. JOSEPH) And I'll zoom in on that just a little bit, Officer Wright, so that you can kind of see some of the injuries that Mr. Talley's complaining of.

Okay, so -- make myself a note real quick.

Now, that we've seen the plaintiffs and -- and you've been introduced to them by -- by virtue of some photographs, let's talk about May 30th, 2020. So tell me what time you came on duty that day.

A. I don't know the exact time that I came on duty that day. We got a page toward -- around lunch time, if I believe -- if I remember correctly -- that all available APD officers needed to come in for mobile field force.

Q. Were you already working when you got that page?

A. I was not. I was --

Q. Okay.

A. -- near home.

Q. Was this your scheduled day off?

A. I honestly don't remember.

Q. Okay. But you know you weren't on when you got the call?

A. Yes. I -- I don't remember if -- if -- if I was supposed to be going in already later that day. 'Cause my shift starts later in the day or if that was my -- my day off.

Q. Okay. And you said you were near home. Do you remember where you were when you got the page?

A. Yes, I was on the 35 service road northbound in Georgetown near I think it was Williams Drive -- trying to get something to eat from Chipotle. Or about -- about to

pull into Chipotle rather.

Q. Okay. And do you remember where you were coming from?

A. I do not.

Q. Okay. So you --

MR. LAIRD: Leigh. Leigh, I'm sorry. Would you mind taking -- I mean, if you're finished asking about the photographs can you take those down so --

MS. JOSEPH: Sure.

MR. LAIRD: -- I can see.

MS. JOSEPH: Yeah, no problem.

MR. LAIRD: And focus on the speakers. Thank you.

MS. JOSEPH: There we go. I've got two screens. So sometimes if I'm not looking at that one.

MR. LAIRD: Oh.

MS. JOSEPH: I -- yeah.

MR. LAIRD: No, that's fine.

Q. (BY MS. JOSEPH) All right. So you get the page around lunchtime. Were you able to -- to get the Chipotle and eat it?

A. No, ma'am. I immediately drove home, dropped my husband off, grabbed my gear, and drove to work.

Q. Okay. So you skipped lunch?

A. Yes, ma'am.

Q. Okay. I guess all officer -- all available officers then is a fairly urgent call I would expect?

A. Yes. And I -- I would like to say that I -- I -- I don't know if that was the exact verbatim language of the page.

Q. Mm-hmm.

A. But that was the generalized message of the page that any -- anybody who was available, whether you're working or not, needs to mobilize.

Q. Okay. So you drop off, you head down, where do you report?

A. I report to the North Sub -- sorry -- the North Substation off of Lamplight Boulevard [sic].

Q. And who do you report to when you get there?

A. At the time my sergeant was Sergeant Reid. I don't -- I -- I can't remember if I directly reported to him as soon as I got there. Once we got there the -- the -- we'll call it the standing order was to collect a car, double up. So ride two officers in -- in each car. And head to the staging point which was in downtown Austin.

Q. Okay. And is that what you did?

A. Yes, ma'am.

Q. Are you at this point wearing a police uniform?

A. Yes, ma'am. I'm wearing my -- my police uniform, yes.

Q. Okay. Does it have long sleeves or short sleeves?

A. I don't remember. I -- I think I had short sleeves that day because if I remember correctly, in my body camera you -- my -- my arm is exposed in front of my body camera.

So I think I was wearing short sleeves or I had possibly rolled up my -- my long sleeves, but I -- I'm am fairly certain I was actually wearing short sleeves because we were supposed to bring long sleeves and I accidentally forgot it. If I remember correctly.

Q. Okay. And at this point, heading out of the North Substation are you wearing any additional tactical gear or anything beyond your -- your standard uniform?

A. I do not believe so. I -- I believe that that day I was wearing my standard outer carry vest. At the time, we did not have "police" written across the back. I had my gas mask with me, as well as, my helmet. But I had not put my helmet with the face shield on yet. It was just with me.

Q. Okay.

A. And -- and I'm sorry. I have also had the -- the less-lethal shotgun.

Q. Okay. So that was distributed to you at the North Substation?

A. Yes. When I got to the North Substation I -- I checked one out.

Q. Okay. Were you directed to do that by someone?
A. Not directly. It was -- it was you know, if they're available, check them out. If they're not that -- then -- then you'll be without. And I --
Q. Okay.
A. -- I happen to get there early enough that they had -- they had one available.
Q. Okay. I want to have a whole separate conversation about training, but just while I'm thinking about it, are you trained in MFF? Mobile field force?
A. Yes.
Q. Okay. And are you -- I may be asking this in a strange way, but are you also a part of that team or group? Are you a member of the mobile field force? If there is such a thing?
A. So the mobile field force is -- sorry -- I'm -- I'm trying to think of the best way to explain this.
Q. Mm-hmm.
A. So the -- the mobile field force is not a -- is not the directed team.
Q. Okay.
A. That would be the SRT team. The special response team, if I remember their acronym correctly.
Q. Okay.
A. They are the main kind of -- we'll call it large

event kind of security. So they -- they're there for -- they're -- they're the ones who -- who are -- are at all the protests.

Q. Mm-hmm.

A. Mobile field force is when a situation is larger than they can handle. Mobile field force is patrol officers and detectives. Everybody else on the department who's been trained to come and assist them in crowd control.

Q. Okay. Thank you for explaining that. Is -- and so you're not part of SRT?

A. No, ma'am.

Q. Okay. And you weren't then?

A. No, ma'am.

Q. Is mobile field force training part of the curriculum at the Academy?

A. Yes, ma'am.

Q. In your first -- okay. So if you're an APD officer you should have taken mobile field force training as part of your academy curriculum?

A. As far as I know, yes. My academy got it. And as far as I'm aware the academy's before after me got it, but --

Q. Mm-hmm.

A. -- that I -- I -- I can't say for sure if every single academy got it.

Q. Okay. Okay. So you have checked out the less -- so-called less-lethal or the shotgun, do you have some of the beanbag ammunitions with you there at the substation? Do you get those too?

A. Yes.

Q. Okay.

A. So were given enough to load the wea -- load the weapon system to its capacity; however, I do not remember if at the substation I was given additional less-lethal rounds or not.

Q. Okay. And the shotgun holds five rounds; is that correct?

A. I think so, but I -- I cannot remember for sure.

Q. Okay. Okay. So now you have the shotgun loaded with beanbag rounds?

A. Yes.

Q. Okay. And you are checking out a car with another officer. Who is the other officer?

A. Officer Christopher Williams.

Q. Okay. So where do you and Officer Williams go?

A. We drive downtown to the staging area. I believe it was called -- it was the parking lot across the street from Revolutionary Park. I think that's the name of the park.

Q. Okay.

A. I don't remember the address. It was a fairly large parking lot in downtown. And I believe it's around Fourth Street, but I cannot be sure.

Q. Okay. And this is where -- this was kind of the gathering point. You call it the staging area?

A. Yes.

Q. Okay. What are you feeling in the car? Are you driving? Or are you in the passenger seat?

A. I'm in the passenger seat because at this time I was still fairly new to the department and the city. So I knew -- I knew my sector well and the surrounding areas of my normal work area. But I still was not -- and even to this day I'm not very versed -- especially, with downtown. So --

Q. Okay.

A. Officer Williams is a senior officer to me and he asked if I didn't mind him driving. And I said, you know how to get places better -- you know downtown better than I do. Something along those lines.

Q. Okay. Okay. So I'm actually gonna interrupt myself for a second because I didn't ask you this yet. When did you join APD?

A. I -- my hire date is October 1st, 2018. I graduated the Academy I believe it's May 10th, 2019.

Q. Does it typically take -- what is that -- about

seven months to graduate from the Academy?

A. Yes, ma'am. The Academy is roughly eight months long.

Q. Okay.

A. And there is three months of field training where after you graduate the Academy you are with -- you are considered what's called a PPO, a probationary police officer. And you ride with what is known as an FTO or a field training officer.

And for roughly three months -- just a little over three months, you ride with different FTOs so that they can teach you more in -- you know more in-depth -- actually doing the job. Policies and procedures, reports, and stuff like that.

Q. Okay. So you -- have you worked for another police department or law enforcement agency prior to coming on with APD?

A. No, ma'am.

Q. Okay. In your time at APD -- in the -- maybe about seven months that you had been driving on your own and well -- so even including those months when you were riding along with an F -- FTO -- have you ever been called to respond to a crowd protest event?

A. One other time. And I believe it was the night before.

Q. Okay. Have you ever been called or heard one of these you know, all officers we need you whether you're working or not calls prior to May 30th, 2020?

A. No. Not the all officers whether you're working or not. I do believe the night before they mobilized a mobile field force as well. A little bit more of a condensed version because it was an unplanned protest so SRT was not on standby.

Q. Okay.

A. If I remember correctly. And so they asked for patrol officers to come and assist with crowd control outside of the Main.

Q. Okay. Okay. So on May 30th SRT was on standby and APD was expecting the protest?

A. I believe so.

Q. Okay. Tell me just kind of generally about your experience the night before. And I'll ask first, were you armed with a shotgun equipped with kinetic impact projectiles then?

A. I honestly do not remember.

Q. Okay.

A. 'Cause the -- as the rookie on the shift, I usually did check out the less-lethal shotgun. However, I do not remember if I had it that night or not.

Q. Okay. Do you remember what the scene was like

that night? And if it all blurs together that's something I can understand too so just tell me you know, what you remember.

A. I remember -- I remember there being a decent size crowd in front of the Main that was upset and very loud. And we were standing on the steps of the Main where they were screaming and yelling at us.

Q. Were they throwing things at you?

A. I don't remember.

Q. Okay.

A. A few objects may have been thrown, but I -- I -- I don't remember.

Q. Okay. And how long were you out there the night before?

A. I -- I can't recall.

Q. Would it be hours? Some number of hours?

A. I think so. It was -- it was at least an hour probably.

Q. Okay. Okay. So approximately how much time passes between when you leave the steps of Main the night before and when you're in line at Chipotle with your husband the next day?

A. I -- I can't say for sure and I -- I don't necessarily want to guess.

Q. Yeah, and I don't -- I don't want to pin you down

by the minute.

A. Sure.

Q. I'm more looking for was it 12 hours or two hours?

A. It was -- it was more than 2 hours. It was at least -- it was at least six, if not more --

Q. Mm-hmm.

A. But I -- I -- I can't recall exactly.

Q. Did you sleep?

A. Yes, ma'am.

Q. Okay. Did you get what you consider a typical amount of sleep? For you?

A. I believe -- I believe so.

Q. Okay. Okay. So now we're going to go back to you and Officer Williams in the car heading down on May 30th.

Having been out there the night before, having been called in for the first time, hearing this all available officers we need you. What are you feeling as you're headed downtown with Officer Williams, sitting in the passenger seat?

MR. LAIRD: I object to the form, but you can answer officer.

THE WITNESS: I would say that I was feeling nervous and tense because I didn't know what to expect. I had watched you know, unruly crowds and protests that got out of hand both in training and in my -- in my private

time.

And just was -- was nervous and worried on what -- what the next couple hours were going to bring. It was -- it was more of the anxiety of the unknown.

Q. Do you remember saying anything specific to your husband as you -- as you left him to go report in that day?

A. I don't remember anything specific, but my usual go to for -- if I have the time for higher intense inci -- incidences is I -- I tell them that I love him and that I will try to stay in contact as much as I can throughout my shift that day or the -- the incident.

Q. Mm-hmm.

A. And that currently I'm okay. Obviously, he knew that because we were together.

Q. Mm-hmm.

A. And that I will -- I will let him know when I'm on my way home.

Q. Mm-hmm. Were you guys able to stay in contact during the afternoon and evening of May 30th?

A. I believe I possibly -- I -- I possibly text [verbatim] him a couple of times throughout the day when we -- when we did get a break.

Q. Mm-hmm.

A. And we were relieved for a short period of time.

Q. What kind of messages were you sending to him?

A. Just I love you messages and that I'm okay.
Q. Mm-hmm.
A. And that things are chaotic.
Q. Mm-hmm. You mentioned being aware of some of the other protest events that had been going on in the country around that time. Were you aware that -- I think it was El Paso -- a police station had been vandalized the night before?
A. I don't believe so.
Q. Okay. I think another -- another police station headquarters around the country had been set on fire the night before. Did you know about that?
A. I that there had been attacks on police stations throughout the country.
Q. Mm-hmm.
A. I -- I don't remember any specific ones, at that time, because throughout the next couple of months there was a lot. So all of that is kind of bleeding together.
Q. Mm-hmm. Where do you get your news?
A. I don't watch a ton of news. So a lot of it is in passing or just YouTube videos of what's going on.
Q. Mm-hmm.
A. Fox News. I try to watch CNN on occasion just so I can get a different perspective of things. And -- and then just stuff on Facebook feeds and Instagram feeds.

Q. Okay. Okay. So if you do turn it on, it's probably going to be Fox, the occasional CNN?

A. Yes.

Q. Okay. And then whatever the -- the algorithm sends you in your socials?

A. Yes, ma'am.

Q. Okay. Okay. So you're downtown with Officer Williams, you've reported to the staging area. Who do you report to?

A. We reported to a lieutenant, but I do not remember his name.

Q. Okay. And what orders did that lieutenant give?

A. I believe he said that we were going to -- we were going to wait until we had more people and then we were going to go to the Capitol and assist DPS. Because DPS was having trouble securing the Capitol.

Q. Is that what happened?

A. Yes, ma'am.

Q. Okay. Approximately what time did you head over to the Capitol?

A. Oh, I -- I don't know. I -- I -- it was around lunchtime. Probably between maybe 1:00 and 3:00.

Q. Okay.

A. Somebody brought us pizza. And so we -- we each got like two slices of pizza before we went out.

Q. Was that a member of the public or -- or --
A. No. I -- I -- I think it was an -- I believe was an officer. It might have even been that lieutenant.
Q. Mm-hmm.
A. But I don't remember for sure.
Q. Okay. How many -- how many did you have in the group? Or how many did you wait for before you guys headed to the Capitol?
A. I -- I don't know.
Q. Okay. And what happened when you got there?
A. When we arrived at the Capitol we lined up along the front gate. In front of Congress and we -- we -- my understanding was we were there to give DPS a little break because they had an incident.
Q. Did you -- did you all kind of march over there? Or drive over there?
A. We drove to parking garage on San Jac [verbatim], I believe.
Q. Mm-hmm.
A. And from there we formed up into smaller groups and -- and -- and semi-formally marched to the -- to the Capitol.
Q. How many in your group?
A. I don't remember.
Q. Okay. More than five?

A. Yes, I believe so.
Q. Okay. Do you think more than ten?
A. Maybe it was -- it could've been groups of ten.
Q. Okay. And you had, I'm assuming, the shotgun with you and your -- well, did you have the shotgun with you?
A. Yes, ma'am.
Q. Did you have your helmet at this point?
A. I don't know if I had my helmet on, at that time. I know that I put my helmet on once we got -- it might -- I know that my helmet was on once we got to the Capitol. I don't remember where I actually doffed -- or donned my helmet.
Q. Okay. So it was with you?
A. Yes.
Q. Okay. Okay. So you all march to the Capitol, lineup to help relieve DPS. What was the incident that had occurred that -- that caused them to need backup?
A. I think -- if I remember correctly one of the DPS troopers got overwhelmed and got into a fight and it became an officer needed assistance situation.
Q. Okay. Like got into a fight with a protester?
A. With -- if I -- if I remember correctly it was multiple protesters.
Q. Mm-hmm.
A. And they didn't have enough people at the Capitol

at the time. So we -- we came to help to -- so that we could keep the Capitol grounds clear.

Q. Wow, okay. Do you know who instigated it? Like kind of threw the first punch, so to speak?

A. No, ma'am.

Q. If it was a protester or the officer?

A. No, ma'am.

Q. Okay. Do you know who the officer was?

A. No, ma'am. I don't know who the trooper was.

Q. Okay. Okay. So you're there sometime between 1:00 and 3:00. You're lined up on Congress. How long do you stay?

A. I don't know. It could've been an hour. It could've been slightly less. It could've pushed past an hour. I -- I don't believe we were there more than two hours though.

Q. Okay. And when you're lined up on Congress what are you doing?

A. So I -- I -- I would like to clarify. So we're lined up in front of Congress. Across the front gate of the Capitol.

Q. Okay. On the side -- sidewalk there?

A. Yeah, yeah, yeah. So --

Q. You're not in the street. Okay.

A. I'm not in the street. And -- and I want to say

that that's 11th. So we're lined up --

Q. Mm-hmm.

A. -- on the Capitol grounds. I cannot remember if we were in front or behind the fence. And we are lined up so that we are standing in front of the Capitol like this not like this (indicating.) I'm sorry I just did -- I did hand motions even though we're -- the recording and I apologize.

Q. That's okay. So I think you are expressing that you were kind horizontal going across the front of the Capitol --

A. Yeah.

Q. -- as opposed to -- okay.

A. In line with the fence.

Q. Okay. Now, are -- I know sometimes people rally right there at the Capitol steps inside the fence right by the entrance of the Capitol. Were there protesters or ralliers there?

A. Yes. So DPS had pushed them -- pushed all of the protesters off Capitol grounds.

Q. Mm-hmm.

A. And so they had gathered in front of the Capitol, at the sidewalk street-level outside of the gate.

Q. Okay. So is it accurate to say that you are part of kind of a physical barrier to prevent these individuals

from reentering the Capitol grounds?

A. Yes.

Q. Okay. And that's kind of what your role was?

A. Yes.

Q. Okay. Did you fire the shotgun or discharge the shotgun at any point while you were at the Capitol?

A. No.

Q. Okay. Okay. So you stay there maybe an hour or so. And then what happens?

A. It -- we walked -- we cleared out, we walked back the way that we came. And there were large vans waiting for us. So we went to the east side of the Capitol towards where we had parked. And there were vans waiting for us. The large kind of taller, like Sprinter-style vans. And we filled them up and we were driven to the 35 service road, near the Main.

Q. Okay. Okay. And then what?

A. And then we lined up again and started moving towards the 35 proper to facilitate the removal of protesters on the highway.

Q. Okay. Have you been told that people are attempting to block traffic at this point?

A. I believe so.

Q. Okay. So everybody in your van went up on the I-35 overpass?

A. I believe so. Some others could've been pulled to go other places, but I believe for the most part everybody in my van moved forward onto the 35.

Q. Okay. Do you know the names of any of the other officers that were with you?

A. No. I --

Q. Are you -- I'm sorry, go --

A. I can't be sure.

Q. Are you still with Williams?

A. No. We had gotten separated at that point.

Q. Mm-hmm.

A. So I was -- I was just in a van with a whole bunch of other people. I may have recognized some, but --

Q. Mm-hmm.

A. I saw a lot of people that day that I recognized and I -- I can't definitively say you know, if it was this person at this time. Or if -- if it was that person at a different time.

Q. What's the atmosphere in the van going from the Capitol over to the 35 service road? Is it tense? Is it jovial? What's -- what's going on in the van?

A. It's -- tensions are high so we're doing what first responders do and we're -- we're -- you know we're trying to you know, make light of the situation so that we -- we don't get too stressed. You know maybe some --

some light jokes. You know like, oh, well at least it's not too hot today. You know, being sarcastic because it was very hot that day.

Q. Mm-hmm.

A. Stuff like that.

Q. Yeah.

A. You know or --

Q. So while --

A. -- it's supposed to be my day off. You know, something -- you know, stuff like that.

Q. Mm-hmm. So y'all aren't just uncomfortable because of the situation. You're -- you're physically uncomfortable too?

A. Yes.

Q. Okay. Now, who ordered you to go up to the bridge? The overpass.

A. I don't remember. When we got out of the van I believe it was a corporal who said you know, line up and we're going to -- we're going to push up to the 35.

Q. Okay.

A. We -- we might have actually -- I believe we were dropped off on the proper -- the southbound proper. Or on a -- on an onramp and we're very close to the southbound proper.

Q. Okay. And your current title is SPO, senior

patrol officer?

A. My current title now is --

Q. Mm-hmm.

A. -- senior police officer.

Q. Police, okay.

A. At the time I was just police officer because I had not had two years on yet.

Q. Okay. It didn't have a "P" or an "F" in front of it. It was police officer?

A. Yes.

Q. Okay. We've been talking for almost an hour. Not quite. I think it might be a good time to take a comfort break, if that works for you. Just about five minutes?

A. Perfect. That would be great.

Q. Okay.

VIDEOGRAPHER: All right. The time is 10:58 a.m. and we are off the record.

(Recess was taken.)

VIDEOGRAPHER: Okay. We're back on the record. The time is 11:07 a.m.

Q. (BY MS. JOSEPH) Officer Wright, we took a short break. You understand that you're still under oath?

A. Yes, ma'am.

Q. And I didn't talk to you about this before, but you probably know that your testimony today is just as if

you were in a courtroom. Even though we're not in that formal of setting right now?

A. Yes, ma'am.

Q. Did you speak to anybody during the break?

A. Yes, ma'am. I spoke to Mr. Laird.

Q. Did you guys have any conversation -- don't tell me what it was -- about the deposition?

A. Yes, ma'am.

Q. Okay. Can you hear that awful sound coming from my end?

A. No, ma'am.

Q. Okay. Good. All right. So let's -- let's get back to it. I -- we've kind of been walking through your day on May 30th and we had gotten to the bridge -- the overpass.

Who is in command on the overpass when you arrive?

A. I do not recall.

Q. Okay. Is it multiple people or one person?

A. I -- I don't recall. I don't know --

Q. Okay.

A. -- if there was one person there directing the entire line or if they had multiple supervisors out there.

Q. Okay. Are you taking orders specifically from someone -- a high -- who is a higher rank than you are?

A. Yes, ma'am.
Q. Okay. And what are you directed to do?
A. If I remember correctly, when we exited the van a corporal instructed us that if someone is throwing objects, that they are participating in riotous behavior. And should be impacted to stop that riotous behavior.
Q. Okay. So the criterion given was throwing an object?
A. Yes. Because thrown objects can hurt the people who are trying to peacefully protest or us.
Q. Okay. Was there any specification about what the object -- like what objects they're throwing? Or throwing anything?
A. Throwing anything, ma'am.
Q. Okay. And what about the direction that it's being thrown? Was there any -- anything specified about that?
A. No, ma'am. Not --
Q. Okay.
A. -- that I recall.
Q. Okay. Okay. So you received the instruction to target anyone who is throwing something. And what do you do next?
A. We begin walking up to the 35 service road southbound. There is a line of semi-trucks that has come to

a standstill. I hear numerous -- very numerous amounts of objects peppering the sides of the semi's. It was loud enough that I could hear it over the shouting. I could hear it over the semi engines. And it -- it reminded me of what it sounds like when you know, you're in an armored vehicle and it gets shot at.

Q. Have you had that experience before? Being an armored vehicle and -- and it was shot at?

A. I have had the experience of being in armored vehicles. And my vehicle was -- was not hit. But I have heard armored -- armored vehicles be hit by rounds.

Q. Do you have a military background?

A. Yes, ma'am. I was a US Navy Corpsman which is a medic. I spent roughly two years working in a Naval Hospital. And then I spent roughly two years with the Marine Corps as a combat medic.

I was assigned to a field hospital in Afghanistan for eight months in Helmand Province where we were Second Echelon Medical Care which just means that we had ER and surgical capabilities that were limited to neurology.

We -- we did not have a neurologist on -- on our site. I participated in roughly 400 major trauma situations where I participated in both ER and OR operations. So that's emergency room and operating room

operations where we had roughly a 98 percent survival rate.

Q. Wow, okay. When did you get back from Afghanistan?

A. September of 2012.

Q. Okay. And are you still in the reserves or did you remain in the military in some capacity?

A. No, ma'am.

Q. And when did you -- when did you completely discharge?

A. I discharged from active service in 2013. My contract specified, inactive reserve. Which is fairly common.

Q. Mm-hmm.

A. For another four years, I believe. And what inactive reserve means, is that I'm not checking in with anybody. I'm not doing anything military. It's essentially if World War III were to pop off they could pull me back in. And I am out that now so ...

Q. Okay. So you were still in inactive reserve maybe for the first year or so you were on -- a member of the APD force?

A. No.

Q. Do I have the timing right?

A. No.

Q. No?

A. I believe that -- I believe that my discharge date from the inactive reserve was in 2017.

Q. Okay. Oh, and you -- I -- I had the wrong date in my head. I was thinking you started 2016. But you started in 2018 at APD?

A. Yes.

Q. Okay. Okay. Does anything else on the overpass or at the scene -- it -- on May 30th remind you of -- I'm gonna just kind of use the phrase -- of just kind of a war zone like you had experienced?

A. Yes. So to an extent somewhat even more than when I was in Afghanistan. Because I was in a --

Q. Mm-hmm.

A. -- medical unit. We were fairly sheltered from active attacks.

Q. Mm-hmm.

A. And so our -- our main thing was the medical side. This incident -- this riot felt -- felt like I had entered somewhat of a war zone.

Q. Mm-hmm. And in what ways?

A. We were mobilized to protect people who were attempting to exercise their legal rights to a grievance in a -- in a protest form. And a large group came out and chose violence in the form of throwing dangerous objects at us that had the potential to cause serious injury to us.

And that felt like kind of being back in a war zone where we're there to protect people and there is this group that is tr -- actively attacking us for trying to protect that aspect of life.

Q. So you're there to protect people and you feel at risk?

A. Yes.

Q. I imagine if it was tense before, at this point when you're on the bridge and you're hearing the bullets hit the semi-trucks and -- and things like that --

A. That -- they were rocks hitting the semi-trucks --

Q. I'm sorry not bullets. You said it sounded like bullets.

A. Yes.

Q. It reminded you of bullets. I'm sorry. Let me try that again.

Yeah, if it was tense before when you're here on the overpass and you're hearing the rocks hit the semi-trucks and -- and seeing the crowd and kind of the way that some of them are interacting, I imagine there's an element of fear at this point for you of what's going to happen next?

A. Absolutely.

Q. Yeah, yeah, okay. The groups -- you kind of referenced some groups of protesters who decided to throw

things or poss -- you know, in danger people I think were some of your words -- did that appear to be -- when you say "group" are you -- did it appear to be kind of an organized group that was out there to take a different, more violent approach?

A. I would say that there was some level of organization to it. I -- I cannot -- I -- I -- I can only speculate on how organized it was. But we witnessed multiple occasions where you would have a group of people who were peacefully protesting and you would have one or two of them come out, agitate by throwing things, and then jump back into that group so we couldn't intervene.

And from my perspective it -- it looked planned out. Like you had the small of group of people who were doing it the right way. And they were kind of that shield so that somebody could run out, try to hurt us or other people, and then run back in and intermingle with that group and -- and they were essentially protecting those people.

Q. Talking about throwing things, we kind of talked about this a little bit earlier when we were talking about people throwing objects, and that really that meant any objects. What kinds of things were people throwing?

A. Pardon me.

Q. Like to -- actually, just -- no, let me be more

specific and direct. Tell me everything that you remember seeing thro -- be thrown.

A. Throughout the whole day? Or just at -- at that time?

Q. If you can, tell me throughout the day from the time that you were on the overpass. But I don't need to know like there was a rock 2:31. There was a -- you know, just like what types of objects can you remember?

A. Mostly rocks and broken pieces of concrete. Broken bricks, bottles filled with water, frozen water bottles, water bottles filled with urine, fireworks were thrown. It seemed like any hard object that could be thrown with force, was thrown. That -- that was either at their feet or staged.

Q. And per direction from command, you guys were tasked with basically responding in the same way with the shotgun regardless of what was being thrown. Whether it was a rock, a water bottle filled with urine, a firework, a water bottle filled with water?

A. Yes, ma'am. Because it is almost impossible to know what is being thrown and the level danger that it could -- sorry -- I just -- I lost the word that I was going to use. The level of danger that it could possibly possess.

Q. And you say it's almost impossible to know what's being thrown, but you were able to distinguish things enough

that you could give me a list just now.

A. So the -- the list I gave you is because of what we discovered later. So when I -- I only know that there were bottles of piss because we found them after they had been thrown. You know, I -- I -- I know that there was fireworks because I witnessed the fireworks explode at officer's feet.

Q. Mm-hmm.

A. Obviously the rocks are -- are self-explanatory and the broken bricks and stuff like that. You know the frozen water bottles, once they land we can -- you know, we can see that they were frozen water bottles.

Q. Mm-hmm.

A. So what I'm trying to get across is in the moment, we -- we have no idea what that object is until it lands at -- or until it hurts somebody. So we have to assume based on that that everything that is thrown is dangerous. Because if we wait for it to land and then in -- investigate it and inspect it, at that point it could be too late.

Q. Mm-hmm. Assume that everything that is thrown is dangerous. That was the kind of operating --

A. Yes, ma'am.

Q. Okay. I'm going to show you some video. Let me get my screen share on.

A. Yes, ma'am.

Q. So this has been Bates labeled as COA 4621 and identified to me as your body worn camera. If at any point during the video you determine that that's not what this is, please tell me. But I'm going to assume unless you tell me otherwise that this is correctly labeled as your -- your body cam, okay?

A. Yes, ma'am.

Q. Okay. And I'm going to jump around a little bit within the video. So what I'm going to try to show you is some of the time surrounding when Modesto Rodriguez and Tyree Talley were impacted. At this point I think that it's getting to be close to 9:00 p.m.

A. Okay.

Q. And I think based on the timeline that we've talked about, that you've probably been on the overpass for at least five hours. Does that -- does that sound right?

A. That -- that's very poss -- that's very probable. I -- we sat on the -- I'm sorry. We sat on the north side of the proper for a while facing a row of -- an apartment complex. So we weren't -- we were on the 35 for a long time. It wasn't the -- the entirety wasn't on the -- the -- the bridge overpass.

Q. Okay.

A. I -- I don't exactly which one it is. I apologize.

Q. Okay. Once you were stationed on the bridge overpass with the -- the shotgun kind of looking out for people throwing objects, did you take breaks?

A. In -- in what sense do you mean? Are you saying did we take collective breaks? Like did we switch out huge groups? Or individually, did we step back and -- and -- and rest for a couple minutes at a time?

Q. Okay. More specifically about you. Whether that happened because a group was relieved or you stepped back, you can tell me. But did you personally take breaks?

A. If I remember correctly, we -- there was one break where we went from the north side of the 35 down to the 250 building. Which is where a lot of our maintenance is done.

Q. Mm-hmm.

A. And we were sat in the shade for a short period of time before we moved back onto the bridge. However, with that being said, we did this for a couple of days in a row. And that was one of the typical spots where we were -- we were given time to take breaks. So that could kind of be meshing together.

Q. Okay.

A. If that makes sense. So I --

Q. Like what specific day that happened or --

A. Yes. So I -- I -- I can't remember if -- if we took a break in -- at 250 that day. Or if it was the next

day or if it was both.

Q. Mm-hmm.

A. I know that there were multiple days where we would be on line and after a couple of hours we would come in and we'd -- we'd sit down and we'd rest at least in the shade for you know, 45 minutes or so.

Q. Okay. What if -- like what if you needed to go to the bathroom? Did you just hold it? Or what -- what did you do?

A. I honestly -- I don't remember. I know -- I -- I think when we -- when we -- when we took our break at 250 I used the bathroom in there.

Q. Mm-hmm.

A. I remember because -- I remember -- I -- I -- I at least took a break in that bath -- and used that bathroom --

Q. Mm-hmm.

A. At some point throughout the multiple days of protesting because it was so hot and they had one of those old-fashioned like round sinks where you'd press the foot pedal --

Q. Mm-hmm.

A. -- and it put water out all around. And I remember thinking to myself, it's hot enough that part of me wants to climb into this sink and just soak myself so I can cool off. And you know, face the judgment of my coworkers

for climbing into a bathroom sink.

Q. Yeah, yeah, okay. What about water or Gatorade or something. Did you have access to something to drink?

A. I believe that officers were coming up in vans or patrol cars with bottles of water and -- and maybe Gatorades to -- to keep us somewhat hydrated.

Q. Mm-hmm. I wonder who got to have that role?

A. I wish -- I wish it would've been me.

Q. Yeah. Now, you ate some pizza when you first got to the staging area. Did you eat again before you went off duty?

A. I don't recall. I don't believe so. I -- I remember being --

Q. Mm-hmm.

A. -- incredibly hungry that night when we finally did get off.

Q. Mm-hmm. Okay. So here we are around nine o'clock. I'm going to scroll to about the 10:20 mark, if I can get there. So I'll start at 10:15 and I think that the incident involving Modesto is going to happen pretty quickly. I can replay this more than once for you, but if we can try to pay attention to what we see and what we hear.

A. Okay.

Q. Okay.

(Video playing.)

Q. (BY MS. JOSEPH) I think I just heard someone say "red shirt." Did you hear that?

A. I actually don't have audio on my side.

Q. Because I probably didn't turn on audio. Let me try this share again. I'm sorry about that -- sound.

Okay. Thank you, for telling me that. Let me try this one more time. Okay, starting again at 10:15. Do you hear the noise?

A. Yes, ma'am.

Q. Okay. Did you hear the "red shirt" that time?

A. Yes, ma'am.

Q. Was that you or someone else?

A. I honestly don't know. It kind of sounded like me, but I'm not sure.

Q. Okay. It seems like somebody is saying that to kind of say to the officers, that's somebody that I'm targeting, I want draw your attention to this person. Do you think that's what's happening?

MR. LAIRD: Object to the form.

Q. (BY MS. JOSEPH) Let me ask you a different way. Why would be somebody identifying a specific individual here in the line?

MR. LAIRD: Object to the form. You can answer it if you can.

THE WITNESS: It is common practice for us

when we have you know, even one or two individuals, if any officer sees somebody doing something that we believe might need some sort of police action to be taken, for us to call out some sort of identifiable marker so that the officers around us can -- can all get eyes on. And so that we're seeing the same thing.

So that you know, we don't just say something like "guy" and there's you know, 15 guys and now you have six or seven officers or even one other officer like, "Which one? What are you seeing? What are you seeing?" So --

Q. Mm-hmm.

A. -- we -- we try to -- to put out a descriptor if we see something. And that's just to get everybody's attention so that we kind of have that second, third, or fourth eye that we are all seeing the same thing that's happening.

Q. Okay. And that's what this sounds like to you here? Somebody putting out a descriptor to draw attention of other officers?

A. Mm-hmm. Yes, ma'am.

Q. Okay. Do you know -- do you know at this point who is standing next to you?

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

Q. Mm-hmm. And I know we've talked some about did you know the people in the van, stuff like that, but I don't

know if I asked you with respect to here on the overpass. Do you know any of the folks around you at this point?

A. So if -- if I may, can I -- can I ask clarification? Are you asking if I -- if I know them like I've been standing next to them for the last hour or two? Or if I know them like I've run into them multiple times and had conversations with them?

Q. Good question. Do you know their name?

A. I don't remember.

Q. Okay. Okay.

A. And you know, it -- I -- I -- there was multiple members of my shift around me. You know maybe they were one officer away from me or a couple, but I -- I can't recall if I knew specifically the person who was next to me and their name.

Q. Okay. Can you recall any specific names of people who you knew that were also there? Whether they were next to you or not?

A. Yes, my shift. Everybody on my shift as far as I'm aware. And a few of the people that I went to the Academy with. I saw them you know, randomly throughout the day. I said hi.

Q. Mm-hmm.

A. I -- because of the military I have -- my knees get sore fairly easy if I just stand in a sing -- single

spot. So I tried to walk around my area a little bit just to not get as much knee pain. And so throughout the time that I was up on the 35, I was walking back-and-forth. And if I saw somebody that I knew I would say hi.

Q. Mm-hmm.

A. And strike up conversation if -- if nothing -- if nobody was actively doing anything that needed attention.

Q. And the atmosphere as you were doing that, was it kind of like in the Sprinter van? Tense, but some joking going on to kind of manage the situation? Or what was the atmosphere like?

A. Yes. So we are trying to -- we are trying to minimize the chaos around us by -- whether it be using humor, whether it be using sarcasm to cope with just how insane and chaotic things were. That's what the military taught me. That's what being a police officer's taught me.

And -- and that's -- that's how you -- that's how I and -- and many people in my profession prevent from getting locked in too much to a very specific point. Because that can become dangerous. Does that -- does that make sense or do you need me to elaborate?

Q. I may need you -- you to explain the locked in part a little bit more. Yeah.

A. So hyper-focused, tunnel vision --

Q. Mm-hmm. Okay.

A. -- upon a singular thing or topic --
Q. Mm-hmm.
A. -- that can be very dangerous in -- in our profession because we have to kind of look at the -- the broader picture in order to maintain safety. If we focus too much on a singular issue or a singular thing, people can take it advantage of that and hurt us or other people.
Q. Okay. Okay. So the -- the sarcasm or the joking, that's kind of a generally taught and accepted way to manage this sort of experience?
A. Yes.
Q. Okay. I'm going to play video some more. And I think we'll see -- I don't think we're gonna see Modesto. I think we're going to hear some shots. But let's -- let's see what we're able to see.
A. Yes, ma'am.
(Video is playing.)
Q. (BY MS. JOSEPH) Actually I think that you're going to be able to see him kind of around here. So I'm going to draw your attention to that area of the video.
A. Okay.
Q. And I'm actually going to back it up a little bit, okay?
A. Okay.
Q. It's hard to see from your -- your body cam and

hard to hear, but after I heard "red shirt" I think a little while later I heard, "Red shirt on the ground." Did you hear that?

A. Kind of. I -- I don't -- I heard "red shirt" again, but I couldn't determine what was said after that.

Q. Okay. Here I can play it again -- whoops. Sounds like, red shirt on the ground, mumble, mumble, throwing a bunch of -- excuse my language -- shit.

Is that -- do you hear that?

A. Yes, ma'am.

Q. Is that your voice?

A. I don't think that was my voice, no.

Q. Okay. We see in the clip that we just watched from -- and I'm looking at the mark on the -- the playback, as opposed to the mark on your body cam. From about the 10:15 to the 10:39 mark.

We saw the line of officers that you're a part of, targeting and -- and discharging the shotguns, right?

A. Yes.

Q. Did you fire your shotgun?

A. Yes.

Q. During that clip? Okay. Do you know how many times?

A. I believe it was just once.

Q. Okay. And I think we saw the person next to you fire. Did you -- were you able to see that in the video?
A. Yes, ma'am.
Q. The person to your right?
A. Yes, ma'am.
Q. Okay. And we heard more than two shots?
A. Yes. I think so.
Q. Okay. Do you remember whether you fired at Mr. Rodriguez before or after he was on the ground?
A. I do not.
Q. Okay. So it could have been either?
A. It could've been.
Q. Okay. Let me -- well, let me ask you this -- did you see Mr. Rodriguez engage in any behavior before you began to target him?
MR. LAIRD: Object to the form. You can answer.
THE WITNESS: I -- I don't know.
Q. (BY MS. JOSEPH) Okay. It's possible that this was one of those situations where someone on the line saw something and called out to draw other eyes to it?
A. Yes.
MR. LAIRD: Objection to the form.
Q. (BY MS. JOSEPH) Okay. So it's possible that you didn't -- and I'll just -- we haven't said this out loud,

but a lot of the conversation in this case is around Mr. Rodriguez throwing a water bottle. And is -- are you aware of that fact?

A. I am aware that there's video of one of -- one or both of the gentlemen throwing things.

Q. Okay. So you may or may not have seen Mr. Rodriguez throw something?

A. I decided very early on in this situation that I would not be firing unless I physically saw somebody throw something. I -- what's the word I want to use?

I -- I took the order to be what it was. If I see somebody throw something then I will impact. So if I fired my weapon then I -- I visibly saw somebody throw something.

Q. Okay. Even though you don't necessarily recall this particular instance that is the practice you were following?

A. Yes, ma'am.

Q. Okay. I can't see it on this video, Officer Wright, I have seen another video where it appears to me that I can see Mr. Rodriguez walk up to a water bottle that's on the street and pick it up before throwing something. And it looks, although, I can't see it on your body cam because various times it's covered up, it looks like you would have a vantage point to have been able to see

that.

Do you remember when you first laid eyes on Mr. Rodriguez? Whether it was before or after he picked up the bottle?

A. I -- I do not.

Q. But from your vantage point, it would have been evident -- evident to you that what he had in his hand was a -- a water bottle as opposed to say a brick or a rock?

A. I -- I don't know. That's fairly far. It -- I -- I don't know that I would be able to identify it if was a -- if it was a water bottle or something else.

Q. Okay. How far do you think that distance is from where you're standing to where Mr. Rodriguez is -- is standing?

A. I couldn't --

Q. I'm actually going -- I'm sorry -- I realize I'm going to ask about two different points. So let me ask you first, just for estimate purposes -- I wish I could make a mark, but I'm just kind of just -- here, let me see if I can make a mark.

Let's kind of estimate there as the first point. And then over here -- oops, there's a big "2" -- as the second point. So how far do you think you are from that "X?"

A. I'm not entirely sure. Maybe 15 or 20 yards,

possibly.

Q. Okay. I'm just -- give me just a moment to save -- am I showing my email right now? Okay, I'm just going to try to save a picture that I just drew on there for us. Okay. And you said how many yards?

A. It could be possibly around 15 or 20 yards.

Q. Okay. Now, the "2" -- did I put it back on the screen where you can see it again?

A. Yes, ma'am.

Q. How far do you think are from the 2?

A. Maybe just slightly farther. Just with the way that the road curves, it could be slightly closer.

Q. Okay. So a little bit closer of a little bit farther?

A. Yeah. I -- I -- I can't really determine just the --

Q. Okay.

A. -- the way the road curves and where they are on the median.

Q. Okay.

A. Wherever that is.

MR. LAIRD: I'm going to mark that. Just so that we have it for reference as Exhibit two to your deposition.

(Exhibit No. 2 was marked.)

Q. (BY MS. JOSEPH) What -- what is the maximum effective distance of this shotgun that you're holding at the time?

A. I --

MR. LAIRD: Let me -- Leigh, let me make sure I understand what you're asking. Are you talking about the shotgun using the less-lethal munitions?

MS. JOSEPH: Yes. And I tried to clarify that, Gray. But thank you for --

MR. LAIRD: I just want to make sure.

MS. JOSEPH: -- for coming in. That is what I'm talking about. Mm-hmm.

THE WITNESS: I don't recall because since then we have changed munitions and changed our distances. At least once. So I -- I -- I cannot definitively say what it was at that time. I want to say it was no more than a hundred feet. But I can't -- I can't definitively recall.

Q. (BY MS. JOSEPH) Okay. When you changed the distances in munitions did the distances get shorter or longer?

A. Again, I -- I can't remember if the -- if the new rounds that we got are -- can go further or -- or don't. I -- I don't think that they go as far because --

Q. Mm-hmm.

A. -- they are a lighter round.

Q. Okay.
A. So I -- I -- I can't -- I can't remember.
Q. Okay. Do you have any understanding of the reasoning behind the change?
A. I -- I don't -- I don't.
Q. Okay. And do you know far the current rounds -- the maximum effective distance of the current rounds, whatever they are?
A. I -- I -- I do not because although I have been trained every year since on the rounds, I -- because of this incident, I really don't ever want to use these weapons again. So I qualify with them. And I don't check them out anymore.
So I don't -- I don't lock those into my memory bank because I -- I don't check them out or use them anymore.
Q. Why don't you want to use them anymore?
A. This entire incident just created a lot of stress and anxiety for doing my job and doing what I believe is -- was -- was right to protect people and this city.
And the hassle of that weapon system and how scrutinized it has become. I -- no offense to you I -- I don't want to go through this again.
Q. No offense taken. I -- yeah, yeah. When you see you know -- let me put it back up. Give me just a second.

When you see what happened to Modesto -- you know, we just watched some -- some shots getting fired. Do you feel like this is an appropriate consequence for throwing a bottle of water?

MR. LAIRD: Object to the form. You can answer.

THE WITNESS: As I stated before, there's really no way for us to determine what is being thrown, what is in those in bottles. From my prior experience, I know that for instance, a true Molotov cocktail is two chemicals with a breakable device inside that once mixed explode. But it can look as innocuous as a water bottle.

I believe that this is an appropriate response to riotous behavior. When we, as I said before, cannot determine in the split seconds that we have watching these objects being thrown of how much damage they could potentially cause to not only the innocent people that are trying to peacefully protest, but even other agitators and other officers.

Q. A Molotov cocktail can't be in a plastic bottle though can it? Doesn't it have to be in glass?

A. No.

Q. Okay.

A. It can be in plastic bottle. That -- that's what I was saying.

Q. Okay.
A. A Molotov cocktail is commonly shown as like a liquor bottle with a rag in it that you have to light on fire.
Q. Okay.
A. A true Molotov cocktail needs no fire. It's two chemicals that are mixed together.
Q. Mm-hmm.
A. That when the -- when one of the chemicals -- like ampule is broken on the inside --
Q. Mm-hmm.
A. -- and it mixes with those chemicals --
Q. Mm-hmm.
A. -- it becomes an explosive. So it would be a very --
Q. Mm-hmm.
A. -- effective way to put it in a water bottle as long as you could verify -- or as long you could guarantee that the -- the chemicals mixed.
Q. Have you seen that done before?
A. Not here in Austin, no.
Q. Okay. Would you classify Mr. Rodriguez here as a rioter?
A. If he was throwing objects, yes.
Q. Okay. Would you classify him as a violent

protester?

A. If he was throwing things, yes.

Q. Okay. And by throwing things we're talking about a bottle of water?

A. Anything, yes.

Q. Okay. Would you classify him as an aggressive resistor?

A. Again, if he's -- if he's throwing objects, yes.

Q. What's the difference, if any -- and I -- I -- I took these words -- I think you said the word rioter and some of these other words I've taken from reports and from general orders -- the APD policy.

What's the difference between a rioter, a violent protester, and an aggressive resistor, if any?

A. Give me those three terms again just because I -- I want to make sure I get them correctly. So we have rioter --

Q. Rioter, violent protester, and aggressive resistor.

A. Okay. So I would say that a rioter and a violent protester are the same. A violent protester is what I believe to be the politically correct term that has been bestowed upon people who participate in riots to try and minimize what they're doing.

And an aggressive resistor is someone who --

that that would be what I would consider a generalized term for like, use of force. In the sense that if we were trying to effect an arrest and they are actively resisting and being aggressive, they're not just like pulling away from us, but they're actively trying to fight us.

Q. Okay. Now, I hear that, but if I understand you correctly, it raises another question for me. Because nobody tried to arrest Modesto Rodriguez at any point on this night, right?

A. Not that I'm --

Q. You may not have that knowledge. Yeah, not that you're aware. Okay.

So if nobody's trying to arrest him, how can be an aggressive resistor?

A. I -- I don't know. I -- I was -- I was -- I guess I was linking those terms in my mind before I wrote them out and acted.

Q. Mm-hmm.

A. And -- and kind of took the time to define them to myself.

Q. Okay. Do you believe that you had cause to arrest Modesto Rodriguez?

A. Yes.

Q. Okay. If you cause to arrest him I'd assume that you believe you had cause to detain him?

A. Yes.
Q. Okay. But you didn't do either one of those things?
A. No.
Q. Did you go to his aid after he was injured?
A. No.
Q. Did you see any member of APD go to his aid?
A. No.
Q. Do you think that -- well, not do you think, but was Modesto Rodriguez's behavior in throwing the water bottle criminal?
A. Yes.
Q. Okay. And how was it criminal? What was the violation?
A. Participating in a riot.
Q. Okay. So I have the Penal Code definition of riot in front of me from 42.02 and I want to ask you a little bit more about that.
MR. LAIRD: And Leigh, if -- are -- if you're finished with that --
MS. JOSEPH: I can take in down, yes.
MR. LAIRD: Yeah. Just so it helps me see what's -- there we go, thank you.
MS. JOSEPH: Yeah. Uh-huh.

Q. (BY MS. JOSEPH) Just if I think I'm playing a video on it's not on your screen tell me to put it back on the screen.

A. Absolutely.

Q. All right. Okay, so looking at the Penal Code definition of riot I see, "assemblage of seven or more persons resulting in conduct which," so first let me ask you about seven or more because I see Modesto as one individual acting alone. Do you agree with that --

A. No.

Q. -- analysis? No.

Okay. So what seven -- what group of seven are more persons is he a part of here?

A. So he's part of the entire group of -- of everybody surrounding the Main and on Eighth Street.

Q. Okay.

A. Just because it is scattered out does not mean that it is a -- it is not a singular group.

Q. Okay. And does everybody in the group have to be engaging in the behavior that -- that is defined as -- as riotous in order for it to be a riotous group? Or only some people?

A. It sounds like it is a minimum of seven.

Q. Okay. And it says, "which creates an immediate danger of damage to property or injury to persons."

And these are some "or" statements. So let's say this or this or this.

So, "creates an immediate danger of damage to property or injury to persons."

When I ask about this I want -- carefully note the difference between risk of danger and actual immediate danger. So in throwing the water bottle I believe that you've already expressed to me opinions that can make me understand that you believe that created a risk of danger; is that right?

A. Yes.

Q. Okay. In throwing the water bottle did Mr. Rodriguez create immediate danger of damage to property or injury to persons?

A. I believe so, yes.

Q. Okay. Or "substantially obstructs law enforcement or other governmental functions or services."

In throwing the water bottle that landed on the ground did Modesto Rodriguez substantially obstruct law enforcement or other governmental functions or services?

A. I would say that he was a part of the entire group that was preventing us from maintaining law and order in the area.

Q. Okay. Just by virtue of being there?

A. Mm-hmm.

Q. Okay.

A. So for instance, everybody standing in the street, they're obstructing the highway. You know, they were told to disperse multiple times.

Q. Okay. So that one gets kicked -- gets checked off not because he threw the bottle, but because he's there?

A. Because he's there and because he threw the bottle.

Q. Okay.

A. Because when situations did arise were we needed to bring in ambulances or other officers or fire departments we had to mobilize entire other groups to try to wade through the crowds so that those other first responders could -- could get to places. So I would say that the entire crowd is doing what you explained.

Q. Okay. Okay. So that one is by virtue of being a part of the crowd. Anybody who's there substantially obstructs law enforcement or other governmental functions or services?

A. Yes.

Q. Okay. And in the last one, the "or" -- or "by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right."

Did -- does Modesto Rodriguez's behavior in

throwing the water bottle meet that criterion?

A. You did say disturbs other peoples rights to the peaceful protest, right? Or -- or --

Q. "Disturbs any person in the enjoyment of a legal right."

A. Yes. So -- so I believe that his actions throwing things -- causing that to -- you know, being one of the people who caused that to be a riot is doing just that.

It's not allowing the people who are there for the right reason. And for the reason to legally protest to enjoy that because of the agitators.

Q. Okay. Now, I'm going to circle way back. I'm going to put this picture back up. And this time I'm not asking you about what you thought in the moment. I'm asking you about now that it's over and you have more facts at hand than you did in the moment.

Now, that you're sitting here in this deposition, you're looking at this picture of Modesto Rodriguez, you know that what he threw was a water bottle with water in it. Do you think that this is an appropriate consequence for the behavior that he engaged in?

MR. LAIRD: Object to the form. You can answer.

THE WITNESS: Yes.

Q. (BY MS. JOSEPH) You do?

A. I do.
Q. Okay.
A. This was the only way for us to maintain some semblance of order.
Q. Okay. How do you feel about what happened to Modesto?
MR. LAIRD: Object to the form.
THE WITNESS: I feel like it was very easy to go there and make your voice heard without becoming an agitator. There were plenty of people who did it. There are plenty of people who still do it. It looks like --
Q. (BY MS. JOSEPH) I have to follow -- sorry, go ahead.
A. It -- it looks like he chose to be an agitator and try to ruin that for everybody else.
Q. I have to follow-up on your choice of words. "Make your voice heard." Do you know that Modesto Rodriguez is deaf?
A. No. Actually, I'm sorry, yes. I -- I was told that.
Q. I'm going to give you some background. And this is coming from me from what I've seen in the videos, so take it you know, as you will, with a grain of salt. But Modesto Rodriguez, who's deaf, had just seen a vehicle driving on these streets in a way that he testified, he felt was

dangerous and threw the bottle after he saw that.

Does knowing that background about him change any -- I mean that's his testimony about his background, right? I'm just sharing with you what has been said. Does knowing that background about him change anything about the way that you evaluate his actions now after the fact?

MR. LAIRD: Object to the form. You can answer it if you can.

THE WITNESS: I -- that's -- I -- I don't know how to answer that because I -- I -- I'm not prevue [verbatim] to what he's thinking and why he's doing that. Or why he thinks that throwing a -- a bottle at a vehicle would somehow change that behavior.

Q. (BY MS. JOSEPH) Okay. Okay. I just wanted to ask. So let me go -- let me find our video. Do you -- would like to take another break, Officer Wright?

A. Do you mind if we take like -- like just ten minutes so I can use the restroom and -- and whatnot.

MS. JOSEPH: Sure. Let's take ten minutes. We'll come back at -- somebody do the math -- 12:16.

THE WITNESS: Sounds good to me.

MS. JOSEPH: Okay.

VIDEOGRAPHER: We're off the record. The time is 12:06 p.m.

(Recess was taken.)

VIDEOGRAPHER: All right. We are back on the record. The time is 12:17 p.m.

Q. (BY MS. JOSEPH) All right. Officer Wright, we're back from a short break. And I'm going to share my screen and return to the video that we were looking at earlier.

A. Yes, ma'am.

Q. So we'll just pick up where we left off here at about 10:39 on the play bar.

(Video playing.)

Q. (BY MS. JOSEPH) What do you think is covering up your camera?

A. It's probably my arm.

Q. Okay.

A. So by that time I had been holding a shotgun for a -- for a while and so my arms were -- were getting tired and my shoulders were getting tired. So I was constantly kind of just moving around so I could hold the weapon in a way that you know, I could give certain muscle groups a break.

Q. Mm-hmm.

A. And it took me about -- took me a few minutes to realize that somehow my Pandora got activated. And so that's why there's music in my background. That was not intentional in any means. I had put my phone away and -- because my han -- my fingers -- fingers were sweaty it

activated my Pandora. And I couldn't figure out where that music was coming from. I thought it was actually a boom box down below.

And then I realized that my pocket was lighting up and, oh, okay. So my phone's --

Q. Okay.

A. -- here is projecting Pandora directly into my body cam. So I apologize about that.

Q. Okay. You anticipated one of my questions. So you didn't put on your -- your jams for the protest?

A. No. Not at all.

Q. Yeah, okay.

A. As -- as a matter of fact I -- I think that you might hear me maybe utter a swear word, realizing that my Pandora is on and being somewhat frustrated with myself about it.

Q. Okay. All right. Let me resume play here. So I may have cut it off in the middle of the conversation. That might have been the end. But I think heard an exchange possibly between you and another officer. Kind of talking about who's looking where. Did you hear that conversation?

A. A little bit. If you don't mind just playing it again. So -- I'm sorry -- I was trying to -- I was more focused on looking at the screen to see -- I -- I was wondering if --

Q. Sure. Okay. Yeah.
A. So now that I know what I'm supposed to be listening for.
Q. Yeah. So for this part focus on audio.
A. Okay.
Q. Yeah. I'll go back a little bit. I went all the way back.
A. Yeah, no, you're fine.
Q. Let me see here. Try there. I'm going to pause it there and ask you kind of generally about that conversation, but unfortunately I have to switch my AirPods first. Give me just one second.
A. You're fine.
Q. Can you hear me?
A. Yes, ma'am. You are slightly -- slightly lower than you were before, but I can hear you.
Q. Okay. I think I have got it.
MS. JOSEPH: Can y'all hear me now?
THE WITNESS: Yes, ma'am.
MS. JOSEPH: See if I can hear you. Can we go off the record?
VIDEOGRAPHER: It's 12:24 p.m. We are off the record.
(Recess was taken.)
VIDEOGRAPHER: All right. We are back on the

record. The time is 12:26 p.m.

Q. (BY MS. JOSEPH) All right. I had a little technical difficulty. I'm going to apologize in advance if you guys hear background noise since I don't have the -- the AirPods in. But let me ask you now if you haven't forgotten what I just showed you.

Did you hear a conversation, Officer Wright, amongst some officers maybe talking about where to look or who was doing what?

A. Yes, ma'am.

Q. Okay. What was -- what was kind of going there?

A. So I don't know who it was, but we kind of collectively established that we realized that we had two or three less-lethal weapons in fairly close proximity. And to prevent all of us targeting the same person at the same time we set up the -- the only word I know is from the military it's -- it's called a field of fire.

And so from where you're standing it's a cone -- an outward cone shape. And so you have your lateral limits. So you have a right lateral limit and a left lateral limit. And your area of responsibility is within that cone. And kind of nothing else unless you know, there's an emergency.

So it sounds like we were setting up these kind of areas -- that -- that's what we'll call them. We'll

call them areas of responsibility to focus on so that we didn't have -- so we -- we -- we're communicating better so that we didn't have multiple people impacting the same person.

Q. Okay. Okay. So 'cause that was kind of my question. Is this a watch area? Or a target area? Or both? So you're -- it sounds like both.

A. Yes, ma'am.

Q. So you're not like watching over there and then someone calls out that they saw something the other way and you go over there and aim. You're focused on your kind of designated area?

A. Yes, ma'am.

Q. Okay. Okay. Let me continue the playback.

(Video playing.)

Q. (BY MS. JOSEPH) I have to stop there. We heard the conversation I think about some marijuana use?

A. I didn't hear that actually.

Q. Oh, okay.

A. That didn't come through.

Q. Let me -- you do hear the sound?

A. I do -- I hear your sound. I don't hear --

Q. Don't hear the video? Okay.

A. No, ma'am.

Q. Let me try again. Do you hear the sound now?

A. Yes, ma'am.

Q. Okay. Did you hear that? "Somebody's burning some good hemp"?

A. Yeah. That was me.

Q. Okay. I think that's a reference to somebody probably using some marijuana somewhere in your vicinity?

A. Yes, ma'am.

Q. Did you arrest anybody for -- for drug possession or use?

A. No, ma'am. That was actually the reason for my sarcasm. At the time, the -- I can't remember if it was the state or the City of Austin itself -- had began [verbatim] their transition of -- well, so the City of Austin had began of decriminalizing marijuana even more than they already had.

And I think the state had just enacted something about they -- they allow hemp farming. And the kind of -- the general consensus was -- is if your burn hemp and you burn marijuana you know, you really can't tell the difference. And that that's what we were told you know.

And so it became kind of a running joke with my squad at that point that anytime we smelled what we believed to be marijuana because the city didn't want us to do anything about it in our department. Didn't really allow us to do anything about it. You know we would make light of

the situation of not being able to enforce the law due to city policies.

You know, some -- oh -- or somebody's making T-shirts. Or somebody's making little tiny rope. Stuff like that. You --

Q. Okay. Okay. Understood. Okay, let me continue playback.

(Video playing.)

Q. (BY MS. JOSEPH) Did you hear that exchange?

A. Yes, ma'am.

Q. What -- what was that exchange? What did you hear?

A. I heard -- I -- I believe it was me that said, "I think we both got the dude in the red shirt." And I believe the other officer said, "Yeah, it looked like it hurt pretty good."

Q. Okay. I think that's probably a relation back to somebody calling out red shirt. And then the -- the shots targeted at Modesto. Do -- do you think so?

A. Quite possibly, yes.

Q. Okay. Okay. Now, I know -- let me get to -- all right, I'm going to continue playback some more. I'm at 12:30.

Were you able to hear that?

A. Yeah, it sounds like I'm talking to somebody and

explaining why we fired our weapons.

Q. Okay. And it sounds like you weren't able to tell that night that it was a water bottle that -- that was being -- (crosstalk.)

A. Yeah, it sounds like it.

Q. Okay. All right. I'm going to skip ahead to see if we can get to the Mr. Talley incident. I'm going to go to about -- a little before 18:00 on this bar. So I'm at 17:57.

So actually this is just before Mr. Talley. Something's actually going to happen, Officer Wright, kind of right in front of headquarters. And then you're going to see the crowd scatter. And I want to show you that and then ask if you know what happened.

A. Okay.

Q. Okay.

(Video playing.)

Q. (BY MS. JOSEPH) Is this still your Pandora?

A. Yeah, unfortunately.

Q. Yeah. Okay. So I interrupted to ask you that question. Let me go back ten seconds. And -- and see what causes everyone to scatter. Do you have any idea what happened there?

A. I don't, but from looks of it, it looks like somebody threw an incendiary device and people on the steps

might have fired less-lethal at them.

Q. Do you see -- do you see the incendiary device that you're thinking of here in the video?

A. I think so. If you look towards -- so if you look where the street light is and then you go to the -- yeah, right -- and right below that -- just a little bit more over. You see that pillar of smoke? No, other way. Yeah, just a little bit up. You see that pillar of smoke?

Q. Is it this gray area here?

A. Yes.

Q. Okay.

A. So it's like right before that smoke starts happening you see a couple of flashes as if a firework -- like mortar was thrown. And so it flashes for what -- what I would assume would be the propellant engine. And then it smokes and it might explode here if we continued the video. But it looks like some -- some -- something is now burning on the front steps. And it was a --

Q. Okay.

A. -- a bright red flame before.

Q. Okay. Do you remember somebody throwing an incendiary device?

A. Yes. I remember --

Q. In that area?

A. -- yes. I remember at -- at least one if not

multiple incendiary devices were thrown at the officers on the steps.

Q. Mm-hmm.

A. As a matter fact, I don't remember if it was a protester or somebody filming the event, got a fairly incredibly picture of it exploding at the officers feet. And I saw it a couple -- I saw the -- the picture a couple of times and haven't been able to find it since.

Q. Okay. Okay. Well, that was really just to educate me because I wasn't sure what was happening there. So that gives me something to -- to look at.

I'm going to go just about 30 seconds ahead and we'll see if we can identify Mr. Talley. Kind of in the area where I'm circling.

(Video playing.)

A. Okay.

Q. As he comes onto the screen. So it's just real brief that I see him in your body cam. Were -- were you able to identify him?

A. No. I was. I -- I -- I couldn't. There's a lot of people moving around. If you -- if you rewind it back a little bit I can -- I can try it again.

Q. So I think that I see Mr. Talley in a white T-shirt and dark shorts kind of jog up over here before your camera is occluded.

A. Okay.
Q. We'll see if you see that. If you're able to identify him as the target that you're shooting at, is kind of my question.
A. Okay.
MR. LAIRD: And Leigh, Leigh would you mind specifying what the timestamp is? I can't see it.
MS. JOSEPH: Yes. Right now I just paused at 18:52.
MR. LAIRD: Perfect. Thanks.
Q. (BY MS. JOSEPH) That time it was under -- I can't figure how to get rid of this bar. I'm sorry, Officer Wright, let me try again --
A. That's all right.
Q. -- and try to get that bar out of the way.
A. Why don't we go back like 15 or 20 seconds? And then just watch it all the way through. That way we can -- we can maybe got that bar to disappear.
Q. Sounds good to me. So we're starting at 18:36. There he comes.
A. I -- I'm sorry -- I.
Q. If -- you don't have to apologize -- (crosstalk.)
A. I'm not -- I'm not trying to be difficult. There's -- there's a lot of people moving around in that area. And so I'm not entirely -- I'm not entirely sure

which one you're claiming to be Mr. Talley.

Q. Mm-hmm.

A. So and also unfortunately these -- these cameras are really good, but they are still a little bit grainy when they get out to -- to that distance.

Q. Let's see if I can slow the speed. See if that helps us. When I move my mouse it makes that bar come up, but I'm going to try to point.

A. Okay.

Q. Okay. Right here, coming up.

A. You're saying right there in the very, very bottom of the screen?

Q. That's who I think your target was. Are you able to confirm that?

A. I -- I don't -- I don't know.

Q. Okay. All right, but you do -- and I can replay or continue play if needed -- you do fire the shotgun containing the beanbag rounds at this point?

A. I believe so because the first time we watched it I -- I -- I saw myself fire.

Q. Okay. Okay. And do you know how many times you fired in this particular engagement?

A. I don't recall, but if we could watch the video we can verify.

Q. Okay. I turned the speed back to normal so that

it -- the sound is more --

A. Okay.

Q. -- like we would expect. And I'll just play it through.

Were you able to approximate how many times you fired?

A. Not really. So I only see one shell eject from my firearm or from my less-lethal shotgun rather. So I honestly can't tell if I fired once or twice right there. Do you mind just going back just 10 seconds. We can watch it one more time. I can -- I can try again.

Q. Sure. And the officer next to you, to your right fires as well; is that correct?

A. Mm-hmm. I believe so, yes.

Q. I didn't go far enough. If -- do you think you can tell if you fired more that once?

A. I -- I honestly can't. I -- I can't tell if I attempted to fire and my safety was accidentally engaged from bumping my vest and I instinctively jerked with the expected recoil. And then fixed the problem, and then fired, and then ejected the round. Or if I fired twice. I -- I honestly can't tell. I know for a fact I fired at least once.

Q. Okay. Okay. And throughout the day that day, you fired multiple times at multiple different individuals?

A. Yes.

Q. Okay. So I know we talked earlier about what video you had seen. And we talked about your -- is -- your body cam video. Is this some of the footage that you watched before the deposition?

A. I actually -- I don't think we watched this portion. I think that we watched more of the -- what you're claiming to be the Modesto portion.

Q. Okay. Okay. But this does -- this is your body cam?

A. Yes, ma'am, this is my body cam.

Q. Okay. And if what I'm telling you is correct about who is Modesto and who is Tyree, then you did fire at both of them?

A. I've would -- I would agree that it's very possible that I fired at Modesto. However, I -- I have no idea who I -- who I am firing at based on what I can see in this video here.

Q. Okay.

A. I -- I don't know if it was somebody closer to me. If it was somebody further away. I -- I -- I don't know because it's in the very corner of that -- of that screen and essentially as soon as I raise the less-lethal shotgun I -- I can no longer see the picture.

And so part of that, just so we're all kind

of on the same page, at the time I wore my body camera on the right side of my chest. I have since moved it to the left side of my chest after this incident because after reviewing this video I realized that the way that I hold a long gun, this arm (indicating) happens to cover my body camera a lot. And I realized that that could be a potential problem.

So what that also means is when I get into a shooting stance, although I'm facing this way (indicating) my body camera is showing more of the right side of were my body is facing. And not necessarily exactly where I am looking.

And then again, when I go into my shooting stance to properly prepare, I turn my body to make a thinner, slimmer profile causing not only my arm to semi-block the camera, but the camera to turn towards where my body is facing and not where my eyes and -- and head are facing.

Q. Okay. Okay. That's helpful to know. Did -- did someone instruct you to wear the camera in one position or another?

A. No. So I -- I will not be able to quote the policy verbatim. But our policy is essentially, middle of the chest between the first couple buttons from the top. And then either to the right or the left, if you have the

outer vest. Or if possible, direct center if you have the inner vest.

Q. Okay. Okay.

A. The camera -- (crosstalk.)

Q. Let me ask -- go ahead.

A. I'm sorry. The camera doesn't mount on the center for the outer vest because of the way the vest zips up.

Q. Oh, okay. Okay. Let me play just a little bit farther and I -- I think we're about through with the video.

A. Okay.

(Video playing.)

Q. Okay. Yeah, I'm -- I'm gonna take that off of your screen. So you haven't seen a video showing Mr. Talley's conduct immediately before he's shot at?

A. I -- I have not seen a video, no.

Q. For purposes of our conversation, I'm going to represent that Mr. Talley threw a water bottle.

A. Okay.

Q. Okay. So assuming that that's a fact, is that conduct criminal?

A. In these circumstances, yes.

Q. Is it cause for arrest?

A. Yes.

Q. Did you arrest Mr. Talley?

A. No, ma'am.

Q. Did you go to his aid?
A. No, ma'am.
Q. Okay. Is his behavior, assuming that he threw a water bottle you know, as I've described, riotous behavior?
A. Yes, ma'am.
Q. Let me pull some pictures up for you. And I'm gonna show you some pictures of Tyree labeled 1141, 1140, 50, 43, 44, 42, 38, 47, 45, 46, 1149, 1139, 1152. So I'm also going to represent to you that Mr. Talley was impacted 12 times.
A. Okay.
Q. By -- by beanbag rounds. At the -- and that these pictures contain some, but not all -- depictions of some, but not all of those injuries, okay?
So looking at Mr. Talley in the aftermath -- and I also don't know if you know this, but it's -- it's not a photograph that I'm showing you. So I'm -- I'm also going represent to you that Mr. Talley was also shot in the groin -- in the -- in the penis.
A. Okay.
Q. But that was another place that he sustained an injury.
A. Okay.
Q. Is this an appropriate consequence for throwing a water bottle?

MR. LAIRD: Object to the form. You can answer.

THE WITNESS: So I cannot account for other officers from other vantage points seeing what Mr. Talley was doing and taking the same action that I possibly did on this individual. So what I would say is, yes.

Q. (BY MS. JOSEPH) Being shot 12 times and having his body covered in -- in bruises and cuts having lasting scars and disfigurement -- that's appropriate consequences for throwing a bottle of water?

MR. LAIRD: Object to the form. You can answer.

THE WITNESS: So at max, I fired twice and I would say that that is appropriate.

Q. (BY MS. JOSEPH) Even if it was -- (crosstalk.)

A. What I'm saying -- what I'm saying is -- is I cannot -- I cannot account for what any other officer did from another vantage point. What I can say is that we had been impacting people who had been throwing things all day and that it was very evident that that is what our response was.

So for people who continued to throw things, if they got impacted multiple times, I don't believe by -- by different vantage points, I don't believe that that is -- that is our fault. There's no way to coordinate from how

many different vantages that we had and where we had officers you know, who was going to impact an individual. It would probably impossible because of how the situation was evolving.

Q. So from your perspective, if he had been out there for any length of time that day Mr. Talley should have known better?

A. I would say that he been there for any length of time Mr. Talley should have been able to see what the response was to people throwing things. And should have realized that it was not -- it would not behoove him or benefit in any way to throw things at anybody or anything.

Q. Did you receive training on excessive force and a person's right to be free from excessive force as part of your APD training?

A. Yes, ma'am.

Q. Does the fact that excessive force was used on one person and another may have seen it, mean that it's then okay and the second person no longer has a right to be free of excessive force?

MR. LAIRD: Object to form, but you can answer.

THE WITNESS: Okay. Can you please just restate your question. I just want to make sure I'm hearing right. And I'd like to -- to write it down so I'm not --

I'm not forgetting any aspect of what you're saying.

Q. (BY MS. JOSEPH) Let me see if I can say it better because it's a little bit confusing. And I think I'm going to have to do it with kind of an example.

A. Okay.

Q. So I'm a -- I'm, you know, an American. I have a right to be free of excessive force, right?

A. Okay.

Q. Do you agree with that?

A. Yes.

Q. Okay. I see someone next to me do something and what I believe is excessive force is used on that person.

A. Okay.

Q. Okay. Does that mean that I have lost my right to be free from excessive force, if I engage in the same action?

MR. LAIRD: And object to form, but -- but you can answer.

THE WITNESS: I -- I'm sorry. That actually made it -- it made it more confusing.

Q. Made it worse?

A. And -- and -- I -- I'm not trying to be difficult. So in that situation are you saying that the force is used on you? Or you witnessed somebody using force and you have the right to not have force used on you?

Q. I witnessed somebody do something --
A. Okay.
Q. -- and the consequence is that force is used on them.
A. Okay.
Q. And I do the same thing.
A. Uh-huh.
Q. That the first person did.
A. Okay.
Q. Do I still have an independent right to be free from excessive force?
MR. LAIRD: Object to the form.
Q. (BY MS. JOSEPH) Even though I've seen what I've seen.
MR. LAIRD: Same objection, but you can answer.
THE WITNESS: I'm -- I'm sorry. I'm -- I'm -- I'm -- I'm having -- I'm having trouble understanding what -- what you're trying to -- to portray. So are you saying that you witnessed somebody throwing something and excessive force is used on them. And then you do the same thing -- does that mean that you should receive the exact same consequence? Or you shouldn't?
Q. (BY MS. JOSEPH) Yeah, I'm not getting it across. I want to ask you that so let me see if I can say it better.

I'm gonna try -- I'll try one more time and then we can move on.

A. Okay. And -- and -- I -- I apologize.

Q. Not your fault. Yeah. And -- and what's prompting me to ask this is your remark about Mr. Talley or the protesters who were out there -- should have seen what was happening that day when objects were thrown. They should have seen what the response was.

And so that's making me try to ask this question. Does what I see --

A. Uh-huh.

Q. -- does what I see, alter my right -- my Fourth Amendment right to be free from excessive force?

A. No. But I don't believe that -- in this particular situation I don't believe that you could say excessive force was used. And here's why. So in -- I'm sorry did somebody say something? Okay.

Q. No continue.

A. So in a situation where we have say five officers and we're dealing with one individual, okay? In that that situation devolves into a fight. And hypothetically say we use excessive force on him, right? That is all of us in the same exact area, focusing on the same exact person, at the exact same time.

Am I echoing? 'Cause I -- I -- I hear

somebody.

MR. LAIRD: It sounded like there's a little feedback or something.

THE WITNESS: Okay. Okay. I -- I just -- I'm okay. So let me get back to where I was. So in that situation when all of -- say the -- say officers are together and excessive force is used then, yes, I would say that that is excessive force.

In this particular situation what we have is we have an individual who is far away. And we have officers from multiple different angles who are using the minimal amount of force, right? And as I said before there's no way to coordinate between everybody out there who had less-lethal weapons and the vantage points that they had, right?

So like I said, I fired maybe two rounds. I don't believe that that is excessive. Maybe the person next to me also fired two rounds at that same person. To him that is not excessive. The person 15 people down with a completely different vantage point who no idea that we were targeting the individual, fired one round. That is not excessive.

The cumulation of everything could be conceived as excessive, however, there's no way for us to know that the other force was being used at the time.

Q. Okay. I understand what you're saying. So you don't --

A. So --

Q. In your opinion an individual -- I'm sorry, I don't want to interrupt you. Go ahead.

A. No, it's okay. And I apologize, I'm not trying to talk over you. So the fact that he was impacted 12 times, that is tragic and that is -- that is sad. And -- and no, I don't believe that that should have happened. But what it sounds like is, is you're trying to claim that -- that somehow we accumulated this idea of everybody in the area was going to shoot this same guy as a -- in an individual punishment for him. And that's just not the case.

Individual officers from different vantage points maybe all saw the same thing and reacted. And reacted in a reasonable way, with a reasonable amount of force to stop the riotous activity. The fact that it all accumulated onto one person, that's -- I -- I don't believe that that's our fault. 'Cause there's no way to precisely coordinate that in that particular situation or really in any situation.

Q. People always think that lawyers are trying to scheme some sort you know, answer out of them. And I'm really not trying to do that. I'm just trying to ask you questions.

A. Okay. I -- and I understand and -- and --
Q. Yeah.
A. -- and I don't think you're trying to scheme. I think that you're trying to make the point that, yes, 12 impacts is a lot. And why, right? And what I'm telling you is, is that we need to look at it from a different paradigm of it's not like we had 12 -- 4 officers line up and shoot him 3 times each. You know, simultaneously. We had multiple officers who I had no -- you know I -- I had no ideas where these officers were. Because even my video it only shows maybe a max of four shots, right?
Q. So this was not a coordinated effort by APD for people to make sure that Tyree Talley was shot 12 times?
A. Not at all.
Q. Okay.
A. This is individual officers observing a riotous act and taking the actions in which we were not only instructed, but we felt necessary to prevent further harm and disorder to the people in the -- the people in the area and the area. And unfortunately and sadly for Mr. Talley multiple people were -- multiple officers with less-lethal shotguns were observing for him at the same time. And -- and took that same action.
Q. And in -- instead of a coordinated effort, it was actually the opposite. You guys were not able to

coordinate?

A. There's no way to coordinate. The only way that we would've been able to coordinate, again, is if we were all lined up and you know, somebody was like, that guy, ready, fire. And that --

Q. And that --

A. -- that wasn't really what -- it wasn't what was happening.

Q. Okay. In that resulted in a number of -- how many people were armed with these shotguns at that time? Do you have any idea? Like more than 20?

A. Honestly, I have no idea. I --

Q. Okay.

A. I -- I have no idea.

Q. Okay. So that resulted in some number of APD officers armed with these shotguns equipped with the beanbag rounds all following the same order, shoot at somebody who's throwing an object?

MR. LAIRD: Object to the form.

THE WITNESS: Impact somebody who is -- who is throwing objects.

Q. (BY MS. JOSEPH) Okay. And so in Mr. Talley's case you know, your -- your view and what you're explaining to me is that one individual officer's actions were not excessive?

A. No.

MR. LAIRD: Object to the form.

Q. (BY MS. JOSEPH) Okay. But the cumulation, the aggregate of 12 shots to Mr. Talley was excess.

MR. LAIRD: Ob -- object to form.

Q. (BY MS. JOSEPH) Even though it's not one individual. We can't blame a particular individual officer for that -- the -- the aggregate was -- was excess?

MR. LAIRD: Object to the form.

THE WITNESS: No. Because again, I don't think that you can -- you can -- I don't think you can call -- you can combine all of these. Because again, it's -- it's individuals from different areas. So I think that you would have to essentially make it each individual thing, an -- an individual situation.

Q. (BY MS. JOSEPH) How many times do you think Mr. Talley needed to be shot in order to not throw another bottle?

MR. LAIRD: Object to the form. Calls for speculation.

THE WITNESS: I don't know because I'm not -- I'm not there, right now. I'm not looking at what's happening.

Q. (BY MS. JOSEPH) But you were then. I mean, seeing what you saw. Impacting the people that you did

and -- and targeting people who throwing objects. How many shots did it take to get somebody to comply?

MR. LAIRD: Object to the form. Speculation.

THE WITNESS: I'm sorry. Does that mean I answer? Or I don't answer? I'm sorry.

Q. (BY MS. JOSEPH) You still answer.

MR. LAIRD: Yeah, you answer if you can.

THE WITNESS: Okay. I'm sorry. So restate the question.

Q. (BY MS. JOSEPH) Yeah. When you were out there for hours you know, targeting -- under orders to target people who were throwing objects, right?

A. Ah, yeah, okay. I see what you're saying. Okay. So the less-lethal shotgun is not a -- is not an immobilization weapon. So it is indeterminate to tell how many shots it will take for someone to realize that this hurts, I should stop. Right? Because one, it depends on where you're hit. Two, it depends on how much of an actual blow you received. So for instance, if I missed or I -- or it was just a glancing blow it's -- it's not going -- something I'm happened.

Q. My screen back up. Yeah.

A. Something -- so if it's a glancing blow you know, that -- that might not gain com -- compliance. That might not make gain -- you know, make somebody realize that I -- I

need to stop this behavior. So it -- it depends. I've seeing people get impacted four or five, six, seven, eight times and continue doing what they're doing.

It depends on each individual person's pain tolerance I suppose. If they're under the influence of anything. There are -- there a multitude of -- of reasons why one or two or -- or multiple impacts won't work.

It depends on the type of clothing their wearing. It depends on if -- if they have anything under that -- that clothing. We -- we -- we could go on for a long time and to -- to say you know, all -- all the different reasons on why these -- these rounds might not work. Or would work. And there is -- there's -- there's no way to tell until the behavior actually stops.

Q. You said something that I want to go back to. You said glancing blow. So I want to ask you -- I'm showing you these same pictures of Mr. Talley's injuries. Does this look like a glancing blow?

A. No. But could you go back to the first one?

Q. Yeah. I'll get there. Does this look like a glancing blow?

A. No.

Q. What about this one?

A. Nope.

Q. Okay. And we're just going backwards from this

set that I've been you today.

A. Okay.

Q. What about -- what about these on the hips? Do these look like glancing blows?

A. They don't look like it, but they -- they could be. Just -- but they don't look like it.

Q. Does that look like it hurts?

A. Absolutely.

MR. LAIRD: Object to the form.

Q. (BY MS. JOSEPH) Do these look like glancing blows?

A. The one on the right side of the picture with the striped underwear looks like -- or no, sorry. So left picture, right side of the leg that looks like it could be a glancing blow. And again, glancing blow is -- is -- is relative as well. How -- how much material is being -- is -- is -- is being touched. It could be very minimal. It could be a lot. And the other one does not look like a glancing blow.

Q. What about -- what about the ones we see here?

A. So if I'm being --

Q. I think the new ones are the shoulder and the back of the arm.

A. So if I'm being honest, the shoulder and the elbow, those look like road rash. Those look like somebody

falling down and scraping.

Q. Okay. You wanted me to go back. It's probably to this picture of the ear?

A. No. It was the shoulder one.

Q. The shoulder?

A. But that looks like more like road rash, but that -- that also looks like what -- road rash is somewhat of a glancing blow. It's a slide acrossed [verbatim].

Q. Okay. And I do have to ask you at this point you know, if you have particular training that enables you to identify the difference between a beanbag round injury and road rash?

A. I don't have any (audio distortion) -- I don't have any specific training to say (audio feedback) -- sorry?

Q. Oh, carry on.

A. I don't have any training to specifically say beanbag or road rash, however, through my training and experience for five years as a military medic, both stateside and in Afghanistan, I have seen a multitude of injuries and things that cause injuries and know what certain injuries look like.

Could this be a beanbag? Absolutely, this could be a beanbag. However, it also looks like it could be when -- if he fell down or when he fell down, he scraped his shoulder. And possibly over here when he fell down he hit

his ear and that's what made his ear swell.

Q. But you don't know. (Crosstalk.) You don't know one way or another?

A. No. I don't know one way or another. So it could either.

Q. Okay. They could -- these very well could be beanbag munition injuries?

A. Mm-hmm. They can also be him running into a wall when he was finally running away. These two (indicating). And I'm not talking about the other ones. I'm talking about these two.

Q. Okay.

A. Is -- is -- a lot of -- a lot of the -- a lot of things could've caused some of these injuries. Could they be beanbags? Yes. Could they also not be --

Q. Okay.

A. Yes.

Q. Okay. You also talked about there being instances where it takes three to four impacts with a beanbag round before somebody stops in action.

A. Mm-hmm. Yes.

Q. Okay. I'll limit this question to May 30th, 2020, people who were throwing water bottles, okay? Of those people how many did you see reaching for a second bottle to throw again? After they threw the first one?

A. So I can't specifically talk on only the individuals who threw water bottles. I -- I was -- was I able to identify at least one? And that sounds like it was Modesto. But there were multiple instances where we would -- I impacted somebody, they went down, they jumped back up, ran back around and then later I saw them throwing objects again. But they were either too far away or I didn't have a clear enough shot. And it -- had I tried to impact them again at that later time they would -- I could've possibly hit somebody who was not participating in that particular activity.

Q. So you didn't want to just stop the throw that was happening? You wanted to stop these people from throwing again? Even if it was going to be ten minutes later?

A. No. I wanted to stop the behavior as it was happening and hopefully that would stop future behavior as well.

Q. Okay. So I mean, Modesto throws a water bottle, he didn't have an arsenal of water bottles. He picks one off the ground and he throws it. I mean, Tyree throws a water bottle. You know, I mean what I'm getting at here is these people are not water bottle, water bottle, water bottle. They're throwing one. I mean, did you see anybody kind of repeatedly throwing water bottles?

A. Absolutely. So what you're saying is -- what

you're saying is, is these guys picked up a weapon of opportunity that was on the ground and immediately threw it. The ground was littered with weapons of opportunities, so what's to stop them from grabbing another weapon of opportunity and throwing it again.

Q. What's to stop them is -- is it what I'm asking? I'm asking what you saw.

A. Yes. I saw people --

Q. So how -- how many people did you see walking around on the street, picking up a water bottle, throwing it, and then picking up a water bottle again and throwing it?

A. On multiple occasions I saw people picking things up off the ground and throwing them and doing that multiple times.

Q. All in a continued sequence? Bend down, throw, bend down, throw -- you saw that happening?

A. Not necessarily a continued sequence. Some of them were. Some of them weren't. They would meander through the crowd and like I said, pick up weapons of opportunity as they found them and throw them.

Q. And so that gets to this distinction in -- in clarification point that I don't quite get on what your objective is. Are you trying to like take somebody out so they can't throw something again?

A. No.

Q. Or you just trying to stop the action that's happening in that moment?

A. We're trying to stop the action that's happening in that moment. And hopefully, they realize that that's not a good idea and stop doing that action. I'm hoping that they make that decision. I'm not -- I'm not hoping that because I -- I'm not hoping that I'm going to permanently incapacitate them from ever doing anything again.

Q. Yeah. I mean, I would hope not, but I just want to make sure. And so in that moment Tyree Talley's action, throwing a single water bottle, right?

A. Sure.

Q. Okay. It didn't take 12 shots to deter him -- to -- well, actually let me -- let me go a different way. Let me ask you something else. Had he already thrown the water bottle when you shot at him?

A. I -- I don't know. I -- I -- I don't remember -- (crosstalk.)

Q. Okay. Do you know on Modesto?

A. I don't know on Modesto. However, I think I have something in one of my supplements that might be Talley. Okay. So -- all right, so this is -- this is reminding me of it. So I -- I this might be the incident we're -- we're discussing.

So "At 18:55 mark in my video, Officer Wright observed what I believe to be a male subject standing in the 35 service road intersection with Eighth Street. The male was facing the Austin Police Headquarters. I observed the male throw an object towards the officers on the steps. By the time that I had brought my less-lethal up, the subject had turned around. I fired the first round at the subject -- I fired the first round at the subject as he started to run northbound on the service road."

"I aimed this round to impact the subject in the abdomen, however, due to him accelerating into a run this, this round impacted him in the upper body, near the shoulder. I reloaded with my second round and hit him in the lower body."

The reason -- now that I'm reading this I remember. So what was happening, at that time, what we were seeing was we were seeing people run out from under the overpass that we were standing on -- or under the bridge that we were standing on. They would grab something, throw it and then try to run back under the -- under the overpass so that we couldn't impact them. And then they would continually go back-and-forth and do that.

So the idea here was we -- it sounds like I observed him throw the object so I impacted him and as he started to try to run back in, I was attempting -- I was

trying to prevent him from running back to try and grab more things to throw at the Main at the officers there.

MR. LAIRD: And -- and, Justin, could you just identify the Bates number on the bottom of whatever page --

THE WITNESS: Yes.

MR. LAIRD: -- you're reading from?

THE WITNESS: That is 2469. And that's the middle paragraph that starts with, "at 18:55."

Q. (BY MS. JOSEPH) Okay. So is -- he has thrown the object already?

A. Yes.

Q. And is running away when you are targeting him?

A. Yes -- (crosstalk.)

MR. LAIRD: Objection, form.

MS. JOSEPH: Are you objecting to the word "targeting"? I got that from an officer yesterday. Is that --

MR. LAIRD: That's part of it.

MS. JOSEPH: Okay. I'll -- I'll use a different word, yeah.

Q. (BY MS. JOSEPH) Okay. So Mr. Talley had thrown -- or the subject that you're reading about in this report had -- had thrown the object and was running away at the time that you were firing your shotgun aimed with the

beanbag rounds?

MR. LAIRD: And I object to the form. And -- and, Leigh, what I'm -- I'll tell you what I'm objecting to is -- is I think it's unclear when you say that he's running away.

MS. JOSEPH: Okay.

MR. LAIRD: Because he's --

MS. JOSEPH: Okay.

MR. LAIRD: I don't think that's what the officer is -- is saying, but ...

Q. (BY MS. JOSEPH) Okay. Mr. -- Officer Wright, I'll let you answer that question and you can of course -- you know, if he's not running away you can -- you can say so.

A. So I don't -- I don't know what word I would use, but based off of reading this, what I believed at the time was -- is that he was actively trying to throw stuff. And then maneuver away so that he would not be impacted. So he could -- he essentially was trying to do this thing so that he could do it and we wouldn't be able to -- to do anything about it. And so that's why I continued -- or I -- I -- I fired the second round.

Q. Okay.

A. So the first -- the first round is I'm witnessing him throwing it. By the time I've raised the -- the

less-lethal shotgun and fired, yes, he has thrown it and started to move. We -- the reactionary times that we have we that's -- that's the way that it's -- it's going to be. We can't -- we you know, we -- we -- we can't ...

Q. So neither one of these shots is to stop him from throwing the water bottles?

MR. LAIRD: Objection, form.

Q. (BY MS. JOSEPH) The particular water bottle that he had already released from his hand when -- when the first shot was fired?

A. These shots are because -- the shots are because he threw the water bottle, yes.

Q. Because it had already happened?

A. Because it was happening and I reacted. And by the time the reaction was finished, the bottle had been thrown.

Q. Okay.

A. And then he began to what -- I believe to -- evade us. Well, evade is not the right word. Tried to maneuver away from us so that we couldn't impact him.

Q. Okay. And at least the second shot, if not both, the second shot was intended to be a deterrent from continued behavior?

A. Yes.

Q. We don't see in your body cam, but I've seen

other -- other footage that makes it look like there's light aimed at Mr. Talley. Are you aware of somebody using some sort of lighting device to target particular subjects while you were out there on the 30th.

A. Not that I remember.

Q. Okay. Did you fear for your own safety when Mr. Rodriguez or Mr. Talley threw the bottle?

A. No. I feared for the safety of others in the crowd and the officers at the steps.

Q. I'm going to completely change tracks for a minute and ask you about the beanbag rounds themselves.

A. Okay.

Q. And I'm trying to push through, but like I said at the beginning, Officer Wright, if you need a break, you say so. Okay?

When you -- so I knew you were given some amount of munitions when you first checked out the gun at the -- the shotgun -- at North Substation.

A. Yes.

Q. How were those --

A. I believe so. I'm -- I'm pretty sure they -- they gave me -- they gave me at least one -- one load out.

Q. Okay. How were those packaged when they were given to you?

A. Okay. So the -- at that time the less-lethal

shotguns -- now, I'm remembering this now. I apologize. So, at that time, the less-lethal shotguns came in a -- in a black gun case. Like a soft black gun case with a zipper pocket on the back. And -- or -- it -- towards the back of the case. In that -- in that case was the four or five rounds to fill the -- the weapon. The weapon system. Right?

And those were -- as far as I know, those were only replaced if somebody realized that they were expired or if they had expended.

Q. Okay.

A. So my initial load out was the rounds that it had been with the gun for however long.

Q. Mm-hmm.

A. And then after that we were handed rounds in I believe little white boxes.

Q. Okay.

A. And I don't know how many rounds were in each box.

Q. Mm-hmm.

A. But it was probably either five or ten.

Q. The ones that were in the case with the -- the shotgun case --

A. Uh-huh.

Q. -- were those in a little white box or --

A. No. Those were loose because those are the same

rounds that were loaded into it on a daily basis for whoever checked out that particular weapon system.

Q. Mm-hmm.

A. They were -- I'm sure the first time they were handed out -- in a -- in a white box. But after that basically you would unload the -- the weapon system and then those loose shells would be placed in that pocket.

Q. Okay. And you mentioned that they would get changed out if they were expired or expended? Did as --

A. I think. I think expired.

Q. -- as the user -- okay. Yeah. And did you as the user have a way of knowing if -- if the rounds -- the beanbag rounds that were in the case with the shotgun were expired? Did you have a way of checking that?

A. I don't believe so because I -- I -- I don't believe that it's on the shell.

Q. Mm-hmm.

A. I don't remember being told that.

Q. Mm-hmm.

A. That we had to look at each individual shell. And I -- I don't believe even to this day -- I think it -- it was on the original box.

Q. Mm-hmm.

A. And so I -- I don't believe that there was a way for me to know if the shells that I was given were expired.

And nor did I know if they were.

Q. Okay. Was any part of your training and handling these weapons -- did any of it involve kind of checking the integrity of the munitions?

A. Yes. However, it was -- it -- it was the -- so just -- just for explanation purposes, I -- I don't mean to insult anybody's intelligence. I'm just going to explain the shells so we all know what we're talking about, right?

Q. Okay. Doesn't insult my intelligence. I've never held one of these.

A. Okay.

Q. Never seen one in person. Yes.

A. Okay. So the bottom of the shell is made of brass.

Q. Mm-hmm.

A. All right? And the very, very bottom is slightly wider. And then there is a -- there is a primer in the center of that -- of that shell. From the brass point, it then -- it then extends out into a plastic case -- a plastic casing, right?

Q. Mm-hmm.

A. And the gunpowder is in the brass portion. There is a plastic plug that goes in-between the gunpowder and the less-lethal munitions sock, right? As a buffer --

Q. Mm-hmm.

A. -- so that it doesn't catch the -- the sock on fire. And then it is -- it's got another -- if I remember right, it's got another piece of cardboard at the very top and the plastic is rolled over the top of that to secure everything from not falling out.

The part that we were taught to check is the same part that we check with our regular shotgun rounds. And that's that slightly wider portion at the very base so that the round doesn't fall too far into the barrel. And after continuous reload, what can happen because that's brass and that's a softer metal, is that can become deformed. And then the round slips too far into the barrel and it -- and it cannot be fired.

Q. Okay.

A. And so we are taught to inspect the back of the round to make sure that they are not deformed to where they would cause the weapon to be jammed.

Q. To make sure the weapon is still going to be operational?

A. Yes. But that -- as far as I remember, is the only part of the shell that we inspect as individual officers on the street.

Q. Mm-hmm.

A. Somebody else in the department might be tasked with other inspections. I don't know.

Q. Okay, okay. So as an officer on the ground you have an expectation that the munitions that are being given to you are not expired?

A. Not expired and that they are functional and that they're not you know, defective in any way.

Q. Okay. Okay. Talking further about training, I believe you mentioned earlier that you -- you were and you continue to be qualified in these type of so-called less-lethal weapons. Has there -- has there ever been a time during your time at APD that that qualification lapsed or was expired?

A. No, ma'am.

Q. Okay. And I understand that in your training for using those, you're taught particular target areas. I think in kind of green, yellow, red system?

A. Yes, ma'am.

Q. So tell me what is green, what is yellow, and what is red?

A. So green is the optimal place for the most effective and safest target areas. So the -- the butt, the legs, are green. I -- I can't remember if the arms are green. I think they changed the -- I think they changed the -- the model that we shoot at.

Q. Mm-hmm.

A. The back is green. The chest is yellow. And the

head and the groin -- oh, sorry. Go ahead.

Q. I'm going to stop you because I'm going to ask you about some specific areas.

A. Oh, okay.

Q. So that way, you don't have to tell me twice.

A. Sure.

Q. So green is -- ideal place to target. Yellow is okay, but not as ideal. And red is try not hit there?

A. Yes.

Q. Okay.

A. Red -- red is do not actively aim for these locations.

Q. Okay. I think it's like unless it's a situation where you're authorized to use deadly force?

A. Yes, and, no.

Q. Okay.

A. So that's specifically the head --

Q. Okay.

A. -- right? So for example, the groin -- the -- the front of the groin is also a red area.

Q. Mm-hmm.

A. If I remember correctly.

Q. Mm-hmm.

A. Obviously that would be an inappropriate place if we feel that we need to use deadly force to actively aim at

that spot.

Q. Mm-hmm.

A. Because that -- that would not do it.

Q. So she you should never target the groin?

A. You should never actively target the groin, no.

Q. Okay. So let me ask -- I'm going to pull back up the picture of Modesto because I've noticed there's some linguistic disagreement on where one of his particular injuries is. So I'm going to show you instead of trying to say a body part.

A. Okay.

Q. So I'm going to show you this area on his torso.

A. Okay.

Q. And ask you if that is green, yellow, or red?

A. I would say that that's kind of right in-between green and yellow.

Q. Okay. Okay. Is the -- the chest is red, right?

A. I want to say, I honestly can't remember. I -- I can't because ever since we got the new Taser system, we have another mat with different colors all over it. And so -- and like I said, I -- I only see the mat once a year at this point.

Q. Yeah, okay.

A. And so I --

Q. Okay.

A. -- can't actually remember.
Q. Okay. What about the -- this ankle spot? Do you know what color that is?
A. I don't know. I believe it to be either green or yellow.
Q. Okay. And for Mr. Talley I'm going -- I'm gonna try saying some body parts instead of looking through all the pictures --
A. Okay.
Q. But I'll pull one up if we need to. The -- and I'll just throw out a body part and you tell me what color zone it's in, okay? This is the portion of the deposition that's a test. But it won't last long. The -- the ear. What color zone is that in?
A. I would say the ear would be red.
Q. Red? Okay. And the penis?
A. Would be red.
Q. Okay. The chest?
A. As I said before, I can't remember if the chest is split between red and yellow. Or if it's just over the heart that's red.
Q. Mm-hmm.
A. Or -- I -- I honestly can't remember.
Q. Okay.
A. I would say probably yellow, maybe red.

Q. Okay. And I think you already answered with regard to the buttocks, that you thought that was a green area?

A. I believe the buttocks to be the green -- to be green.

Q. Okay. And I think you said legs in general. So that would include thighs and calves would also be green?

A. Yeah.

Q. Okay. What about shoulder?

A. I believe the -- so I believe the sh -- where on the shoulder? Are we talking along the shoulder blade, on the back? Or are we talking on the front of the shoulder? Like where the socket is or --

Q. Do you remember --

A. And I'm sorry, I'm not trying to be difficult.

Q. No, no --

A. Or are we talking on the -- on the -- like deltoid area or the --

Q. Do you -- do you remember that picture we looked at and we said maybe -- you thought that could be road rash --

A. Maybe it could be road rash?

Q. -- but it also could be a beanbag round? I can pull it up again.

A. I do. I think that's the back of the shoulder so

I would say that that would be green.

Q. Okay. And then you talked earlier a little bit about arms. My next ones would be forearms and upper arms, but I think you weren't sure about arms anymore?

A. Yeah. I -- I'm -- I'm not sure. I -- I think they're -- they're yellow or green.

Q. Okay. So some of the areas at least for Tyree, some of the areas that he was actually hit, not talking about where people were targeting, but some of the areas where he was actually hit were red areas?

A. Yes, ma'am.

Q. Which leads me to believe that these shots were not 100 percent accurate?

A. Yeah, that sounds fair.

Q. I rather think that then that you know, an APD officer was targeting a red area.

A. Yeah. Yeah, so there's officers -- their shots are not 100 percent accurate, as well as, we've already gone over the fact that Mr. Talley was moving. Which means that by the time we pull the trigger, he's still moving and so where we're aiming we're doing our best to aim for this -- the places that we are. But as he's moving around, that impact zone is changing.

Q. Okay. Did you observe inaccuracy of your weapon as you were shooting it that day? As you were using it?

A. Yes, I did.
Q. Okay.
A. I observed -- I observed my round were flaring upward. And so I purposely for the rest of the day, because that scared me -- I'm sorry -- for the rest of the day I purposely aimed lower at the legs and the lower abdomen because -- because of that.
Q. Okay. Okay. I want to talk a little bit about the formation out there. So I don't think the roads were blocked; is that right? Or maybe some roads were blocked and some weren't.
A. Which roads are we talking about? Actually, hold on --
Q. Let me just --
A. So -- sorry two questions. So which roads are we talking? And when you say "blocked" are you asking if we block them as Austin Police? Or if the protesters and rioters blocked them?
Q. So what you're doing is pointing out extreme deficiencies in my questions. Let me try again.
Did you -- APD officers -- did you -- whether you or some other officer -- did any APD officers that day put up any barriers to block roadways around the headquarters?
A. I think so. I -- I believe that at -- at some

point it was decided that you know, the -- it wasn't necessarily worth trying to keep them out of the roads and for those who are being peaceful could stay there. So I -- I do believe that we blocked off some roads. I don't know which ones though. I --

Q. Okay.

A. -- I can't recall which ones.

Q. Do you know with what?

A. I can't -- I can't say for sure. I don't know if we used cars or if we used the barricades that are used on Sixth Street every weekend.

Q. Mm-hmm.

A. Or a combination of both. I -- I -- (audio distortion.)

Q. Okay. And you were on the -- the overpass. We've talked about that. And we've also, I think at some point, referenced that there were other officers on the -- do y'all call is the "patio"? The front of the headquarters?

A. I think we call it the "steps".

Q. The steps?

A. If I remember correctly.

Q. What was the purpose of the officers on the steps?

A. I believe that the officers of the steps were there to make sure that we didn't have the same incident as -- as we discussed earlier. Some police departments that

were getting overrun and -- and damaged on the inside.

Q. So --

A. So that was -- that was a safety measure because of what's inside of a police department, right? So not only are there weapons and stuff like that, but there is a -- an ungodly amount of personal information for people all over the city and all over the states. And even in different countries. And it would be very dangerous to allow an angry mob to get inside of that building and -- and -- and it could cause a lot -- a lot of damage. Not only physically, but -- but also in people's lives. Whether it be through other nefarious actions.

Q. Okay. So they were there to protect headquarters from getting breached?

A. Yes, ma'am.

Q. And you said angry mob, but at the time that Modesto and Tyree were -- were injured, the times we looked at on your body cam, would you describe that as an angry mob situation?

A. I -- I would describe -- I would describe that as an intermix -- an intermixing of people who wanted it to be an angry mob, agitators. And people who just wanted to yell and scream at us. And so like we did -- you know, unfortunately like we described before you know, that -- that does -- that does make the whole thing a riot.

We were trying to be as lenient as possible with that aspect of it. But so angry mob? Sure. It -- it might be a little bit more -- might be -- it might be a little bit too strong. So the -- the protest that was full of agitators to prevent them from agitating further into a breach of the Main.

Q. Okay. And other than the police line on the steps, what other measures did APD take to prevent the breach of Main? For example, were there other physical barriers set up?

A. I honestly don't know because I -- I didn't -- I think -- I believe the closest I got to the Main that day was across the street at the 250 building. So I don't know if they did anything inside. And I don't remember anything specific when it comes to like the gates to the parking garages or anything. It's just not -- I'm sorry -- it's just not something that I was paying attention to.

Q. Okay. Did you observe -- well, let me ask you first. Did you personally kind of go down into the crowd and interact with citizens one-on-one, at any point?

A. Not that day, no. Later on -- a couple of days later, we attempted to I guess mingle with the crowd and -- and try and talk and stuff like that. But on the day in question, I don't believe that I ever went down into the crowd.

Q. Okay. And to use a word, I think "mingling" is a good way to describe what I'm asking about. Did you see anybody -- any other officers kind of mingling in the crowd that day, interacting one-on-one on the 30th?

A. I didn't. I -- I didn't.

Q. Okay. That mask that you had with you, that went up and down, the shield -- the helmet --

A. Oh, yes. Yes.

Q. -- did -- when that was down did it in any way affect your ability to aim that shotgun?

A. I don't believe so, no.

Q. Okay. Did you just kind of move it up and down throughout the day on and off?

A. Yeah. It -- as I -- as I said before it was -- it was really hot that day and -- and when the -- when the shield was down it was a little bit more difficult to like wipe the sweat and stuff out of your eyes. So I was constantly popping up and -- and stuff like that.

Q. Okay.

MS. JOSEPH: Why don't we take ten minutes and I think this will be the last break that I need to ask for. And I'll be able to wrap it up on our next go around. Does that work for everyone?

THE WITNESS: Yes.

MR. LAIRD: Yes.

VIDEOGRAPHER: We're going off the record. The time is 1:46 p.m.

(Recess was taken.)

VIDEOGRAPHER: We are back on the record, it's 1:57 p.m.

Q. (BY MS. JOSEPH) Officer Wright, we're back after another break. I'm glad to see you got some water.

A. Thank you.

Q. I'm going to ask you a few kind of random questions just picking up some pieces that I didn't get to here. So don't try to make them all go together because they may not.

A. Okay.

Q. Have you ever found yourself in a position where the use of deadly force was warranted or justified as an APD officer?

MR. LAIRD: And, Leigh, I want to make sure I understand. You're -- are -- you're not limiting to him using deadly force? I mean ...

Q. (BY MS. JOSEPH) Yeah, you may not have made the choice to use deadly force after fully analyzing the circumstances. But as an APD officer, have you encountered a scenario where it felt like it was something that could be done?

A. Yes. Would you like me to elaborate on that?

Q. Yes, please.

A. Okay. The first one that comes to mind is, we went to a Super 8 in the sector that I work in, in Ida off the 35 service road southbound for a check welfare [verbatim]. For somebody who had made some suicidal ideations. And then just kind of stopped responding to people.

So we went to the hotel room. It was a bottom floor hotel room on the south side. So -- well, it was north-facing on the south side of the building. And we knocked on the door multiple times, announced ourselves, and nobody came to the door. Because we didn't have any sort of exigency because no plan or method or anything like that was -- was mentioned, we -- we did not have the exigency to -- to breach the room.

And so we decided to walk away. As we were walking away I heard the door latch. I turned around and the gentleman that we were there to check on comes out of the hotel room holding a steak knife. I drew my service weapon and actively targeted him and ordered him to drop the knife. And he -- he dropped the knife fairly quickly, but it was a long enough hesitation because he was looking at my partner not at me that when he turned to look at me he was holding the knife. And then pause, drop.

I felt in that moment that I was justified in

using deadly force because of the distance that I was away from the individual and how quickly somebody can close that distance with an edge weapon. However, whether it be consciously or subconsciously I chose not to fire because -- I don't know if it was because of maybe how much of his body was still in the hotel room or you know, how -- or -- or the -- the look on his -- on his face or what his reactions were. But I -- I chose not to fire at that time.

And it was the -- it was the correct decision. I believe that had I fired, it would've been a justifiable use of deadly force, but thankfully everything worked out.

The second incident that vividly comes to mind was an incident where we had simultaneous calls at a residence. One was a crash. One was a possible burglary in progress. And one of the other responding officers was a gentleman on my shift. The other one was a gentleman on my sister-shift. And they determined that because of the time in which both calls happened and where they were that possibly they were related.

And what ended up happening is a male -- excuse me -- a male crashed his vehicle into the back of a residence and climbed in through the window. And took a mother and her son, who I believe was either eight or ten years old, as hostages. When the officers arrived on scene

they made contact for the burglary first because as they saw the crash, nobody was by the vehicle. So they made contact at the residence.

And if I remember correctly, they could hear multiple voices. When the females that called in said that she and her -- she was the only one home. So because they heard multiple voices they -- and -- and one of them sounded to be in distress, they kicked the door open. And as they entered the residence, the gentleman that climbed in through the window fired a modified fully-automatic GLOCK 9-mm at my shift partner and my sister-shift's partner.

Later on we found out that one of those rounds struck my sister-shift partner in the gun belt. Specifically, on the Taser. Officers returned fire, but did not hit him and exited the residence. A few minutes later that man came out with a gun to that ten -- or that eight or ten year-old boy's head.

It initiated a SWAT call out. I was the second or third officer on scene. And I took up a side/front containment on that residence. And all I had was my shotgun -- my -- my lethal shotgun and my pistol. I was maybe 30 yards away. And I observed this man come out holding a gun to this child's head.

I -- at that moment I knew that I could use deadly force. However, the tools that I had at the time

were not appropriate for that type of engagement. It was a very long pistol shot that I could not guarantee would not hurt the child and the shotgun was impractical because of the manner of shotgun shooting out multiple projectiles. Had I had a rifle there is a very high likelihood that I would have taken an open shot if I had it and used deadly force against that person.

Later on in that incident that is exactly what happened with one of our SWAT snipers. And he -- that person was pronounced deceased and we saved that child and mother and -- I can't remember which one it was. So, yes.

Q. Thank you for describing those two incidences to me. It sounds like based on your answer to my previous question that you have not actually implemented deadly force in the conduct of your duties at APD.

A. No, ma'am.

Q. Is that --

A. I'm sorry. I -- I -- I might have misheard your question. I apologize.

Q. No. You answered the right question. I was just asking a follow-up. Yeah. Have you ever shot someone with a firearm?

A. No, ma'am.

Q. Whether in the military or not? No? Okay.

A. Well, kind of back to what we said earlier. So

the less-lethal shotgun is a firearm, but it is designed so -- I -- I just don't want to be -- I just don't want it to seem like I'm -- I'm lying or anything like that. So with a --

Q. Mm-hmm.

A. -- deadly firearm with a bullet projectile, no. I have not.

Q. Okay. And then the follow-up question, have you ever impacted other than as part of the -- what I'm going to call the Geor -- George Floyd protest here in Austin -- have you ever impacted an individual with a beanbag round? And I think you know what I mean when I say the George Floyd protests?

A. Yeah, yeah. No, absolutely. I -- I -- I don't think so. I believe that the George Floyd protest the first day was the first time and the only times that I have impacted someone with a less-lethal shotgun.

Q. As part of your training and using those weapons, I'm assuming you fired them. Tell me kind of what that training was like. What were you targeting and -- and how did that go when you were learning to use those weapons -- the less-lethals?

A. So for the less-lethal weapons they go through a quick distance verification. What is the closest distance you can shoot. And what is the suggested longest distance

that you should shoot.

Q. Mm-hmm.

A. Before it becomes really ineffective.

Q. Mm-hmm.

A. And then kind of a brief you know -- as you get further because it's a heavy -- a heavy projectile it will start to drop and stuff like that. So you do have to adjust your aim for things like that. And then we are handed a -- if I remember correctly -- we were handed a less-lethal shotgun which is always got orange furnishings.

So an orange front stock and an orange rear stock. And we are given two rounds. We will fire the first round from a specified distance that is slightly farther away. And aim for a green zone while you know, yelling the words "impacting." And then we will move closer to the target and do the same thing, yell impacting and fire at a green portion of the -- the rubber mat. And it's just a rubber mat that's hanging with a -- a silhouette painted with the different colors.

Q. Okay. So before the George Floyd protest it sounds like you had discharged one of these so-called less-lethal shotguns twice in your life?

A. I think that we did it a few extra times in the Academy, but I -- I can't remember.

Q. Okay.

A. But as far as the less leas -- sorry -- less-lethal shotgun goes before the George Floyd riots, I would say no more than ten rounds.

Q. Okay. I asked you about impacting others I'm going to ask about yourself now. Have you ever been shot with a -- a bullet from a firearm?

A. No, ma'am.

Q. And have you ever been personally impacted by a beanbag round?

A. No, ma'am.

Q. Okay. I said I was going to be jumping around. So now changing gears.

A. Absolutely.

Q. How many times has -- have you received a written performance review as part of your employment with APD?

A. I -- I think it's only been twice because of the way my employment timeline lined up. My first year was when I was in training so I don't believe that I got one for that -- I might have. So maybe three.

And then yeah my second year and then my third year. And I haven't received my fourth year, 'cause God I want to say I've only signed two. One from Serrato and one from Leyva. I don't think I had one from Francois. So I -- I think it's only two.

Just because of the way where -- the way my

employment lined up, I think they're in done in like July or August or something like that. And I hadn't been -- I think -- I think that was it -- the first one. I hadn't been observed long enough to -- you know, I'd only been solo for like a month or something like that and so --

Q. Mm-hmm.

A. It wasn't -- it wasn't done. I think.

Q. So '18 probably wasn't done. 2023 probably isn't done yet. But then I have --

A. Yes. So '18 definitely was not done because I was in the Academy.

Q. Uh-huh. Okay.

A. I don't think that '19 was done because by the time I hit street --

Q. Okay.

A. -- either that time had already passed or I hadn't been observed long enough for the evaluation to be fair. So --

Q. Okay.

A. -- I should have got one '20, '21, and '22. Maybe I did get three. We'll say three. I don't know.

Q. Okay. Two or three. Maybe one was missed in there. But --

A. Yeah.

Q. Okay. And your expectation is that they're

annual?

A. Yes.

Q. Okay. Have there been any like -- I don't want to use the word reprimand 'cause I know that's like a formal process within APD.

A. Sure.

Q. Has there been any sort of like deficiency that they've told you to work on in those evaluations?

A. No. I -- I've -- I've never been given anything that would -- I've never been given anything less than a like meets standards of -- of the standard officer, or however, they --

Q. Mm-hmm.

A. -- they describe it. There was you know, one or two things that aren't observed obviously like, I'm not in a leadership position. So you know -- you know although some leadership skills are observed you know, like taking command of their -- you know, like that sort of stuff. That shows as not observed.

But so everything is either --

Q. Okay.

A. -- above average or essentially where -- where the standard officer is.

Q. Okay. I'm going to try to speed up because I'm taking so much of your time. So I'm going to start talking

a little faster. I've got it in my mind I want to get you out of here.

A. You take as much time as you need. It's fine.

Q. And -- and thank you for that. Do you have -- aside from anything related to the George Floyd protest and then we'll talk about that separately, do you have any history with IA or SIU?

A. I had -- I've one instance with internal affairs. It was when I was on FTO. When I was -- when I was being trained by my field training officer and I was PPO.

Q. Mm-hmm.

A. We responded to a situation where somebody called in and stated they had been assaulted at a gas station. We arrived on scene. I interviewed the man. I called EMS out for him and once EMS got there, he's like, "I -- I don't want do anything. I don't want to press charges. I just -- I just want EMS."

And so I was like okay. And then I noticed that two of the other officers that responded with us had like walked away. And then so I -- I let the -- not that I was holding the gentleman, but the gentleman that we were talking to left in the -- in the ambulance. And the next thing I know, the two officers from my shift that had walked away were walking back with an individual in handcuffs. And I don't remember exactly what the charge was that -- he

ended up being arrested that night and we brought his car over.

They towed his car and they asked me to do the tow sheet. The administrative form that says the Austin Police Department towed your vehicle. This is what we found in it. This is what we found in it. This is the condition it was in. And you know, it's -- it's basically a receipt saying that the Austin Police Department towed your vehicle and where it went, right?

So I -- while I was filling out that tow sheet, because I was so new I was kind of slow at it so other officers did the inventory of the vehicle. And so when I started doing it for myself, the -- I was told hey that's already done. And I was like okay. Well, what did we -- like what -- did we find anything? And I was told to write, "nothing of intrinsic value was found in the vehicle." Right?

Q. Mm-hmm.

A. So I wrote that on the tow sheet and I submitted it. That gentleman later complained that we illegally towed his car and that he was illegally arrested and he filed a complaint with the OPO who turned it over to IA. IA investigated me for improperly filling out the tow sheet because basically what they send was nowhere in policy does it say something has to have an intrinsic value to be

documented on the tow sheet.

Q. Hmm.

A. So you need -- you need to document everything that -- that you found in the car. And I was like, oh, like okay. You know, absolutely. And so it didn't result in any sort of discipline. It was more just an investigation into the other things they found that I technically had violated a minor policy so we had a discussion about it. And then as far as I know, it was completely cleared up with no disciplinary action other than just a -- maybe an oral -- just an oral conversation with my Sergeant about you know, just -- just make sure you just document things slightly better.

Q. Okay. And were you disciplined at all with respect to your actions during the George Floyd protest?

A. No, ma'am.

Q. Okay. And I know we said that we both know what I mean when I say that. That I'm talking about the protest events surrounding the May 30th, 2020. The days before and the days after.

There are a couple of places within the documentation of those protests that I see remarks like people were throwing things, intending to hurt officers. And I want to talk to you about intent for a second. Are you able to tell in the moment when you're up there on the

overpass what someone's mental intention is?

A. I'm unable to tell what somebody's mental intention is. What I -- what I believe is that a reasonable person would say that if you throw an object at a person, even if it's a small object, you are intending to -- if -- if there's not an agreement to play catch you are intending to hit them with it. And therefore at least annoy or harass them with throwing that object. And possibly even cause pain.

So I mean bodily injury is any pain at all. But you know, when I'm seeing rocks thrown at people, the only time you throw rocks at people is to intentionally hurt them. The only time you throw fireworks at people you know, is to intentionally hurt them. Unless there is a prior agreement that we're going to shoot fireworks at each other.

Q. It's my understanding that after these events occur you -- you guys -- you APD officers were instructed not to follow the standard written policy on response to resistance reports, but to do something different; is that correct?

A. Yes, ma'am.

Q. Could you kind of tell me what the difference is in what the policy would have required and what you were instructed to do?

A. Yes. So essentially -- sorry, let me start over.

So policy states that for every response to resistance they're certain things that need to be done. You need to contact a supervisor. You need to contact EMS for the person that was involved in a response to resistance. Things like we're required to take pictures of that person and ourselves. And anybody who was involved in the response to resistance.

A -- what's called details page in our report writing system is to be completed for every individual that is involved in a response to resistance. And then we're supposed to be interviewed by that supervisor. Whether -- sometimes it's on the phone. Sometimes depending on the severity of the response to resistance they will come out and interview us in-person. And then we are to write a detailed, either a report or supplement based on the call for service or whatever needed to be reported and that response to resistance.

The way that I understand it is that this was such an unprecedented event that the department did not have the resources to be able to do that. So it would have been impossible to every time I impacted or attempted to impact somebody to stop, call a supervisor, have the supervisor come out, pull me off the line, interview me, take pictures of everybody that witnessed it, take pic -- you know, talk to everybody that witnessed it, try to talk to the person

that was impacted or almost impacted, coordinate getting EMS to them.

We -- we weren't able to do those things because we were so overwhelmed with the crowd control and trying to maintain as much of a -- a peaceful assemblance as possible. So at the end of the night, I don't remember if it was broadcast over the radio or if it was given to individual supervisors who just went around telling anybody that they could see, it was if had you had a response to resistance, write a supplement of roughly where you were and what you did. If you fired your less-lethal, roughly how many rounds you fired. And submit that under the case number that you were given.

So that was the -- that was the first directive. After that it -- it became more detailed as we had the time, as we had the manpower to go through each one of these instances, it -- we were required to go back, watch every second of our video, and do a detailed supplement of everything that we did.

So that's why I have multiple supplements. So my first one is very generic, very vague. And then I was told, hey, that's not quite enough, go back in and add a little bit more. Okay, that's fine, I'll go add a little bit more detail. And then, hey, give me another one, and we need more detail. And then, hey, give me another one, we

need -- and then it was just, hey, minute by minute, go through tell -- you know, anytime you took any sort of police action, I want it timestamped. I want it you know, documented.

And so that's to the best of my ability is -- is -- is what I did. And that all went to a -- I don't remember what they call it. But it went to a -- a group of supervisors who went through each one of them and determined if it needed to go -- if -- if it was justified. If it was within policy and -- or if it needed to be locked at by A -- sorry -- by IA. Or if it needed to be looked at by SIU.

Q. Okay. Do you know a former APD officer named Michael Harris?

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

Q. Okay. I wondered if by any chance he might have been the guy standing to your right in the body cam we watched. But you don't know?

A. I -- I don't know and I -- I'll be honest, I'm -- I'm really, really bad with names. So I --

Q. Okay.

A. -- I don't know.

Q. I Googled you.

A. Oh, no.

Q. And --

A. That's terrifying.

Q. I think you're on the Board of Directors of the APAPAC; is that correct?

A. Yes. I'm -- I'm part of the Political Action Committee for the Austin Police Department.

Q. Okay. And as -- what is the kind of main objective of that group?

A. So the main objective of the Political Action Committee is to represent the Austin Police Department during legislative sessions and during different city and state elections so that we as a police department can have representation at the state level, at the city level you know. And that we have -- we have help to you know, keep the -- you know, a lot of the -- the safety -- the safeties that are built into our job.

So for instance this last legislative session there was talk that people wanted to make us at-will employees to the mayor. And so we as the PAC worked with legislators at the state level to try and help pass a law that would protect us from becoming at-will employees to the mayor and the city manager so that it wouldn't be one of those things where you know, one of our officers -- and I'm not saying our mayor would do this, that's not what I'm say. But you know, as an example you know, somebody sees a speeding car, pulls it over and it happens to be the mayor and the mayor just goes, well, you know what, after today

you're fired.

Q. Yeah.

A. You know so it was it's -- it's -- it's those sorts of protections. I'm still fairly new to it. I've -- I've been on it for about a year. And a lot of -- most of the stuff we've done is, hey, this person is running for the Williamson County you know, County Commissioner and he wants you know, he wants our support and stuff like that.

Or you know, different city council members who are -- who are running for position you know, and it's -- it's well, you know, do you support the police? And if you do then we absolutely would love to -- love to you know, throw our support to you. And stuff like that.

Q. Mm-hmm. Okay. How did you obtain your position on the board. Were you voted in? Was it just you volunteered and -- and you got it? How does that work?

A. I was -- I was suggested to the position by a commander who has since retired from APD. His name is Commander Don -- or he was Commander Donald Baker. His wife was actually my -- my parents' realtor and so through that we -- we had many off-duty chats where he realized that I had you know, some level of interest in politics, but also some level -- a much higher level of interest in, you know, making sure that my career here at the Austin Police Department was productive, and you know, protective.

And so he actually asked me if I would like to join. And I put him off for about a year because I didn't think that somebody so new should be, you know, representing like that. And he finally convinced me to join. And you know, he said, you know, just -- just be a part of it so you can learn what it's about. And you can learn how all of this stuff works. And then, you know, as time goes by you can get as active as you want to be. Or if you don't like it you can leave. But not like in a mean way.

Q. So you got involved and then is there kind of a vote for board? Or is it just people volunteer and they're on it?

A. Yes. So a name is suggested by a member. If there's an opening and the board votes yay or nay -- if that person should be allowed to -- to come in.

Q. Okay. I'm going to ask you a series of questions that I think can be kind of quick yes or no questions. If you feel like you need to elaborate, I'm not going to stop, but hopefully they'll be kind of quick.

Is -- does APD strive through its policies to keep the public safe?

A. Yes.

Q. Does APD strive through its policies to protect its officers?

A. Yes.

Q. Okay. Now this one is not a yes or no. Is there any indication within policy -- if it's one or the other, an officer or a layperson citizen, who you're supposed to choose?

MR. LAIRD: Object to the form, but you can answer.

THE WITNESS: I -- I don't believe that there is any policy or -- I -- I don't believe that there's anything that is -- is determinant on you know, you have to choose one or the other.

Q. Okay.

A. I think in those situations, intensive investigations are done to see who was in the right and who was in the wrong. And the outcomes have varied throughout the last couple years.

Q. Okay.

A. We've had a couple of officers who have overstepped and they have been fired or they have left.

Q. Okay. Back to the kind of yes or no. Is it APD policy to strive to protect the Constitution and the amendments thereto?

A. Yes.

Q. And would that include the exercise of First Amendment rights?

A. Yes.

Q. And would that include ex -- the Fourth Amendment right to be free from excessive force?

A. Yes.

Q. All right. Walk me through your analysis as an Austin Police Department officer holding a shotgun equipped with beanbag rounds of whether to fire. I know that -- I know what the directive was or the order was. You told me about that. But what other questions do you need to ask in your mind you know, to go through your analysis of whether to fire that weapon?

A. Are we -- and I -- just as point of clarification, are we asking in general or are we asking specifically for the events that happened on the 30th?

Q. If there's a difference, I'll will ask for both. So why don't you tell me in general first?

A. So in general -- so the less-lethal shotgun is what is considered a pain compliance tool, right?

Q. Mm-hmm.

A. It is -- it is a standoff weapon. A standoff weapon system that is used to try to gain compliance through pain. And that sounds archaic and barbaric, but so the idea is, is that it is the -- the -- if somebody is putting us, themselves, or somebody else in danger, say they have a weapon. Right? Say we've got somebody right here on the

Congress Bridge and they're walking up and down the bridge with a knife in their hand. And you know, as people walk by there you know -- kind of chasing them and -- and kind of like lunging the knife at them, right?

Q. Mm-hmm.

A. So theoretically, black-and-white you know, we -- we have the ability to shoot that person. Right?

Q. Mm-hmm.

A. They're -- they're actively trying to hurt and possibly kill people. But that's not our first step. Our -- our first step is to try to and gain compliance. So we're, you know, we're going to be at a standoff distance with something in-between us. And we're going to ask, you know, we're -- we're gonna tell you to put that weapon down. If that weapon isn't put down then if it is available our next step is to try, if we -- again, if it's available, all of these -- also keep in mind, all of these situations are fluid. So they -- I'm not saying this is how it's going go every time, right?

Q. Okay. Mm-hmm.

A. The next step we can use is using that less-lethal shotgun to fire a beanbag round at the person to inflict pain as a means to try to get them to stop that behavior, drop that weapon, so that we can then approach and arrest them without taking it to a lethal level.

Q. Mm-hmm.
A. Right? It is often used in the unknown. So if we don't know if the person has a weapon or not, but were -- we suspect that the person has a weapon. It is unsafe for us to move forward and go hands-on. So use the standoff weapon and if the -- the orders are not -- the orders that we're giving these people are not -- these individuals are not complied with, then our next step is if we're close enough to possibly use a Taser or to use a kinetic impact device or the less-lethal shotgun. It is mainly to prevent us not using deadly force.
Q. Mm-hmm. Mm-hmm, okay.
A. But --
Q. It does sound like that's different from kind of the process engaged in on May 30th? Is --
A. Slightly.
Q. -- were there some differences?
A. Yes. So one of the issues that we ran into during the George Floyd riots is that we had such a large accumulation of people who were showing hostilities toward us. Even the ones that weren't necessarily throwing stuff, you know.
Q. Mm-hmm.
A. The aggressiveness in which they are screaming, and shouting, and pushing against us made it very difficult

to coordinate, you know, doing arrest teams and arresting individual agitators. So at a standard, peaceful, lawful protest that somebody sets up, you know, SRT will go out there and they will have teams, different types of teams set up. You know you'll have your containment teams, you'll have your arrest teams and stuff like that. And the idea is -- is you guys can scream and shout and -- and -- and let your voices be heard. Let your message be heard. Right?

However, due to the mob mentality we can't allow agitators to -- to cause people to start taking that to the next level. So as soon as we see that in a standard situation when it comes to protests and stuff like that, we engage an arrest team. Where the frontline will break open and four or five officers will -- they will signal -- they will all communicate which person is the agitator.

They will enter the crowd as a group to protect each other with two extra officers in the middle. And that will be their -- their hands-on people. They will surround that agitator, place them in handcuffs and remove them from the crowd. So that they don't intentionally stir that crowd up into doing something that the crowd doesn't necessarily want to do, but psychology and history has shown us that agitators can turn peaceful crowds violent, right? Even if it's just causing enough fear that they stampede each other, right?

So that is what's done normally. Because we couldn't do that, because this was so large and because it was so -- what's the word I'm looking for? So -- not volatile. Complex. We couldn't form arrest teams. There was -- at the beginning there were so many agitators that we -- we couldn't wade into these crowds and arrest these individuals. We can't go after -- you know, we can't individually run after these people.

Through past mistakes made by officers not just here, but around the country and even around the world, we have seen that when you have a crowd that is already upset at you and an individual officer tries to wade through the crowd to arrest a singular individual, they become the ones that is -- the one that is surrounded. And it just takes one person to start some sort of physical altercation and everybody begins that physical alteration. And now that officer is in danger of getting severely hurt or losing his life.

And that's why we do it in that group setting. So that we can protect those internal officers with that slight perimeter around them. Slightly pushing people back. And then bringing everybody back at that same time and then just allowing the crowd to go back to what they were doing without that -- that individual agitator.

When we have so many agitators that we have

thousands of rocks littering the 35 and we have water bottles, and we have fireworks, and we have all of these things going on at once, and then you have these agitators that are constantly moving from little group to little group so that even if we did start chasing after them, pretty soon we're going to be so far away from our own people that we are in a dangerous position. And then it leads us into even more dangerous position because now, say it was me, I'm alone and I'm suddenly surrounded. And these people start hurting me, right? Am I justified in just -- starting and shooting them? No, but I also have the right to protect myself, right?

So we get into this really, really scary gray area where you know, it -- it's -- it becomes so volatile that too many mistakes can be made, right? And so that's why we have to work as a team. That's why we -- we normally have everything set up in these arrest teams and in these -- these -- these proven SRT methods to remove the agitators while still allowing people to exercise all of their rights. Right?

These George Floyd riots happened and it was -- it was unprecedented for us. We -- we couldn't form those teams. We didn't have the people. We didn't have -- it was so spread out. It was -- it -- there -- there was no way to safely try to effect arrests. So it was decided by

our chain of command that the only way to proceed was to try and deter the agitative behavior by using standoff less-lethal weapons.

And as the night went on the -- the agitators lessened. They were still there the entire time, but it wasn't -- it wasn't anything like in the beginning.

Q. Do you think -- do you think it's accurate to say that APD was not ready for a situation like this?

MR. LAIRD: Object to the form.

THE WITNESS: I -- I can't -- I can't personally speak for the department, right? I can say that it didn't seem like it.

Q. Mm-hmm.

A. Okay. Whether they were or they weren't, I can't say. What I can say is, from a person on the ground, it seemed like we were behind the curve.

Q. Mm-hmm.

A. That is my personal opinion. And it is also the personal opinion of somebody who had -- has zero control over that.

Q. Sure. Sure. Have policies on crowd control and use of force changed since the George Floyd protest?

A. Yes.

Q. And I can look -- I can compare the written documents, but I'll ask you just kind of general like -- can

you give me some general areas in which changes were made?

A. Yeah. So I don't remember which day, but whether it was a day or two after the 30th, the -- they -- they changed how they wanted us to engage people with less-lethal weapons. I want to say they had designated people in designated places with those weapon systems. I believe that the ability to use crowd dispersion devices, such as smoke and gas, was taken away from SRT and was given strictly to SWAT.

Q. Mm-hmm.

A. And they were the only ones that could deploy those types of crowd control measures, if I remember correctly.

Q. Mm-hmm.

A. And then I think even after that that was further taken away to where we could not engage in any of those things. And that's -- that's when DPS troopers came in and began assisting us. Because we -- we suddenly really couldn't do anything to try and stop agitative behavior, if it got out of hand.

Q. It sounds like that was an attempt to reduce the usage of the so-called less-lethals and the gas. Is that what you understood that change to be? An attempt to kind of reduce the use?

A. I don't -- I don't know if it was an attempt by

the department to reduce the use. Or if -- I know that the city council got involved. And I -- I believe that they made some directives that forced us to change certain policies and -- and the way that we did things.

Q. Mm-hmm.

A. So I don't know if that was a result of the department necessarily wanting things to change or the department being forced to changed -- sorry -- forced to change by things that the city council enacted.

Q. Okay. I have to tried to be thorough, Officer Wright, but have I failed to ask you about anything that you think is important with regard to what happened out there on May 30th, 2020, that you -- you think should be known or should be considered?

A. I don't -- I don't think so, no.

Q. Okay. Have you understood all of my questions today? Or if not asked me to clarify and gotten to the point where you understood?

A. I believe so.

MS. JOSEPH: Okay. All right. I'll -- I'll pass the witness.

MR. LAIRD: And we'll reserve our questions until the time of trial. We -- we will want to read and sign. And then I also wanted to see, Ms. Walters, if we could get an expedited copy of the transcript. And --

COURT REPORTER: Okay. Go ahead.

MR. LAIRD: And -- and I also will need to order a copy of the video as well.

COURT REPORTER: Okay. So you would like a copy of the transcript and video, a read and sign, and you want to see about possibly getting this expedited.

MR. LAIRD: Yes, that'd be great, if we can.

COURT REPORTER: Do -- do you have an idea of how soon -- how quickly -- if you it were up to you -- and then I'll tell you if I can pull that off.

MR. LAIRD: Maybe --

VIDEOGRAPHER: Pardon the interruption, maybe we should go off the record here. It's the videographer. Is that okay with everyone.

MR. LAIRD: Yes.

VIDEOGRAPHER: All right. So the time is 2:47 p.m. and we're off the record.

(Proceedings concluded at 2:47 p.m.)

CHANGES AND SIGNATURE - ERRATA

WITNESS NAME: JUSTIN WRIGHT DATE: JULY 21, 2023

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, JUSTIN WRIGHT, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
JUSTIN WRIGHT

THE STATE OF TEXAS)
COUNTY OF)

Before me, _____, on this day personally appeared JUSTIN WRIGHT (or proved to me under oath or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2023.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES:_____

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYREE TALLEY Plaintiff,	§ §	
v.	§	CASE No. 1:21-cv-249-RP
	§	Lead Case
CITY OF AUSTIN AND JOHN DOES Defendants.	§ §	

****

MODESTO RODRIGUEZ Plaintiff,	§ §	
v.	§	CASE No. 1:21-cv-1087-RP
CITY OF AUSTIN AND JOHN DOES Defendants.	§ §	

****

REPORTER'S CERTIFICATE
OF JUSTIN WRIGHT

****

I, Lilia W. Walters, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That the Witness, JUSTIN WRIGHT, hereinbefore named was at the time named, taken by me in oral stenograph on July 21, 2023, the said Witness having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter

reduced to typewriting by me or under my direction. The charge for the completed deposition is $_____ due from Plaintiffs;

( ) That pursuant to the Federal Rules of Civil procedure, the Witness shall have 30 days after being notified by certified mail, return receipt requested, by the deposition transcript is available in her office for review and signature by the Witness and if any corrections made are attached hereto;

( ) That by agreement of counsel, a reading condensed copy of the deposition transcript along with the full-sized original Changes and Signature Sheet has been sent to _____ on _____ for review and signature within 30 days and if any corrections returned are attached hereto;

( ) That by agreement of counsel, the deposition officer is instructed to release the original deposition transcript to _____ on _____, for review and signature, and the deposition officer is thereafter released of any further responsibility with regard to the original;

( ) That the witness shall have thirty (30) days for review and signature of the original transcript and if any corrections returned are attached hereto;

( ) That the signed transcript ( ) was ( ) was not

received from the Witness within 30 days;

( ) That the examination and signature of the Witness is waived by the witness and the parties;

That the amount of time used by each party at the deposition is as follows:

Ms. Joseph - 4 HOURS - 6 MINUTES
Mr. Laird - 0 HOURS - 0 MINUTES

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in this action in which this proceeding was taken to the best of my ability and under the circumstances, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 25th day of July 2023.

LILIA W. WALTERS, TEXAS, 12390
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0

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Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff, vs. CITY OF AUSTIN and JOHN DOES, Defendants.	)	No. 1:21-CV-249-RP Lead Case
MODESTO RODRIGUEZ, Plaintiff, vs. CITY OF AUSTIN and JOHN DOES, Defendants.	)	No. 1:21-CV-1087-RP

ZOOM VIDEOTAPED DEPOSITION OF BENJAMIN LYNCH

Date: Tuesday, July 18, 2023

Time: 9:08 A.M.

Location: MAGNA LEGAL SERVICES REMOTE
16414 San Pedro Avenue, Suite 900
San Antonio, Texas 78232

A P P E A R A N C E S

For the Plaintiffs: HENDLER FLORES LAW, PLLC
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For the Defendants CITY OF AUSTIN:

AUSTIN CITY HALL
CITY OF AUSTIN LAW DEPARTMENT
BY: MONTE BARTON, ESQ.
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(512) 974-2409

Also Present: ALEXIS M. LOPEZ

Videotaped By: MAGNA LEGAL SERVICES
BY: NATE LANINGHAM
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Reported By: REBECCA K. QUINN, CSR #5720
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I N D E X O F E X A M I N A T I O N

Page:

BY MR. DEMIK.....5

-OOO-

I N D E X O F E X H I B I T S

(No exhibits marked)

P R O C E E D I N G S

THE VIDEOGRAPHER: This begins media file number one in the video deposition of Officer Benjamin Lynch in the matter of Tyree Talley, et al. versus City of Austin, et al. in the United States District Court for the Western District of Texas, Austin Division. Case number 121-CV-249-RP.

Today is Tuesday, July 18th, 2023, and the time is 9:08 a.m. This deposition is being taken remotely at the request of Hendler Flores Law, PLLC.

The Videographer is Nate Laningham with Magna Legal Services and the Court Reporter is Rebecca Quinn.

Will counsel please state their appearances and whom they represent.

MR. DEMIK: Stephen Demik on behalf of the Plaintiffs from Hendler Flores Law.

MR. BARTON: Monte Barton on behalf of the Defendants, City of Austin Law Department, City Hall.

THE VIDEOGRAPHER: You can go ahead whenever you're ready, Madame Court Reporter.

///

BENJAMIN LYNCH,

having been duly sworn by the Certified Shorthand Reporter to tell the truth, the whole truth, and nothing but the truth, responded, "Yes," and testified as follows:

MR. DEMIK: Thank you.

EXAMINATION BY MR. DEMIK

Q Good morning, Officer Lynch.

A Good morning.

Q Can you hear me okay?

A Yes.

Q Okay. If you can't hear me, if you just raise your hand and -- on Friday I had some issues and then yesterday it went better. So just flag your hand if you can't hear me or if for any reason you can't hear what I'm saying.

Does that work?

A Yes, sir.

Q Okay. So my name is Stephen Demik. I represent the Plaintiffs in this case. I'm from Hendler Flores Law.

Let me just sort of ask you have you ever been

deposed before?

A Yes, sir.

Q Okay. So I've got to ask you sort of the routine questions at the beginning, so let me ask you those. You've probably been asked them before, but you understand that this is a deposition that we're taking that could be presented in lieu of courtroom testimony?

A Yes, sir.

Q And that means that the questions and answers may be recorded by video and presented to a judge or jury later in a courtroom?

A Yes, sir.

Q So it's important for you to be full, accurate and complete to the best of your abilities?

A Yes, sir.

Q Okay. Is there anything -- and I've never really understood this question, but we have to ask it, is there anything that would prevent you from giving full, accurate and truthful and complete testimony today?

A No, sir.

Q Okay. And you're represented by an attorney at the deposition today?

A Monte Barton with the City of Austin, yes, sir.

Q Okay. Okay. Now, let me ask you -- one second. Let me just get my notes organized, if you don't mind.

Okay. Let me just sort of ask you a little bit about your background if that's all right, Officer. I'll try and flag things for you so you know what subject I'm asking about. I try not to jump around too much, but if at any point you need clarification to my question, you don't understand my question, please just ask. I'm happy to rephrase it, put it in a different way, but if I don't hear that from you, I'm just going to assume that you understood the question and you answered it to the best of your ability; is that fair?

A Yes.

Q Okay. Good. It seems like my audio is working pretty well today. So that's a good thing.

How long have you been with the -- well, let me ask you, are you currently employed with the police department?

A Yes, sir.

Q Okay. And how long have you been with the Austin City Police Department?

A Since 2009.

Q Okay. And when did you go to the Academy and graduate?

A I graduated in April of 2010.

Q All right. Let me sort of go a little bit in the background, not too far, but before you went to the Academy, what's your background, sort of occupational, educational background before you went to the Academy in 2009?

A High school. Went to high school in Massachusetts where I grew up, I'm a graduate of Penn State University and moved here after graduation and started the Academy after a little bit of time in the construction world.

Q Okay. How did you end up in Austin from Pennsylvania?

A I visited here before and liked it, so I applied and was accepted into the Academy so I moved here.

Q Okay. So high school and college in Pennsylvania sometime in --

A Massachusetts, yeah.

Q Massachusetts, I'm sorry. Then Pennsylvania?

A Correct.

Q Okay. And then a stint in construction and then the Academy in Texas?

A Correct.

Q Okay. How long did you work construction?

Was that in the northeast or was that in Texas?

A No, that was in Philadelphia.

Q Okay.

A It was almost a year.

Q Okay. What kind of construction?

A It was just like general jobs. We did like general contracting, just building small, small jobs, flooring, anything. Really anything. And then also like lawn maintenance.

Q Okay. And it may seem like a weird question, but I do like to ask it, why did you become a police officer?

A It runs in my family and, you know, I wanted to serve the community, help people out.

Q How does it run in your family, father, grandfather?

A My two uncles are police officers back in Massachusetts or were, they're both retired now, and then I had a great grandfather in one of the federal agencies.

Q FBI?

A I believe so.

Q Interesting. Okay. What did you study in college?

A Criminal justice.

Q Okay. And was that in anticipation of becoming a police officer or did you know yet at that point?

A I didn't start with that, but when I decided that I was going to try to go the police officer route, I transitioned to that major and then graduated with that degree.

Q Okay. And so that after construction, that takes us to the Academy in 2000 -- and moving to Texas, that takes us to the Academy in 2009?

A Correct.

Q Okay. After you graduated from the Academy, excuse me, geez, 14 years ago, where were you first positioned or stationed?

A I was first positioned in Baker Sector. So --

Q Center?

A Yeah, yeah. It's mostly centered around west campus, but it also comprised of areas like Lamar up to 183, the -- parts of 360, 2222 and Burnet Road.

Q And was that as a patrol officer?

A Yes, sir.

Q Okay. And are you still there or did you move after that?

A I was there for two years and then I worked downtown for ten years.

Q Okay. So you went from the Baker Sector to downtown -- for about approximately two years, downtown and you've been there ever since?

A In April of last year I promoted and I've been violent crimes detective since the end of September of last year.

Q Oh, congratulations.

A Thanks.

Q So that was last year. Okay. So most of what we're going to talk about, Officer, just goes up to 2020, May 30th, 2020 specifically. There might be an occasion that something after that becomes relevant, but generally just to sort of help focus, you know, we're only going to mostly go up to May of 2020 for purposes of this case.

Let me ask you a question. Do you -- what's your understanding of why you're being deposed today?

A I'm being deposed in a lawsuit that stemmed from the protests around the end of May of 2020 and an individual who had been impacted during the protest.

Q And generally what was your involvement, and we'll just start really, you know, broadly what was your involvement on May 30th, 2020?

A So like I said, I was assigned to downtown. I had a regularly scheduled shift that day. We were asked

to come in early, and so once my whole shift was there, we grouped up and were given tasks to, you know, be in certain areas at certain times for -- during the protests for, you know, crowd control and, you know, everything else that went on.

Q Okay. Let me ask you this. So let's sort of center around that weekend. I believe May 30th was a Saturday.

A I believe so.

Q Let's go a little bit earlier because I know that the shifts somewhat fluctuated during this time because of the protests. Fair?

A Fair, yes.

Q Yeah. So, you know, let's start a few days before that. Were you working -- I forget what it's called -- emergency shift or, you know, I was -- I waited tables, we call them a double or triple or something like that.

You know, during that week, what was your work schedule like?

A I couldn't remember to be sure. Usually we worked four 10-hour shifts. Like you said, we went into like, you know, emergency, we call it Alpha Bravo, but I don't remember exactly what day I started. I believe it was after that weekend.

Q Okay.
A And that day I was probably scheduled to work at 5:00 or 6:00 o'clock in the evening as that would have been a normal time on a weekend.
Q Was that your -- these four 10-hour shifts per week --
A Correct.
Q -- was that your regular shift like approximately 5:00 in the evening to what, 2:00 in the morning or --
A It would have been -- yeah, 5:00 or 3:00 or 6:00 to 4:00.
Q Okay.
A Would have been a normal shift downtown on a Saturday.
Q Okay. You said "Alpha Bravo." What does that mean and what is that?
A Alpha Bravo is just -- it's a day split up into two. So you -- there's a group of officers working the A shift, which is the first 12 hours, and then a group of officers working the B shift, which would be the second twelve hours, which I think I started at 5:00 or 6:00 was the beginning. But like I said, that didn't start until I think it was like possibly Monday following that weekend.

Q Okay. So bring it back to that weekend. On Friday, if you recall the day before, you know, this incident, do you recall what your shift was or what hours you worked, approximately?

A It would have been the same, 6:00, 5:00 to 3:00 or 6:00 to 4:00.

Q Okay. 5:00 to 3:00 or 6:00 to 4:00. Okay. And were you -- on Friday the day before, were your hours extended in any way or did you just work your regular shift?

A I don't believe so.

Q So just talking about hours still sticking on this topic. On Saturday, May 30th, 2020 to your recollection you were asked to come in a little bit earlier?

A Yes, sir.

Q What does that look like? Do you get a call or a page or --

A We get a page.

Q Okay. And so you get a page asking you to come in earlier and I assume report to the downtown police station?

A Yes, that's where I was stationed anyway.

Q Okay. So do you remember, and I know this is at this point, you know, three years ago, but do you

recall what time you got that page or notification?

A I do not recall.

Q Okay. Do you recall approximately what time you came in to the police station?

A I don't recall. It would have been before my regular scheduled shift. Sometime in that early afternoon.

Q So walk me through a little bit what you recall when you got there. So a little bit before your shift, report to the downtown police station, what did you do then?

A We showed up, you know, in uniform, met with our shift with, you know, our supervisors, and then our supervisors were given, you know, whatever our assignment was and then we grouped up and, you know, performed those tasks.

Q Okay. Is that -- is that like called a briefing or something or is there some word for that or is that just your normal course of business, you come in --

A We usually call it show-up, but we have -- it would be like normal course of business every day we do that.

Q Show-up?

A Correct.

Q Okay. I forgot to ask you a quick question, so I'm going to just jump back for a quick question.

You said you had been deposed before. What was the context of deposition that you gave -- well, how many times have you been deposed before?

A Just once.

Q Okay. And what was the context of that deposition?

A It was -- I was a responding officer to an officer-involved shooting.

Q Okay. All right. And when was that, approximately?

A Maybe 2019. When I was deposed or when the event happened?

Q Both.

A I believe the incident was in 2019.

Q Okay.

A Around then. And then I was deposed I believe it was maybe like a year -- a little over a year ago. Maybe less.

Q Okay. All right. And was that a case an officer-involved shooting that you were a witness, an eye witness or --

A No, sir.

Q -- were you the subject of the lawsuit?

A No, neither. I was a responding officer.

Q Okay. All right. So you were being deposed as a witness to the shooting?

A No, sir. I was a responding officer after the shooting.

Q Oh, okay. All right. Yeah, that makes sense. Sorry, I just wanted to clarify.

Have you ever testified in court before?

A Yes, sir.

Q You probably do it a lot now as a detective now I imagine?

A I actually haven't done it as a detective yet, but as an officer, you know, DWIs is a common one that way, and then, you know, certain other felony cases.

Q Okay. How many times do you think you testified, ballpark?

A Just call it five to be safe.

Q Fair enough. Okay. Now, let me get back and I'm going to switch gears again. I try and flag it for you as much as I can, but I want to switch gears back to Saturday, May 30th, 2020. You came in a little bit early. Let me just ask you specific questions and then ask you more generally.

Was there a crowd outside of the police station when you showed up for your shift?

A Yes, sir.

Q Okay. And how does that work? How do you get into the police station if there's crowds outside?

A I believe I had to go down Red River instead of the frontage road, and then we were allowed access to drive down Eighth Street into the exit gate, I believe, or into the garage across the street. I forget which one I parked in that day, but it was something like that.

Q Okay. And let me ask you this if you recall, was the crowd larger during the day than it was at night or was it the opposite, was it larger at night than it was during the day, if that question makes sense?

A I believe it was larger during the day.

Q Okay. And then sort of petered out towards the evening?

A Correct.

Q Okay. So you show up, and then what do you do now at the police station after you've parked your car and reported for your shift?

A Yeah. Like I said, we have that show-up meeting, we're getting our shift together -- excuse me -- and then the first thing we did is we were asked to go up on the 35 and stop people from walking onto the highway so that it could be kept open for traffic.

Q Okay. Let's stop on the show-up meeting for a minute. What was discussed at the show-up meeting or what information was given to you at the show-up meeting?

A I couldn't tell you like for sure what exactly was said. Just like, hey, something to the effect of, you know -- I'm not even sure, sir. Just like how we're going to work that day, what we were going to do and then just get with this person to meet up and then you'll walk this way to the highway. Something to the effect of that.

Q Sure. And I'm not -- certainly not asking you to, you know, give verbatim or anything, I wouldn't expect anybody to remember that, but I guess I can maybe get more specific with my questions and you can tell me if you remember.

So at the show-up meeting, right, later -- so you cleared the overpass and then later you ended up in front of the police station, right?

A Yes. So I was there later in the day.

Q So here's what I -- what I want to know is if you remember at the show-up meeting did they say, hey, we're going to go to the overpass, we're going to clear it, we're going to clear the highway, and then we're going to come down and position in front of the police

department or had that not developed yet?

Do you understand what I'm asking you?

A I do. I don't think it had developed yet. I think we were just taking it one at a time.

Q Right. One issue at a time?

A Correct.

Q And you at least remember being discussed that the first issue is that we're going to clear the highway?

A Yes, the first thing we do was went up onto the highway.

Q Okay. And so how does that work? Did you -- why don't you walk me through it.

Did you check out a shotgun? As you do the show-up and then I imagine you get your equipment and then you go up to the highway, walk me through that.

A I did not check out a shotgun. I believe like our shift might have had one at the shift. Yeah, we had all our protective equipment just like helmets. You know, obviously, we all wear our normal uniform, and then, yeah, we just got in like a row and walked up -- I believe we walked through our -- the area of our shop there, that's on the north side of Eighth Street and then up through the grass onto the highway.

Q Okay. So how many officers about in this

group?

A I think it was two shifts. So somewhere call it 15 to 20.

Q Okay. One shift is about seven or eight?

A Full would be 10, but I probably didn't have a full shift.

Q Okay. And so you -- you check out your equipment. Did you have one of these shotguns, less lethal shotguns at the time that you left the police station?

A No, sir.

Q Okay. So what did you have on you to clear the highway? You said you checked out your equipment. So just --

A I would have like a helmet with face shield and I believe I had like a baton that I -- that would have been mine anyway.

Q Okay. And in this -- these two shifts that leave the police station and go up to the highway, it's daytime now, right?

A Correct.

Q You were -- you had a baton to utilize to clear the highway?

A Yes.

Q And you say you believe there was one of these

shotguns for that group that was going up to the highway?

A Yes, sir.

Q Okay. What happens when you and your fellow officers go to the -- walk up the sort of grassy embankment onto the highway, what happened?

A I believe the first thing we did was we crossed into the northbound side. We formed like a line on the north side of Eighth Street to just stop people from walking up and entering the highway.

Q Okay. People blocking the highway and you're just preventing more from going up or had the highway been cleared and you're preventing --

A No, the highway stayed cleared at that time. There were people on the service road, but we were just more focused on keeping the highway open.

Q Okay.

A We were just -- we didn't even have to disperse people. It was already clear. We were just up there to make sure that it stayed clear.

Q Preventing further people from going up on the highway and obstructing it?

A Correct.

Q Okay. And how long did you all do that? We're staying on the issue of clearing the highway. How

long, approximately again, you know, hours or whatever, how long did that take?

A One to two hours.

Q Okay. And during this chunk of time, right, leaving the police station to we'll just call it block off the highway, I know that's probably not technically correct, but you understand what I'm talking about when I say that?

A Yes.

Q Okay. Was there any -- did you engage in any use of force during this first chunk?

A I believe when I was on the highway the only use of force I used was OC spray.

Q Okay. And can you tell us about that?

A There was a group of people directly below me throwing rocks at the officers, and we dispersed them using OC spray so that they would stop throwing rocks.

Q Did it work?

A Yes, sir.

Q Okay. So how -- how did that work? OC spray, somebody who doesn't know what that means or what that entails, what does -- what does that look like?

A It's a canister. It's full of -- you know, it's -- the general term would be pepper spray, but it's OC sprays. It's a mist that contains a certain

percentage of capsaicin and can cause -- you know, when it's dispersed, it can cause like irritation to the face or eyes or whatever part of skin that it comes in contact with for a temporary amount of time, and it's just meant to, you know, not -- it's to disperse the people that were doing that.

Q Now, is this one of those handheld canisters that people have attached to their key chain, you know, the small tin, or is this like a handheld grip that has a trigger that has a can attached to it?

A We don't have any key chain size ones. I believe I was using one of the larger ones that had the MK9 that has a handle. I probably would have been using one of those.

Q All right. And those can fire the pepper spray out for some distance, right?

A Those are actually misters. So it does spray it for a distance, but it's not a large distance. It's probably, you know, 15 or 20 feet max.

Q Okay. And so how far this -- was it a crowd that was throwing rocks or was it an individual?

A No. It was probably like three to five people in one area.

Q And they were surrounded by other people or were they just three to five?

A Where they were, if my memory serves me correct, they were kind of like in their own little group where they were doing it. It was like -- like I was up on the bridge like I said north of Eighth Street and they would have been like directly below us under the bridge. Where like the part where it comes up and meets the roadway on the north side of the bridge.

Q Okay. And were you -- this chunk of time, we're still limited to this because we're going to move to the police station later, but this chunk of time blocking off the highway, were you hit by anything?

A Yes, sir.

Q Okay. Tell us about -- go ahead.

A Countless rocks, bottles, other objects. Like I couldn't tell you exactly what they all were. Bricks were thrown at us. Just all sorts of stuff.

Q Okay. And were you hit by all those?

A I was hit by bottles, I was hit by rocks. I don't remember if I ever got hit by a brick, but larger rocks for sure was probably the biggest thing I got struck with.

Q Okay. And was the shotgun used at any point during this chunk of time?

A By me or anyone, sir?

Q Anyone in the group, the two shifts?

A Honestly, I couldn't tell you if anyone in our two shifts fired it at that time. I know like I said, I know we had one, but I can't tell you if it was used.

Q Sure. So in this blocking the highway period of time, what uses of force were used? Pepper spray was used, right?

A Correct.

Q And then batons, were those used to sort of hold people back or push them out of the way?

A No. I don't -- I don't remember anyone actually trying to cross the guardrail onto the highway, so I don't believe they were utilized.

Q Okay. Did you suffer any injuries from this period of time in which you're blocking off the highway?

A Nothing major.

Q So any bruises or injuries that would require medical attention?

A Most likely I had some bruises, but I never got medical attention for that time.

Q Okay. Okay. So at what point do you leave the highway or the -- you know, the ramp to the highway?

A Like I said, it was one to two hours. We would have gotten replaced by someone else and then went

back into -- inside the headquarters.

Q And about what time is it now?

A I'm not sure. Later in the afternoon.

Q Still daylight out?

A I believe so.

Q Okay. So what happens now that you're back at the police station?

A We took some time to cool off. It was hot. You know, turned some water and then just waited for the next, you know, task.

Q Okay. And it's May in Austin, and it's pretty hot and you're wearing a lot of clothes, right?

A Yes, sir.

Q What else makes it hot?

A That's about it. You know, it's late May in Austin, it's probably somewhere in the 90s. You know, we're all wearing vests that are super hot to begin with, and we're standing out on pavement for two plus -- you know, one to two hours in the direct sunlight, so it was pretty hot.

Q And you had those helmets on with the masks too, right?

A Correct.

Q And those masks aren't ventilated, they're like a glass mask over your head, right?

A Plastic, yeah, but --

Q Plastic, uh-huh. Yeah, that makes sense. Glass wouldn't be wise.

Okay. So -- so you're back in the police station. At what point do you get your directions or orders for the next task?

A Maybe like within the next hour.

Q And what are those directions?

A That we were going to swap out with a shift or team that was out on the front porch of the main.

Q How long had they been out there?

A I have no idea.

Q Is that sort of something that happened on this day, this period of time that different shifts would swap out to give people a break for water, for rest, for sitting down, et cetera?

A Yes.

Q Okay. And so you were given the direction to relieve this shift that had been standing outside of the police department?

A Yes.

Q Okay. So at what point do you get a shotgun?

A So like I said, I believe my shift or the group of officers at one, and we were just like pretty

much like taking, you know, 20 or 30 minute shifts being the person to use the less lethal shotgun. I couldn't tell you exactly how many times, you know, it was my turn or anyone else, how many times anyone else used it, but that's kind of how our group functioned with that piece of equipment.

Q Okay. So when you're at this point, which we've moved away from the blocking the highway, obviously we're in front of the police station, your shift has been called in to relieve another shift, at this point how many officers are in front of the police station, approximately?

A Maybe 30 to 50.

Q And is it light or dark at this point?

A I believe the first time we went out there it was light.

Q Okay. Did you go out there more than once? Did you go out, come back in, go back out again?

A Yes.

Q Okay. All right. So we're on the first -- let's just call it the first shift. I don't want to get that term confused with the group of officers, number of officers, but how many shifts did you do standing in front of the police station?

A I couldn't tell you for sure.

Q Okay. Like more than 10 or --

A No, I think we had spent longer than that. It was -- I -- maybe like three to five. Like, you know, 45 minutes to an hour long shifts as you would term them.

Q Sure. And then they would switch you out, give you some relief and then rotate it so officers have a chance to sit down, get water, use the restroom, whatever, I assume?

A Correct. Yeah, eat dinner, you know, depending on the time of day or, you know, yeah.

Q Okay. All right. So in the -- let me ask you this way because you said there's like three to five of these shifts in front of the police station.

Did the number of shot -- how many shotguns approximately to your memory were -- were -- I want to say issued, but that's not the right word -- did the officers have in front of the police station? Approximate number is fine.

A I have no idea to tell you the truth.

Q But again, I'm going to ask you to do this, I'm really not trying to be rude, but maybe a bracket. Like more than five but less than 20, can you give me a bracket?

A If there were 30 to 50 officers out there, I'd

say there were looks like let's just -- because I'm not sure, I'll just say one per ten like our shift had, so maybe five at the most.

Q Okay. All right. And that's fine, I understand that's an estimate, but the one shotgun per shift is a general rule. I know that that's not -- but is that sort of like a general ratio?

A That's just what I'm using. Yeah, like I said, our group had one -- I believe they only had one. So I'd say if that holds true for the rest of the -- like say there were 30 to 50 out there, then I'd say, you know, three to five on the porch at that time.

Q In the three to five shifts that you did in front of the police station, were there officers at the overpass looking down on the crowd milling in front of the police station?

A Yes, sir.

Q For all the shifts or did they only show up for a period of time to your recollection?

A I remember them being there later. I'm not sure if they were there the whole day or not.

Q Sure. And so when the officers were positioned up on the overpass, you could see them, right?

About how far is that from you if you're

standing in front of the police station where you were, what's an approximate distance as the crow flies between there and the overpass?

A Maybe like 100 feet.

Q Sure. And I understand it's an estimation. But you had visual, I'm going to call it contact, but just, you know, you had visual, you know, I'll call that contact with the officers on the overpass, you could see them, right?

A Yes, I could see them.

Q Okay. And did you -- did you all know or were you aware that the officers on the overpass also had these shotguns?

A I could see that they did, yes.

Q Okay. Now, let me ask you a little bit about that. Is there any -- because there's three to five shifts, so you came in the station and you went out. And I obviously, you know, want to talk to you about how the shifts, where the acts happened, right. I don't know exactly which one that was, but let me ask it to you this way.

Did anything -- was there any significant difference in those three to five shifts? And here's what I'm asking you. You know, was it one shift was totally different than the other shift or were they all

pretty much the same?

A They were all pretty much the same.

Q Okay. And that just helps me because, you know, I don't know if things totally changed. Like one shift came out and nobody was out there and the other shift came out and there's 200 people out there, but is it safe to say that pretty much the crowd was out there for all these shifts and it was the same situation for this period of time more or less, right? I mean I --

A Yeah. I mean kind of like you said earlier, the crowd dissipated into the night. So there would have been more people at the beginning of the shifts and less people at the later shifts.

Q Okay.

A Behaviorwise, you know, operationalwise I can't -- I couldn't differentiate like the first, second, third, fourth, how many ever times I was out there by like what happened. Like I know, just, you know, on the time of day and the size of the crowd maybe.

Q Sure. I understand. So breaking it down and eliminating the highway block, which you utilized OC spray or pepper spray, right?

A (Nods head up and down)

Q Let's just take this block of time and say

it's the guarding of the police station block, the three to five shifts out there.

Let me ask you, how long did that last? What time did you get off shift? What time did you get off work?

A I believe we didn't leave until 6:00 the next morning, but that wasn't all done at the main.

Q Oh, okay. Did you go to another location?

A There was some looting on Sixth Street, so we had to go clear Sixth Street later in the evening, like maybe like between midnight and 2:00 a.m.

Q Okay. And so you were dispatched to deal with the Sixth Street stuff. Besides that, did you leave the police station?

A No.

Q Okay. All right. So during this chunk of time guarding the police station, so we're eliminating the Sixth Street incident, we're eliminating the highway operation, how many uses of force did you personally have? Just for you, not other officers.

A I believe there was three.

Q What were those three uses of force?

A As I mentioned for OC spray the first time, the second time was also OC spray, and then I used the less lethal shotgun to impact one person.

Q Okay. How many times did you fire the shotgun in front of the police station?

A I fired it twice at one individual.

Q Besides those two, you know, deployments, I think, deployment of the less lethal shotgun is what you call it, besides those two deployments, did you deploy the less than lethal besides that, besides those two?

A No.

Q Okay. Did you -- how long did you have this shotgun? So was it just sort of passed between officer and officer within your shift or was one person each shift charged with holding it, what do you recall?

A I don't know how other shifts were, like I don't know what their operation was, but within mine we took turns between like the group of us. So I couldn't tell you how many times like my turn came up, but like I said, it probably would have been like -- maybe like 15 to 30 minutes for each person and then, you know, hand it off to the next one.

Q Okay. And does everybody have the rounds on them that were -- or do those just stay in the shotguns?

A No, they just stay in the shotgun.

Q Okay. Did you have any rounds in case you needed to reload to your recollection?

A I had a couple. I couldn't tell you for sure.

Q Okay. Do you recall ever having to reload your shotgun?

A I don't recall. I'm sure I did after I fired it, but other than that, I'm not sure.

Q Okay. I forgot to mention this, Officer, really quick, as a quick aside, if you need a break, again, just raise your hand and let us know. You know, a restroom break or whatever, you're welcome to do that. I don't want to force you to sit there if you need a break. So you just let us know.

Let me go through the two OC sprays first before we talk about the less lethal. Tell me about the first OC spray use of force in front of the police station?

A All right. Yeah, the first one was on the highway, we talked about that one. The second one was I was on the porch of the main. There was a group of I believe it was like two or three girls, they started an argument. I believe one of the girls was -- she wasn't like -- she was trying to either calm stuff down or wasn't liking what was going on, and then two other girls didn't appreciate what she was saying and they just started punching her in the face. So to break that up I used OC spray.

Q Okay. How far was that from the line on the

porch?

A Like just below us.

Q Okay. Like approximate distance?

A Like maybe three feet, three to five feet.

Q Oh, okay. So right in front of the porch?

A Yeah, right in front. Right in front of the wall of the porch.

Q Okay. And that's the -- that's the area that you call the front of the police station is referred to as the porch?

A Yes.

Q All right. And now the porch has like a fence around it?

A Yes, sir. It has about a ten-foot iron fence around the whole thing.

Q But going back in time to May 30th of 2020 there was no fence around that area, right?

A Correct.

Q Okay. And that's I imagine part of the reason why officers were forming a line there is to protect the police station?

A Yes.

Q All right. Okay. What about the -- let's go to the second use of force, OC spray.

A That was the second.

Q Oh, that was the second?
A Yeah.
Q What was the first?
A The first was on the highway.
Q Oh, okay. All right. I understand. So if we limit ourselves to the porch, you had two uses of force, OC spray for the fight between the females and the firing of the shotgun?
A Yes, sir.
Q Okay. Any other uses of force on the porch that you recall?
A Not that I recall, no.
Q Okay. Let me ask you this. Are you -- do you still have the mask? I'll call it like the helmet and the mask. Did officers still have those when they were on the line on the porch?
A Yes.
Q All right. And when you fired the shotgun twice, did you have your mask on or did you have it lifted up?
A I'm not sure.
Q Okay. Did you witness other officers shoot their shotguns from the porch?
A At the same time as me or any other time?
Q Any other time during the time you were on the

porch?

A Yes, I believe so.

Q All right. Did those officers to your recollection have their mask down or their mask up?

A (Shakes head from side to side) I don't know.

Q Okay. Let me ask you a little bit about the directions that you were given when you first were sent out to the porch, so after the highway.

What -- did you have like the equivalent of a show-up, did anybody sort of give you information when you go out there, this is what your directions are?

A I'm sure we did. I couldn't tell you exactly what was said. We probably spoke of like how we're going to handle the less lethal shotgun and just like where we're going to stand, but I couldn't tell you for sure what was said.

Q Okay. Do you recall anything that was said about the shotguns? Like you said how to handle the shotguns. What does that look like?

A I don't recall. Could you rephrase? I'm not really sure what you're asking. How to handle it?

Q Well, I mean I was just sort of following up.

I mean were you given any directions on these shotguns? Like here's where you use them and don't use them under this scenario and you have authority to use

them in these instances, but not these instances. That's what I'm asking.

Was there any discussion or directive given?

A You know, so they pretty much said, hey, you know, if people are throwing things at officers, you can -- you have the ability to use the less lethal shotguns or use of force or like other uses of force. That's pretty much what we were told.

Q Okay. So if I kind of understand it correctly, you know, as a patrol officer in your position on May 30th, 2020, there's a certain level of directions that you're given. Go to the highway and block it, form a line on the porch, crowd control, things like that.

Those are orders that you're given that you have to go to those positions and follow orders, right?

A Sure.

Q And with regards to the shotguns, there's like this -- you know, maybe I'm being too much of a lawyer, but there's this carve out for discretion.

You as an officer if you have a less than lethal shotgun have the discretion to use it, you know, if you see agitators throwing things, et cetera, right?

A Correct.

Q In other words, you don't have to like turn to somebody and say, hey, can I fire, you have a certain level of discretion or the officer who has the shotgun has a level of discretion whether to fire or not?

A Yes, sir.

Q Okay. Was there any discussion to your recollection of when not to fire it? So did anybody say don't fire it if X, Y, Z?

A Not that I remember.

Q Okay. Let me switch gears a little bit and just talk about the shotguns and the training and certification and that piece of it.

What training -- and again, Detective, sorry, I was calling you Officer, but I realized it's Detective now. May 30th, 2020 and prior, okay, so we're in that time zone, not afterwards, what training and certification did you have with regard to these shotguns?

A Well, like all weapons we're trained within the Academy, and then every year we have a qualification with each less than lethal and lethal weapon that we have to partake in every year to be -- to stay current of a user of that weapon.

Q And the annual certification is kind of like

an accuracy test, right? They have you fire at a target?

A The less than lethal?

Q Yes, sir.

A Yes, sir. Yeah, you're given I believe it's four rounds, and you fire at like a -- I think it's given to them by the company. There's like a silhouette of the front of a body with the areas painted and the impact zones, like green, yellow, red, and then the back of a person with the same colors. And then you take two shots from I believe it's the -- it's either the 10 or the 20 mark, and then you take two shots from the five mark at the areas that would be acceptable from that range.

Q Okay. And what, ten and five yards or feet?

A No, yards, sir.

Q Yards. Okay. So you fire the target every year for certification. You fire at the target from different distances in yards and you're tested for accuracy?

A Yes.

Q Okay. And what -- what distances are you trained are acceptable to fire at?

So, for example, do you get a threshold where it's like -- I'm making up numbers because I don't know

-- but over a 100 yards, don't fire it within a 100 yards, that's your range?

A I believe at that time the acceptable range was 5 to 25 yards. That was the recommended range. They can be used outside of that, but you need to like be more selective with, you know, the areas that you're targeting.

Q Okay. All right. So to your recollection 5 to 25 yards is the recommended distance. You can go past that, but you need to take special precautions if you go past that?

A Yeah, and I think it's more that you need to take special precautions when you're closer.

Q Okay.

A Because obviously it's more, yeah, lethal at that range.

Q Okay. Right. The closer the subject is to you that you hit with the bean bag rounds the more injury it could be the farther away -- go ahead.

A Well, energy -- the closer you are to like anything, the more energy it has. So as that dissipates, then obviously the range -- the part of the body you hit is more acceptable because it has less energy at the time. So you want to be more selective closer to the person because the chance of injury is

higher in that sensitive area.

Q The impact would be harder --

A Correct.

Q -- more or less like? So we can sort of focus in -- well, let me ask you this. So that's the certification process, you do that once a year.

How is that -- how is that graded? Is it pass/fail? What constitutes a pass and what constitutes a fail on the annual certification?

A It is pass/fail, and I believe the pass/fail is just targeting in the right area for that distance that you're shooting at.

Q Okay. Now, besides the certification, which is the annual test, right, and we're going from I think the Academy for you in 2009 to May 30th, 2020, what training do you receive? So besides the annual certification, what training do you receive on the shotguns?

A I believe that's it, sir.

Q Okay. So you're trained on how to use them in the Academy, and then after you graduate the Academy, you're on the police force, once a year you do the certification, the accuracy test to stay current and certified?

A Correct.

Q Okay. Any further training after the Academy between 2009 and 2020 that you recall?

A Not that I recall.

Q Okay. So let me ask you about your use of weapons prior to. So we're cutting it off again at May 30th, 2020 and before, let's include May 20th (sic), 2020, so you've displayed the not less than lethal two times on May 30th, 2020, right?

A Correct.

Q Okay. So before that, right, from the Academy on, how many times approximately had you shot the less than lethal shotgun?

A Other than in the qualifications?

Q Yeah. Let's take the qualifications out of it, let's use real-life scenarios.

A Zero.

Q Oh. So from 2009 to 2020 you had never used the less than lethal or fired the less than lethal on duty?

A No, sir.

Q Why is that? That seems unusual to me. That's a big chunk of time.

A I just haven't had the -- I've utilized it, but like just by its presence I guess I've gained compliance, but never actually fired it at someone.

Q Oh, okay. And what you mean I think, if I can unpack that, you correct me if I'm wrong, is that sometimes you show it to the individual who's not complying and them knowing that you might use it they gain compliance, they start cooperating?

A Correct.

Q Okay. But you had never had to shoot it at somebody between '09 and May 2020?

A Correct.

Q How often did you even get one, right? Because these shotguns are sort of checked out, right, by -- from the police station?

A Yes.

Q And did you -- let me ask you that. On May 30th, 2020, did you check it out or did some other officer check it out and then you guys just shared it and passed it around to give people breaks?

A I don't believe I checked it out. I believe someone else, maybe a supervisor, maybe it was another officer, I'm not sure. But like I said, we had one for like our shift. I couldn't tell you who checked it out. It wasn't -- I don't believe I -- it was me.

Q Sure. That makes sense. So in this 2009 to 2020 range that I'm asking you about, how often would you have one? How often would you, you know, have a

less lethal shotgun at your disposal, at your use?

Is it something you took out every patrol, is it something that, you know, you would only go and check out if you wanted to go check out? Why don't you explain that to us.

A I definitely don't take it out every patrol, but I usually carry it fairly often while -- when I was on patrol.

Q Okay. So let's sort of -- let's discuss firearms, right. We're not talking about the shotguns, the less lethal shotguns. We're talking about firearms.

How many times have you discharged your firearm in the line of duty?

A Zero.

Q Okay. Now, excepting -- taking out the Academy and certifications and things like that, you've never fired your service weapon in the line of duty?

A That's correct.

Q Okay. So if I understand you correctly, on May 30th, 2020 was the first time that you had fired a weapon, and now I'm going to include service weapon and shotgun, even though, you know, we're talking about the shotgun. May 30th, 2020 was the first time in the line of duty that you had fired a weapon?

A Yes.

Q Okay. Okay. All right. I want to switch gears on you and ask you about a car.

Do you recall a car coming down that intersection and driving into the crowd?

A If my memory serves me correct, there were several at different points of the day that did.

Q Okay. And what happened -- how many cars, again, and ask you like more than five?

A I don't know. Maybe five at most.

Q Okay.

A There was, yeah, there was cars. There was a van that came down at one point. But yeah, there were several times where vehicles made its way into the crowd for whatever reason.

Q Right. And one of those times officers from the line on the porch came out and removed the driver from the vehicle, right?

A Sure. I never participated in that.

Q Okay. Did you ever witness officers leave the line on the porch and go into the crowd for any reason?

A Yes.

Q Okay. What were those?

A One time -- one time was to administer aid to someone who was injured, one time someone had lit a car

on fire under the overpass so they were providing security for AFD. I believe -- I remember escorting a vehicle, not myself, but being down there, but I think that was the next day. I don't think that was the 30th.

Q Okay.

A So on the actual 30th, those are probably the only two times I remember officers going down into the crowd were those two.

Q Okay. At any point do you recall the shotguns being fired at someone who was driving a vehicle?

A No.

Q Were you or any other officers aware on May 20th (sic), 2020, right, going back in time, when you're on your shift that Saturday, were you aware of other incidents in other cities?

And here's what I mean by that. I mean the police station being torched in Minneapolis, the police station in El Paso being vandalized, were you aware of that on May 20th -- May 30th, 2020?

A I'm aware of it. I couldn't tell you when I became aware of it. At some point.

Q Sure. Is it safe to say that, you know, because you're on the line on the porch of the police department, right, the downtown police station, that that sort of heightened officers' readiness?

A Yes.

Q And I know that's a broad term, I appreciate you're answering it, and I want to be fair to you and not try and, you know, say something else, but in other words, you know, this crowd being in front of the police station made it a significant situation because that presents a dangerous situation if people were to enter the police department, right?

A Yes.

Q There's weapons in there, there's documents in there, that would be a catastrophic situation, right?

A Yes.

Q Okay. Do you -- I think you already answered this, it's just a question I ask, you don't have any military experience, do you?

A No, sir.

Q Okay. All right. Let me -- actually, you know what, could we take a -- for myself could we take just a quick four-minute break? I've got 9:11 Mountain, 10:11 Central, could we go to 10:15?

MR. BARTON: Sure. Yeah.

MR. DEMIK: Okay.

Is that alright, Officer, we'll take a four-minute break?

THE WITNESS: Yes.

THE VIDEOGRAPHER: We're off the video record. The time is 10:11 a.m.

(Break taken)

THE VIDEOGRAPHER: We are back on the video record. The time is 10:16 a.m.

Q (By Mr. Demik) Okay, Detective, let me ask you about just in general the protests.

So on May 30th, 2020, we've been talking about that, but I want to sort of shift gears before that, had you had during this time period of time, and I'll, you know, call it May 2020, had you worked shifts where protests happen?

A Prior to or at any point or --

Q Prior to?

A I wouldn't say -- I'd probably say that's -- this is the -- not the only one. This period of time was the only time I've worked an actual protest.

Have I worked events with other large gatherings, yes.

Q Okay. So prior to May 30th, 2020, right, in front of the police station on the porch, had you ever had experience dealing with this type of crowd, this type of protest?

A No.

Q Okay. And what about that week, right, I

believe the George Floyd death happened, you know, several days before, had you been on shifts or been on crowd control at all that week?

A I don't think there was any crowd before Saturday.

Q Okay. So on May 30th, 2020, this is the first time that you're showing up for duty for an active protest happening in front of the police station?

A Yes.

Q Or an active protest, you know, happening in the city of Austin?

A Of this type, yes. I mean there's been other like -- there's been marches, and I was here when -- what's it called? They're doing the whole Wall Street thing out here in front of the City Hall for like months on end, but an actual protest where, you know, there was like violence, this is the only one I can -- that comes to mind.

Q And what training or experience did you rely on, and I know that's a broad term, I mean it to be broad because I want to give you latitude to answer whatever you had, but May 30th, 2020, showing up for a protest that you said was violent, right, what training had you been given did you rely on in dealing with it on May 30th, 2020?

A Going to the Academy we had a day or two of doing like crowd stuff. I was also a member of BPOT, and although we didn't utilize our bicycles at this point, we did on later days during the same, you know, event, but that has a lot -- that's all like crowd control. So that would probably be the most relevant training I had to deal with, you know, protests because that's what BPOT's all about.

Q Okay. Let me ask you, what is "BPOT"? I don't know what it is.

A It stands for Bicycle Public Order Team. It was created in -- I believe it was somewhere in Canada, Calgary, I believe. So it's pretty much using bicycles to support and deal with large crowds.

Q And what period of time were you on this BPOT team?

A Everyone who works downtown is trained on that. It wasn't implemented in 2012 when I went downtown, but probably sometime in the mid-2010s it was. So for several years I've been a member, trained on that, you know, technique.

Q Okay. And that's a technique dealing with bicycles or what is that technique?

A Yeah. So using police bicycles to deal with it, deal with crowds.

Q Okay. And there were no bicycles on May 30th, 2020, right?

A There were -- there were some, but they were just -- they were using them to block the steps to the main.

Q Okay.

A Because like back then there was no fence or no anything. So they were just using them to like limit access, but that wasn't part of my shift's like duties or tasks.

Q Okay. So if I understand you correctly, May 30th, 2020, besides BPOT, the Bicycle Patrol -- I forgot, what's the acronym, Bicycle Patrol --

A It's Bicycle Public Order Team. Something like that.

Q The Bicycle Public Order Team. Besides the Bicycle Public Order Team in May 30th, 2020, you relied on your training at the Academy?

A Yeah. Besides the BPOT, yeah. Yes, sir.

Q Okay. And going into May 30th, 2020, did you understand what the protests generally were about?

A Generally, yes.

Q And can you articulate that in your own words?

A George Floyd was killed in Minneapolis and

people across the country were -- felt the need to attack police around the country for it.

Q Did you have any personal opinions or beliefs on that issue prior to and during May 30th, 2020?

MR. BARTON: Object to the form. You can go ahead and answer.

THE WITNESS: I honestly didn't know too much about it at that time.

Q (By Mr. Demik) You didn't know too much about the George Floyd death?

A No.

Q All right. Did you -- were you watching the news at the time?

A Probably not.

Q Okay. Do you watch the news around this time, May 2020?

A No.

Q It's probably healthier for you.

A Probably.

Q Why don't you watch any news?

A It's just a lot of times I don't think it's accurate. It's just -- I mean the news, they're all -- they're businesses too. They're just trying to make their money. A lot of times it's sensationalized, a lot of times they're not telling the whole truth.

I just choose to spend my time doing other things. To be honest, I just -- it's not entertaining to me.

Q Sure. So going into May 30th, 2020, if you weren't watching the news, where were you getting information on the issue?

I'm just going to call it "the issue."

A Probably from coworkers.

Q From coworkers?

A Yeah. I'm not -- I'm not even big on my social media or anything like that, so I wouldn't even know. Like I don't even remember. I couldn't tell you the first time I saw the video. It was probably around that time.

I know it had been on for -- I know it was like earlier in that week or maybe even the weekend prior. I forget when exactly it happened, but I don't even remember the first time I saw it. I don't think it was -- probably around the weekend that we're talking about, the 30th, the 31st.

Q Okay. Do you recall what circumstances you viewed it? Was it you going online, was it somebody saying, hey, watch this, what was it?

A Honestly I have no idea.

Q Okay. All right. Let me ask you about the

overpass. I want to ask you, switch gears here and ask you about the sort of interactions between the officers on the overpass to your knowledge and the officers on the porch as we're calling them. Fair?

A Uh-huh.

Q Okay. So did you witness officers on the overpass fire shotguns into the crowd?

A Yes. I saw officers fire at individuals, yes.

Q And was there any communication between the officers on the overpass and the officers on the porch?

A Other than being on the same radio, there wouldn't have been any like direct communications between us, no.

Q Okay. And what kind of information was passing on the radio?

A I couldn't tell you.

Q Was there information being given to the officers on the overpass of what was happening underneath them, beneath the overpass?

A I'm not sure.

Q Okay. You're not aware of that?

A I'm not aware, and I can't remember what was said on the radio, no.

Q Okay. Were you on the radio? Do you remember

saying anything on the radio?

A No, I don't remember ever saying anything.

Q Okay. Do you know if officers on the overpass were using flashlights or other illumination techniques to focus on people below?

A That was mentioned to me earlier. I didn't have any independent recollection of that up until then, but I do remember people at night using flashlights just so like pointing people out in the -- on the -- in the street.

Q Okay. Was there any kind of coordination between the officers on the porch and the officers on the overpass?

A No.

Q Okay. Let me ask you about -- well, let me ask you this. The officers on the porch, were they using any flashlights or illumination devices?

A Not that I remember.

Q Okay. And I guess I said "illumination devices" because I don't know if there's like a spotlight or something else.

What other means do they have at the police station?

A There's no spotlights. At that time it was poorly lit. Just if anyone was shining anything, it's

sort of a normal flashlight.

Q Okay. So let's talk about that. It was poorly lit in front of the police station.

A No. The porch of the police station, what --

Q The porch to the police station at this time, May 30th, 2020 was poorly lit in front of the porch?

A The actual porch would have been poorly lit. There's streetlights that illuminate the street, but at that time there was -- the light, it was pretty dim up there. Since they've installed like very bright lights up there, but then they weren't up there.

Q Okay. On May 30th, 2020 they weren't up there?

A That's correct.

Q And so the porch area is dimly lit?

A Yes.

Q The street is lit by the streetlights?

A Correct.

Q Okay. When you fired your shotgun the two times on the porch, do you remember the individual that you -- that you impacted?

A I mean I don't know who it was, but I remember the -- like the purpose I guess you would say.

Q Okay. Sure. Can you walk us through that?

A So yes. I saw a male, he was somewhere like

on east -- on Eighth Street, east of the service road. I believed I saw him light something in his hand and then walked, walked westbound towards the intersection and then started to attempt to throw whatever he had lit in his hand.

Q Okay. Did you -- did you -- did he throw it?

A Yes. He was able to throw the -- I called it like a -- some sort of incendiary device, but it landed somewhere like on Eighth Street north of where we were standing.

Q Okay.

A And then dispersed its -- whatever it had, smoke or whatever it was.

Q Okay. Let me break that down a little bit.

So did you observe this individual before he threw something or he threw it and then you --

A No. It was -- it was -- so I saw him light it, and then as he like was in his throwing motion, I struck him twice.

Q And how far away was he from you at that point?

A Um, maybe like -- I'm not sure. Call it maybe 40 to 50 feet. I'm not a hundred percent sure.

Q That's fine. And so when you shot him, did --

had he already thrown the --

A Like I said, he was in his like throwing motion.

Q Okay.

A Like -- thinking like a pitcher, they have like a windup where, you know, they bring the ball like up and, you know, execute their throw over their shoulder. So it would have been in that motion.

Q Okay.

A So I would assume the intended target was where we were standing, but he missed assuming because he was impacted.

Q Okay. And where -- when you say "incendiary device," was this a firework, a smoke bomb?

A That's -- I didn't examine it after, but it caused smoke so I'm guessing it was some sort of -- just from what it looked like, I guess I would assume that it had to have been some sort of firework. I'm not sure what exactly it was but --.

Q And where did the firework go?

A It landed like I said like just north of the porch on Eighth Street.

Q Okay. And so you remember him in a windup to throw it, you shot him, what happened then to him in your line of sight?

A If I remember correctly, he like turned around and went eastbound.
Q So he ran eastbound away from the porch?
A I believe so, yes.
Q Okay. What was this individual wearing?
A I don't remember.
Q Can you identify him by any article of clothing or other distinguishing factor?
A No, I couldn't.
Q And that's the only individual that you shot the less than lethal shotgun and hit? No, no, that you -- those are the only two times you shot the shotgun?
A Correct.
Q Did anyone assist the individual after you hit him?
A I don't believe so.
Q Did any other -- to your knowledge, did any other officers shoot the same individual?
A I believe the -- some officers on the overpass did, but I'm not sure how many or like who struck him obviously. I never talked to the guy. So --.
Q Oh, to the individual that you hit?
A Right.
Q Did you talk to the officers on the overpass?

A No.

Q So this -- did you witness any other instances where officers on the porch shot somebody and officers from the overpass shot somebody?

A No, not to my -- like just -- I don't recall right this second. I couldn't tell you for sure.

Q Well, officers from the overpass were firing at people in the crowd, right?

A People on the street, yes, they were.

Q Okay. And officers on the porch obviously were shooting individuals in the crowd, right?

A Correct, but I couldn't tell you if that was the same time or not.

Q Okay. Was there any discussion by any officer at the time, and I -- again, I'm making it a broad question because, you know, I want to be thorough, did you participate in, witness, overhear any conversation by any officers, supervisors, anybody with the police force over a notion of crossfire between the porch and the overpass?

A Crossfire would be when you are shooting in opposite directions at each other, so that wouldn't have been an issue.

Q Maybe I used that term incorrectly. What would you call that where you had two lines?

Let's say you had a 90-degree angle, I know this is a hypothetical, I'm going away from May 30th, 2020, but let's say you had an angle and officers or -- yeah, officers were shooting at the same individual from different angles, what do you call that?

A That's standard practice. You usually try to hit different angles, and that's the most safe. Like when you were saying there the L, because you're not in a crossfire situation.

Q It's also probably safer for officers if you're at different levels?

A Right. Yeah, that's like a different -- that's a whole different thing.

Q Sure. So that's sort of what I'm asking is that topic, and I know that -- I know that's super general, but that topic of like, hey, these officers are going to be on the overpass shooting at this angle with this field of vision or field of -- what do you call it, range?

A Field.

Q And the officers here at the police station are firing from this range and this vantage point, did you ever witness, overhear, participate in or have any knowledge of any conversation about that within the police on May 30th, 2020?

A No.
Q So nobody brought that up to your knowledge on May 30th, 2020 before or during?
A Not to my knowledge, no.
Q Were you or any other officers to your knowledge -- because I can't ask you what was in somebody else's mind of course, right, but, you know, if I'm in a room and another person's in a room and I overhear somebody telling them something, I can say they probably knew about it because I witnessed that. Sorry for the detour. But were you aware personally or aware of any other officers having knowledge that there were deaf individuals in this crowd of people?
A How would you know?
Q Right. Was there ever a discussion that there might be deaf people in this group of people?
A Never a discussion of deaf people. I don't know. How would you know?
Q Sure. And "group of people," I mean the group of protesters that are milling around the front of the police station to be clear, to clarify. Fair?
A Fair. Yeah, no, there was no conversations like that.
Q Okay. There was never a conversation about the possibility that some of these people might be deaf?

A Not that I took part in.
Q Okay. Or overheard?
A Correct.
Q Okay. Can you just give me one second, I think I'm done, but I just want to check my notes to be sure. Okay. All right. I do have another sort of topic to ask you about.
So in the firing of the shotguns, right, you made that decision on May 30th, 2020 based on what you observed?
A Correct, yes.
Q And so the only time that you fired the shotgun was when you observed an individual throwing or beginning to throw an object?
A Yes.
Q All right. Was there any other point that officers sort of directed fire at an individual? And what I mean is this. Were you present or overhear any instance where one officer sort of highlighted an individual to another officer?
A I mean like my supervisor is standing next to me just like kind of watching, keeping eyes out for me. I can't -- I'm guessing he was doing that for other people, but there was never a time where anyone was like, hey, impact that person or anything like that,

heap force on that person. It was nothing like that. It would always be individual discretion.

Q So you don't recall officers directing, and I'm trying to find a better word for that, but I think you know what I mean, directing another officer, hey, hit that guy or, hey, shoot that guy?

A I mean even if they did do that, they don't -- it's not like they have to follow that request.

Q But what do you do? I can't ask you about other officers because you can't answer for them, but you personally, right, at the time, and I know you've moved on to detective, but at the time of a patrol officer, May 30th, 2020, did you hear -- if you hear another officer say, hey, impact that guy, what do you do?

A If they were asking me or telling someone else?

Q Saying it to you.

A No. I'd say like, okay, I'll, you know, I'll just make my own determination.

Q Okay.

A I've never -- I mean that's like as we mentioned, that's the only time I've ever impacted someone, and I did it on my own, you know, accord. So -- and my own decision-making. So I haven't ever

fired on anyone after someone told me to, obviously.

Q Have you ever been in a situation May 30th, 2020 and prior, not after, you know, again sort of our timeline, were you ever in a situation where another officer did that? Said, hey, impact this person and obviously you didn't because the only time that you fired the shotgun was on May 30th, 2020.

Before that or on that date, have you ever been in a situation where another officer said, hey, impact that person and you didn't do it?

A I don't think so.

Q Okay. Do you receive any training on what to do or show-ups or information on what to do in that type of scenario?

A I don't think that's all that common, so no. I don't know why someone would be telling someone to impact anyone on someone else's behalf.

Q I'm sorry, I missed the first part of that answer.

A I don't know why someone would be -- an officer would be directing another officer to impact someone.

Q Okay. I think that's all I have, Detective. I always end here, and I just ask you, you know, I've been asking the questions and you've been answering

them, thank you for your time and attention and thank you for answering my questions, but I like to give you an opportunity if there's anything that you think is important or anything that you think we should know about this case, this incident on May 30th, 2020. So I really -- it's like a catch-all question, I just give you an opportunity if there's anything that I didn't ask you about or something that you think is important to give you an opportunity to say it.

Was there anything like that here?

A I don't believe so.

Q I don't have any further questions. I don't know if Monte does, but thank you for your time. I appreciate it. I know it probably takes a chunk out of your day, so I appreciate it, Detective, and I wish you the best.

A Appreciate it.

MR. BARTON: Okay. I don't have any questions for the witness, but I do want to exercise the option to read and sign, and then I would like to order copies of the transcript and the video. And I've been told to request the expedited transcript.

THE REPORTER: Do you have a date you need it?

MR. BARTON: I think by the end of the month, but maybe the week before the end of the month. I don't

have my calendar handy, but --

MR. DEMIK: That's next week, I think.

THE REPORTER: Okay. Well, I'm all caught up so there's no problem.

MR. BARTON: And actually, I guess we're off the record.

THE VIDEOGRAPHER: We're off the video record. That concludes our deposition this morning. The time is 10:43 a.m.

(Deposition concluded at 10:43 a.m.)

DECLARATION ERRATA SHEET

Case Caption: TALLEY VS. CITY OF AUSTIN

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the above-captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

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BENJAMIN LYNCH

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BENJAMIN LYNCH

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)

I, Rebecca K. Quinn, CSR No. 5720, in and for the County of Santa Clara, State of California, hereby certify that the witness in the foregoing deposition was duly sworn or affirmed by me to tell the truth, the whole truth, and nothing but the truth in the within-entitled case; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, to the best of my ability, and was thereafter transcribed into typewriting under my direction and supervision.

IN WITNESS WHEREOF, I have hereunto set my hand.

Date: July 24th, 2023.

_____
REBECCA K. QUINN, CSR #5720

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Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Tyree Talley, Plaintiff	)	
v.	)	Case No. 1:21-cv-249-RP
	)	Lead Case
City of Austin and John Does Defendants.	)	

ZOOM VIDEOTAPED DEPOSITION

JOSEPH HETHERSHAW

VOLUME 1

JULY 17, 2023

ZOOM DEPOSITION OF JOSEPH HETHERSHAW, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on July 17, 2023, from 9:34 a.m. to 11:34 a.m., before Priscilla Glover, CSR in and for the State of Texas, reported by machine shorthand at my residence in Grand Prairie, Texas 75054, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

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JOSEPH HETHERSHAW

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P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record. This begins media file number one in the deposition of Joseph -- Joseph Hethershaw in the matter of Tyree Talley et al. versus City of Austin et al. In the United States District Court for the Western District of Texas Austin Division, Case Number 1:21-cv-249-RP. Today is Monday, July 13th, 2023 and the time is 9:23 a.m. This deposition is being taken remotely at the request of Hendler Flores Law, PLLC. The videographer is Nate Laningham with Magna Legal Services and the court reporter is Priscilla Glover. Will counsel please state their appearances and whom they represent?

MR. DEMIK: Stephen Demik on behalf of plaintiffs along with my paralegal Alexis Lopez present.

MR. LAIRD: Gray Laird for the City of Austin along with Priscilla Chavez.

COURT REPORTER: Also --

VIDEOGRAPHER: Whenever you're ready, ma'am.

COURT REPORTER: Okay. Just to correct

the record, today's date is July 17th, FYI.

It's okay. He's probably --

JOSEPH HETHERSHAW,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. DEMIK:

MR. DEMIK: Great. Good morning, Officer Hethershaw. I apologize again for my tardiness. Where are you located right now? In Austin, I assume?

A. Yes, sir. I'm currently located at City Hall.

Q. Okay. And you can hear me okay? If there's any problem just raise your hand or anybody else, if you can't hear me. I was having a little bit of technical difficulties on Friday.

A. Yes, sir.

Q. Thank you. Officer Hethershaw, you understand that today's deposition that we're taking that could be presented in lieu of live testimony to a judge or jury. Do you understand that?

A. Yes, sir. I do.

Q. Okay. And so it's important that you give your answers under oath the same as you would any other proceeding.

MR. DEMIK: Actually, Madam Court Reporter, have we sworn the witness? Do we need to do that?

COURT REPORTER: I just -- I did swear him in.

MR. DEMIK: Oh, you did okay. All right. Thank you. I was just looking at my notes.

Q. (By Mr. Demik) So you understand you've been sworn in as a witness, testifying under oath. So it's the same as if you would be testifying to a judge or a jury in the court room during a trial?

A. Yes.

Q. Okay. If you don't understand any of my questions, I'll just ask you to let me know that. Otherwise, I'm just going to sort of presume that you understand, you can hear me okay, you understand the question. If you answer it and, of course, if your lawyer objects that's perfectly fine. You can pause for a minute and then you can answer the question if there's an objection. Do you understand all that?

A. Yes, sir. I do.

Q. Okay. Have you given a deposition before?

A. No, sir. I have not.

Q. Okay. All right. If you have any

questions you can let, you know, your attorney or me know as well but it should be pretty straight forward. Any questions for me Officer Hethershaw, before we get started?

A. No, sir.

Q. Okay. How -- let me ask you what you did to prepare for today's deposition? What did you review and who did you speak with?

A. Oh, I reviewed my body worn camera, my supplements and I spoke with Ms. Chavez and Mr. Gray.

Q. Okay. And when you say supplements, how many -- did you write a narrative text report and then some supplements? How did that go?

A. I wrote two supplements. I did not write the initial report. I wrote one the day -- day -- a couple of days after and I think I wrote one after reviewing the body camera.

Q. Okay. When you say -- do you -- did some -- another officer write the narrative text and then you added the supplements?

A. So normally with reports someone will write a initial report, kind of an overview of what occurred. And then I write a supplement pertaining to what I did.

Q. Okay. Do you know who wrote the overview report here?

A. I wrote my supplements.

Q. Okay. But do you know who wrote the report that the supplements went to?

A. I do not know who wrote the initial report. No, sir.

Q. So body worn camera, supplements, you spoke to your attorney and Ms. Chavez. Anything else that -- that you reviewed in preparing for today's deposition?

A. No, sir.

Q. Okay. How long have you been with the police department?

A. Three and a half years now, sir.

Q. Okay. And can you walk me through that basically just sort of how you got started, academy, where you were stationed, all that?

A. Sure. I started the academy mid 2019, graduated January 31st of 2020. I worked South Central Eastern Patrol. I worked the Riverside or what's better known as the Henry District for the Austin Police Department. I have several certifications including -- I'm a part of the street response team, I'm an intoxilyzer operator, I'm a

mental health officer and that's all I can think of off the top of my head.

Q. Okay. I didn't -- I didn't just catch -- I didn't catch that second one. Street response team --

A. Special response team.

Q. I'm sorry?

A. The special response team.

Q. Special response team. And what was the second one?

A. Intoxilyzer operator.

Q. Okay. That's like a breathalyzer?

A. Correct. Yes, sir.

Q. Okay. And what was the other one?

A. Mental health officer.

Q. Mental health officer?

A. Correct.

Q. Okay. And what does that entail?

A. The mental health officer?

Q. Yes, sir.

A. We do evaluations for people who ask us. We receive a extra 40-hour class regarding mental health and we respond to mental health calls when people ask for -- especially a trained mental health officer to kinda determine if people need -- what

kind of help they need and if we need to intervene in any way.

Q. Okay. Before you went to the academy in mid 2019 what was -- what's your educational background?

A. I -- high school -- high school graduate and then I worked at Williamson County Jail for approximately a year and a half -- I believe year and a half, two years.

Q. Okay. So after high school you went and worked for the jail?

A. I worked for Lifetime Fitness as janitor for a short time and then I worked at Williamson County and then I worked for Austin Police.

Q. Okay. And at Williamson County what was your position?

A. Correctional Officer.

Q. Okay. And what facility were you -- did you work at one facility or multiple facilities?

A. I worked at -- so for Williamson County it would be the -- just the jail. There's only one.

Q. Okay. And you worked as a Correctional Officer there from when to when?

A. I believe until mid 2019 to when I transferred to the academy and then I believe I

started in 2017. I don't accurately recall that off the top of my head. It could have been --

Q. That's fine.

A. -- 2017.

Q. That's fine. And -- and -- you know, I might ask you to -- if -- if your memory is not perfect or you don't have an exact answer it's totally fine. I might ask you to sort of bracket it, if that makes sense, you know. After this year, before that year, whatever but I understand, you know, and you don't have to be exact like August 17th, you know, 2017 or whatever. Why did you become a police officer?

A. I wanted to help people and certain -- certain events that occurred. When I was a kid -- had a big impact on me watching Columbine and other stuff like that definitely had an impact. And I wanted to help people and I wanted to be one of the first people on scene to try to help people and intervene in any problems that they had.

Q. What was it about the Columbine incident that inspired you to become a police officer?

A. Well, it was -- it was really rough seeing everybody kind of sit on the outside and no one kinda going in to deal with it and there was a

policy change after that. And that was definitely something that struck -- struck something in me to where I didn't -- that I didn't want to be the one waiting outside. I wanted to be the one in there to kinda assist in the issue.

Q. Sure. Okay. So when you went to the academy in 2019 you graduated on you said January 1st 2020?

A. January 31st. Yes, sir.

Q. 31st. Okay. Sorry. And then what was your first position? Were you first stationed with the Henry group or -- or where was your first position?

A. So I went to -- like I said, I'm a mental health officer so the first week out of the academy we went to a mental health class to become mental health officers. And then after that time I went to the Henry evening shifts and I worked Henry evenings my entire career. I've never worked anything else.

Q. What is the regular evening shift generally?

A. So it -- the hours have changed over the years but it's anywhere between 1:00 p.m. and we get off normally around 2:00 a.m. Or we normally work ten-hour shifts but we start anywhere between 1:00

and 4:00 and get off normally before 2:00.

Q. Okay. So at this time if you recall, May 30th of 2020, I believe it was a Saturday, what hours were you working?

A. So if I recall correctly, it was my day off and I was called in. So I was working until they basically told me to go home.

Q. Okay. What was the last shift you worked before your day off that you were called in?

A. I worked Fri -- that -- the Friday before. So I worked Friday patrol and I was responding to calls until I got off of work. But we were held over due to the events that were unfolding.

Q. On Friday?

A. Correct.

Q. Okay. So kind of walk me through that a little bit for -- for somebody who doesn't, you know, know the hours. Does that mean you started at about mid afternoon, 1:00 to 4:00 p.m. on Friday? You worked til after midnight and you were held over on Friday?

A. Correct.

Q. Okay. And what time did you get off? I guess that would be Saturday morning. What time did you get off?

A. I cannot recall.
Q. Okay. Would it have been like --
A. Later.
Q. -- 8:00 a.m.?
A. I honestly can't -- I -- I don't have a good memory of when I got off that morning.
Q. Okay. Do you recall how many hours you were held over on Friday evening?
A. No. I know that it was past my normal shift time but I can't give you an accurate answer to how many hours.
Q. Okay. And when you were held over on Friday where were you stationed?
A. Henry. We were taking patrol calls in evenings. Calls -- calls were service 911 phones or anything like that.
Q. Okay. So you weren't stationed for protests on Friday, you were patrol officer held over. And why is that? Because they needed officers for the protests and so you were held over to do the patrols?
A. Yes, sir. To my knowledge, they needed extra bodies in Henry -- or extra -- I say bodies, extra officers to assist with the 911 phone calls because a lot of officers were getting sent to

downtown.

Q. Okay. But you weren't downtown?

A. No, sir.

Q. Okay. So if you graduated the academy May 31st, 2020 and this was May 30th, 2020, you had been a police officer for approximately three months -- three, four months?

A. January 31st. And yes, it was approximately three to four months. I believe that's accurate. Yes, sir.

Q. Okay. And -- and are you still with the police force now, I assume?

A. Yes, sir.

Q. And stationed in the same position or have you moved since then?

A. No, sir. Same shift, everything.

Q. So let's walk through the Saturday, okay? So Friday you had your shift, you were held over. I assume you went home, went to sleep. And then how does it work that you get the call on your day off to come in?

A. So from my recollection, we got paged in via our Spoke app, which is just a -- basically like a page that we were to come in. We all met at the east substation and then we were all loaded up into

patrol cars and taken down to I-35 off of H Street. I don't recall what time we were called in. However, I don't remember that.

Q. Okay. And do you know a Officer Cantu Harkless?

A. Yes, sir. I do. He works in the same sector as I do but on opposite days.

Q. Oh, okay. That's what I thought because we spoke to him on Friday. Do you recall seeing him or Saturday or were you guys in separate deployments, I guess?

A. The short answer is I don't know.

Q. Okay.

A. I call recall if I saw him that day or not.

Q. Okay. Fair enough. So you get the page, you come into the east substation and then what happens at the east substation?

A. To my best recollection, a -- I believe a supervisor of some sort in some capacity, I don't remember, I recall who; paired us up in four and we got into a patrol car and we went straight from the east substation to the 35 bridge.

Q. Okay. About what time was it?

A. I can't -- I know it was -- it was

daylight. I believe it was the afternoon but I -- I can't accurately recall. Like give you -- give you a time. I don't -- I don't know. I believe it was in the afternoon cause I had woken up and it was definitely not the morning.

Q. Fair enough. How much sleep did you get? Do you recall? A lot? A little? None?

A. I don't recall. I believe a --

Q. What was --

A. -- fair amount.

Q. Yeah. I mean, it was less than 12 hours, right?

A. I can't say that accurately. I mean, I don't -- I don't know when I was called in and I don't remember when I went to sleep.

Q. Okay. So you're put in a patrol car, four of you, you get to the -- to the interstate. Tell me what happens then.

A. We're paired up with a supervisor when we went down to 35 and we were given a directive to provide overwatch for both the protesters and the officers who were on the main steps of 35 or out of the main sub -- the main headquarters.

Q. Okay. Were you asked to clear the interstate or did that already happen?

A. That had already happened by that point, I believe. Because there were no protesters on the bridge at that point, it was just officers when I arrived.

Q. So when you arrived you and the other three individuals in the patrol car were ordered to go to overpass and provide cover for the people for the police officers below?

A. For both police officers and protesters, correct.

Q. Okay. And -- and who gave that order?

A. I cannot accurately recall a name. It's been -- been three years since the incident so I -- I honestly don't know.

Q. Sure. But was it a super -- but do you all getting the order? I mean --

A. Yes.

Q. You didn't go -- you didn't go there of your --

A. Correct.

Q. Right. You didn't go there of your own free will, right?

A. Correct. Yes, sir.

Q. So someone that was a superior to you gave an order that you and the other officers would go to

the overpass and -- right?

A. Yes, sir.

Q. And -- and you sort of purged on the overpass towards -- in towards the station. Is that fair?

A. Yes, sir.

Q. Okay. Let me stop here for a second and switch gears a little bit. Were you issued a less than lethal shotgun?

A. Yes, sir. I was.

Q. Okay. Let's walk through that. When were you first assigned the less than lethal shotgun and pick it up and check it out and all that. Can you walk us through that?

A. Sure. I was at the east substation. I don't -- they were giving at least, I believe, it was like one less lethal a car or at least they were handing them out. I received one and I went down with one to the 35 bridge.

Q. Well, what is that? Again, I don't -- I don't know. And so maybe talk to me like I'm a kindergartner. But what is a card? What is that? They hand out -- yeah. Explain that to me.

A. I mean -- I meant a car. Like they --

Q. A car. Oh, a car.

A. Right. They were just giving them to a group of people so that way a group would have them.

Q. Okay. So they gave one shotgun to each patrol car or did they chose one patrol car and give everybody shotguns?

A. I don't recall how they were specifically handing them out. I know that I received one and we only -- I believe it -- I was the one in the car that had one.

Q. Okay. And who gave it to you?

A. I can't -- I don recall.

Q. Okay. How does that normally work?

A. For a normal patrol shift we go to our police equipment and we check one out using our City issued IDs so that way they make sure who it goes to. On this day I don't remember how they were handed out. I remember I received one. I don't remember who gave it to me. It's been -- it's been a little while since that --

Q. Sure. Sure. But you didn't go in and check it out the way --

A. No, sir.

Q. -- you went on a patrol?

A. Correct.

Q. Somebody handed you it outside the

substation?

A. I can't say that accurately either. I don't remember where I received it.

Q. Okay. So we can say you -- you remember you didn't check it out but you re --

A. Right.

Q. -- somebody gave it to you. You just don't remember who gave it to you or what the circumstances were?

A. Correct. I know I -- the only issue, I don't know if I was inside the substation, outside the substation. I was in the vicinity of the substation but --

Q. That's fine. It's fine. And you know, all we're looking for is just your best recollection and the truth, that's it. I don't want you to guess at something or make something up. So did -- were you issued a less than lethal shotgun or Friday, the day before?

A. I believe I checked one out.

Q. Okay. And -- and why would you have checked it out on Friday?

A. I -- so for my shift I normally carry a less lethal. I'm the only guy who carries it normally. I just -- I carry one just to have it

available. So that way in case we run across any incidents where it may be useful that I have it available.

Q. Is there any sort of protocol like on every patrol, one guy needs a less than lethal shotgun or is it just sort of at discretion who wants to check it out? Is there some quota that, you know, you have to have a certain number of shotguns -- less lethal shotguns for each patrol? Tell me about that.

A. I'm not aware of any policies regarding any -- of a quota or anything like that. Anyone who is certified is available to check one out. So if patrol should have eight on the street, they could. If they wanted to have zero on the street, they could. I -- I normally check one out for my shift because I work in a very dangerous area and I want to make sure that I'm prepared.

Q. Sure. Okay. So let's also talk about, you said, certified, right? Are you --

A. Right.

Q. Do you have any certifications or training -- let's just go generally with firearms in general. And I know I'm going to work to the less than lethal shotgun. That's what I want to talk about but you

know, I figure I'll start out big. Are you certified or trained in firearms in your job?

A. Yes. I'm certified for what the academy and what the department requires.

Q. Okay. And -- and what does that look like for a -- let's say for a service weapon? What does that training and certification look like?

A. We qualify every year. I get a little bit more training cause I'm a part of the special response team. So we train a little bit more frequently sometimes involving firearms. So answer is we train and I qualify year with my firearm.

Q. What is train -- so the qualification is where you -- you shoot and you have accuracy tests, right, like zero to 100?

A. Correct.

Q. What does the training look like?

A. Training, it depends. I can't -- I mean, it can be anything from adjusting your grip to how you're pulling the trigger to what is your sight alignment, other things like that. I mean, training differs. Whether or not it's offered that year and whether or not staffing training is available. So I -- I just -- I don't understand your question maybe.

Q. That's fine. Let's talk about the less

than lethal shotguns. What is the training and certification that you received and for that prior to May 2020 -- May 20th, 20 -- May 30th, 2020?

A. Sure. During the academy they train you on how to use it and then we qualified with it and that's the extent of the training with it.

Q. Okay. Do you receive training in checking the service ability of the less than lethal shotguns?

A. Yes.

Q. Okay. What does that consist of?

A. Normally just doing a function chest -- function test making sure that the slide is working correctly, making sure that nothing is stuck in the barrel. Making sure the trigger works, making sure the safety works. Things of that nature to make sure that it's functioning properly.

Q. What about the actual rounds? Do you get any training on checking the rounds, seeing what condition they're in, what constitutes a good round versus an expired round?

A. That's more or less a -- I'm going to -- I'm going to say no only because to qualify if you see that there's a crack or if you see that there's a dent. They're like make sure -- they like look at

it but they don't give us specific training on being like this means this or this means this. They just say look at it, make sure there's no dents, make sure there's no cracks and stuff but I don't -- I'm not specifically trained in the functionality or necessarily the fundamentals of how it works.

Q. What are the bean bag rounds made of?

A. I -- I don't know. I -- I can't speak to the nomenclature of it. I just -- I'm not an -- I'm not an expert in it. I know it has a bean bag in it but --

Q. Okay. So you said you -- and then do you do like an annual certification accuracy test with the less than lethal shotgun?

A. Yes, sir.

Q. Okay. And how many of those have you done prior to May 30th, 2020?

A. One.

Q. And when was that approximately?

A. During the academy.

Q. At the academy. Okay. And why don't you tell us what -- what -- what that certification looks like?

A. Sure. To qualify you stand at three different lines and you fire rounds at a target and

they make sure that you're hitting accurately and so that's the qualification.

Q. What are those -- what are the distances at those three different lines?

A. I can't accurately recall off the top of my head.

Q. Are you trained that there's a -- that there's a distance that you should use or should not use the shotguns?

A. So the old rounds, I can't testify to, they changed the rounds since then. And so I know the newer rounds I know the engagement -- I know roughly the engagement distance for those but the old rounds that we were using during that time, I can't recall. I've forgotten that since then.

Q. Okay. But we -- we do want to stick with up to May 30th, 2020.

A. Right.

Q. And so you said engagement -- what did you call it? Engagement distance?

A. Just a -- yeah. I don't recall what I said but yeah, just a -- the -- the distance in which you can impact somebody. Yes.

Q. Okay. And -- and what is that distance so the -- as last you know it? I know that you said

you don't remember the earlier ones but as last you know it, what's that distance?

A. If I were to give you an answer it'd probably be for the new ones because the old ones used during the time of the protest -- and I know you want to stick to the 30th. I just -- I can't accurately recall because I'm more so refreshed on new ones so I don't want to give you an incorrect answer.

Q. Totally fine. Understandable and appreciate it. Well, what is the distance for the new ones?

A. The new one has a zero -- zero engagement so we can -- we can less lethal someone at a 0-foot. I believe the maximum range is approximately 75 feet or 25 yards. No, that may be inaccurate. I actually don't remember that off the top of my head.

Q. So prior to May 30th, 2020 did you receive training on what engagement distances? The distance which you should use the shotguns, the distance which you probably shouldn't use the shotguns?

A. Yes, sir.

Q. Okay. And -- and what was that distance?

A. Like I had -- like I had testified before, I just -- it -- I can't recall off the top of my

head for that specific round that we were using at that time. I know we have changed since then and it's been -- I -- I can't recall how long it's been since we've even used that round so...

Q. Okay. Well, the general concept, and you correct me if I'm wrong, is that at a closer distance the -- you had more accuracy, right?

A. Correct.

Q. So -- so you had stated at -- at zero feet, right? Right in front of you, you can use this less than lethal shotgun with pretty high accuracy because it's you and I just standing in front of each other, right?

A. Or the new one. Correct. I'm not aware of what the engagement distance were on the old one.

Q. Okay. And I'm not asking you the engagement distance. I understand you don't remember it but just going to the general concept and I am talking about as of May 30th, 2020. The general concept is just what I'm asking you is that the reason why those distances what they mean is that if you're at zero feet, as you had testified, where, you know, that's one distance the accuracy is high, right? Is that fair?

A. It is but the reason it's zero feet is to

make sure that it -- for other reasons for serious injury and for other stuff like that. For certain distances for close range like zero feet have more to do so, I believe, with injury than anything else.

Q. Okay. Okay. That's -- that's another aspect of it is the closer you are the more it -- injury it could cause?

A. Correct.

Q. Okay. And -- and to be sure these bean bag round can cause serious bodily injury. Would you agree?

A. They are less than lethal, they certainly can cause injury to someone. Correct.

Q. Sure. If you hit them in the wrong body part such as the eye or in some sense -- or areas of the head it could be very serious, right?

A. Yes.

Q. Okay. So there's two things and -- and thank you for bringing it up. There's -- there's accuracy and there's -- let's just call it injury or degree of injury. So the closer you are, the shorter the distance in general the higher the injury and the better the accuracy, right?

And then if I can just sort of make it two questions, and that's alright if you want to

break them up. The father out you go on the range, right, if you're firing the shotgun from, let's say, a hundred yards -- I know that I'm embellishing but I'm asking you the concept of it, then your accuracy would go down a lot, right?

A. The accuracy at distances can be harder if that is the answer to the question you asked.

Q. Yeah. I mean, I just sort of want -- somebody who doesn't understand firearms or who doesn't understand these shotguns. And certainly, I've never fired one or handled one. But I think I understand it, I'm just asking you if I'm right. That the reason why those distances are trained, right, is that you have the three lines that you fire from for your annual certification, your accuracy test, is because the farther away you get the less -- the less ability you have to pinpoint where you want to hit somebody? Is that fair?

A. Yes. It is harder at distances to impact someone. Yes.

Q. Okay. And even though you don't remember it, which is fine, there are distances that the police department says, you know, if you're within this distance -- and I'm not going to put words in your mouth cause -- so I'm not going to put a number

on it because, like you said, you don't remember. But if you're within this distance it -- it's -- it's to okay to fire, right? You're -- you're within the recommended distance.

If you're outside that distance, if you're farther away what -- what is the policy and procedure? Is it that you can fire or that you can still fire but you just need to be aware of that distance? Does -- does -- does my question make sense?

A. It does. It's more of the second one that you represented. You have to take these things into consideration -- special considerations that you have to do. So if you're at a sizable distance you have to make sure that your shot -- you take more careful and more time to accurately engage the shot.

Q. Okay. So the reason why they even have a distance or a distance of engagement or whatever it is, is because in this range you -- you should feel more confident to shoot. Outside of this range you should probably exercise more caution. Is that fair?

A. Yes, sir.

Q. Okay. How many -- have you ever discharged your service weapon? I'm not talking

about the shot guns now, I'm talking about your service weapon or -- or a -- a long rifle. How many times have you discharged that in the line of duty?

A. Zero times.

Q. Okay. How many times total today -- okay. So I got to break it up by time so I'm clear. I want to be clear in my question. July 17th, 2023, today, how many times have you discharged the shotguns, the one we're talking about?

A. The less lethal shotguns?

Q. Yes, sir.

A. I can't put an accurate number on that. Calling, training and on duty, I -- those are the times where I discharge it.

Q. Okay. More than ten? Now, I'm going to ask you to bracket it and it's okay. I'm not trying to trick you. I'm just saying would it be more than ten?

A. Yes. Actually, that's accurate.

Q. Less than 50?

A. Yes. I'd probably say that's -- yeah.

Q. Okay. So 10 to 50. Can -- can we shrink that all? To the best of your recollection, I want you to give a -- an accurate answer but understanding that you don't have a log. So you're

not going to be able to tell me 21 times or whatever.

A. Right.

Q. So I'm asking you for your best estimate. So we've got 10 to 50. Can you shrink that at all? Like 20 to 30? 20 to 40?

A. I'd say 10 to 35.

Q. Okay. Thank you. I appreciate you working with me on that and getting that concept and it's okay. I just sort of want a -- you know, a range of what we're dealing with.

Now, let me ask you the second part which is time, right. So from the time you graduated the academy January 3rd -- well, no I want to go before that. So may 30th, 2020, before that, okay. So I'm -- I'm eliminating anything that happened after May 30th, 2020. Before that how many times had you discharged or impacted someone with a -- that -- that's a good -- how many times have you impacted someone with one of these shotguns?

A. None at that point.

Q. Okay. How many times -- cause this -- it's a distinction, right? I just caught myself. How many times have you discharged one of these shotguns prior to May 30th, 2020?

A. Just during the academy, to my knowledge.

Q. Okay. Okay. And the difference there is -- especially for somebody like a jury who might see this. The difference is discharging means firing and impacting means you actually hit somebody, right? Is that fair?

A. You could -- you could say deploy. There's -- there's a myriad of different nomenclature that you could use but --

Q. Yeah. And -- and thank you for that too, you're helping me out on -- I haven't had all my coffee this morning but discharge is generally for a firearm, deployment is for a less than lethal shotgun. So deployment means I fired a less than lethal shotgun. Impact means I deploy it and it hit somebody, it impacts someone, right?

A. Yes, generally.

Q. Okay. And that's -- as long as we're on the same page and you understand what question I'm asking I think is good enough. I know that there's different law enforcement terminology and I'll just never learn it.

Okay. So prior to May 30th, 2020 you had not impacted a person, meaning you had not shot a -- one of these shotguns and hit somebody before

May 30th, 2020. Is that fair?

A. Yes, sir.

Q. Okay. So this was the first time that you had shot and hit somebody with one of these shotguns?

A. Yes, sir.

Q. Okay. Same question, just asked a little different. Okay. So now I'm going to take us back, Officer, if that's alright with you to that overpass on May 30th, 2020. When you arrived how many officers were on that overpass approximately?

A. Okay. I was about to say -- and I'll give you a bracket. Anywhere from 30 to 50, I believe.

Q. Okay. So you're -- you're -- you're getting good at it. I don't even have to bracket it, you get the concept now. This isn't so hard. So -- so 30 to 50 officers on the overpass. And how many of those 30 to 50 officers had to -- again, another estimate, right, had these shotguns?

A. I -- that, I don't know. I can't accurately say for that one because I can't brack -- I was only paying attention to what I had and kind of what I had going on but I --

Q. Sure.

A. -- I can't give a statement to what other

officers were carrying.

Q. Well, did ever officer have one of these shotguns?

A. No.

Q. Okay. Were you the only officer had one of these shotguns?

A. No.

Q. All right. So somewhere between one and -- well, and -- and -- and again, I understand. I understand you were focused on what you were doing and what you saw which is important which is why we're here. But peripherally when you're there on the overpass can you give me an approximate ratio? And nobody's -- I'm not going to, you know, mathematically hold you to this. We're not making fine wine here but was it one shotgun for every three officers? One shotgun for every ten officers? You know, can you give me a ballpark that way just so we can understand how many shotguns approximately were on the overpass?

A. And I -- I would like to give you an estimate. The -- my only issue is like I -- we weren't necessarily in groups. And I didn't -- I -- there wasn't like a -- there wasn't like a -- for every four officers there was one less lethal. It

was just kinda everyone was spread out and I wasn't entirely sure what everybody had going on. So I just -- I don't want to give an inaccurate statement or inaccurate approximation, you know.

Q. Right. That's fine. So you said you weren't in groups. Was everybody just sort of in a line on the overpass overlooking the police station?

A. That's correct. I mean, we -- we stayed close to the original supervisor we had when we came down but everyone was either huddled up talking or just kind of in a line on the bridge.

Q. Okay. And so when you're -- when you were positioned -- you're ordered to position yourself on the overpass of the highway. How long had that crowd -- and I'm talking about the crowd milling outside of the main, so the main police station. How long had that crowd been there?

A. I don't know. I mean, they -- they were there when I got there and I don't know if they were there from the night before. I'm sure people came and went but I can't give an accurate statement to that. I don't know.

Q. Okay. There had been protests in the same area the evening before?

A. Yes, sir, to my knowledge.

Q. Okay. You weren't stationed there though because you were on patrol, right?
A. Correct.
Q. Okay. You just heard about it --
A. I'm sorry. Just from other officers.
Q. Okay.
A. And kinda just looking at, you know, our computer and seeing the stuff that was going on downtown.
Q. Okay. Did you get any briefing? So you know, for example, I assume at east substation and the Henry area where you were -- where you were located if there's a -- you know, a warrant takedown or a house search or something like that, you're familiar with the concept of like a briefing. I don't know if that's what you call it but like a briefing. Does that make sense?
A. Yes, sir. It does.
Q. And that's where a supervisor, Sergeant, Lieutenant, something like that comes in assembles all the police officers, explains to them, you know, what the background is, what the mission is, what the goal is, all the information they need to know, correct?
A. Yes.

Q. Okay. In this scenario on May 30th, 2020 when you're called into work and you report to the east substation, at any point was there a briefing whether it was formerly like in a office room or whether it was in a patrol car or whether it was over radio, did you get any kind of briefing prior to showing up at the overpass?

A. Gosh, this was a long time ago. Yes. I believe so, we had an informal briefing.

Q. Okay. Can you tell us about that?

A. I believe the supervisor was on duty, said that we were going to provide overwatch on 35 bridge and that I was to be assigned to a supervisor and then we were going down to 35 and that was the informal briefing.

Q. Okay. Had you been advised or given information that there had been blockage on the interstate or the overpass and that it had been cleared?

A. I can't recall.

Q. Okay. When this information was given to yourself and other officers did they say anything about the crowd? Who was in the crowd, how long they had been there, what their behavior's been.

A. I believe the majority of the briefing

occurred on the bridge. I don't believe it necessarily occurred on the substation because everyone -- there was a rapidly evolving situation that we were kind of still all trying to figure out what necessarily was going on.

Q. Sure. And I understand that. In the -- and we're going to call it a briefing but I understand that's not what most people would have in their minds where, you know, like the TV show where the guys up at the podium and everybody is drinking coffee and getting the information. So it happens at the overpass, they're giving you information. During this time, right, when they're giving you information did anybody give any information on whose in the crowd, how long they had been there, what their behavior has been?

A. I believe once we got to the bridge we received information that they had taken the bridge at one point and that we were there to secure the bridge and make sure that no one was to be able to come back on the bridge. That the crowd had been there for -- since the morning at least. And we were tasked with providing both security to the 35 bridge as well as overwatch. Mine -- my role specifically was more overwatch than anything else.

Q. Okay. And what does overwatch mean? I -- I know that you sort of said this before but can you break that down for us? What does overwatch mean?

A. Absolutely. So overwatch is a term that we use to just kinda watch over the crowd. See what the crowd is doing. See what officers are doing. See how everyone is interacting. Pointing anything out that may be dangerous and kind of give entail as well as take any action if needed.

Q. Okay. Were you given any directive on what that action might be?

A. We were given a directive by a supervisor, I can't recall his name, that if anyone was to throw anything we believe they may cause serious injury or bodily injury to someone that we could apply our less lethal shotgun as per APD policy at the time.

Q. Okay. What is that APD policy or your understanding of it May 30th, 2020?

A. I actually quoted it in my supplement if I'm able to refer to that.

Q. Sure. I -- I have no problem with that if you want to look at your supplement, that's great.

A. It says is engaged with riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people or officers creating the risk

for injury.

Q. Okay. And so essentially -- and I'm going to put it in my own words but if it's wrong you correct me. But essentially what that is, is that's a supervisor telling the officers who have these shotguns that they have the discretion to use them if they see what you just quoted?

A. Correct. They're reminding us and giving the examples of saying like hey, you this is the policy, use officer discretion, obviously, and deploy how you see fit. Correct.

Q. And -- so in other words, let's break that down a little bit. And again, this may seem silly but I just want to paint a picture for somebody who wasn't there such as myself or a jury that's listening to this. That means, you know, if you see something you don't have to go ask for permission to fire, right?

A. Correct.

Q. You don't have to -- you don't have somebody standing behind you saying yes, you can fire; no, you can't fire?

A. Correct. We have discretion as individual officers.

Q. Each individual officer on that overpass

has discretion to fire if they see fit?

A. Correct. If they believe that someone is causing a risk of serious injury or injury to another person. Correct.

Q. Okay. And that -- and at some point you reviewed your body cam footage, right --

A. Yes, sir.

Q. Before -- before -- before the deposition?

A. Yes, sir.

Q. At some point on the overpass -- and I don't have an exact time, I don't want to give one but at some point officers were sort of working in conjunction saying, you know, go after the guy in the red shirt or using flashlights to spotlight certain individuals. Isn't that true?

A. I wouldn't say go after, that's not a terminology I would use. But we were certainly communicating and acting in a tact-able sense of being able to point out potential people who were trying to cause harm or anything like that. Yes, sir.

Q. So breaking that down, did you ever hear somebody say go after a guy in a red -- go after the good in the red shirt?

A. I can't -- I can't recall that. I don't

remember that.

Q. Okay. But you do recall that there were officers with handheld flashlights that were using them to spotlight individuals underneath the overpass?

A. I recall flashlights being used. I don't remember necessarily what for. We were using it to light up the area. It was extremely dark later on in the night.

Q. Okay. Do you recall officers using the flashlights to highlight or -- or focus attention on certain individuals that then other officers were firing at?

A. I can't -- I can't recall that for sure. I don't remember that.

Q. How many times did you deploy, right, fire your shotgun on May 30th, 2020?

A. I know in my supplement I said I deployed approximately 10 to 20 shots but I -- I -- that -- to bracket for you. That's the best bracket I can give you.

Q. So more than 10, less than 20 shots, right?

A. Correct.

Q. And so how many times did you reload on

your -- your shotgun?

A. That, I don't accurately remember. I don't remember that.

Q. Okay. How many rounds does the shotgun hold?

A. The less lethal shotguns that we use hold four plus one, so five total. So if you have one in the chamber of the gun or the less lethal shotgun and you have four that are in the two ready to use but not necessarily primed and ready to go.

Q. Okay. So five total with one in the chamber. Sorry, approximately five. We go with that. It's safe to say you had to reload at least one? Again, I'm doing elementary math but if you fired more than 10 times you had to reload at least once?

A. Yes, sir. I'd say that's accurate.

Q. Okay. And how do you do that? Tell us about reloading, what that looks like.

A. You -- normally the way I do is I turn the shotgun over and I make sure that I can see where the rounds go into. And then I load them carefully and slowly to make sure that I make sure that they load accurately and make sure that I've load a good amount and that it's not going to get jammed.

Q. And where do you get the rounds?
A. We were given a rounds at the east substation and other people on top of the bridge were also assisting us and had extra rounds available if we needed them.
Q. Okay. Did you get round -- to your recollection, did you get rounds from other people or did you just use the ones that you had say in your cargo pants or pockets or whatever?
A. I don't remember. Yeah. I don't -- I don't remember.
Q. What -- I -- I forgot to ask you this question before but approximately what time did you get off that night on Saturday? So -- right. So we're going through you're called in, in the af -- in the daylight sometime, you're deployed or -- or up at the overpass. Just fast forwarding end of shift, what time did you get off shift that night?
A. I don't -- I can't accurately recall that. I believe if I were to give you a bracket somewhere between 6: 00 and 2:00 -- 3:00 a.m. Somewhere between 6:00 and 3:00.
Q. 6:00 p.m.?
A. 6:00 a.m. and 3:00 a.m.
Q. Oh, or 3:00 p.m., right?

A. No, sir. So when -- the time where I would have gone home or -- or would have gotten off of work would have been approximately between the times of 3:00 a.m. and 6:00 a.m.

Q. Oh, okay. 3:00 and 6:00. I got you. And when you got back to the -- did you go back to the east substation?

A. That's where I was parked, so yes.

Q. Okay. And did you write your supplement when you got back to the police station?

A. I don't know. I -- no.

Q. Okay.

A. Not that day. I -- I'd written it later.

Q. Okay. What did you do when you got back to the police station?

A. I don't remember in great detail. I remember I took all my stuff off and went home. I remember I gave my less lethal back to the substation -- no, that actually -- no. That's not accuracy. I don't -- the only reason I say that is because some nights I was able to hand my less legal shotgun over to someone else and somebody gave it back to the substation. So I can't give an accurate answer for that.

Q. Okay. And so let me ask you that. So you

can hand your shotgun to another officer who maybe is coming on shift?

A. Correct. We did that occasionally.

Q. Okay. So occasionally it would happen that the shotgun just sort of passes hands rather than sort of going back into the armory being checked out -- going back in the armory and being check out -- I'm calling it an armory. I don't know what it's called. But you -- you could -- you could transfer the shotgun to another officer whose going on shift and just as long as you guys knew that that happened, right?

A. Correct. And it's up to them to do the functionality tests and to make sure that all the rounds in the account and stuff. Yes, sir.

Q. Okay. And is there any kind of log kept for that functionality test?

A. No, sir.

Q. You said you took off all your gear. So can -- can we paint that picture a little bit? What gear -- let's -- let's go to when you're at the overpass and isolate it in time so I'm being specific. But what is the gear that you have on? Can you just sort of walk us head to toe what -- what you have on your person at this time on the

overpass?

A. I was wearing my department issued vest or my department issued gear. So a taser, department issued pistol, magazines, a baton. I believe I was wearing a ballistic helmet and a face shield as well. And that's all I can recall right now.

Q. And you were wearing -- you were wearing pants, right?

A. Correct. I'm wearing my department issued -- I'm wearing my uniform as well.

Q. Okay. And is that where you -- I don't know. I'm asking but is that where you kept your rounds in the cargo -- you know, these pants have cargo pockets, right?

A. Uh-huh.

Q. And a lot of officers keep their rounds in their cargo pockets?

A. I -- I -- I can't remember where I put mine on that specific day. I just don't remember.

Q. Okay. Well, that's a place that you and other officers can put your rounds, right?

A. Sure. Officers can keep them there. Yeah.

Q. Okay. And then that's -- that's the uniform and the equipment that you had on your

person your entire shift?

A. To the best of my knowledge, yes, sir.

Q. Sure. You mentioned the tactable helmet. When you deployed or fired your shotgun say -- I'm using the same terms but, you know, deployed the shotgun, did you have your helmet or mask on?

A. I had my helmet on, I did not have my face shield down.

Q. So you can wear the face shield up or you can wear it down, correct?

A. Correct.

Q. Okay. Did you ever have it down that this shift -- this shift, May 30th, 2020?

A. I can't -- I don't remember.

Q. Okay.

A. I mean --

Q. Did you -- go ahead.

A. It's feasible that I did but I don't remember whether or not I did.

Q. Okay. Did you ever have the -- the mask down when you fired the shotgun?

A. I don't recall off the top of my head. I don't think so.

Q. Okay. Have you ever -- this is a silly -- this is going to seem like a silly question but I'm

asking out of curiosity. Have you ever been hit by a less than lethal shotgun -- impacted?

A. No, sir.

Q. Do you receive any training on medical injuries that could result from a impact from one of these shotguns?

A. Yes, sir. I believe there is a PowerPoint they show that it could -- it shows that it can cause serious bruises and other things like that.

Q. Okay. And when did you view that PowerPoint?

A. The academy.

Q. And can you convey the general information that you learned from that PowerPoint?

A. That specific PowerPoint?

Q. Any -- any PowerPoint on this topic?

A. Just any training I've received on less lethal in general?

Q. Yes.

A. Okay. I mean, it -- it's a less than lethal means. It can cause injury to people. You want to try to hit them in the legs area or the bottom part. And you want to stay away from the torso as much as you can but it's -- you don't have to and you definitely want to stay away from their

head up so...

Q. And why is that?

A. Because it could -- it could cause them serious injury if you hit them in the head.

Q. Okay. Did you learn about the injuries that it could cause?

A. Yes. I believe that. I can't --

Q. Okay.

A. Generally, yes.

Q. Okay. And what are some of those injuries?

A. I can't -- I know their -- it could cause serious injury. I can't -- I'm not a doctor. I just know that it could cause like serious injury to someone if you hit them in the head.

Q. Sure. Well, I -- I just sort of want to ask you -- I know you're not a doctor but, you know, what training you received or in the time -- in your time at the police department what information you'd been given on what kinds of injuries can result from someone being shot with these shotguns? So do you have any concept of what kinds of injuries can be caused?

A. Sure. I mean, conceptually like large bruises. I mean, it could cause I'm sure -- you

know, it could cause serious injury. I'm sure it could crack a bone. I mean, I -- it -- it -- it's very -- it depends but it could cause serious injury.

Q. Okay. And could that include nonphysical injuries? You said you had a specialization in mental health, right? Could that cause psychological injury?

MR. LAIRD: Object -- object to the form but you can answer.

A. Okay. Yeah. I'm -- I'm -- I'm a mental health officer, I'm by far from a -- a phycologist or anything but I'm sure that -- I'm sure that, you know, just like anything a sound or, you know, anything like that would certainly cause someone some emotional distress if getting -- feeling pain. Yes.

Q. Or being shot, right?

A. After being impacted.

Q. Yeah. And again, being impacted is being shot with one of these shotguns, right?

A. Is being hit with less lethal ammunition.

Q. I think you answered this but you don't have any military experience, right? You -- you --

A. No.

Q. -- went from high school -- high school, correctional officer, police officer, right --

A. Correct.

Q. -- generally? Okay. Okay. So how many -- let's -- let's come back to 10 to 20 deployments of your shotgun on May 30th, 2020. Just trying to narrow us down, we're on the same page. How many individuals in those 10 to 20 shots did you impact?

A. In my supplement I said approximately 5 to 7. Yeah. It -- it's a range just like, you know, less lethal rounds were. I mean, it was rapidly evolving in, you know, a chaotic situation so...

Q. What do you mean by chaotic situation? Can you paint that a little bit more for us?

A. Sure. So we were -- I was personally struck by a water bottle. We had lots of, you know, protesters or fire works going off behind me. I heard mal-tops being made. I heard rocks being thrown. I saw bottles rocks being thrown. I saw bottles being thrown. People were quite upset and angry and it was just -- it was a very chaotic and rapidly evolving situation. It changed from minute to minute.

Q. So you were -- what -- what were you impacted with specifically? What made physical

contact with you? Let -- and -- and let me -- Officer if it's alright, let me further sort of slice down the time, if that's all right. So let's go from the time that you impacted the individuals below, okay? And -- let -- let me back up. Let me back up. Do you specifically recall impacting Tyree Talley?

A. I -- I don't recall names. I never really got names for who was who.

Q. Okay. Do you specifically recall impacting two deaf individuals -- one or two deaf individuals?

A. I -- I never got a chance to speak with anybody that I got impacted so -- or that I impacted.

Q. All right. So after you -- you impacted these people you never had a conversation with them?

A. No, sir. I was not able to do -- do crowd size, hostility in the events going on.

Q. Okay. Okay. So now what -- what I'm trying to do is get the timeframe. So from the time that you discharged or deployed -- deployed the shotgun, right, on May 30th, 2020 -- and I keep repeating that date cause I just want to be specific. So everything before that, right, so not

after that but everything before that, what are the objects that -- that were thrown by the crowd that made physical contact with your person?

A. I was hit in the groin by a water bottle during a effort to supplement people that -- who were under the bridge.

Q. How did that happen?

A. So officers were deployed under the bridge to, I believe, attend to somebody. I don't know the exact circumstances. The crowd was gathering around them and being increasingly hostile. They were getting things thrown at them. So at that time we moved down from the bridge from the -- I guess the northern part where that hill is. We came down, we came around and we observed a large crowd surrounding the officers. Luckily the officers were able to get out and move. And as we were standing there objects that we could only see for a fraction of a second began to be hurled at us and other officers and that's when I was in the groin by the water bottle.

And at that time I did not deploy my less lethal. We were quick to back out to the safety of the steps to avoid any further hostile action taken against officers to avoid any body

injury or serious body injury from the things being thrown.

Q. Okay. Were you impacted by any other objects to your person?

A. No, sir.

Q. Okay. And so for -- as a police officer being impacted with a water bottle is -- is a serious thing, right? I mean, that puts you on high alert, right?

A. Well, it -- it certainly hurt. I mean, it was -- it was to my groin area and that hurt --

Q. Right.

A. -- a lot -- enough.

Q. Sure. So the -- when the water bottle -- did you see who threw the water bottle?

A. No. So it was a -- it was a very dense crowd. I couldn't see anything and I -- I saw the water bottle only as it was like two or three feet from me and then I felt the impact.

Q. Okay. Did you -- I think you already answered this but I want to be clear. Did you fire your shotgun in response to that?

A. No. I -- I had no one to identify and I couldn't accurately or safely make a shot for anyone who was throwing anything so I decided against it.

Q. Okay. And -- and the reason for that is -- and I'm not putting words in your mouth, you correct me if I'm wrong. But when you discharged these -- when you deploy -- when you fire these shotguns you want to have a specific individual that -- that you're aiming at and that you intend to impact, fair?

A. Yes. But more so I want to have a reason, right. Like if I saw someone throw something and I could accurately and safely deploy it to prevent that person from causing further body injury or serious bodily injury to another person, I would have done so. But had -- because there was not a safe opportunity and I could not accurately identify anyone I chose not to.

Q. Right. You want to accurately identify an individual before you fire your shotgun at them?

A. Correct.

Q. You don't -- is that right?

A. Correct.

Q. What I'm saying is you -- you don't -- the purpose of these shotguns and it's counter intuitive for some people I think that, you know, hunts but you don't fire these shotguns into a crowd? You don't -- correct?

A. You can fire them at specific individuals if you can do so safely in a crowd environment, right? Like if there's a group of people standing around, right, it's discretionary. So if there's a group of people and they're all close to each other, no, it may not be safe to accurately do it. But if someone is by themselves in an open area and you can feel you can accurately make the shot you can absolutely do it.

Q. Okay. And -- and that's what you're supposed to do. You're supposed to identify one individual and impact them not just fire into a crowd to disperse the crowd?

A. Correct.

Q. Okay. So when you were at the overpass, right, as opposed to sort of underneath the overpass -- when you were at the overpass were you -- were you hit with anything? Were people -- in your estimation were people throwing water bottles at the officers at the overpass?

A. Yes. So personally I had a water bottle fly past my face and I had the -- I observed rocks being like -- landed behind us on the roadway. I observed fireworks and other things going off behind me and very close to me. Enough to make me jump or

almost had to go toward the edge because of how close it was to me because traffic -- traffic was behind us and it was definitely a rapidly evolving situation.

Q. Okay. And so you felt under threat at the overpass by the -- the protesters and the people assembling in front of the police station?

A. I felt a threat from the agitators and people who were throwing stuff but not from the majority. No.

Q. Okay. How do you tell the difference -- and I asked -- I've asked this question before. But how do you tell the difference between an agitator and a protester?

A. Normally by them throwing things or engaging in illegal activity versus someone who is just there peacefully protesting.

Q. Okay. And what do they look like? Is there -- is there a difference in -- in the way they look?

A. No. I mean, it's just someone whose engaging in the illegal behavior of trying to cause, you know, injury to an officer by throwing things I would say is an agitator.

Q. Okay. So you can't tell who an agitator

is by looking at them, you -- you can tell by watch -- witnessing their actions?

A. Correct. I'd say that's accurate.

Q. Okay. And you know, coming back to -- to May 30th, 2020, what if somebody tells you that somebody is an agitator what do -- what do you do in that situation? Do you -- do you shoot them with a shotgun or do you know?

A. Well, it's -- it totally depends on the situation. There's a lot of factors that would have to go into doing something like that.

Q. Okay. Well, we can be more specific.

A. Okay.

Q. But if you're up on the overpass and someone says hit that guy or impact that guy, he's an agitator, what do you do?

A. Well, it's up to my personal discretion. So I would have to view the offense, right. Just because someone is telling me to watch someone or do something like that doesn't mean I'm going to, right. I personally have to believe that that person would -- is -- is causing or going to cause body injury -- serious body injury to somebody. Just because someone tells me to do something I'm not going to do it.

Q. Well, in a rapidly evolving situation and chaos, is -- is your words, if another officer says hey, impact that guy. Are you going to stop and say well, give me the reasons why or are you going to fire?

A. I'm going to observe that individual's behavior. So if they're like that gentleman over there he, you know, threw a -- or you know, he did something. I'm going to observe that person and make a determination based off their behavior from my own individual experiences and training to determine what action needs to be taken next.

Q. Well, let's be honest, they're not referring to the people beneath the overpass on May 30th as gentlemen, are they?

MR. LAIRD: Objection, form.

A. Normally they would -- as -- they would say that person or that protester or something like that. Yes.

Q. (By Mr. Demik) Okay. So yes. And I do want to sort of drill down and I'm just asking for your opinion, right. This is a hypothetical. Let's be clear, this is a hypothetical. But I'm asking, you know, in this realm of officer discretion and I'm really just trying to be fair and give you the

question. I want to ask you which is in this realm of officer discretion -- what I'm really asking you is are there instances in which you would not observe, okay. So not personally observe the throwing of a water bottle, not personally observe the throwing of a rock, not personally observe the throwing of a firework, et cetera, are there instances that another officer would tell you something they saw and you would fire your shotgun at that person?

A. So --

MR. LAIRD: Object to the form, but you can answer.

A. I can only attest to what I would do, other officers, I can't speak for them. But personally I would have to observe behavior and I would have to -- because at the end of the day, I'm the one who has to justify it. So I'm only going to do what I know I can justifiably do.

Q. (By Mr. Demik) Okay. So you would ask that officer to give you specific details before you fired your shotgun?

A. If time allowed but in this situation that's not necessarily the case and that's not something that I would do.

Q. Okay. Well, that's -- that's -- we're -- -- we're -- you know, rapidly evolving situation and chaos, let's -- let's account for that, right. It's just a rapidly -- I want to take the assessment that you had, it's rapidly evolving and it's chaotic. If an officer were to tell you to impact someone and you didn't personally observe what they did, how would you deal with that?

MR. LAIRD: Object to the form, but you can answer?

A. I would -- like I said before, I would make my own personal decisions, my own personal judgment and further observe that person's behavior and further try to assess what was going on because I can only do whatever I can justifiably do.

Q. (By Mr. Demik) Okay. And you would assess and observe before you fired?

A. Correct.

Q. On May 30th, 2020, okay, in the 10 to 20 times that you fired the shotgun, in every one of those instances did you observe the individual that you aimed at be an agitator?

A. I observed aggressive or what could have -- possibly be deadly resistance to officers or peaceful protesters prior to deploying my less

lethal. Yes.

Q. Okay. So -- so before you fired your shotgun you personally observed behavior yourself before firing the shotgun at that person?

A. Correct.

Q. Okay. Were there any instances on May 30th, 2020 in the 10 to 20 times that you fired the shotgun that you fired it at someone where you did not observe them personally but you had been given information that that person was an agitator or engaging in agitating behavior?

A. Each person I observed was engaged in activity that I believed could cause body injury or serious body injury to a person. Yes.

Q. Okay. Now, on the overpass looking down on -- at the crowd in front of the station -- the police station there were limits to the visibility that you and your fellow officers had from the overpass, right?

A. It was certain -- we were certainly -- yes.

Q. Yeah. I mean, it -- well, yeah. I mean, you couldn't see behind the police station?

A. Correct.

Q. And you couldn't see underneath the

overpass because you're -- you're on the overpass, right?

A. Yes, sir.

Q. Okay. And so individuals directly beneath you -- directly beneath you, not on your line of vision but individuals directly beneath you, you couldn't personally observe what those individuals were doing, right?

A. Correct.

Q. Okay. So at the time -- were you getting any information from any other officers on what was happening below you?

A. I believe people from the steps were perhaps calling out agitators who were retreating under the overpass.

Q. Okay. And how were you getting that information?

A. Via my department issued radio.

Q. So police officers -- and breaking that down, police officers who were at that line -- there was a line of police officers in front of the police station, right?

A. Yes, sir.

Q. And those police officers had radios, right?

A. Yes, sir.
Q. They also had shotguns, right?
A. I believe so. Yes.
Q. And -- and they were radi -- they were in radio communication with the officers on the overpass, right?
A. Yes, sir.
Q. So were they giving information to you officers at the overpass on things that were happening beneath you that you couldn't see?
A. Yes, sir.
Q. Why were they giving you that information?
A. Mostly for officer safety and stuff like that, right. Like if -- if someone is a known agitator or they seen someone whose thrown something two or three times, we want to be made aware of that person to observe them and personally see what they're -- what they have going on or to make sure, you know, that mainly for officer safety purposes more than anything.
Q. Okay.
MR. LAIRD: Hey Stephen it's been -- looks like we've been going about an hour and twenty minutes. Could we take maybe a five-minute restroom break?

MR. DEMIK: Absolutely. Thank you. And again, I'm really sorry I held people up this morning, that's not my MO.

MR. LAIRD: Oh, no problem at all.

MR. DEMIK: Five minutes will be great. Is that all right, Officer?

THE WITNESS: Yes, sir.

MR. DEMIK: Okay. How about -- I've got 9:41 mountain. What is it central right now?

VIDEOGRAPHER: 10:41.

MR. DEMIK: Okay. 10:46, does that work for everybody? Does that work for you, Gray?

MR. LAIRD: Yeah. That's fine.

MR. DEMIK: Okay. Great. We'll take a five-minute break then.

VIDEOGRAPHER: All right. We are off the video record at 10:41 a.m.

(Break taken.)

VIDEOGRAPHER: We are back on the video record, the time is 10:48 a.m.

MR. DEMIK: Officer, I -- I should have mentioned that. You seem like a very polite guy. If you need a break you're -- you're absolutely welcome to ask for a restroom break or -- or whatever you need if you want. I

don’t want you to have feel -- you know, you got to slug through. So if you need a break feel free to tell us too. Thanks for that, Gray.

Q. (By Mr. Demik) And that actually raised a question in my head. So what did you do on this shift at the overpass on May 30th, 2020. Again, you hear me repeat that a lot just cause I want to be specific. But what would you and other officers do when you needed to use the restroom?

A. Normally you go in pairs and you would go down the side of 35, walk across to what we call 250 or where the people fix our vehicles, and there was a restroom available in there that we would use.

Q. Oh, okay. And was that just sort of an ad hoc like, I got to go, you go in a pair or was that on some kind of ration? Did you get a break or any relief?

A. I don’t -- I can’t accurately remember if we got a break. I can remember that if you needed to use the restroom you went to whoever you were with in the patrol car. And you were like hey, I’m taking so and so and we’re going to the bathroom. Like okay, when you would just go to the restroom if you needed to.

Q. And so when you were hit in the groin with the water battle did you receive any medical treatment at the end of your shift or any time afterward for events on this day?

A. No, sir. No form of medical care.

Q. Okay. Any bruises?

A. Not to my recollection.

Q. Okay. Okay. Did you -- at the time that you were called in on Saturday, on the -- on the 30th did you have information about other cities -- and let me be specific. Did you have any information or knowledge of the Minneapolis Police Station being torched?

A. That specific, I -- I can't remember.

Q. Any information the police stations had been -- I don't know what the word is, overrun or vandalized?

A. I recall protests breaking out. I can't accurately say whether or not -- what news I had heard or anything like that.

Q. Was there any kind of elevated -- what's the word I'm looking for? Elevated awareness, I guess; that's not the right word. But any kind of elevated awareness because these people, the protesters, were assembling and milling around the

front of the main police station, did that have any significance for you -- for you as a police officer?

A. I mean, not in the sense of -- I mean, we just wanted to make sure that -- you know, there's important documents, there's victims information, there's important cases that are inside the building so I mean more so --

Q. And weapons -- and there's weapons in there too, right?

A. I'm not out of the main substation so I -- I would venture to guess yes, but I don't -- I wouldn't know where those are kept or anything like that.

Q. Are there weapons in the east substation?

A. Yes.

Q. So you -- you're -- you can say no if you're not aware but the main sub -- the main station -- the main police station in Austin also has weapons, doesn't it?

A. Yes, sir.

Q. Okay. How long -- and I know you're going to have to give me an approximation cause this was three years ago, but how long were you at that overpass? And I'm going to include, let's say, you took a restroom break and went and came back. So I

don't want you to break it down that minutely. But you know, how long were you at that overpass approximately if you could put it in a estimate of hours?

A. So if I -- if I have to estimate I would say more or less, 12 hours.

Q. Well, on the overpass?

A. Once I -- once I was there we -- we didn't -- well, I mean, we had -- we were there pretty much -- pretty much all night I mean until we were relieved to go home. So it really -- because it's an estimate I would have to venture to guess 12 hours but I never -- for the most part with very short pauses --

Q. Sure.

A. -- was on there all night.

Q. And -- and the majority of that time you're standing at the overpass looking below you?

A. Correct.

Q. Okay. Now, when you wrote your supplement when did you write that? I mean, you can look at it if you need to but --

A. Yeah.

Q. -- if you want to go off memory that's fine too, however you prefer.

A. Looks -- the first one was June 2nd, 2020 of -- looks like at 10:43.

Q. That was when you wrote the supplement?

A. I -- I think so. It says -- that's what it says on the related date.

Q. Okay. And did you write a narrative?

A. Yes, I did.

Q. Okay. Could you read that narrative for me.

A. Sure. Out loud? On May 30th of 2020, I Officer Hethershaw, Number 9073, responded to a mobile field force response downtown to the main headquarters on East 8th Street. When I arrived I was tasked with holding the South IH-35 bridge southbound over 8th Street, which is actually -- yeah. No. It was southbound. I was given a less legal shotgun and was providing overwatch for the units below. I moved down to help maintain an overwatch. I moved down the bridge to help maintain overwatch. When I put in stars, I put R to R, which means response to resistance and further stars just to make everything aware.

But per policy I knew at the time, went to deploy less lethal shotgun on a subject in which I quoted AP policy stating is engaged in

riotous behavior. Was throwing rocks, bottles or other dangerous projectiles at people and or officers creating a risk for injury. Thus during my time providing overwatch I fired at approximately five -- I fired at approximately five to seven people. These people were throwing rocks, water bottles and other projectiles at officers at the AP main.

I deployed between approximately 10 to 20 shots. One particular time I can recall when I was directed by a supervisor on scene to get protesters off of a car that was in the middle of an intersection. The protesters were hostile toward the vehicle. I deployed my less lethal multiple times. And I put in stars again, end of -- I have response to resistance or R to R, stars and I put no other information and my initials.

Q. Okay. Thank you. I want to break that down a little bit. Can you tell me -- and now I'm not -- now I'm not going off the report. I'm asking you about your recollection and your sort of personal knowledge. What happened with the car?

A. So from the car -- the car was in the intersection. We weren't really sure why it was there or what it was doing but eventually a

supervisor did come over and say hey, get those guys off the car and he's referring to the people who were surrounding the car.

Well, I observed multiple people, they were banging, they were obviously agitated. They were raising their fists, they looked like they were extremely agitated. It looked to me like they may try to extricate the person from the vehicle or they may try to cause that person severe injury. So I deployed my less lethal a couple of times to try to get the people away from that car so we could get that car safely out of the intersection to make sure the driver and other -- anyone else around it could not cause further injury -- or be injured, I'm sorry.

Q. Okay. Was this -- where was this intersection specifically?

A. That was east 8th Street and IH-35 service road southbound.

Q. Okay. So it was off the highway?

A. Correct. It was on the service road in the middle of the intersection.

Q. Okay. And did you fire your shotgun from the overpass or were you down on the -- what did you call it?

A. The --
Q. Service road. Yeah.
A. No, sir. I was on the overpass.
Q. Okay. And -- and what color was that vehicle or that car?
A. Watching my body camera, I believe it was silver.
Q. Okay. I'm -- I'm -- I'm just trying to get in my head -- were you aware or did you observe a car come down in -- in front of the police station and have someone removed from that car and have the car driven off? Do you recall that?
A. That specific of circumstances, no. I remember a car being in the intersection, multiple people trying to get the person and extricate them from the vehicle and many -- many hostile acts were observed and I deployed my less lethal multiple times. And from that on I don't necessarily remember what happened to the car or who drove the car off or anything like that.
Q. Okay. Well, when you -- I -- again, I just don't know the streets of Austin that well. But was this in front of the police station? Did -- I want to ask you about where you fired your less than lethal, right.

A. Uh-huh.
Q. So was this in front of the police station or was this up on an over -- a exit ramp?
A. No.
Q. Or -- or --
A. It was in the middle of an intersection. So right there like literally in the middle of the intersection the car was. And the car was facing southbound and protestors were interacting with the vehicle initially and it was on the service road and I was up on the overpass.
Q. And so were you the only person to fire your shotgun or did other officers fire as well?
A. I don't remember.
Q. Okay. And what happened after you fired your shotgun?
A. The protesters dispersed and officers were able to get the vehicle out from the situation and mover it along.
Q. All right. What happened to the driver of the vehicle?
A. I'm not aware of what happened to the driver of the vehicle.
Q. When you say officers were able to get the vehicle, what does that look like? Can you -- can

you --

A. From what I observed and my body camera, they just -- they like -- almost like created a space for it to drive out. And that's pretty much what I remember is officers eventually went out there and they got the car out of the situation. I'm not aware of their tactics or whatever they used, excuse me, but they eventually got the car out of the intersection.

Q. The officers drove the car out of the intersection?

A. I'm not aware if they drove the car out of the intersection or not.

Q. Okay. Did you observe who drove the car?

A. No.

Q. So that's -- and the star, star, R to R's, use of force, that's a code that you put in when you -- is that the firing of the shotgun or that's just a general use of force code? What is that?

A. So I use that in my reports. Different officers use different things. I use that for -- we have a team of people who reviews our responses to resistance. And so kind to the reports -- so that way I can point out to them like hey, this is the most important part that you need to read because

this is where I'm using force. And this is where I kind of explain everything.

Q. So when you wrote your supplement on June 2nd of 2020 you wrote that based on your best recollection of the events, right?

A. Correct. At that time we weren't sure how we were reporting this because nothing like this from what I asked around had ever occurred before. So everybody was just kind of at a loss. Nobody necessarily did so everybody -- we just kinda wrote a belief overview of what occurred so that way we can kinda, you know, at least say something so...

Q. What were you told? I mean, that -- that -- can you say some more about that? What were you told about writing the reports in relation to this specific event?

A. We were just told to -- I mean, you write -- you write what you did, right. But it was a -- it was a long day.

Q. What do you mean by that?

A. It was just -- it was 12 hours. I mean, from start to finish it was a very long day. Normally we work 10 so I mean, working the extra two hours in -- on your day off can certainly cause for a long day.

Q. So when -- you were up till the wee hours of the morning the same day working, right?
A. Sure.
Q. And so when you wrote your supplement on June 2nd, the best of your recollection was that you had -- you had impacted or shot five to seven people, correct?
A. Correct.
Q. And 10 to 20 shots?
A. Correct.
Q. Okay. And did you document the specific use of force -- and again, I know the answer so I'm just trying to frame what I want to ask you but --
A. Sure.
Q. -- I'll ask it to you in a leading way. You didn't put a specific -- or did you? Let me ask you that. Did you put a specific detail for each individual that you had impacted?
So for example -- giving example just so I can be clear. Individual one, this is what they were doing specifically, this is what they were wearing. This is the time and the date and the moment that I made the decision to fire. Did you keep that for those five to seven individuals?
A. Not in my first supplement. My second

supplement, I kind of did that but in the first one --

Q. Okay. And when you say kind of did that, what does that mean?

A. It means I did reference specific individuals and specific actions that I impacted. I did not give any -- I don't believe I gave -- if you -- if you would allow me to read this real quick so I can accurately say it.

Q. Sure.

A. Okay.

Q. Actually, you know what? For the record, Gray, I don't know if you want to jump in. But Officer Hethershaw -- and I have no problem with you looking at it, that's not the issue. But to be clear for the record, there's usually a number in the lower right-hand corner called a Bates Number.

Could you just state that Bates Number on the record so, you know, if somebody wants to say well, what was he looking at, we have the Bates Number?

A. Sure.

THE WITNESS: Is that fine? Okay.

MR. LAIRD: Yeah. That's fine.

A. It'll be -- the second supplement I'm

referencing is COA2479.

Q. (By Mr. Demik) Is it -- it's more than one page?

A. No.

Q. Okay. And -- and we're just being lawyers about that, you just got to put it in the record. So looking at COA2479. Go ahead. Please go ahead.

A. Okay. To my knowledge and from this report, it looks like I only reference people as a subject and I did not use any further description such as shirt collars or anything else like that.

Q. And that's fine. I understand. Did you remember those things at the time? And I'm -- let me ask you that way. On June 2nd, okay, did you -- did you recall specifically any or all of the five to seven individuals that you had -- that you had hit?

A. I mean, I don't understand the question. Like what do you -- what do you mean?

Q. Sure. So on June 2nd you -- in your memory -- I'm asking you what was in your memory on June 2nd when you wrote the supplement, right? Cause now it's been three years. But on June 2nd did you remember each individual that you had shot or impacted? Did you -- did you have a specific

recollection of what they were wearing, what the circumstances were, et cetera? Or some of them, right, maybe some but not all.

A. Some of them. I mean, I -- I can't accurately say that I remember, you know, every thing. That's why I kinda wrote the second one to kinda make sure that I'm still in stone. Like hey, like this is everything that occurred and why I gave approximations was I wanted to be as accurate as I could and as transparent as I could to try to give them the best and accurate answer that I could.

Q. Okay. And -- and what you wrote was subject. You didn't write any identifiers, right?

A. No, sir.

Q. Okay. But here's what I guess I'm asking you and I'm not saying you did anything wrong I'm -- at all I'm just saying that -- did you have that information and you just chose to put subject or did you put subject because you weren't necessarily clear on the exact details?

So let me, again, give you an example, maybe I can sort of clarify with an example. Subject number two, that guy was wearing a white shirt and shorts and, you know, red sneakers. But -- but I'm going to put subject because I have

to list all the times that I -- that I used force, right. That's one example. The other is like, you know, I can't really recall what that person was wearing but I do recall using force, you know, the code and so I'm going to put subject. Does -- does that make sense to you?

A. Yes. The second description is more accurate. It's more -- more -- more along the lines of like there was a lot like rapidly evolving circumstances and stuff so you would deploy. And then after that factor scanning and making sure like after I deployed my less lethal, you know, a water bottle came flying passed my head. You know, you're having to scan, you're having to evaluate constantly.

Q. That term rapidly evolving circumstances or rapidly evolving situation, was that discussed at any point on May 30th, 2020? What I mean is, did any supervisor maybe during the briefing at the overpass or sharing information, was that addressed by any superiors to you?

A. Like the specific terminology or just the events?

Q. The concept. This is a rapidly evolving situation, you got to use your discretion, you got

to be flexible. That -- that's sort of what I'm asking you. Was there a conversation to that effect?

A. I'm sorry. I just don't know if I understand the question completely.

Q. Yeah. And -- and I'm trying. You know, at this point the -- I think you said a superior. I don't know if you remember who it was. But they're up on the overpass with the officers, you with me?

A. Uh-huh.

Q. And they said, you know, here's your -- here's your parameters, right. If you see somebody engaged in riotous behavior you have discretion to shoot your shotgun, right?

A. Right.

Q. So there was some information being given to the officers up on the overpass, right? Was -- was there any discussion or information about this being a rapidly evolving situation?

A. I think contextually just because they had taken over 35 and they were -- things were being thrown and people were coming and going, yes, but that specific terminology was never used.

Q. Were there any helicopters that were -- that were there?

A. I don't remember.

Q. Is that something that you've seen in the past that the police department has the ability to use helicopters to observe crowds?

A. Absolutely. I mean, Air 1. We have our Air 1 asset that is used from time to time.

Q. And were there any -- I'm going to use the word spotters if -- if that's more clear. I can -- were there any spotters -- besides the officers at the overpass, the officers in front of police station, were there any spotters? Exam -- for example, police officer at the top of a building, a police officer observing from one of the floors of the building giving any -- any information? Were there any spotters?

A. That, I cannot accurately remember. Just -- only because we were getting information but I'm not entirely sure where it's from. You know, it's a -- a random call sign that I don't know who they are saying something or something. So I -- that, I don't know.

Q. You don't know where the information was coming from but you -- you took whatever is on the police radio's information that's being given to you at the overpass.

A. Correct.

Q. Okay. So I'm almost done here but let me ask you about the -- sort of the effect. And I don't mean the injury that we talked about before but I mean the effect of -- of firing one of these shotguns and hitting somebody with a less than lethal round, okay.

In general in your experience -- training and experience, times that you've deployed, et cetera, that's to push the person back, right? I mean, when you impact them with a -- with a less than lethal shotgun the idea is to push them away, right?

A. No. I believe that the idea of the less lethal shotgun is to deter any further behavior, right. Like it's to stop the individual from committing serious bodily injury or body injury to another person from their actions.

Q. And how do you deter with the shotgun?

A. You deploy it in the sense of if you see something about to happen or happening you can deploy it and you impact them -- the lower half of the region with a less lethal ammunition.

Q. And -- and I think what you're saying then is that you use pain as a compliance technique?

A. In -- in the general sense -- in the -- in laymen's terms, yes.

Q. Okay. Well, I mean, I just -- and now, I'm going to ask you a hypothetical, okay? Just cause I want to get the concept. So I'm not saying May 30th, 2020. I'm saying -- let's say there's an individual whose 25 -- 20 yards, let's put him 20 yards, okay, in front of you throwing a water bottle, okay. If you -- and it's just you and him, let's just limit it. So I know there's a lot of other variables.

But if you -- if you shoot -- you're here, the individual is here, you impact them with a round. You shoot them with shotgun, right. How does that -- what -- and the -- I'm going to -- I'm going to say it, you correct me. That has two purposes, one is to impact the individual, hit them with a bean bag round so that they flee and they stop the behavior that they're engaged in. Or two is, it hits them, it inflicts pain and because it inflicts pain it deters them from continuing to engage in the agitating behavior that they're engaged in. That's a lot of words so you please clarify.

MR. LAIRD: Object to the form, but you

can answer.

A. I believe more so the -- the less lethal shotgun -- and again, I am by far not an expert and nor someone who trains or trains other people. I do not train other people in the use of the less lethal. But from my training and experience it's used to stop an individual's behavior that can cause serious bodily injury or death.

Q. And -- and I guess that's what I'm -- what I'm drilling down. How does it stop them?

A. Again, by no means am I an expert on the less lethal. It -- by impacting somebody with a less lethal means you're using it to -- in a -- in a very, very general sense to stop it from happening. So whether that means that they get hit it and they're like oh, man, I don't want to like do it cause like I -- like it knocked my balance off or, you know, it is -- it hurts. It's trying to stop the activity from occurring.

Q. Okay. All right. Well -- well, one way to stop it is the -- handcuffs are one means to limit somebody's mobility so they can't engage in riotous behavior, right?

A. I -- in a very -- I'm not going to be able to go down there and handcuff a protester in the

middle of a riot.

Q. Absolutely. Absolutely. I'm not talking about May 20th. This is a time that I'm jumping off May 20th, 2020. Just in your training and experience as a police officer with the police department, I'm just asking you about the general means to get someone to stop, okay, engaging in -- in threatening or risk of threat behavior. Are you with me?

A. Okay. Yes, sir.

Q. All right. So one way is you can physically restrain them, right?

A. Yes, sir.

Q. You can -- you can put handcuffs on them, right?

A. To -- to stop like violent behavior?

Q. Yeah.

A. Sure. Yes.

Q. Or prevent a risk, right, if they're some --

A. I mean, putting handcuffs on someone is not a use of force by any means.

Q. Okay. You can use batons, you can use tasers. You know, you have the use of force continuum, right?

A. We do have a use of force continuum. Yes.

Q. And -- and those are things that you can do to stop an individual from engaging in this agitating behavior that we're talking about, right?

A. There's -- there's a lot of things that you can use.

Q. Right. And -- and again, I'm not saying that, you know, you -- I'm not saying you come down from the overpass and you handcuff somebody. That's not what I'm saying. I'm just sort of -- I -- I'm trying to understand how shooting somebody with a shotgun would stop their behavior. And I think I know the answer but I -- I'm not a police officer. You're -- you're here being deposed as a police officer.

And my understanding is that one is that if the person is hit it could knock them off balance, right, and so that they can't throw a water bottle. Let's use throwing a water bottle.

A. Okay.

Q. That's -- that's one way that the shotgun can -- can deter the behavior, right?

A. Sure. Yes.

Q. It -- and it can also make them run away, right? If you get hit with one of these bean bag

rounds you're like ow, and you run the other direction, right?

A. In -- I -- I can't speak for what a person would do when they get hit by it but, yes. I'm sure it would hurt. Yes.

Q. Okay. Okay. And then what is the training that you received if an individual has been impacted once one time? Okay. How many times do you impact them?

Are -- that's what I want to ask you is, like are you trained in any way on here's how many times you shoot somebody?

A. You are given parameters to assess their behavior. So if one doesn't work and you reassess you can then deliver another less lethal ammunition.

Q. Okay. So -- and that makes sense to me. Do it until it stops, right. If you hit them once and they're still engaged in the behavior, hit them again. Still engaged in the behavior, hit them a third time. They stop, then you stop shooting them with the shotgun, fair?

A. Yes. Based off your own individual assessment.

Q. Okay. And that makes sense. I get it. What do you do -- I'm going to ask you again what

you, Officer Hethershaw, right. Your -- your own training, experience and sort of how -- how you've been trained and how you do it.

What do you do if there's -- and this is a hypothetical, okay? I'm not talking about May 30th, I'm talking in general. What if you're there with three other officers and you impact the person, you shoot them with a shotgun and the other two shoot them with a shotgun, right?

A. Uh-huh.

Q. And they've complied. They've -- let's say they've fallen on the ground and gone into the fetal position.

A. Uh-huh.

Q. Do you impact them again?

MR. LAIRD: Object to the form, but you can answer.

A. So I can only speak to what I would do and my own individual actions. So if I believe that person is still a threat there are a myriad of things that could happen. It all depends on facts and circumstances. So it all -- it depends is my answer. Because you -- just because someone is on the ground, right, it doesn't mean that they -- you know, a lot of times -- to give -- to give you a

hypothetical. If someone has a gun and we impact them and they fall on the ground and they still have the gun in their hand, that's not saying I'm not going to impact them again, right. It -- it depends on circumstances, it depends on my individual assessment. It depends on the circumstances.

Q. Sure. And -- and those circumstance -- that makes sense. The circumstances that you consider are -- I mean, I'm not -- I can't name them all cause -- because you can't prepare for every unknown situation. But it's sort of based on the immediacy of the threat, right? Like you gave the example they have a firearm. That's an immediate threat, right? I mean, they can shoot somebody, they can shoot you, they can shoot somebody else. They could, you know, potentially shoot themselves but that's an immediate threat, right?

A. Correct. Or they could have other hidden weapons on them.

Q. Other hidden weapons on them. Right. So one of the factors that you would consider in choosing whether to impact somebody; let's just say a third time, okay, is the immediacy of the threat. That's just one factor, it's not all off them. But would you agree that that's one factor?

A. Sure. That is a factor and a myriad of them.

Q. Okay. And at what point are you trained or are you instructed to stop shooting an individual?

A. When the -- when the officer believes that the threat no longer exists.

Q. Okay. All right. Okay. Let me ask you was there any discussion as far as crossfire in -- on -- now, I'm back to May 30th, 2020. We're specifically talking about you and the overpass and -- and -- and the people milling around the front of the police station. You with me? Was there any discussion of crossfire?

A. Can you define what you define as crossfire?

Q. Sure. Well, when you're -- when you're using firearm or shotgun, less than lethal -- let's say less than lethal. One of the things that you are trained to be concerned about is what your line of -- what your line of fire is, right?

A. Correct. Yes, sir.

Q. If you're shooting in a -- in a crowded grocery store as opposed to one individual at a traffic stop and there's nobody else around, do you

need to be aware of your line of fire and who you could potentially hit, right?

A. Correct. You need to be aware of your surroundings.

Q. Was there any discussion of that on May 30th, 2020?

A. That, I don't remember or I can't recall specifically.

Q. Was there any discussion of this -- of the issue of having officers in front of the police station, okay? Officers at the overpass. Was there any discussion of -- of crossfire for the individuals that were in the street -- milling in the street below?

A. That, I -- I don't -- I can't recall that. I don't remember that. I don't remember.

Q. Did anybody bring -- bring it up? That we're not the only officers on the overpass that had a line of fire here?

A. I -- I can't recall. I don't remember.

Q. Okay. Is that something you would -- that would be important to you?

A. Yes.

Q. Okay. And you don't recall anyone talking about that, discussing that, giving any directives

on that?

A. I don't remember many speci -- I don't remember many conversations I had that day specifically. It was --

Q. Excuse me.

A. -- three years ago so I -- I don't remember any specific conversations.

Q. Understood. And excuse me, I sneezed. But this -- this was an unusual situation, right. You hadn't experienced something like this before during your three months as a police officer?

A. Correct.

Q. You hadn't experienced something like this in the academy, obviously, cause you're training to be a police officer, right?

A. We just did scenarios for -- I mean, for mobile field force training and stuff like that. So you engaged in scenarios and stuff that were similar and would mimic scenarios such as this.

Q. Okay. And this was a notable circumstance in your first three months as a police officer, fair?

A. Yes, sir.

Q. What about ever since after that? Have you had a similar situation in -- after May 30th,

2020?

A. Well, I'm part of a dispatch and response team for Austin Police so I respond to protests quite a bit. So not -- not something of -- to that magnitude of riotous behavior but I have responded to several protests since then.

Q. Okay. Any of them bigger than this one?

A. I can't accurately say that. I mean, this was a big -- this -- the one that we're discussing was a big one but there -- there's been some big ones too.

Q. All right. Let me just check my notes. I think -- I think I'm done. I just want to look at my notes.

Do you have any electronic communications regarding this incident? Like e-mails that you shared with fellow officers? I'm not talking about your report. Like let's section off the supplement that you wrote on June 2nd. Any electronic communications, e-mails, other correspondence that you have, you know, had with someone regarding this incident, May 30th, 2020?

A. Not to my knowledge.

Q. And -- and of course, I'm excluding lawyer communications, I'm not talking about that. I'm

talking about fellow officers, supervisors, anybody like that.

A. Not to my recollection.

Q. Okay. When you showed up at the overpass on May 30th, 2020 and you were stationed above, right.

A. Uh-huh.

Q. These citizens, protesters, agitators, including all of them; this group of people, what information -- actionable information did you have, if any? And -- and that's a really big term. But I mean it to be big because I want to know like walking into a situation what information did you have about this situation?

A. Sure. So from the totality that I've learned up until that point; learned that they had taken 35 at one point. That they were engaged in throwing lots of things at officers or at some point surrounding officers and were engaged in riotous behavior. Like I said in the beginning too, I mean, there were as well there were -- like there was also like peaceful protestors out here. But there are the -- you know, there are the agitators, they are the rioters as well.

Q. And I imagine it's difficult to tell the

difference sometimes?

A. Not necessarily. I mean, if I see someone throwing a rock or a water bottle or throwing fireworks I could see that that person is engaged in riotous behavior versus the people who are just simply standing on the steps not doing anything. Then I can definitely make a differentiation.

Q. Right. In terms of, you know, the group as a whole before somebody throws something, right.

A. Uh-huh.

Q. Let's say -- let's say that. Let's say group of people. It must be very difficult to tell the difference before anybody throws anything. It's just a group of -- massive group of people in front of you. You can't really say this one is going to be an agitator, this one is just a protester, right?

A. Correct. I mean, until they engage in some form of illegal activity they're -- they're just protesting up to that point.

Q. Right. And -- and so let me ask you this way, in your view -- and I'm just talking about you. I can't ask you to opine on what other people think or saw.

A. Uh-huh.

Q. In your view in that shift on May 30th,

2020, were all the people who were agitators, throwing things, riotous behavior, all the sort of things that you quoted in your supplement. And I -- I can't go off memory. You probably can't but let's just call them agitators, fair?

A. Okay.

Q. Were all the agitators impacted by shotguns?

A. I -- I can't accurately say that at all. I mean, I -- I can't -- I can only speak for the people that I impacted and that I saw engage in riotous activity. But I can't say for every single agitator out there that they were engaged in some way or another.

Q. Did you witness any agitators who were not impacted by rounds?

A. I mean, I'm -- I'm sure. I mean, I -- like I said, it as a rapidly evolving situation. I mean, there was -- there was a lot going on. I mean, I can't say -- I can't give you a specific example but I'm not going to say that's out of the realm of possibility.

Q. Right. Well, I mean, you're focused on who you're focused on and who you're going to impact. I get that. Fair?

A. Fair.
Q. But you're also -- I mean, you also have peripheral vision. You're also -- when you're not shooting the shotgun you're also observing things, right?
A. Uh-huh.
Q. You got to say yes for court reporter.
A. Oh, sorry. Yes.
Q. That's all right. It's lawyer stuff. And so there had to have been situations where you witnessed other offerers fire their shotgun while you were not firing your shotgun, right?
A. Yes.
Q. Okay. So -- and I just want to make sure that I -- that I asked the right question and you answered it fully. Did you witness any agitators, okay, throwing things, agitating behavior, all that other stuff, who were not impacted by shotguns?
A. That -- I -- it's just a broad question because like it -- it doesn't dictate like whether other means were used or whether there is kind of like -- so I -- it was -- there was a lot going on so I can only speak for the agitators that I saw, that I dealt with and that I impacted myself. Other officers were doing whatever other officers needed

to do. And I was more so worried about what I was doing and protecting the peaceful protesters along with my fellow officers.

Q. Okay. Did you witness at any point on May 30th someone who had not engaged in agitating behavior impacted by shotguns?

A. Again, I -- I can't -- I can't say for certain because I don't know what other officers saw. I don't -- I can't speak for other officers. I don't know what actions they saw or lead to believe. So I only saw what I saw and I can only justify what I can justify.

Q. Okay. That's fair. But I'm not asking about other officers, I'm just asking about what you, okay? What you observed, what you witnessed, what you saw.

A. Correct.

Q. So that -- it's just a two-part question and I asked you the first and now I'm asking you the second. Did you personally view anyone who was impacted, shot with a shotgun, who you had not seen engaged in agitating behavior?

A. I -- the short answer is no. But again, I'll qualify that only for the sense of I can't speak for what other officers saw. I can't see what

riotous behavior they observed. I can't say that I observed that other person's behavior. So I can't give an accurate statement to that.

Q. So you -- you -- what I think you're saying -- and you correct me if I'm wrong. I don't want to put words in your mouth. But what you're saying is all I can really recall specifically and -- and testify to are the individuals that I shot with the shotgun. I can't answer to what happened before or after or outside my line of site. I can only answer to the individuals that I impacted.

A. That's pretty -- that's pretty accurate, I would say.

Q. I just -- I just want to make sure. Is there anything else -- and Gray can certainly ask you questions if he wants to as well. Gray, I don't know if you intended to but I always ask this question at the end. Officer, I ask is there anything else that you think is important for us to know about this, you know, this case, this incident, your -- your testimony? Cause I'm not always asking a hundred percent all of the questions but is there anything that you think is important for us to know?

A. I just think that I've said it all. I mean, this had a lasting impression on my life. I

mean, you spoke to mental distress earlier. So I mean, it's caused quite a lot of anguish and caused a lot of emotional damage for myself as well as being a part of it. So -- and that's all I'd really like to leave with.

Q. Well, I -- I'm -- I'm sorry for that. I got to ask you a couple of follow-up questions. And I -- I certainly am not trying to, you know, make you feel bad. But what do you mean by its caused you distress and anguish?

A. Well, I -- I don't -- I don't like doing stuff like that. That's not why I did the job. That's not what I wanted to do.

Q. And how has that been a lasting impact? So not just on May 30th and June 2nd but, you know, obviously today it -- it still effects you, I think, from what you said, right?

A. I would say that's accurate. Yes.

Q. What are the lasting effects then?

A. Just -- I mean, it's -- it's tough. I mean, when you -- when you think back on that time it was just a -- a tough point in my life. So I mean, that's all I can say for the most part, the most detail I can go into. I mean, it -- it's just a rough time.

Q. Okay. And I don't mean to pry. I really don't. And so if -- but what do you mean a rough time in your life at that time in May of 2020?

A. It was just -- I mean, there's a lot of -- there was a lot of -- there was a lot of stuff going on, you know. Just starting my career, a whole lot going on and it was just a rough time in general so...

Q. How would this event effect your career?

A. Just -- you know, it's a -- it was a tough time. I mean, it was just -- it's definitely just -- in the simplist of terms I mean, it -- you want to help people and it's just not -- not something I imagined myself doing.

MR. DEMIK: Okay. Thank you, Officer. You had a tough job. I appreciate your taking the time out of it to speak with me today and -- and give this testimony. I certainly, again, for the last time but importantly want to apologize for being late. I don't like wasting people's time. But thank you for answering my questions. I'll turn it over to Gray now.

MR. LAIRD: And we'll -- we'll reserve our questions until the time of trial. We -- we do

want to read and sign the transcript. And then, also, Ms. Glover if I -- if we can order an expedited transcript, that'd be great.

COURT REPORTER: Okay. Mr. Laird, when would you like the transcript.

MR. LAIRD: It'd be great if we can have it within seven days, maybe. Would that work or --

COURT REPORTER: Yeah. I don't think that's -- that may be regular time but yes, I'll try to get it -- I'll put it in front of and get it to you as soon as I can.

MR. LAIRD: Great. Thanks so much.

COURT REPORTER: Uh-huh.

MR. DEMIK: And -- and same here, Ms. Glover, if that's all right. We'd like a copy, obviously, as well.

COURT REPORTER: Okay. Awesome.

VIDEOGRAPHER: We'll conclude our deposition, it's 11:34 a.m. We're off the video record.

(End of proceedings.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Tyree Talley,)
Plaintiff)
)
v.)Case No. 1:21-cv-249-RP
)Lead Case
City of Austin and)
John Does)
Defendants.)

ZOOM VIDEOTAPED DEPOSITION

JOSEPH HETHERSHAW

VOLUME 1

JULY 17, 2023

I, Priscilla Glover, Certified Shorthand Reporter in and for the State of Texas hereby certify to the following:

That the witness, JOSEPH HETHERSHAW, was duly sworn by the officer and that the transcript of the Zoom deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on_____, 2023 to the witness or to the attorney for the witness for examination, signature and return to me by _____, 2023.

That pursuant to information given to the deposition officer

at the time said testimony was taken, the following includes counsel for all parties of record;
Mr. Stephen Demik, Attorney for Plaintiff
Mr. Gray Laird , Attorney for Defendants

The amount of time used by each party at the deposition is as follows:

Mr. Stephen Demik - 2 Hours: 06 Minutes
Mr. Gray Laird - 0 Hours: 00 Minutes

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the actions.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 19th day of July, 2023.

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WITNESS NAME: JOSEPH HETHERSHAW

DATE OF DEPOSITION: JUlY 17, 2023

PAGE/LINE	CHANGE	REASON

I, Joseph Hethershaw, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

Joseph Hethershaw

STATE OF _____)
COUNTY OF _____)

Before me _____On this day personally appeared Joseph Hethershaw, known to me or proved to me on the oath of _____or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office on this the ____ day of _____, 2023.

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My Commission Expires:

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Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	)	
	)	
Plaintiff,	)	
	)	
V.	)	CIVIL ACTION
	)	
CITY OF AUSTIN AND JOHN DOES,	)	Case No. 1:21-cv-249-RP
	)	Lead Case
Defendants.	)	
____	)	
	)	
MODESTO RODRIGUEZ,	)	
	)	
Plaintiff,	)	
	)	Case No. 1:21-cv-1087-RP
V.	)	
	)	
CITY OF AUSTIN AND JOHN DOES,	)	
	)	
Defendants.	)	

ZOOM AND VIDEOTAPED DEPOSITION OF
OFFICER DARRELL CANTU-HARKLESS
JULY 14, 2023
VOLUME 1

ZOOM AND VIDEOTAPED DEPOSITION OF OFFICER DARRELL CANTU-HARKLESS, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on July 14, 2023, from 10:09 a.m. to 1:08 p.m., before Wendy Schreiber, CSR No. 9383, in and for the State of Texas, reported by machine shorthand,

at the City of Austin Law Department, 301 W. Second Street, Austin, Texas, 78767, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 999689

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EXHIBITS

NONE

REQUESTED DOCUMENTS/INFORMATION

NONE

CERTIFIED QUESTIONS

NONE

VIDEO OPERATOR: We are now on the record. This begins media file No. 1 in the video deposition of Darrell Cantu-Harkless in the matter of Tyree Talley, et al., versus City of Austin, et al., in the United States District Court for the Western District of Texas, Austin Division, Case No. 1:21-cv-249-RP.

Today is Friday, July 14th, 2023, and the time is 10:09 a.m. This deposition is being taken remotely at the request of Hendler Flores Law, PLLC. The videographer is Nate Laningham with Magna Legal Services and the court reporter is Wendy Schreiber.

Will Counsel please state their appearances and whom they represent.

MR. DEMIK: Stephen Demik on behalf of Mr. Tyree Talley and Modesto Rodriguez. I'm here with my paralegal, Alexis Lopez, also present.

MR. BARTON: And I'm Monte Barton on behalf of the defendant City of Austin representing Officer Cantu-Harkless in this deposition.

THE REPORTER: Officer Harkless, could I get you to raise your right hand for me, please?

In the deposition about to begin, do you swear to tell the truth, the whole truth, nothing but the truth so help you God?

THE WITNESS: I do.

OFFICER DARRELL CANTU-HARKLESS,

having been first duly sworn, testified as follows:

THE REPORTER: Thank you.

You may begin.

EXAMINATION

Q. (BY MR. DEMIK) Thank you. Good morning, Officer. Is it all right if I call you Officer Cantu? Or how do people usually refer to you?

A. Harkless is fine.

Q. Harkless? Okay. I just want to make sure I get that right.

So, Officer Harkless, we're taking your deposition today. Do you realize this deposition is the same as it would be in court as if you were giving live testimony before a judge or a jury?

A. I missed that first part.

Q. I'm sorry. I hope this fixes itself.

Do you realize that this deposition being taken today it would be the same as testimony before a judge or a jury?

A. I do.

Q. Okay. And -- and it's important (audio distortion) -- I'm sorry. I will get this checked out.

And if you understand the question or you can't

hear a question that I'm asking, would you please let me know?

A. Okay.

THE REPORTER: Okay. I'm going to -- could we go off the record, please?

VIDEO OPERATOR: Off the record at 10:12 a.m.

(Recess taken from 10:12 a.m. from 10:18 a.m.)

VIDEO OPERATOR: We're back on the video record. The time is 10:18 a.m.

Q. (BY MR. DEMIK) Okay. All right. That should be better.

Officer Harkless, can you hear me okay?

A. Yes.

Q. Okay, great. So I'll -- I'll just pick up where I started.

So do you understand that the deposition is in lieu or could be in lieu of courtroom testimony before a judge or jury?

A. Yes.

Q. And -- and so it's just important for me if you don't understand my question, if you'd like me to clarify my question, please ask me. Otherwise I'm -- I'm just going to assume that you understand the question when you answer. Is that fair?

A. Yes, I understand.

Q. Okay. Do you have any questions before we sort of

start discussing this case in particular?

A. No.

Q. Okay, great. If you do, just let me know. I'm happy to answer any questions or clarify if you need me to.

Let me start or begin how long have you been with the police department there?

A. I started out with Austin police Department in May 2017 at the academy.

Q. Okay. And what was your route to becoming a police officer?

A. As far as education or?

Q. Sure.

A. Well, I'm from Austin, Texas. I went to Crockett High School. I went -- I graduated high school, went to Abilene Christian University. Received a bachelor's in criminal justice and minor in political science and in May of 2017 I applied and started at the Austin Police Department's academy.

Q. Okay. I forgot one thing, Officer Harkless. I'm sorry, I don't want to bounce around too much but can you tell me what you did to prepare for this deposition today?

A. I just -- I spoke with counsel, Monte Barton, about my recollection of these events.

Q. And did you review any materials?

A. Yes.

Q. What did you review?

A. Reports and supplements I've written -- personally written in regards to the protest and then the -- the complaints.

Q. Okay. So the -- the court complaints, right?

A. Uh-huh.

Q. And I have I think one short -- very short narrative that I believe you wrote and then two what appears to be maybe, I don't know the terminology, use-of-force reports which just sort of have a list of unidentified individuals. Were there any other -- excuse me, were there any other reports that you reviewed?

A. I believe the only reports I reviewed were the two that you mentioned and a use of force kind of packet written by a sergeant at the time.

Q. Okay. When you say "packet," can you describe that in a little more detail for me?

A. Yeah, they're called response-to-resistance packets completed by the supervisors whose sole responsibility is to review use-of-force incidents and determine if they are within law and policy.

Q. Okay. All right. So the three reports that we've discussed, the use-of-force packet and the complaints, anything else that you reviewed or went through in preparing for the deposition?

A. Not that -- no, not that I can recall right now.

Q. Okay. All right. Now, let me -- I'll get back.

So you went to the police academy in May 2017, right?

A. Yes.

Q. And where were you positioned after the academy?

A. After I graduated I was assigned to Henry 500s until October -- October of 2018 and then I moved over to the Henry 600s where -- where I since report -- where I still remain.

Q. Can you -- can you explain to me what that means, the 500s and 600s that you've just mentioned?

A. Yeah, the -- the -- Henry is a -- is a sector -- a certain part of the City of Austin which is the eastern side of the (inaudible) area, and the 500s, 600s is an evening shift within -- within the Henry sector.

Q. Okay. And -- so when were you assigned to the intersection that you mentioned, I think the 600s?

A. I was -- I was assigned there October -- September, October of 2018.

Q. Okay. And is that where you were stationed in May of 2020?

A. Yes.

Q. Okay. So when you were stationed there in September, October of '18, then you were there through May '20 -- May of 2020 when this happened?

A. Yes.

Q. Okay. So at the time -- so we're -- we're -- I am going to bounce around a little bit but -- but just so we're talking about May 20th -- or, excuse me, May 30th, 2020, what was your position and what were your duties generally, and then we'll -- we'll get a little more specific, at the police department?

A. As far as the shift I was assigned to or what was I doing that -- the day?

Q. Well, let's -- let's sort of start with what your responsibilities were in your position, right, in May 2020 and then we'll -- we'll get to -- to the specific date. So why don't you start with in this division, in this position in May 2020 what were your roles and responsibilities and what -- can you tell us about your job and (audio distortion).

A. Okay. As far as the Henry 600s patrol, I was patrol -- I still am a patrol officer. My duties included responding to calls for service which includes, you know, assaults, robberies, burglaries, service calls, crashes, along the South Central east part of Austin, Texas.

Q. Okay. Now, on May 30th of 2020 why don't you set the scene for me. How did you end up on this overpass? Can you start when -- when did your shift begin? Were you called in? Can -- can you describe that to us?

A. As far as the -- if I remember correctly, evening

shift would start at sometime mid-afternoon. We were instructed to go to the Capitol to assist DPS with the protest outside of the Capitol. After that crowd moved along we were -- we were called to go to the proper of I-35 near our APD Main headquarters due to the protest taking over both the north and southbound proper of 35. We were instructed to clear out the protestors, getting them off the highway as we were -- you know, rocks, cones, bottles, fireworks, everything thrown at us clearing off the highway. That went on throughout the evening, throughout the night and ultimately the Henry 600s ended up on the overpass at nighttime -- in the even -- or, you know, late nighttime providing coverage and over watch for the officers at the main headquarters.

Q. Okay. Can I break that down a little bit? So you reported to your shift in the mid-afternoon, right?

A. Uh-huh.

Q. And you were dispatched to the Capitol. Is that the first place where you were dispatched?

A. Yes.

Q. And can you tell me generally a little bit about that protest at the Capitol? What was that like?

A. For the -- for the most part we were called there just to supplement DPS. Obviously, the Capitol was the main priority to protect for whatever reason. As far as I remember, that part was a protest, people exercising their rights,

nothing -- nothing too wild. I don't recall any -- anything outrageous going on as far as, you know, protestors throwing items or setting off fireworks or anything like that. So once that crowd kind of moved on from the Capitol to the 35, the APD Main headquarters, we were called by the downtown officers to help them because they were, you know, outnumbered and 35 had been completely shut down by protestors.

Q. Okay. So was it your understanding and your belief that the protests from the State Capitol had moved down; that, in other words, this was one continuous protest or -- or were these separate protests to your -- to your knowledge and understanding?

A. I'm not sure the same crowd, you know, was a part of both sets. This certain crowd here, certain crowd there, I'm not sure.

Q. Okay. How did you get from the Capitol down to the I -- I-35?

A. Oh, we had to use City vans, just unmarked, you know, white vans that helped transport, you know, mass numbers. We didn't have patrol vehicles readily available to everybody so, you know, about 10 to 15 officers in a van that transported us from the Capitol to the proper 35.

Q. Okay. And -- and what were you wearing? Why don't you describe for us what -- what your uniform looked like and what you were equipped with at that point, right, in the van.

A. I was -- I was wearing my department issued we call them Class -- Class C uniforms. Dark navy top, navy pants, patrol belt, Austin Police Department patches on our chest and shoulders.

Q. Okay. And when you were at the State Capitol, did you have these less-than-lethal-bean-bag shotguns?

A. Yes.

Q. Okay. So you had those at the Capitol and then you -- you took those -- the ten or 15 officers in the van, did you take those with you to the I-35 overpass?

A. It was multiple vans. Probably 60 to 80 officers in multiple vans and not everybody had a less-lethal shotgun.

Q. How did they determine who got one and who didn't?

A. That whoever checked one out at the beginning of the shift. There are a certain number of readily available that the department even has -- that has.

Q. Okay. How does that work? Again, I'm -- I'm not a police officer so forgive my ignorance but is that just first come, first served? You make the decision as an officer if you want to go check one out? Or how does that work?

A. Usually with less-lethal shotguns as far as patrol officers there's a -- one or two available to check out per shift and it's -- it's up to the patrol shift like who -- who needs to take one out. It's more of like, hey, someone needs to take it every day for patrol. Who wants to take it? More

voluntary basis of who takes one out or not.

Q. Okay. Did you volunteer to take one on May 30th, 2020?

A. Yes, as a part -- because usually I was the one that always checked it out on patrol shift anyway.

Q. Why is that?

A. At that time it was -- it was commonplace for the younger officers on the shift to check one out.

Q. And why is that?

A. Well, it's just kind of the culture of the young -- the new guy on the shift they check out the equipment so the senior guys don't have to.

Q. Is it kind of a pain? I mean, is it kind of a burden?

A. No, not necessarily.

Q. Okay. Why would the older guys want the younger guys to do it?

A. It's just carrying more stuff.

Q. Okay. I gotcha. Heavy?

A. No, not necessarily. It's just, you know, something that needs to be out in the street and it's somebody's responsibility so, you know, that can happen.

Q. More stuff to worry about?

A. Just more stuff to carry.

Q. Okay. So tell me about how -- how when you checked

out a -- one of these shotguns on May 30th?

A. I'm sorry, could you say that one more time?

Q. Sure. Tell me how and -- tell me about how you checked out one of these shotguns on May 30th, 2020.

A. I honestly don't remember where we started that day, whether it be our -- at our east sub or throughout the protest at some point our -- our meeting area was at the academy but either way you'd have to go to at the east sub we have someone called -- or someone at our PCO the -- someone who handles all of our equipment to go to them, check one out, write your name down kind of thing. This is under your name. It would be the same thing at the academy but I'm not sure if and where I started that day.

Q. Okay. And how many officers did you see check out these shotguns at the time that you checked yours out or is it something that happens at the same time, happens on a staggered basis? Tell me about that.

A. Again, I'm not sure where we started that day. I'm not sure how many other officers had less lethals.

Q. Okay. When you were at the Capitol, how many less lethals did you see?

A. I don't recall the exact number.

Q. Can you ballpark it?

A. If I had -- if I had to guess, one for every five officers maybe.

Q. So about 60 officers so about 12? Was it more than 10?

A. I couldn't -- I couldn't give you a solid, you know, answer.

Q. More than five?

A. Yeah, I would say more than five, yeah.

Q. More than five. Less than 50?

A. I think that would be fair -- fair to say.

Q. Less than 20?

A. Again, I mean, I -- I can't even recall like how many officers we had, what -- what DPS personnel looked like, what our -- everything was such a hodgepodge of people just being thrown into areas to help assist that me having like a general idea of how many people were even out there I couldn't even give you a great guess.

Q. Okay. So -- that's fine. It's fine. I don't want you to guess. I was just sort of looking for a range, like a ballpark, to get an idea whether it was 100 or whether it was two, right?

So you checked out the shotgun either at the east station or the academy -- you don't remember, that's fine -- and then where did you carry the shotgun? Did you go straight to the Capitol?

A. I -- I believe so.

Q. And tell me a little bit more -- I know I already

asked you -- but a little bit more detail about where were you at the Capitol? Did you set up a line? Were you dispersing the crowd? Tell me about what the operations were there. And I know you were support but go ahead.

A. Yeah, we were set up along the fence line in front of the Capitol with DPS.

Q. And -- and so there was a fence line there?

A. Yes. A gated fence, yes.

Q. And about how many officers were set up at that -- at that point if you were to guess? Again, not guess but what's your best estimate?

A. Us including DPS 100 maybe. I'm not sure their personnel. Yeah, I can't remember all personnel out there.

Q. And you said it was largely a peaceful protest?

A. Yeah, for the most part. Like the idea of it was at the direction of DPS they didn't want any protestors on Capitol grounds so once that line was established, you know, the protestors stayed on the streets which was fine to us.

Q. So there was a clear demarcation between where the protestors were allowed and where they weren't allowed?

A. Uh-huh, yes.

Q. And that would be the fence line?

A. Yes.

Q. Okay. Now, at the police station on May 30th, 2020 -- and I know there's sort of a fence now but on May 30th,

2020, there was no fence, right?

A. There was no fence, no.

Q. In front of the police station there was no fence line, right?

A. There's no fence. Yes, there's no fence at all.

Q. There was no -- it was different in the sense that there was no demarcation line. Like the fence line at the State Capitol that was different at the police station, correct?

A. As far as like a physical barrier in front of the steps? Other than officers, yes, that's correct.

Q. Okay. So how long were you at the State Capitol, approximately?

A. Maybe an hour or two. I'm not sure.

Q. That's fine. And when did you receive word that you would be going -- that you'd be moving?

A. When officers from the downtown area called for essentially what we call it it was an alternate-assistance broadcast over the radio from downtown officers saying they needed -- they needed more bodies, they needed help downtown because they -- all of the protestors had taken over both sides of 35.

Q. Okay. Now, you're talking about the 35 overpass as opposed to at the police station, right?

A. So when I refer to "proper," that's the actual

highway as opposed to the service roads.

Q. Okay. All right. And just so I'm clear, the I-35, that's the overpass where you were stationed, right?

A. Later that night, yes.

Q. Okay. Well, when you -- so when you get in the van, you said like 10 to 12 officers in the van going from the Capitol down to the police station, where were you let off first?

A. From the Capitol we went straight onto the proper or straight to the highway to start clearing off -- clearing -- clearing protestors from the highway.

Q. Okay. On the overpass?

A. Yes.

Q. Okay. Tell me about that. How did that happen? How did that go down?

A. As soon as we got onto the overpass, got out of the van, I could immediately see -- immediately saw, you know, hundreds and hundreds -- hundreds -- thousands -- I'm not sure the number, right, but both sides of 35 protestors coming in our van, taking on a barrage of rocks, water bottles and cones and sticks and stuff like that as officers began to form a line to start slowly, you know, inch by inch getting at least the southbound side cleared first and then getting the northbound side off and getting all the protestors off the overpass at least onto the service roads.

Q. Okay. So I -- I just want to be clear. Were you called officer assistance for the police station or to clear I-35?

A. I believe it was -- it was to 35. I think there were officers already on the proper but at some point they were overrun hundreds and hundreds of people and obviously losing ground and traffic was starting to be blocked on both sides.

Q. Where did those officers go?

A. I believe they just joined the ranks when we arrived.

Q. Okay. So when you get out, both sides are -- are blocked. What happens next?

A. Officers form a line across 35 kind of so both sides of traffic were stopped. You know, the northbound side was stopped. The southbound side was to stopped. We formed a line across, you know, the proper to the cars and slowly had to get everybody off the highway.

Q. Did you eventually do that?

A. Yes.

Q. How long did that take?

A. I do not recall exactly. Probably like 10 to 20 minutes.

Q. And what happened? Did they disperse or how did that happen?

A. At -- as far as I recall, the directive was to at least clear the proper. The service roads were considered --

the directive or the orders was like they can have the service road but they cannot -- you know, protestors cannot block the proper. So once we got them off the proper, right, they just maintained on both sides of the service road blocking the roads.

Q. Okay. So once you got the highway clear what did you do?

A. A lot of -- we stayed on the -- on the embankment of the northbound side for some -- for maybe a few hours longer just to ensure they didn't come back up and try and get on the proper again and then at some point like a rotation started where officers -- you know, officers who were at 250 parking lot which was on the northwest corner of 8th and 35 start rotating giving people breaks.

Q. Okay. How is it that you ended up on that overpass area?

A. Up until that point we had officers on the overpass ensuring that nobody else come up to block the protest again but there were no resources up there to help provide coverage for officers at the Main who were -- who were having like rocks and bottles and fireworks and frozen bottles and stuff thrown at them. So an order was given that somebody needs to go on the overpass to provide coverage because they didn't want -- because the people who were throwing things were too far back for the officers on the Main to take any type of action

against. So the idea was to get people on the overpass to help deter those actions. And I guess the -- the Henry 600s we had one of the bigger shifts, we were called upon to go up there to just provide that coverage.

Q. Okay. And who made that call?

A. I don't recall who was the supervisor who made the call.

Q. How were you first aware that that call had been made?

A. When my supervisor came to me and said we have to go on the overpass.

Q. Who was that super -- I'm sorry.

A. (Simultaneous speaking.) I forgot what I was going to say. Sorry.

Q. That's -- that's okay. Who was the supervisor who told you to go to the overpass?

A. My supervisors at the time were Sergeant Tabierou and Corporal Tyler Latham.

Q. And you said the Henry 600s were asked to go to the overpass. Why is that, I'm sorry? Maybe I just didn't hear but you were a larger group or what -- what was that answer? I couldn't hear it?

A. We were one of the bigger shifts. We -- we had a combined shift with a special unit of officers so we had about 14, 15 people on our shift.

Q. And about what time is it that you moved to the overpass? Like six o'clock? Nine o'clock? Do you recall?

A. I don't recall. It was at least nighttime.

Q. Nighttime in May probably after eight o'clock?

A. 8:00, 8:30. After -- after that at least.

Q. And what time did you start your shift that day?

A. I don't recall. I can't remember if we moved to a different emergency schedule at that time or we came in like normal. You know, like at a 2:00 -- at that time we had a 1:00, 2:00, 3:00 and four o'clock shift. I just don't remember -- I don't recall which shift we were on at that time.

Q. What's an emergency schedule?

A. That's -- that's called a -- an alpha-brava schedule where the department's mandated to do 12-hour shifts. You know, twelve hours A, twelve hours B type thing. I -- I can't recall being in emergency-type situations and that was my first time being part of something like that so I don't remember -- I remember it was activated during the protest. I just don't remember at what point.

Q. So that's 12-hour shifts straight?

A. Uh-huh.

Q. Now, you had mentioned that officers were being rotated around to provide relief. Why is that? What kind of relief is needed? Can you -- can you describe that to us?

A. Yeah. I mean, summertime -- you know, May it was

hot. A lot of standing. You know, the rotation -- the idea is to get people in the shade, sit people down, drink some water, 30-minute kind of breaks. Hour breaks are kind of long. You know, rotate.

Q. Okay. And is everybody wearing that uniform: the pants, the top at the time here in May 2020?

A. Most of Patrol is. The downtown officers, the -- the George, the DTAC guys, they have the blue shirts and shorts that they probably usually wear in the summertime, the light -- or the blue-blue, not the navy blue.

Q. Okay. And what's it like wearing those uniforms? Pretty hot?

A. It can be in the summertime, yes.

Q. Okay. Well, what does that look like?

A. What does what look like?

Q. Well, you say it can be pretty hot. What does that look like? Wearing this uniform in May in Austin, you know, being on this shift in mid-afternoon what does that heat look like? Are you sweating? You know, can you -- can you describe it just a little bit?

A. Yeah, naturally you -- you sweat when it's -- when it's hot in the thicker clothing in the summertime. I can't remember how -- what the degree was outside but it was warm actually because it's May in Texas.

Q. And you have -- and during the shift why don't you

describe to me what you have on you. So you have the uniform. We discussed that. You have the shotgun, right? How much does that weigh?

A. If I had to guess, six to eight pounds.

Q. Do you have that mask on the helmet?

A. We were -- yeah, we were wearing it, yes.

Q. So you were wearing that all day?

A. Yes.

Q. What other -- and you have the belt, right?

A. Uh-huh.

Q. And -- and what's on that belt or what weight is on that belt?

A. The belt is probably my best guess 12 to 15 pounds. Your -- your duty weapon, asp, OC spray, taser, handcuffs.

Q. Okay. Anything else you're carrying during the shift?

A. No, that's usually what I carry every day.

Q. All right. So let's -- let's talk a little bit about the less-lethal shotguns. What training and/or certifications have you received in the less-lethal shotguns?

A. So every year we are required by TCOLE to take the annual qualifications with all weapons at the department. It has (inaudible) issued to us so that includes, you know, your duty -- your duty firearm, less-lethal shotgun, the actual shotgun, OC spray, baton or asp, taser. Every year we take it

and then, of course, naturally, I check out the less-lethal shotgun every day and handle it and manipulate it every day.

Q. Do all the police officers have to receive the yearly training in the less-lethal shotguns?

A. Everybody -- every peace officer within the Austin Police Department from Chief all the way down to probationary police officer.

Q. Okay. Even though they might not check it out? It might be you checking it out as opposed to someone else but they at a minimum receive the yearly training?

A. Yes.

Q. What is -- what is that yearly training? Tell us about it.

A. There are, you know, a series of proficiency tests with the handgun and shotgun. You have to have an average minimum score, right, to pass to get that qualification.

Q. What -- what are you scored on? Are you shooting at targets? Are you given written exams? What does that look like?

A. It's all practical exams so shooting at targets.

Q. Okay. And then you're scored on how accurate you are?

A. Yes.

Q. And what's the score? 0 to 100?

A. Yes.

Q. Okay. And what were your scores?

A. For which? For which test?

Q. Let's just sort of focus on the accuracy test where I think you told me you're shooting at a target. You're graded from 0 to 100. What were your scores on those -- on those practical tests?

A. For every -- for --

Q. Let's go -- let's go September, October of '18 when you took the position you did to May 2020. So I'm assuming if you had the yearly test that was '18, '19, maybe '20 if it was before May?

A. I don't recall -- I don't recall when I had took it that year but, yes, every year you take them throughout -- those courses are offered throughout the year.

Q. Okay. So at least in '18 to '19 you took the yearly test, right?

A. Uh-huh.

Q. What were -- what were your scores?

A. So I guess I'll rephrase. The shotgun and fire -- a handgun, the duty gun test are scored from 0 to 100. Less lethal, taser, baton are just pass/fail.

Q. Oh, okay. All right. So for the firearms and lethal shotgun I guess --

A. Uh-huh.

Q. -- it's 0 to 100?

A. Yes.

Q. Less than lethal -- taser, baton, less-lethal shotgun which is what we're talking about here -- is pass or fail?

A. Yes.

Q. Okay. All right. What's the -- what's the range of the less-lethal shotgun?

A. The range? It's recommended up to -- up to 25 yards is what we're trained at.

Q. So when you take the test, do you recall what distance that is that you shoot for the pass/fail?

A. Twenty-five yards.

Q. Twenty-five yards, okay. And are you trained -- what are you trained to do at more than 25 yards?

A. The target zones remain the same as far as --

Q. I'm sorry?

A. The target zones -- the target zones remain the same.

Q. Okay. Are you trained to shoot it beyond 25 yards is what I'm asking?

A. Are we specifically trained? No, what -- the pass/fail standard for a less-lethal shotgun is 25 yards so that's where we conduct our proficiency test at.

Q. Okay. All right. Are you -- are you tested or are you -- I guess what happens when it's more than 25 yards? That's -- that's what I'm asking, I'm kind of curious about.

A. I'm not -- I'm not necessarily sure like the

functionality or -- the functionality of the less-lethal shotgun beyond 25 yards and I can't -- I honestly can't remember what the policy says the ideal impacting range -- max -- the maximum distance of the impacting range of a less-lethal shotgun at that time.

Q. Okay, at that time. Do you -- do you recall it at any other time?

A. Yeah. Well, now we have a -- obviously we have new bean bags where there's no minimum distance anymore and we can discharge -- you know, it's applicable up to 50 yards.

Q. But going back to May 30th, 2020, it was 25 yards with the range that you were trained on, right?

A. Yes, that's where we conducted our test.

Q. Okay. And the idea there is that the farther the distance the less accurate the weapon, correct?

A. Yeah, that goes for most -- pretty much most weapons.

Q. Right, right. And in this case with the less-lethal shotguns the longer the distance the less accurate you're going to be?

A. Yeah, I think that's fair to say.

Q. What was the distance in this case on May 30th, 2020 that you and other members of the Henry 600s were shooting bean-bag rounds at protestors on the street from the overpass?

A. I can't recall like the specific -- specific distance.

Q. Okay. Was it more than 25 yards?

A. I'm just trying to do math in my head. I'm assuming the overpass -- you know, that bridge is probably around -- I can't even guess how -- how tall, you know, that overpass bridge is. I'm not sure how far off the ground we were. I'm not entirely sure.

Q. Let me ask it to you this way. You're trained at 25 yards, right?

A. Uh-huh.

Q. You know what 25 yards looks like?

A. Uh-huh.

Q. Because you've done the yearly test at 25 yards, right?

A. Uh-huh.

Q. And you know what's less than 25 yards, correct?

A. Yes.

Q. So it's more than 25 yards?

A. Yeah, probably possible that it's more than 25 yards.

Q. It's probably possible that it was more than 25 yards?

A. Yeah. Yes, sir.

Q. Okay. What does "probably possible" mean?

A. At least 25 yards.

Q. Did anybody bring that up before -- well, let me ask you this.

Let me just sort of ask you this. Were you ordered to shoot these less-lethal shotguns, you and your fellow officers, or was that a discretionary decision that -- that you made?

A. There was no order to shoot protestors. There -- and it's all discretion in regards to protecting other officers and other protestors from being impacted by whatever objects were being thrown. If -- and this is just me on that night -- if something was available and it was safe to do so, I would impact somebody.

Q. Okay. So is your answer that you made the decision to shoot; nobody ordered you to shoot?

A. Yes.

Q. Did anybody authorize you to shoot or did you just make the decision at the time?

A. No, there was authorization that if -- if there is a need to protect other people or officers, that you do have -- you had the, you know, the go-ahead to do so.

Q. Okay. So when was that given? Was that like at the beginning of the shift? Was that when they put you at the overpass? When did they give you the green light to shoot if you saw a decision to make?

A. When we first got off -- got onto the proper from the Capitol to clear the highway.

Q. Okay. So when you first got to the overpass or the

highway, that's when they said you have clearance to shoot if -- if you decide to shoot?

A. Uh-huh.

Q. All right. When you were on the overpass and you're firing down into the street, were you the first to shoot? Were you the second to shoot? Were you the last to shoot? Let's -- let's break that down. I'll just break it down.

Were you the first to shoot?

A. At -- at what -- at what moment?

Q. So we're -- we're at the overpass. We've cleared -- cleared the highway. We're at the overpass looking down, right? From your BWC, body-worn camera footage, there's a group of officers at the top of that overpass, right?

A. This is nighttime or daytime or --

Q. No, nighttime.

A. Nighttime, okay.

Q. Do you -- do you recall that?

A. Yes, nighttime looking down at the Main, yes.

Q. And there's several officers who have these shotguns including yourself?

A. Yes.

Q. Including your -- okay. So those officers at the overpass nighttime looking down on the protestors, did you shoot first?

A. I can't remember -- I can't recall who shot first.

Q. Okay. But was it you who shot first?

A. I don't recall who shot first.

Q. Okay. Tell me about what was happening the moment you took your first shot.

A. Okay. Yeah -- (simultaneous speaking) -- I'm sorry?

Q. Go ahead. Please -- please go ahead. I didn't mean to interrupt.

A. Yeah, we were positioned on the -- on the overpass overlooking the Main and we were operating in kind of a spotter and less-lethal shotgun kind of tandems. So there was an officer next to me. We were in constant communication like spotlighting people who we thought were going to throw objects at officers at the Main or who had been. You know, we'd recognized the same subjects -- you know, more or less the same subjects throwing stuff at the officers and the -- what was going on and what we saw up to -- prior to me shooting my first less-lethal round was there was a group of protestors at the front of the Main who were protesting -- signs, you know, exercising their First Amendment rights -- but there were agitators coming from underneath the bridge, underneath where we were running out from underneath the bridge closer to the officers and throwing objects and then immediately retreating back under the bridge. So the idea was operating in the spotter and less-lethal tandem was the spotter with the flashlight would flashlight people running from underneath the

bridge like, "Hey, watch this guy. Watch him. Watch him." Kind of identifying things like he has something in his hand or he doesn't or whatever the case may be and upon an individual, you know, throwing an item -- because up to that point there's been fireworks, there's been bottles, there's been frozen water bottles. Earlier that day we -- we found that some of the bottles had urine in them, rocks, stones, bricks, whatever the case may be. We would watch people and watch people's hands as they run from underneath the bridge. All right.

So while operating in that tandem an officer next to me highlighted this individual who was running from underneath the bridge, threw an item and at that point my direction was direct -- was focused on him as he threw the bottle and that's when I deployed a round and I'm not sure -- so I'm listening to my partner. I'm not sure who else shot or if I did anything first or not.

Q. Okay. Well, you've been trained in these shotguns, you know what they sound like, right?

A. Uh-huh.

Q. They're loud?

A. Yes.

Q. You know what the sound of a shotgun going off and shooting the bean-bag round is, right?

A. Yes.

Q. Did you hear that prior to you pulling the trigger on

your shotgun?

A. I can't -- I can't recall three years ago and an ear piece in one ear, my part -- my officer in my other one.

Q. That's fine. That's fine. Let me ask you a little bit -- break that down a little bit what you had discussed. So on the overpass your line of vision, right -- you're familiar with that term, your line of vision -- your line of vision is obstructed at the point that anyone is beneath you because you obviously can't see through the overpass, right?

A. Yes.

Q. You can't see what's going on there, right?

A. Uh-huh.

Q. So your line of vision and the other officer's line of vision only began when somebody came out from under the underpass, right?

A. Yes.

Q. Okay. So you didn't have a direct line of sight under the overpass to look at particular individuals, it was only after they had come out from under the overpass. Fair?

A. Fair, yes.

Q. Okay. What officers had a line of sight on what was happening under the overpass, if any?

A. Officers at the -- the Main steps.

Q. Okay. And were the officers at the Main steps in communication with the officers in the overpass?

A. Yes.

Q. But with regard to who to spotlight, why to spotlight them, what was happening?

A. Not necessarily that kind of radio traffic. It was more of giving descriptors of people who had already thrown stuff, retreated back under the bridge. The officers at the Main were watching those individuals and kind of prepping officers on the overpass like, "Hey, this guy is wearing -- this guy is wearing this, this, this. He's underneath the bridge. It looks like he might do it again. He's at this area."

"Okay, I'll watch out for him if he comes back out again."

Q. Well, do you recall any of those descriptions in any detail?

A. As far as -- these type of descriptions -- descriptions are pretty -- pretty vague because the distance from the officer at the Main to underneath the bridge, you know, may or may not be descript of -- as descriptive as we'd like but, you know, general -- and this is the nature of our job where we're giving descriptors of, you know, it's male, black, white male, Hispanic male, white male, Asian male, female, long hair, black hair, whatever the case may be, this shirt, these pants, these shorts, these shoes, right? And the idea is in our profession we could take in those descriptors,

maybe see something and only enforce if something was going to happen. Again, we're not going to act in a reactionary measure if the person threw something, went under the bridge and came back out and didn't appear as if he was going to do anything again.

Q. Yeah, I mean, I understand the purpose of it, right, and you do have a difficult job. You would agree with me on that, right?

A. Uh-huh.

Q. But, I mean, I think between lawyers and cops you guys probably take the cake but we're a close second in my opinion. That's just unsolicited testimony. You can strike it from the record if Monte wants to. But I understand the purpose of it, right, but let me ask you this. On a scale of 1 to 10 -- you tell me if you don't follow me, okay? And at the 1 of the scale is this person is in a red shirt. That's it. And that's the descriptor that's given. You with me?

A. Uh-huh.

Q. It's very basic -- very basic one detail. On the end of this spectrum it's closer to what you were talking about; white male, early forties, goatee, white shirt with red print, red pants, belt, Nike shoes, holding a sign that says Black Lives Matter. Is that -- so do you understand what I'm doing with this spectrum? I'm going from 1 to 10. One is just, "This person is wearing a red shirt. Watch out, they're going

to throw something." And the other is all those descriptors. Where were these descriptions that you and the Henry 600s were getting on that scale from 1 to 10?

A. Somewhere around the middle, right around a 5.

Q. Do you recall any of those descriptions over -- was it radio?

A. All over radio, yes.

Q. Okay. Do you recall any specific description over the radio?

A. Not at this time, no.

Q. Okay. Did you rely on those descriptions exclusively in making your decision on who to shoot?

A. No.

Q. Okay. What else did you rely on in making the decision who to shoot with -- with your shotgun? You personally, nobody else. I'm just going to talk about you first.

A. Just my own personal observations of what someone did.

Q. So explain that a little bit more. What do you mean what they did? If they --

A. Well, as far as the officers on the Main calling out descriptors, it was more of like, "Hey, just watch this guy in case he wants to do it again."

It's not like, "Hey, if this guy comes out,

impact him."

So with the descriptors I would try and -- you know, I have to pay attention to the crowd but if I saw this gentleman and actually my attention would be more invested in this person to make sure he doesn't do it again. That's what I mean. I take in those descriptors. If I see this person, I would watch him but not necessarily just be, you know, invested in seeking like some kind of retribution or something -- and something of that nature.

Q. Sure. Of course. Yeah, we're not -- yeah, we're not saying that at all. So how -- this crowd in front of the police station, let's just say in general the group of people below the overpass that you shot rounds at -- do you know who I'm talking about? Fair enough? That group.

A. Say that one more time (simultaneous speaking).

Q. No, the first time. Am I -- is it too quiet or is it garbled?

A. I just -- I just -- I just maybe I didn't -- yeah.

Q. That's on me. I -- it's -- I'm having a bad technology day.

But the group of people who are sort of milling around there in front of the police station below the overpass, okay, if we were to define that group of people -- you with me?

A. Okay.

Q. -- how long had that group been there before you were

at the overpass?

MR. BARTON: Hang on just a moment, Steve. I hate to interrupt but I think we're going to need to go off the record for 30 seconds because the battery is running out in our computer and I need to figure out how to get it hooked up.

MR. DEMIK: Sure. That's perfectly fine. I was going to suggest -- should we take five?

MR. BARTON: Yeah, I think that will be perfect.

MR. DEMIK: Okay.

VIDEO OPERATOR: We're off the video record. It's 11:10.

(Recess taken from 11:10 a.m. to 11:19 a.m.)

VIDEO OPERATOR: We are back on the video record. The time is 11:19 a.m.

Q. (BY MR. DEMIK) Okay, Officer. I'm certainly not accusing anybody of anything but during the break besides getting the power worked out for the computer did you discuss anything with Mr. Barton or anything else about this deposition?

A. Yeah, we just went over just what we've already discussed previously.

Q. Okay. No, no, I mean, just during the little break we had, the five-minute break, that's all I'm asking about.

A. Yeah, what we've discussed here previously prior to the break.

Q. Okay. What did you discuss?

A. About my actions on the overpass and impacting an individual.

Q. Anything specific?

A. Not that specifically. Just impacting somebody over the bridge while on the overpass.

Q. Okay. So just in the last five minutes what specifically was discussed? What questions and answers were -- were given?

A. What questions were asked? Well, I was -- I asked Mr. Barton about -- I just wanted to clarify if we were talking about the same individual and how you mentioned I fired what it sounds like multiple rounds when, you know, throughout the course I just want to clarify I only impacted one person, one shot, so I was just kind of curious as to if we were talking about the same individual or not.

Q. Sure. That's -- that's -- that's totally fine. So let's talk about that real quick before I go back into what I was asking about.

So how many people did you shoot on May 30th, 2020, total? And I'm talking about Capitol, overpass, everywhere, that entire shift.

A. I'm going to refer to my narrative that I wrote.

Q. Sure, go ahead. You can refer to it. No problem.

A. So I documented five total less-lethal rounds of

deployments but also notated that out of those five only one was at the nighttime overpass.

Q. Okay. So does that mean when you were at the overpass you only fired your shotgun one time?

A. One time, uh-huh.

Q. Okay. Where were the other four?

A. That was throughout the course of clearing proper on the highway in the evening time when we first got from the Capitol to the highway.

Q. Okay. So the four -- is it -- the four less-lethal deployments, that's shots, right, that's one, two, three, four out of your shotgun?

A. Uh-huh.

Q. Those happened at the overpass clearing the highway?

A. Yes.

Q. Okay. From the overpass shooting down into the crowd there was one deployment that hit one person?

A. Not into the crowd, at one specific person but, yes.

Q. Okay. Fair enough. Fair enough. So from the overpass one deployment, one shot from the shotgun at one person underneath the overpass -- or not underneath but below the overpass?

A. Yes.

Q. Okay. The other four deployments did you hit people or do you know?

A. I documented those four less-lethal rounds were deployed on three different people and they did impact those people.

Q. Okay. Four shots (audio distortion.) Right?

A. I think you muted when you had your fingers up.

Q. Oh, four shots, three people?

A. Yes.

Q. Okay. What range were those shots on the highway?

A. I didn't document the ranges in any of my notations or any of my supplements or texts.

Q. Were -- were they less than 25 or more than 25 yards?

A. I -- I only remember two -- two of those three deployments distinctly in my memory. One was probably around, you know, 15 to 25 yards and the other that was on the proper after an individual threw an object at me and other officers and then the two rounds on the one subject was at an individual he was at a substantial distance away, you know, 50 yards -- 50, 60 yards but I was pointed out to him by a supervisor. He was making some type of object. Like he reached into a backpack and making an object to throw at officers so I deployed two rounds at that individual.

Q. So let me break those down just so we don't throw them off one basket, we divvy them up.

One of the deployments, the first one was 15 to 20 yards or 25 yards. You said within 25 yards?

A. Uh-huh, yes.

Q. An individual threw something at you specifically?

A. Uh-huh, yes.

Q. What did they throw?

A. Like the larger traffic cones.

Q. Okay. One of those orange traffic cones?

A. Yes. Like more the -- not the big barrels but the taller ones. Probably the ones that are about four feet tall and those are designed to be on a highway. Not necessarily like the janitor ones you see but the -- you know, the taller ones.

Q. Made of rubber?

A. Yes.

Q. Okay. All right. When you -- when you were on the overpass when you made those deployments -- let's just limit it to that deployment. We'll call it the traffic cone individual. Did you have a shield or any other protection or just the mask?

A. Just the mask.

Q. And did you -- did you deploy -- let me ask you about all these times. These five less-than-lethal deployments on May 30th, 2020, were you wearing the mask? Was the mask up? Was the mask down? How -- what was the position of the mask when you deployed your shotgun?

A. Me personally the mask was up.

Q. All right. Did you ever take the mask down?

A. Not when I had the less-lethal shotgun.

Q. So you moved the mask up when you're ready to fire your shotgun?

A. Yeah, I left it up most of the time while I was carrying the less lethal.

Q. The other individual you said about 75 yards -- I know that I'm -- I'm -- I'm giving you that number, but it's more 25 yards -- that individual who was making something --

A. Uh-huh.

Q. With me? -- what was he making?

A. So at one point -- and I have it notated -- or I believe Sergeant Kwant (phonetic) had it notated in the R2R packet that the officer near me said this gentleman was making a Molotov cocktail.

Q. Okay. Was there any verification that was secured that he was making a Molotov cocktail? And, again, I'm not turning it into a murder case but I'm saying you saw somebody, it looked like they were making something. Your supervisor told you to impact them and you did, right?

A. A supervisor. I'm not sure -- it wasn't mine specifically. We're all -- we worked with a shift at that time on 35. We were all spread apart, you know. But a supervisor pointed this individual out. I was able to get -- get eyes on him, saw the same thing where he was in a backpack in and out making something with like a bottle, maybe a rag. I deployed

rounds at that individual and at that point they ran. They ran off. They didn't -- I obviously didn't see him again.

Q. Okay. Did the supervisor tell you to fire or what did the supervisor say, right? Because that -- that could happen two ways. One is the supervisor could say, "That individual there making a Molotov cocktail, impact him." And the other is like, "Hey, I just want you to know that guy is there. Do what you want to do." Which one was it?

A. It was more of a hey that guy looks likes he's -- watch out for that guy. Watch him. Because at that point more of the same and we kind of all developed this like spotters and less lethals because at this point in this line only people that can really use force were the officers with less-lethal shotguns because we learned real quick that people -- officers who didn't have less-lethal shotguns who tried to take action and go into the crowd would get surrounded by crowds forcing issues that didn't need to happen. So the spotter -- the spotter on Talley is like, "Watch that guy." I told most people, "Hey, watch that guy." And, again, whereas the police don't have to make that second call if they're going to impact somebody or not.

Q. Okay. All right. Because -- because I did -- I sort of want to focus on what your level of discretion is as a line officer or a patrol officer in these situations. So in this situation on May 30th, 2020, what I'm hearing you say is that

you had spotters, you had supervisors also pointing people out but your level of discretion was whether you chose to shoot somebody or not. That was your level of discretion. Nobody -- you didn't have to turn over to the supervisor and say, "Hey, can I shoot this guy?" You had the green light from the moment you came out of the van to impact people if you wanted to, right?

A. If I felt it necessary, yes. It was necessary, yes.

Q. If it was necessary and your decision?

A. Yes.

Q. Okay. Now, the higher level of discretion where you're deployed, right, at the overpass, in the highway, on the off streets, that's not in your discretion. You have to follow the orders where they place you, right?

A. Were you asking me if I had discretion on where I went? Is that --

Q. General areas. So, for example, when you dropped at the overpass at nighttime looking down off the crowd, that's an order that you take. They tell you to go to that overpass and position yourself there, right?

A. Yes.

Q. I'm just -- I know it's silly but I want the jury to understand what your level of decision is and then at what level you have to take orders because you do have to take orders from your superiors, right?

A. Uh-huh.

Q. And if they tell you to go to the overpass, then that's where you have to position yourself, right?

A. Yeah, in short I go where I'm told and enforce where I can.

Q. Right. And you have this -- this sliver of discretion or decision making that you have whether to fire the shotgun or not. That's your discretion, that's your call once you get the green light that you can fire, right?

A. Yes.

Q. Okay. All right. Let me come back before we took a break. How long was this crowd milling around the street below the overpass?

A. Since -- since we were called to the 35 from the Capitol in the middle of the afternoon to the late morning. Usually the protests will kind of die down 3:00 -- 3:00, 4:00 in the morning.

Q. So about what time did you shoot your shotgun from the overpass?

A. Night -- nighttime. Like, you know, 8:30, nine o'clock -- nine o'clock-ish. I'm not sure when we actually went up there. I don't know the exact time. I mean, 9:00 to midnight. I'm just not sure of the time.

Q. Okay. Well, you said before that you thought you went to the overpass about 8:00 or 8:30, sometime at night,

right? How long were you on the overpass before you fired your shotgun?

A. Yeah, I don't -- I don't recall how long I was up there.

Q. Did you -- did you fire it at midnight?

A. Yeah, I mean, it's -- it's definitely easier for me to say that losing track of time was very -- it just happened down there because you're standing at -- standing at a spot for who knows how long and you go to the next spot and you stand there. You're just, you know, hypervigilant watching people. There's not really a time -- there wasn't really much time for me to stop, take out my phone, look at my time or look at my watch or anything like that. So I know for sure it was nighttime. It was dark. Nighttime May, June time usually sunset. Nighttime is 30 minutes after sunset. You know, May time sunsets around 8:20, 8:30. So 30 minutes after that it would be dark. And as far as me knowing how long I was on that bridge, I -- I can't recall.

Q. Okay. Well -- and I understand you don't -- you don't want to give an answer that's incorrect. I understand that. But my question was you fired one shot from the overpass down into the crowd, correct?

A. At a -- at one individual.

Q. At one individual. That's fine, we can make that. You fired one shot from the overpass down at one individual

while you were on the overpass, right?

A. Yes.

Q. You didn't fire four times up there, you fired one time up there, right?

A. Yes.

Q. Okay. Now, I just sort of want it to best of your ability box it in, right? I'm not asking I fired at 8:27 p.m. or I fired at 9:17 p.m. but from what you're saying it sounds to me like it was after sunset so it's after 8:30 but it was before midnight, right, but it even sounds like before 10:00 p.m. So you could probably say it was between 8:30 and 10:00 p.m. Is that -- is that fair? Again, I'm not asking for 8:27 or 9:17 but I am looking for a range of time.

A. Yeah, I -- I think that would be fair, 8:30 to 10:00 p.m., 10:30-ish.

Q. Okay, between 8:30 and 10:00?

A. Yeah.

Q. All right. So about what time did you get to the -- down from the State Capitol when you cleared the highway which you said took 10 to 20 minutes, right, was it still light out? At what point do you remember -- where were you when it got dark at 8:00 to 8:30?

A. I believe -- I mean, from the time -- you know, as far as my recollection is the sequence of events, right, clearing the highway, now I'm on the embankment on the

northbound side looking at the northbound service road and then, you know, someone replaces us. Then we go to the southbound service road embankment kind of looking at the Main and then we rotate to 250, our parking corridors across the street from the Main, and we're getting water and sitting down for some times. Back on the embankment. Just kind of rotate everywhere until it kind of -- the protest starts getting, you know, rowdy and objects are being thrown. Nighttime is when we're directed to go up to the overpass.

Q. So did you get any information at the time you go to the overpass how long that crowd had been milling in front of the police department?

A. It -- I mean, they had been there since we got on 35. There's -- you know, there's -- throughout the protest there's been a constant crowd in front of the Main protesting the entire time.

Q. Okay. Did you get any briefing information intelligence on who this crowd was and how long -- let me break it down.

How long it had been there in front of the police department? Did you get any debriefing intel information from anybody on the police force?

A. As far as I know, the crowd had been there since the 29th. There's been a small crowd there May -- the night of May 29th because I remember I was working patrol the night before

and we had to pull officers from a crash that I was working and they had to go to the Main to help out.

Q. To the main police station?

A. Yes, on the 29th. So as far as I know there was a crowd there on the 29th. That's where it started.

Q. And were you there on the 29th?

A. No.

Q. Okay. You just knew that other officers had been told to go there?

A. Yes.

Q. Why didn't you go? Because you were working the crash or what?

A. Yeah, it was -- it was a rough crash so I had to go home.

Q. Okay. All right. So on the 30th, okay, when -- when they order you to the overpass to position yourself at the overpass looking down on the crowd, did you have any information about how that -- how long that specific crowd had been in front of the police station?

A. As far as like the crowd, I have like no -- like no specific information or intelligence to tell you that was the same people there in front of the main police station from the 29th to the 30th. I assume it's just a constant rotation of people wanting to join the protest.

Q. Okay. Well, as a police officer, there's -- there's

a concept called briefing, right?

A. Uh-huh.

Q. And so before you're sent on a specific task or job oftentimes you'll be given a briefing, correct?

A. Correct.

Q. And that will be a sergeant or a supervisor or someone will say, "Listen, guys. Here's the information you need. This is what our objective is. This is the rules of engagement." All those things happen in the briefing, right?

A. Correct.

Q. Did you get any briefings before you came to the overpass?

A. Nighttime or Capitol?

Q. Nighttime.

A. Nighttime.

Q. Thank you for clarifying.

A. Yeah, so I believe we were down at 250 and we were directed by our supervisor, "Hey, the officers at the Main are getting hit with stuff. If you're near the bridge, we need officers up there now. That's going to be us. Let's go."

Q. And why did they tell you they needed officers up above for this crowd in front of the police station?

A. From what I recall we were told that they -- officers at the Main were getting hit with objects. You know, rocks, bottles. You know, there's fireworks going off, that type of

stuff. And most of the agitators were too far away from officers at the Main to deploy and go grab them because George -- the George officers -- downtown officers, they have more training, kind of mobile field force and like group-arresting tactics. So what they're used to is they're at the Main, they'll develop a plan, and they have a line set up at the Main steps. All right, they'll develop a plan. They'll send five, six officers out into the crowd, grab somebody, you know, pull them back to the Main. But the agitators, right -- you have the protestors in front of the Main protest which is fine but the agitators would be behind that group throwing stuff over making it very difficult for the officers at the Main to go and grab them. So to deter and keep that coverage and to keep those agitators away we were told to go to the overpass to kind of, you know, help those officers and protect them from the people running from under the overpass throwing objects and running back further away.

Q. Okay. But did you receive any briefings as far as who this crowd was, how long they had been there, who's in the crowd?

A. From what I remember seeing, there was too many people to put different descriptors out for all those types of people.

Q. Okay. So -- so, no, you did not have a formal briefing where they briefed you on this crowd?

A. No, just other than what we were -- where we were going and why we were needed there.

Q. And -- and if I can give it back, and you correct me if I'm wrong, but where you were going and why you were going there, you were -- where you were going is they told you to go to the overpass overlooking the crowd and why you were going there was to provide cover or protection for the officers at the police station, right?

A. Yes.

Q. Okay. So that that was where you were going and why you were going there?

A. Yes.

Q. Okay. All right. Let me ask you just generally about your experience in -- in deployments, I guess. You know, not -- well, do you have any military experience, Officer?

A. No.

Q. Okay. So good. So then "deployment" meaning -- "deployment" is a fancy word for shooting, right? Deployment of less-than-lethal rounds, deployment of firearms, deployment of service weapons, that -- that means shooting, right?

A. So different from what we were trained in the academy less-lethal shotgun and it's -- and I don't want to give you the wrong information. This is just me and I'm no firearms expert but from what I remember in the academy that the less-lethal shotgun they use the term "deploying" instead of

"shooting" because it's not a firearm. It's less-lethal means, it's a bean bag.

Q. Okay. Yeah, I'm (simultaneous speaking) -- sorry, go ahead.

A. And that's why I refer to, you know, deploying a less-lethal shotgun as opposed to shooting it because that's what we were taught to -- that's how we were taught to phrase, you know, that type of language.

Q. Okay. Sure, I understand that. And, again, I understand your different terminology but what you're saying is the terminology that we're taught to use is deploying a less-lethal shotgun and then discharging a firearm there's a difference there because less -- less-than lethal we call it deployment instead of shooting and firearm we call it discharging instead of firing. Fair enough? I mean, I'm -- I'm not asking you to go through the police manual. I'm just saying that's the distinction that you're taught in the police force, right?

A. Uh-huh.

Q. Okay. You've been with the police department now -- well, up until May 2020 -- I don't -- I don't need to talk about stuff after 2020 because it's -- you know, we're just going from the time you started up to 2020 so that was about three years as a police officer, give or take?

A. Three years with the City. We -- we like to just --

just count our street time so December of 2017.

Q. Okay. Okay. More like three years? The academy is 2016 and then we're moving up to May 2020, more like three years you're a police officer. How many times have you either discharged -- let me -- let me start there. How many times have you discharged a firearm during your time in the police department?

A. Never.

Q. Okay. So you've never fired your service weapon. And then on May 20th you deployed the less-lethal shotgun five times. Besides that, besides the five times in 2020 -- and I'm talking about patrol related, I'm not talking about training, okay, if that makes sense -- how many times discharged -- or excuse me, excuse me, deployed less-lethal shotgun besides these five times on May -- on May 30th, 2020? How many times have you done that during your time with the police department?

A. About eight or nine times or -- not including the five, correct?

Q. We're just -- yeah, not including the five. From the time you started as a police officer to May 30th, 2020.

A. Okay. Zero times before that.

Q. Okay. So zero times. So on May 30th, 2020, if I understand you correctly, that was the first time in the line of duty that you shot a less-than-lethal shotgun?

A. Yes.

Q. Okay. Did you receive any training about inspecting the less-lethal shotguns when you check them out?

A. As far as like servicing the shotguns or cleaning them?

Q. More -- more or less. What I'm asking is -- maybe I can help -- maybe I can help sort of focus it this way. So you received training and a yearly certification -- or a yearly test on the less-lethal shotguns, right, in firing them and -- and, you know, the -- I guess can we call it an accuracy test?

A. Yes. Proficiency/accuracy.

Q. Sorry?

A. Proficiency or accuracy.

Q. Proficiency or accuracy. Any part of your training or certification with these shotguns about inspecting them, right, like servicing them I think is the term you used and that's kind of what I'm asking is servicing it, how it works, what the parts are, what -- you know, inspecting it, right, to make sure it's in working order, things like that. Any part of your training and certification to deal with that?

A. In the academy, yes.

Q. Okay. Can you tell me about that training?

A. It's -- it's been awhile. You know, it's just we -- there's lectures and Power Points that went over the functionality of less-lethal shotguns, yeah, I guess the parts, the slides, how it works, the bean bags that are used to put

into the less-lethal shotguns. You know, and it's a -- it's -- they're cleaned and maintained the same way as shotguns -- shotguns are.

Q. Okay. Let me ask you a question and you answered my question. Thank you. The bean bags, do you load those into the shotgun individually before you fire? So, for example, on May 30th, 2020, you fired it five times. Do you have to reload it after every shot? How does that work?

A. So it has the capability of holding four rounds without one being in the chamber so it's capable of five total if you have one in the -- in the chamber ready to go. But other than that you could have four in there and whenever you're ready you can slide a round -- or you can, you know, pump a round into it to get it, you know, ready to deploy.

Q. So does that mean on May 30th, 2020, you had shot it four times I think at the overpass -- excuse me, four times on the highway and then one time on the overpass. Does that mean you had to reload it in between those two?

A. Yes.

Q. And what -- what does reloading look like? What do you do? Where do you have the bean bags? Where do you get them?

A. So our supervisors had rounds and any time -- or pretty much it was just keeping your pockets full. You have to have my rounds in my cargo pants pocket and any time I needed

to reload, you know, put my less-than shotgun on safety and insert rounds into the tubing.

Q. Okay. So between the time that you had fired it four times in the overpass you had to do that, right? You took the bean bag out of your cargo pocket and you loaded -- did you load four rounds in it?

A. I loaded them until I -- until it was full.

Q. Okay. So four?

A. Yes.

Q. Okay. Do you recall when you reloaded the shotgun?

A. If there was -- if there was a break, I would reload -- I probably -- possibly more than likely reloaded every time I deployed a round.

Q. Okay. So you'd fire it once and then you'd take another bean bag and put it in there and so now instead of having three you have four? You have a full chamber?

A. Yes.

Q. And so to your recollection then you probably reloaded four times?

A. More than likely, yes.

Q. Okay. All right. And is there any kind of notification or permission that you need to get when you reload? So what I'm asking you is that after you've fired the shotgun, do you have to tell anybody, "Hey, I'm reloading"?

A. There were -- there were times where you would let

another officer near you also on a less lethal like, "Hey, I'm reloading," to kind of pick up the area that you were watching because everything was so dynamic that any second you could have something thrown at you that person could be right in front of you or at a distance where maybe a deployment would be applicable or practicable so obviously if you were loading you can't deploy and you just let someone around you know like, "Hey, I'm going to back up, reload real quick," because it takes time to manipulate until you get your rounds in there.

Q. So you would mention to somebody that you're reloading so that they could cover you if something happens, right?

A. Yes.

Q. But -- but my question is do you have to get any kind of approval or go to a sergeant or go to somebody in line and say, "Hey, listen, I want to let you know I'm reloading. I've discharged, you know, two times, three times, whatever"? Is that any protocol that you follow?

A. No.

Q. And how many bean bags are you given? So on May 30th how many do they give you? You know, are your cargo pants like ten rounds or how -- what do they give you?

A. As far -- they're full as far as I remember. You know, as many rounds you can probably fit in a regular cargo pants pocket and 10 -- 10 to 15 of those bean bags.

Q. Okay. So you had about 10 to 15 rounds?

A. Yes.

Q. So do you receive any training about inspecting the rounds to see if they're functional, if they're expired, if they're defective, any of that?

A. Not that I recall.

Q. And how big are these bean-bag rounds? Can you estimate? And we'll put on the record with some kind of estimation but just show us how big these rounds are?

A. As far as the tubing they're in or actual bean bags?

Q. Both.

A. The tubing I would estimate to be about like three inches, like one inch in diameter, and the bean bag once it's deployed is about, you know, two inches in diameter. That's the ball. Small two-inch sphere.

Q. And, you know, these bean bags, they -- they can hurt people obviously, right?

A. Yes.

Q. If they hit certain parts of the body, there can be very serious injuries, right?

A. Yes.

Q. And, you know, they're less than lethal but that doesn't mean that they can't cause serious bodily injury, correct?

A. Correct.

Q. So you had mentioned a spotlight or a flashlight somehow that officers from the overpass were pointing at particular individuals. Was that a -- was it a hand-held flashlight? Was it like a spotlight on a patrol vehicle? What was it?

A. Hand-held flashlights.

Q. Hand-held flashlight. And who was doing that? People who didn't have the shotguns?

A. Yes.

Q. Okay. How many people were holding flashlights to your recollection and pointing them down onto the crowd?

A. As many people as were less-lethal shotguns and I can't remember on our shift. I think on our shift up there at least my shift of 14 probably at least five of us had less lethals to my best guess.

Q. Okay. What about in front of the police station? Do you have any idea how many less-than-lethal shotguns they had?

A. At the officers at the Main?

Q. Yes, sir.

A. I don't know. I have no idea.

Q. But you were aware they had them, right?

A. I was -- I would assume they had them.

Q. Did -- did anybody brief you and tell you that the officers at Main had the shotguns?

A. No. No, sir. That was mostly -- I didn't have any

interaction with those guys at the Main because those are mostly the George -- the downtown officers and at no point during those first two days did I go into the Main or interact with those officers over there.

Q. Okay. But they were on radio -- constant radio contact with you officers at the overpass, right?

A. Uh-huh, yes.

Q. And so were you made aware at any point that they had shotguns, too?

A. No, that's not necessarily something that we would radio to each other.

Q. So was it fashioned then that the officers at Main were relying on the officers at overpass to utilize their shotguns?

A. Yes.

Q. Okay. So did you have knowledge that the officers at Main also had shotguns or -- well, let me ask it that way. Do you have any information that they had shotguns?

A. I can only assume. I'm not sure of the resources they had. I know they're available to them but I'm not sure what they had on the steps with them.

Q. Okay. But it would be safe to assume if they're protecting the main police station in Austin that they have some means to deter the crowd or push the crowd away, right?

A. Yes.

Q. When -- when officers were shining the flashlights on particular individuals, were they encouraging other officers to fire at them?

A. No. The -- the communication -- the whole idea was to spot individuals who we thought posed a threat to other officers, right? So the idea is the flashlights -- because obviously I'm -- I'm watching the crowd as well, not only relying on my spotter at that time I'm watching the crowd as well. He's watching the crowd and the idea is we communicate like, "Hey, I think I see someone. Watch them." And then I would direct my attention to that person, right, with the flashlight on them and it wasn't a whole bunch -- the flashlights aren't constantly on. We -- they turned them on at specific moments at specific people so there's no confusion about who we're talking about.

Q. Do you recall anyone saying -- saying something to the effect of, "Go after the guy in the red shirt" when they flashed a spotlight on him?

A. No, I don't recall that.

Q. Was the -- was the idea of shining the flashlight to assist the officer shooting the shotguns?

A. Yes, to direct -- direct their less-lethal officers to that person. Kind of a pay attention and watch this guy.

Q. Okay. And -- and was it in any way intended to help get them visibility to -- to shoot that person? So, in other

words, to get them a better view when they fired the shotgun?

A. It was more an idea so there would be no confusion about who we're talking about.

Q. And -- and in an effort to prevent confusion they used hand-held flashlights?

A. Yes.

Q. So the idea of bean-bag rounds and less-than-lethal shotguns is -- is a deterrent, right? I mean, this is what you're trained in. You don't want to kill somebody, right?

A. Yes.

Q. But you want to deter them. You want -- you want a crowd to disperse, you want an individual to -- to flee a certain area. That's the reason why you use these shotguns, right?

A. Correct.

Q. And the idea is that if you shoot somebody with a shotgun, they're going to run the other direction or -- or in some sense be subdued to go away from you, right?

A. Yeah, or stop their immediate action.

Q. Okay. And so if an individual is, for example, crouched in a fetal position on the ground, okay, is that an instance in which you would impact them with a less-than-lethal shotgun?

MR. BARTON: Object to the form.

Q. (BY MR. DEMIK) That's fine. You -- you can answer.

MR. BARTON: You can go ahead and answer.

THE WITNESS: No.

Q. (BY MR. DEMIK) And the idea is to shoot the less-than-lethal shotgun the least amount of times so you give the individual the idea but you don't just try and hurt them, right?

A. I'm sorry, say that one more time?

Q. Sure. And let me get closer to my telephone.

The idea and what you're trained in is that you shoot them only the number of times that it takes, right, to deter them. I mean, you don't -- you don't keep shooting them to inflict pain, correct?

A. Correct.

Q. And so if you shoot an individual one time and they flee, you're not supposed to shoot them again, are you?

A. No. In -- in most circumstances, no.

Q. Okay. What circumstances would you do that, would you shoot someone again after you shot them once and they had complied?

A. And they hadn't complied or --

Q. They had complied.

A. Well, it wasn't necessarily -- I -- to be specific and to flush it out, sometimes I work with a specific unit, the Violent Crime Task Force, in which we apprehend -- we try and apprehend, you know, people who commit serious violent

offenses. That point when we're trying to, you know, inflict an arrest and I've done it before where I've deployed a less-lethal shotgun multiple times from a fleeing subject knowing that he's a danger to the community. So that's a specific circumstance where I'm deploying multiple rounds for a fleeing suspect.

Q. Well, but you've never done that, right, because the only time up until May 2020 -- and, again, maybe it's a timing thing, maybe it's that -- but from the time you started the police academy in May 2017 to May 30th, 2020, you hadn't done that, right?

A. Yeah, up to that point but after the fact you mentioned that I wouldn't impact some -- a fleeing subject but I have in my career. It's just a specific circumstance where you could impact a fleeing subject multiple times. It just depends.

Q. Okay. Did you have any information or knowledge of anybody in that situation in this crowd in front of the main police station on May 30th, 2020?

A. I think I covered you up on the first part of that.

Q. Sure. Did you have any information or knowledge that anyone in the crowd in front of the main police station on May 30th, 2020, was one of those individuals that you had just described?

A. No, not to my recollection.

Q. Well, is -- is that something you would note?

A. Would note?

Q. Yes. Would you put that in a report? You said somebody who is a danger to the community, fleeing, serious felony offense, that's something you would write a report on, right?

A. Yes.

Q. You did not write one of those reports pertaining to May 30th, 2020, did you?

A. No, I did not, no.

Q. Were -- did you have any e-mails or electronic communications with regards to this event on May 30th, 2020? I'm talking about e-mails to fellow officers, I'm talking about e-mail communication -- electronic communications with supervisors, sergeants or anyone else.

A. No.

Q. Did you have any information on what you were heading into? Okay, so on May 30th -- I think you said you worked on May 29th and you investigated a pretty serious crash. What -- what was that? Can you tell me a little bit about that? And, again, I'm not -- that's not this case but I just want for context what was that crash? Was it like on the highway? Was it a truck? What was it?

A. It was a fatality crash with a couple of kids.

Q. Oh, geez, I'm sorry. A pretty serious event. Where

did it happen?

A. At east State Highway 71 and 130 out past the airport.

Q. Is that -- is that on the highway?

A. Yeah, the service roads but, yeah, the highway.

Q. Okay. So that was on May 29th and I imagine you remember that pretty vividly because it was serious?

A. Yes.

Q. And a very -- a very difficult part of your job to have to deal with those things, I imagine?

A. Uh-huh.

Q. So on May 29th you went home. And then the middle of the afternoon on May 30th you started the shift what -- what we're talking about in this case. I guess in general -- in a general manner I'm asking you did you have any information -- did anybody tell you what you were going to walk into on the 30th? Did you have any idea?

A. From what I remember, the night of May 29th it wasn't -- it was not that large of a crowd. It was a smaller crowd protesting. I think what -- what really kind of enhanced the shock factor was like officers on the 29th -- officers from citywide evening shifts were told to hold over, to work longer after the end of their shift to go down to Main to help and that was a misuse of resources. They didn't need that many officers on May -- on May 29th. So when I got to work the next

day, they're like, "Last night it was just -- it was kind of calm. It wasn't that craz -- it wasn't crazy at all. I don't know why we were there." And then May 30th, yeah, happened.

Q. I think I understand what you're saying and I think it happens in some context is that officers were given -- to your knowledge -- this is only your knowledge. I'm not asking you to testify as Chief of Police or anything of that but to your knowledge, Officer, people had been called in to work, forced to work on the 29th and things were rather calm?

A. Yes.

Q. More or less. And -- and so what that sort of was was a miscalibration, and I understand you can't predict what's going to happen, but then on the 30th it was much more active, it needed much more personnel, much more attention to police officers than on the 29th, right?

A. Yes.

Q. But -- but on the 29th, you know, a lot of these are the same officers. They had to work on the 29th and so I don't know what you call that. When I was waiting tables we call it like working a triple or something. What -- what is that called in the police force?

A. Where officers are --

Q. Have to work like extended hours, like pretty serious hours. Twelve-hour shifts and the emergency protocol that you talked about that --

A. Yeah, we have -- we still have to -- I think for the most part departments still have to adhere to the policy that an officer can only work 16 hours within a 24-hour period. But as far as like mandatory -- we call it holding over, mandatory when your shift ends so let's just say, for example, we were the 4:00 -- 4:00-p.m.-to-2:00-a.m. shift. When our shift ended at 2:00, the department is like, "Hey, mandatory holdover. Anybody that -- you know, all these evening shifts that are about to go off? Y'all go to the Main until further notice." That's what you call it.

Q. Right. And that had happened to quite a few officers from the 29th to the 30th?

A. Yes.

Q. Now, getting back to it -- and I understand the 29th, you know, you had some anecdotal information but going into the 30th did anybody from the police department, you specifically, sort of prepare you for, "Hey, it's a lot -- it's a lot rougher or a lot more people or whatever the extenuating circumstances are on the 30th as compared to the 29th"? Does that make sense? Does that question make sense?

A. Yeah, it makes sense but, no, there was -- there was no information like given out to like, "Hey, be prepared, it's going to get rowdy out there." I mean, even at the Capitol it wasn't. For me personally this being my first time being involved in a situation like this me personally it just -- it

wasn't eye opening at the Capitol until we got to 35 and at that point it -- it seemed out of control.

Q. From the Capitol to the police station?

A. On the 30th, yes.

Q. Okay. Now, at the time -- let me ask you just two follow-up questions to that.

At the time you were at the overpass, right, and your body-worn camera is on and you're there with your shotgun and the -- the other officers are sort of on that line going up and down on the -- on the overpass on the highway, would you describe the crowd at the bottom as out of control?

A. I'm sorry, we're talking about daytime or nighttime?

Q. Nighttime.

A. Nighttime? I would honestly describe the crowd at the front steps at Main as more -- just more of actual protestors. Signs, chants, young screaming. But it was the members underneath the bridge and like the in between in kind of the no man's land that were the agitators that were just out of control. You know, cars being set on fire, mattresses being set on fire, fireworks, rocks, stones, sticks, bottles, all that kind of stuff.

Q. On May 30th, 2020, were there any cars set on fire?

A. Yes.

Q. At the police station?

A. Underneath the bridge right where we were standing.

We -- it was getting to the point where we were inhaling smoke and had to move a little bit further north on the proper away from the smoke.

Q. Okay. What kind -- would that -- well, that must have been during the daytime, right, because then at the night is on the overpass?

A. Yeah, it was nighttime we were called the cars were set on fire.

Q. Okay. What kind of car was it?

A. Sedan if I remember right.

Q. And where was it located?

A. It was located underneath the overpass or right underneath the overpass I think -- I believe on 7th Street.

Q. And was the fire department called?

A. Yes.

Q. And what did they do?

A. They had to wait for us to escort them up there. For officers, not us, but officers to come from the Main, they had to, you know, generate a plan, come out with probably 20 officers and then walk the fire department to the car so the protestors wouldn't surround them and, you know, at that point we had to kind of move over as the over watch into the smoke just to provide coverage for those officers and the fire department.

Q. About what time was that?

A. Ten o'clock-ish to midnight-ish I would guess.

Q. Was that before or after you had fired your shotgun from the overpass?

A. I believe that was after.

Q. So let's -- let's talk about before you fired your shotgun. So that's good, you're sort of making distinguishments in time and that's good. It helps us be more accurate. But from the time you went to the overpass until the time you fired your shotgun, right, would you describe that crowd as out of control?

A. Partially, yes.

Q. What does "partially" mean?

A. And it wasn't everybody. Not everybody out there was in riotous behavior. There -- there were just, you know, a good amount -- a good amount of agitators that, you know, turned the protest into, you know, more a rioting and looting type of situation.

Q. Would you characterize that crowd in front of the police department up until the time you fired your shotgun as a riot?

A. The crowd directly in front of the officers in the Main? No, I wouldn't categorize them as a riot, no.

Q. Okay. Was there a riot happening -- from the time you went to the overpass until the time you had fired the shotgun, would you characterize any area as a riot in that

vicinity? I'm not talking about suburbs or something like that, I'm talking about in that vicinity, was there a riot going on?

A. Yeah, a handful of -- you know, obviously there's definitely more than three people engaging in riotous behavior so, yes.

Q. So there was no riot in front of the police station but there was a riot behind the protestors at the police station?

A. Yes.

Q. Okay. You've mentioned this term a few times, "agitator." What is an agitator?

A. So the idea of a protest is, you know, to get -- you know, get a point sent to -- you know, send your message -- First Amendment rights -- First Amendment rights and we all understand what was going on at that time. Yeah, like there's -- there's no argument from me about what wrong was done during that time, right? But the people -- agitators -- agitators I described is the people that are just literally destroying the message just wanting to see and create mayhem which includes, you know, obviously the fireworks, cars setting on fire, mattresses set on fire. You know, a gentleman was apprehending later that night after making a Molotov cocktail right near the Main. Just those certain people.

Q. Okay. That's not the individual on the overpass that

you shot with the shotgun who was making the Molotov cocktail, you're talking about a different one?

A. Yes.

Q. Okay. The individual on the overpass, again, did anybody confirm that he was making a Molotov cocktail? Did anybody go seize his bag and find gasoline and lighters and any of that?

A. The daytime one, no. The nighttime one, yes.

Q. Okay. And nighttime after you shot your shotgun?

A. I believe so, yes.

Q. What does an agitator look like?

A. There's -- there's no specific look as far -- the looks aren't anything. It's actions of somebody.

Q. Okay. What does a protestor look like?

A. Again, it's not necessarily looks, it's just the actions.

Q. Okay. So somebody who is an agitator could look like a protestor?

A. Yeah. Yes.

Q. And somebody who is a protestor could look like an agitator?

A. It's sort of racist. Again, it's nothing to do with looks. It's just all about actions.

Q. So -- and that's what I'm sort of asking is if it doesn't have anything to do with looks, then how do you tell

who is an agitator and a protestor in a group of 100 people in front of you? It must be very difficult, right?

A. No, not necessarily. I mean, just whoever is trying to inflict injury on someone else, you know, or, you know -- and I use -- you know, I want to use it loosely but, you know, whoever like disrupts the peace, right? The fact that they're protesting and trying to get their message across whether it be yelling or talking, screaming through megaphones, blow horns, whatever the case, it's all fine until fires are set, fireworks are thrown into crowds, bottles, rocks are being thrown. At that point I can distinguish a person who's, you know, talking, getting a message across, I can differentiate that person from someone who is, you know, engaged in that kind of behavior. It's -- it's distinguishable. It was easy for us to -- easier for us to see.

Q. Well, you're human and you make mistakes I assume, Officer, like all of us?

A. Right.

Q. And -- and you could make a mistake in whether you determine somebody was an agitator or a protestor? It's possible you make a mistake especially if there's a crowd of more than 100 people in front of you, right?

MR. BARTON: Object to the form.

THE WITNESS: It's possible.

Q. (BY MR. DEMIK) And nobody is perfect, right?

MR. BARTON: Object to the form.

THE WITNESS: Correct.

Q. (BY MR. DEMIK) Right. And so you're really -- you're -- you're talking about the decision of each individual officer, aren't you?

A. We're talking about my decisions here today which is -- I guess I'm focused on my decisions that I made that night, that day.

Q. Sure. And your decisions could differ from another officer right next to you, couldn't they?

A. Right.

Q. And they could differ from an officer five people down in a line from you, right?

A. Correct.

Q. And so that's what I'm asking you. We're talking about an individual assessment of who's an agitator and who's a protestor. There's no sergeant saying, "He's an agitator, she's a protestor, she's an agitator, he's a protestor." It's your own individual decision, right?

A. Right.

Q. And you have to make it sometimes in a split second, don't you?

A. Correct.

Q. And we can all make mistakes, right?

A. Correct.

Q. Did you see any other officer fire a shotgun at somebody who you weren't sure if they were an agitator or not on May 30th, 2020?

A. No, not at all.

Q. Did you pay attention to any of the protestors that other officers were shooting? I use -- let me back up because I really -- I want to be fair. I used the word "protestors." We've made that distinction so I want to strike that and I want to ask it of you this way.

Did you see any other officer shoot an individual or did you pay attention to any of the individuals that other officers were shooting?

A. Yeah, I did see individuals get impact -- impacted with less-lethal shotguns.

Q. Okay. And why didn't -- why didn't you fire at them as well? If you saw another officer impact an individual and you didn't fire, why didn't you fire?

A. My guess is I didn't see the initial. I was probably pay -- I was paying attention to something else and, you know, peripheral vision I saw someone get impacted but I didn't see the actions leading up to that event so, therefore, you know, I didn't impact that individual.

Q. So you're sort of limiting your decision of who to shoot or impact based on what your own eyes see?

A. Yes.

Q. And your eyes see something different than every other officer's eyes see because that's how human nature works, right?

MR. BARTON: Object to the form.

THE WITNESS: Correct.

Q. (BY MR. DEMIK) Were you there when an individual drove into the crowd? I'm talking about the crowd in front of the main police station, were you there when an individual drove a car through that crowd?

A. At nighttime?

Q. Any time.

A. I mean, yeah, I was -- I was there at the Main for the -- you know, the middle of the afternoon all the way through nighttime so if it happened within that period, then I was there.

Q. Okay. Were you there when an individual drove I think a white car into the crowd?

A. Yeah, I was -- yes, I was -- where? I mean, over the overpass? I mean, I was in that vicinity if I was there.

Q. Can you tell us what happened during that?

A. Honestly, I can't recall -- I don't recall that specific event of the car coming into the crowd.

Q. Do you recall a white car coming into the crowd and officers from the main police station coming down and removing that person from the car?

A. So, I mean, obviously in prep for this I reviewed that video but, you know, prior to reviewing the video I didn't remember that at all.

Q. Did you see it on the video? I'm confused.

A. Yeah, in reviewing for this prep I watched that video but prior to reviewing that video, you know, prepping for this I didn't recall it prior to.

Q. Okay. So when you watched the video, did it refresh your recollection as to what happened on May 30th, 2020?

A. No, not really, no.

Q. Watching the video of -- what video are you talking about? What video specifically did you review?

A. If we're referring to the same thing, I guess a silver car or SUV was stopped in the southbound service road right at 8th Street and, you know, there were protestors in front of it and officers from Main had to come and get the -- that -- that individual from the car out and then the officers drove the car like out of the area. I'm not sure what happened with that whole situation.

Q. Where were you -- where were you when that happened?

A. I believe I was on the overpass at that time.

Q. So do you recall observing that?

A. Yeah. Like I don't recall it -- yeah, prior to, you know, what's described in the video I saw, prior to that I didn't recall and even after the fact I still don't recall it,

you know, personally. My own memory or recollection I don't recall that situation or that incident.

Q. Okay. Well, I mean, I'm not trying to be too lawyeristic but if I don't remember what happened last week, it's perfectly understandable, but if somebody shows me a video of me going down a water slide with my kids, I'd be like, "Okay, I remember that now, right? I saw the video." I didn't remember it prior to seeing the video but once I saw it I'm like I remember where that happened. That happened at Schlitterbahn in New Braunfels, Texas. You can tell I'm fresh off vacation. But I -- I remember that video, right? So when I see the video, it refreshes my recollection and now I remember, yes, I was there, I saw it and, et cetera. So let's apply that to your situation.

You didn't recall this car coming through the crowd before you saw the video. Then you watched the video to prepare for your deposition, right? Did that refresh your recollection of witnessing that event?

A. Yeah. No, like I don't remember that, you know, incident happening. I guess it just wasn't a significant event for me to commit that to memory. There were plenty of things that happened at night where, you know, something would jog it but this one honestly it just didn't jog my memory of anything.

Q. Okay. Well, would you agree with me that a car driving through a crowd of protestors is a pretty significant

event in your line of work?

MR. BARTON: Object to the form.

THE WITNESS: It happened multiple times that night so, I mean -- and from the video I saw I guess when it started it was already stopped so I don't know like actually how it got to that point but, yeah, on like -- it just -- this specific event like it didn't, you know, jog any type of memory of that happening that night.

Q. (BY MR. DEMIK) Okay. Well, let me ask you this way. Are you aware of the protest in Charlottesville, Virginia where an individual ran over a protestor and killed her?

A. Not -- I don't remember -- I don't recall the details or specifics specifically on that.

Q. You don't remember when there were protests -- White Supremacists in Charlottesville, Virginia, there were massive protests there and an individual ran over a group of protestors and he killed a female? Do you recall seeing that on the news or Donald trump making a statement about it?

MR. BARTON: Object to the form.

THE WITNESS: I do not.

Q. (BY MR. DEMIK) Would you agree with me that if a car is driving through a group of protestors who were in the street exercising their First Amendment rights, that could potentially hurt or kill somebody, couldn't it?

A. Yeah, of course.

Q. So on May 30th, 2020, do you dispute that a car drove into this crowd in front of the police station?

A. No, not after I reviewed the video. There's no way for me to dispute it.

Q. And what happened was the group -- a group of officers from the line in front of the police station came into the crowd and removed that woman from the vehicle, correct?

A. Yes, after review of the video, yes, that's what I saw on the video.

Q. And one of the officers got in the car and drove it away?

A. Correct.

Q. Did anybody impact that woman with less-than-lethal shotguns?

A. In the video I didn't see anybody do that.

Q. Where were you when that happened? You were on the overpass?

A. I believe so, yes.

Q. Okay. And you were looking down into the crowd?

A. If I was up there then, yes, I was looking down into the crowd.

Q. And you saw these officers come from the line into the crowd, remove the woman from the car, right?

MR. BARTON: Object to the form.

THE WITNESS: And, again, like only after

reviewing the video like I can give you answers about what happened but my personal memory of that specific event I -- I just -- I can't -- I can't recall -- I don't recall that situation.

Q. (BY MR. DEMIK) Well, I guess -- I guess, again, I'm not trying to state a point but, you know, if somebody else took a video of something I didn't see, that's -- that's not in my personal knowledge. If somebody took a video of something happening in Wimberley, Texas and I wasn't there, so I don't have any recollection of that. You can show me the video and I can say, okay, I guess that happened but I wasn't there, I didn't see it. There's that. And then there's my kid on the water slide in New Braunfels, Texas. I was there, I did see it. I was standing next to the person who took the video. I saw it and now I've seen the video and I recall it and that's what happened. Which one of it is this?

MR. BARTON: Object to the form.

THE WITNESS: So, yeah. If someone were to tell me, "Hey, this happened that night. You were there," I would still say I don't remember that and even after watching the video I can sit here and say like I don't remember that happening. But it doesn't necessarily negate that it did happen because it did happen but I -- my personal memory isn't -- you know, it's just not saved up there.

Q. (BY MR. DEMIK) So you do remember shooting an

individual from the overpass that was an agitator in your view?

A. Yes.

Q. And you recall the details of that?

A. Yes.

Q. You recall seeing the person?

A. Yes.

Q. And what did they do to make you shoot them?

A. They threw an object at the officers at the Main.

Q. What was the object?

A. I think it was lighter fluid. I think it was a bottle.

Q. Okay. What -- what kind of bottle? Glass bottle? Liquor bottle?

A. I believe probably after -- I'm not sure. A water bottle. Plastic water bottle, I believe.

Q. Okay. And you -- you recall vividly seeing that because that was your justification for shooting, right?

A. Yes.

Q. You recall shooting the person one time?

A. Yes.

Q. Right? What did they do when you shot them?

A. They began to fall to the ground.

Q. And then what happened?

A. When I deployed, he was still standing up and then I'm essentially just watching my bean bag like so I'm looking

down the barrel following, you know, my sight -- my line of sight and watching the bean bag fly through the air and, you know, pretty instantaneously he's hit multiple times as he's falling to the ground.

Q. What was he wearing?

A. A white T-shirt.

Q. What did he look like?

A. I couldn't tell you. I know he was a male. I couldn't tell you his, you know, race or necessarily anything like that.

Q. Sure. So you recall those details vividly because you shot an agitator with your shotgun per, you know, policy and procedure and you remember all the details because what you did in your eyes was totally appropriate and justified, right?

A. Uh-huh, yes.

Q. Okay. But you don't remember this car coming through the crowd?

A. No.

Q. You don't recall who was driving?

A. No. I don't think I ever saw the person.

Q. You don't recall if any officers came off the line and took her out of the car?

A. Prior to reviewing the video, no.

Q. Well, after reviewing the video did you recall it or did you still not recall it?

A. No. Yeah, my only knowledge of this event is the video.

Q. Okay. That's fine. But I'm just -- I'm taking you at what you're saying. I watched the video and I still don't recall.

A. Yes.

Q. Okay. So you watched the video of the woman in the car. Still don't recall her being taken out of the car, right?

MR. BARTON: Object to the form.

Q. (BY MR. DEMIK) You -- you don't -- you said you don't recall that, I believe, correct?

A. Yeah, after the fact. I mean, I know on the video. I watched the video I know exactly what happened in the video but before and after there's nothing -- like there's no personal memory other than what I can tell you I saw in the video.

Q. Okay. So after watching the video you still don't have any personal recollection of what you viewed and what you observed with relation to the car?

A. Yes.

Q. Okay. Did you get any intelligence -- so I think you -- you had touched about this before. You understand what the protestors were protesting about. What in -- what in your view or your words were the -- were these protests about? And -- and I understand you're not the protestor, you're not in the

crowd. I totally understand that. I'm asking from your vantage point as a police officer on May 30th, 2020, what were these protests about?

A. The protests were in response to the George -- the George Floyd incident in Minneapolis and then in addition to that we had protestors with the Michael Ramos Brigade so I kind of combine the two.

Q. Okay. Tell me a little bit about that. What's -- what's the difference between the Michael Ramos Brigade and George Floyd protestors?

A. Difference like the message or what do you mean?

Q. Well, what's your understanding of what the difference is?

A. The George Floyd thing was, you know, just a serious application of police practices. That situation all I saw out there was, you know, pretty -- it was -- it was -- you know, it's terrible -- it's terrible police work, right?

As far as Michael Ramos goes, I guess I'll ask I'm still in the midst of that. I don't know --

MR. BARTON: No, just -- you don't have to say anything other than what you recall. Just what your general -- I think the question is if you can clarify in your opinion what is your understanding the difference was between those two events.

THE WITNESS: Oh, I think the whole ideology

behind both protests -- both sides were the same. It's just unjust police practices.

Q. (BY MR. DEMIK) Okay. Is there a difference in your understanding between the level of volatility or tactics or protest techniques between the two?

A. No. And I guess I want to add on to those two brigades -- to those two groups that we also had intelligence that ANTIFA protestors were also in the midst.

Q. Okay. Okay. Is it true that the Mike Ramos Brigade is a group that has a reputation for being more violent in your view?

A. Honestly, if -- that was the first time -- I'm trying to get the sequence of events. I think Mike Ramos was '20 -- was it -- I think it was just -- I think it was a couple months before so that was the first time they kind of -- to my knowledge kind of mobilized. They kind of added their voice to the George, you know, Floyd protests nationwide specifically for Austin. So I had no knowledge of them until those protests started on May 30th.

Q. Okay. Well, did anybody give you any information on the Mike Ramos Brigade having a reputation as being more violent?

A. No.

Q. Were you given any information that anyone from the Mike Ramos Brigade, this Mike Ramos Brigade, was present in

front of the police station on May 30th, 2020?

A. Honestly, I don't recall any differ -- differentiation between Mike Ramos and George Floyd -- George Floyd protestors. We only identify people with the ANTIFA group who notoriously wore all black and face coverings and had the, you know, shield that -- I can't remember -- I can't recall their symbol. Like the hammer and a star symbol, whatever that symbol is.

Q. Did you have any information of the Minneapolis police station being torched prior to May 30th, 2020?

A. I believe that was -- I believe that was circulating around. I believe I was aware of it or something like that.

Q. Were you aware of it?

A. I believe so. At that time we were all kind of -- like in our down time we would all talk about what's going on across the country, how OCs were doing and obviously Minneapolis was the worst off.

Q. And, you know, having a police station torched is pretty serious, would you agree?

A. Yeah.

Q. And in this situation you had a crowd of people milling around in front of the Austin police station, the main police station, right?

A. Yes.

Q. And -- and were people concerned about that? Given

what had happened in Minneapolis were people concerned about the police station being stormed?

A. Yes.

Q. Okay. And would it be fair to say that that increases your alertness level?

A. Yes.

Q. I mean, this -- this -- these people were -- were protesting and milling around the -- the main police station for the City of Austin, right?

A. Yes.

Q. They weren't milling around, I don't know, a restaurant or a government building in some suburb, it was downtown in front of the police station, right?

A. Yes.

Q. And there's probably a lot of firearms and other deadly weapons in that police station that the police have, right?

A. Yes.

Q. And so if somebody -- something were to happen and people were breached -- people breached the police station, that would be a very serious, serious thing for police officers and for the City of Austin, wouldn't it?

A. Yes.

Q. You -- you mentioned sort of you were kind of aware of the George Floyd protests. I believe that George Floyd was

killed maybe several days before this. Does that sound about right? I think it was in May of 2020.

A. Yeah, I can't recall it. It was roughly around pretty -- roughly around the same time.

Q. And -- and where were you getting your information? Just watching the news? Was it people at the police station? Where did you get most of that information that you just sort of would hear?

A. News and word of mouth.

Q. Okay. What news do you watch?

A. Whatever I see -- whatever I see on my phone nowadays. Obviously the papers in our house but, you know -- you know, Fox and ABC and maybe NBC, those news outlets. Whatever pops up on the phone I'll just take a read into them.

Q. Okay. Well, on my phone New York Times is the first thing that pops up or Apple News. Is it Fox on your phone?

A. I usually scroll through like Fox and NBC just to get a read on -- you know, obviously things are pretty divided out there. It's just to get a read on everybody's perspective on things, not solely just ones news outlet. I'll read multiple outlets on the same subject just to see what's -- kind of piece together as many facts as I can.

Q. And is part of getting your facts you watch Fox News?

MR. BARTON: Object to the form.

THE WITNESS: Sometimes.

Q. (BY MR. DEMIK) Why did you become a police officer?

A. In college I was majoring in criminal justice really not knowing what I was going to do but one of the programs offered was a ride-along with one of the local police departments and I really enjoyed it and thought it was something I could do.

Q. Where was that at?

A. Abilene, Texas. I went to Abilene Christian University.

Q. Oh, okay. Well, I mean, it's something you could do. You could also be a lawyer.

A. That's true.

Q. So why did you pick law enforcement?

A. Why did I pick law enforcement?

Q. Yes, sir.

A. That's a tough one. I don't know. I just -- I just like the per -- the perspective of -- or the idea of, you know, going -- literally -- and it sounds, you know, childish but, you know, just going out and just trying to correct the wrong. Just -- just finding bad guys and I've -- I've had success in doing so so far in my career. I still enjoy it.

Q. When you say hunting bad guys, what does that image look like to you in your head?

A. So, you know, patrol in Austin Police Department there's a lot of freedom to just move patrol, right? You

handle the calls for service but when there's nothing going on you can do what you want and be as proactive or not proactive as you want. So I -- I enjoy being proactive and, you know, finding people with warrants. You know, I read a lot of reports, see what people did and just kind of pick and choose who I want to look for for the day kind of a thing. You know, like I said, I've had success in doing so.

Q. So in your free time you search the warrants -- the wants and warrants, and then, you know, that's something you enjoy about your job is going to find somebody, for example, who gets paroled, they've got a warrant out, they've got a failure to appear, an FTA or something, and so they have like an APB out on them and so you take those and you try and find those individuals?

A. Yes.

Q. Okay. And you said you've had some success doing that. What does that -- what does that mean? What does "success" mean?

A. Just the amount of people and type of -- the type of awards that -- you know, that type of work can kind of -- can kind of get you noticed and kind of get you connected to certain people so, you know, it would be like commendations or, you know, like a thanks from detectives or robbery or homicide detectives helping them out with their cases on my free time. You know, collect information, finding people, helping with

search warrants, all that type of stuff. And then, you know, working with the Violent Crimes Task Force, you know, whether it be overtime or something like that just gaining that experience and helping them out with, you know, search warrants and applications and all that kind of stuff.

Q. Do you -- do you have aspirations to perhaps being a detective or what is -- what does your future career look like in your eyes?

A. In the immediate future I hope that I can get with the Violent -- I can be assigned to the Violent Crimes Task Force and primarily assist with investigations with detectives for robberies, sex crimes and aggravated assault units. Like I said, helping with apprehending and search warrants and giving search warrants and investigations and building some cases with hopes to being a detective maybe in one of those fields.

Q. Sure. Were you -- moving back -- switching gears, moving back to May 30th, 2020, were -- were you aware that anyone in the crowd was deaf?

A. No.

Q. Did anybody ever bring that up, like there could be some deaf people in the crowd?

A. No.

Q. Did anybody take any measures if there were deaf people in the crowd?

A. Not that I can recall.

Q. And by "measures," I mean, you know, "There could be someone deaf in the crowd. Do we have, you know, means of -- of communicating with them and sort of accounting that they might be in the crowd?"

A. Not that I can recall.

Q. Did -- did the -- but are you aware now that there were deaf people in the crowd?

A. Yes, I'm aware now, yes.

Q. Did that have -- was any calibration made for the possibility of deaf people being in the crowd, any calibration?

MR. BARTON: Object to the form.

THE WITNESS: Not that I'm aware of.

Q. (BY MR. DEMIK) Okay. And by "calibration" I mean did anybody bring it to your attention?

A. No.

Q. Did anybody voice that in your -- in your presence that there might be deaf people?

A. No.

Q. Did anybody have any discussion what to do if there were deaf people in the crowd?

A. No.

Q. Did anybody have a discussion about finding out whether there were deaf people in the crowd?

A. No.

Q. Okay. I think that's all I have, Officer. I

appreciate your time but I just ask a throw-away question and maybe it's -- well, no, no. Actually, no, no, on the laptop over here -- sorry. I'm reading your report. Do you have that in front of you? And I don't need to mark it as an exhibit. I mean, I'm going to ask you about it but I want -- you said you have it there?

A. Yes.

MR. BARTON: Do you have a Bates number?

MR. DEMIK: It is -- yes, I do. Give me one second. It is 1932. I mean, we can make it an exhibit if you want to, Monte. I don't --

MR. BARTON: If you can just reference the Bates number I think that's good enough for us but -- that's fine with me. Just we can locate it. It's COA 1932 as I understand it?

MR. DEMIK: Yes, sir.

Q. Do you have that in front of you?

A. Yes.

Q. Okay. So it says, "On May 30th I was assigned to the downtown area 8th and IH-35 during the protest/demonstrations."

Right?

A. Yes.

Q. BWC is reference to body-worn camera, I imagine?

A. The BWC, yes.

Q. What is level 2R, 2Rs and level 3?

A. Sorry?

Q. What is level 2R 2Rs/level 3? It's the second line there in the narrative text.

A. So those are -- and I can't -- at the time we had categories for use of force and depending on, you know, what type of use of force you used it falls into a separate category. So in this specific situation level 3 just kind of open hand weapons tactics force that we use on individuals I think. Later on I'll notate that I pushed some individual on the highway. So that resulted in a level 3 use of force, therefore. Like you have to document one way. The deployment of less-lethal shotguns falls into a level 2, level of response to resistance reporting.

Q. Okay. And so you're asked to do these reports to document what happened as a police officer, right?

A. Yes.

Q. And you receive training in how to write these reports as part of your job as a police officer, right?

A. Yes.

Q. And trained to be accurate, right?

A. Yes.

Q. Thorough, right?

A. Yes.

Q. Detailed?

A. Yes.

Q. Have you ever -- have you ever been cross-examined in court?

A. Yes.

Q. Okay. So I was a defense attorney a long time ago so this probably seems familiar what I'm asking you and I'm sure you've answered it a million times but I just need to get it into the record that you received training on how to write these reports; they need to be thorough and accurate and detailed and -- is all that correct?

A. Yes.

Q. And then if you forget a detail, you can go back and you can do an addenda, right?

A. Yes.

Q. So you can go back and you can add information if it's important, necessary or to make the report complete, right?

A. Yes.

Q. All right. And this is your report and you wrote this narrative?

A. Yes.

Q. All right. You wrote, "Throughout my shift I was -- I was used my less-lethal shotgun to prevent subjects from throwing stones, rocks, fireworks, starting fires and making Molotov cocktails..." That's what you wrote, right?

A. Yes.

Q. "... and directing all of the aforementioned objects at myself and other officers." That's what you wrote in your report, right?

A. Yes.

Q. And you -- you drafted this report the next day, on May 31st, 2020, right?

A. At looks like 3:00 in the morning, yes.

Q. Why were you writing a report at 3:00 -- oh, is that when you got off shift?

A. Yes.

Q. So you were at the protest all the way through and then you went back to where? Your -- your patrol -- where did you go?

A. Most likely we went back to E sub. E substation.

Q. E substation?

A. Yes.

Q. And so you're -- you're writing this report immediately after the event after your shift, right?

A. Yes.

Q. And it's -- the events are fresh on your memory because they just happened and you're writing this report just after the events happened before you even have a break from work, right?

A. Relatively after everything happened, yes.

Q. So this report was written approximately seven hours

after you fired your shotgun from the overpass, right?

A. Yes.

Q. And you didn't write any addendums -- addenda to this report, did you?

A. Does "addendum" mean additional like supplement or --

Q. Yeah, supplement, addenda, addition, whatever you're trained to call it.

A. Yes, I did.

Q. What -- what was that? Is that the follow-up report where you listed the individuals who you impacted?

A. The more detailed one.

Q. Okay. Did you write another narrative text correcting this one?

A. Did I write -- I'm sorry, say that again?

Q. Sure. Narrative text so I want to differentiate. So you have the other report where you just sort of have a list of deployments from your less-lethal shotgun, right? That's the other report, right?

A. Yes.

Q. Okay. In this report it has a narrative text, right?

A. Yes.

Q. The other one, does it -- it doesn't have a narrative text. It just has the list of deployments, right?

A. Yeah. This is actually -- so, yeah, it's a little bit more de -- this is definitely more detailed, the

supplement. The -- the directive given by supervisors -- I guess I'll rewind back.

Typically how this report-writing process goes is when you have a use of force you have to document in these documents who you used it against and a details page about what type of force you used and all that kind of stuff. But the direction given by my supervisors was, "Just write something up real quick. You don't have to do the details page. Just say a very, very brief -- write a brief supplement about what you did and why you did it. Don't worry about how many people. Just -- just put it on paper." That was the directive at the time.

Q. So did your supervisors direct you not to be detailed in your report?

A. They directed us to just write something real quick and then obviously a month later we were told to review body cams and, you know, start adding a little bit more descriptions.

Q. Sure. And -- and when you reviewed the body cams and you could add more description, that's when you can write a supplement or an addendum to your police report or your narrative, correct?

A. Yes.

Q. And you didn't do that here, did you?

A. On this night? No, I did not do it that night.

Q. Well, on this narrative text you didn't add or supplement to this text? And what I'm talking about -- I think I know where we're -- we're crossing wires here. I'm talking about a narrative text. I'm not talking about just the list, I'm talking about a narrative text.

A. What's this called, the exhibits?

MR. BARTON: Oh, he's asking what the number is on the documents and it's called a Bates number. You can just call it -- read the -- read the numbers.

THE WITNESS: So are you asking me if I wrote anything in addition to No. 1932?

Q. (BY MR. DEMIK) Any -- any additional narrative text.

A. So if I added anything to 1932?

Q. Yes.

A. Okay. The only thing that was added a month later was No. 2328.

Q. Okay. Besides that you didn't write an addendum or supplement to this one in front of us?

A. No, these are the only two documents I wrote.

Q. All right. Let me sort of get back to this with you, okay? The final line of your narrative text says, "The above is the best recollections of events of the day." Right?

A. Yes.

Q. It says "the best recollections." That's your words, right?

A. Yes. Without --

Q. It doesn't say -- it doesn't say pretty good recollections, does it?

A. No.

MR. BARTON: Object to the form.

THE WITNESS: No.

Q. (BY MR. DEMIK) It doesn't -- it doesn't say fairly good recollection, does it?

MR. BARTON: Object to the form.

THE WITNESS: No.

Q. (BY MR. DEMIK) It says the best recollections, right?

A. Yes.

Q. Going back to the I guess second paragraph, your report says, "Throughout my shift I would use my less-lethal shotgun to prevent subjects from throwing stones, rocks, fireworks, starting fires and making Molotov cocktails."

Those are the five things that you listed in your report on May 31st, right?

A. Yes.

Q. There's no water bottles in there, correct?

A. Correct.

Q. It says, "I used my less-lethal shotgun against six to seven different subjects throughout deployment during the protest."

A. Yes.

Q. Right? That was your best recollection on May 31st, right?

A. Yes.

Q. And today earlier you said that you think you impacted three or four individuals, right?

A. Yes.

Q. Three to four individuals is different than six to seven different subjects or individuals, right?

A. Yes.

Q. So it's fair to say that when we were talking earlier, you had forgotten about three to five people that you had shot, right?

MR. BARTON: Object to the form.

THE WITNESS: This initial narrative was just written without looking at any body cam footage but that second narrative was written after reviewing every minute of my body cam footage from that day.

Q. (BY MR. DEMIK) I understand that. That wasn't my question though.

A. Yeah.

Q. My question -- earlier you said you said you thought three or four individuals, right? I think you actually said four. Right?

A. Yes.

Q. Your report says that you shot six to seven different people, right?

A. Yes.

Q. That's the difference. Six or seven is more than four, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes.

Q. (BY MR. DEMIK) So there's individuals that you forgot that you shot on May 30th. Fair to say?

MR. BARTON: Object to the form.

THE WITNESS: No, not after reviewing my body cam and watching every minute of the protest. The second one is definitely the most detailed.

Q. (BY MR. DEMIK) Okay. Well, let's unpack that a little bit.

A. Uh-huh.

Q. Do you recall speaking to me maybe an hour ago and you stated that you had impacted four individuals? Is that true or false?

A. Yes.

Q. All right, that's four. Your report says six to seven, right?

A. Yes.

Q. Okay. That means that there's two to three individuals that you had forgotten about between the time you

wrote this report to the time you talked to me an hour ago in this deposition, right?

MR. BARTON: Object to form. That's -- I know, Stephen, you're probably aren't trying to be argumentative but the effect is that you are being. He's already answered that and referenced the subsequent report so now I think you're trying to put too much emphasis on one report when, actually, the documents do speak for themselves and he has testified about that.

MR. DEMIK: I understand, Monte, but if your objection is form, it's noted for the record. I'm not being argumentative. I'm trying to get my question answered.

Q. You -- Officer Harkless, you said before that you didn't -- you don't think you forgot that you shot anybody. That was your answer, right? And I'm not being argumentative, I just -- want to get the facts. That's a fact that that was your answer, right?

A. Yes.

Q. So I'm just asking you how that is? If your report says you shot six to seven people and earlier in this deposition today on July 14th, 2023, you said you shot four people, how did you remember six to seven when you told me you shot four?

MR. BARTON: Object to the form.

THE WITNESS: So, yeah, the report -- the

initial report written after that, I guess, 10-hour, 12-hour day was -- you know, after reviewing the body cam from the entirety the correct number was listed as on that second report. So why was there a mistake? Because, like I said earlier, humans make mistakes.

Q. (BY MR. DEMIK) So that -- and that's fine, Officer. I'm really not -- we all do make mistakes. I'm really not -- you've got a tough job. I'm really not being argumentative. But what I'm saying is that when you wrote this report at least on May 31st at 3:04 a.m. -- that's when you wrote this report -- when the events were freshest in your mind, to your memory at that time, on May 31st, 2020, at the end of your shift, your best recollection was you shot six to seven individuals, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes. At the time, yes.

Q. (BY MR. DEMIK) Okay. All right. Subsequent to that, right now July 14th as we've had this discussion, right, the discrepancy between your report and what you -- what you've testified to earlier, how many individuals did you shoot on May 30th, 2020?

A. So, yeah, relying on that supplement on 2328 after I notated that I watched the entire of my body cam, four people because we often -- you know, law enforcement in dynamic situations we have to rely on body cam because the video, you know, it doesn't -- it doesn't lie. It can't lie. So relying

on my body cam in that 2328 document, four people were impacted by myself on that day.

Q. (BY MR. DEMIK) Well, I mean, again, I'm not being argumentative but body cam doesn't lie but body cams can be turned on and off, right?

A. Correct.

Q. Body cams can record only parts of the day, right?

A. Yes.

Q. Body cams can record only parts of an incident, right?

A. Yes.

Q. Or parts of a shift, right?

A. Yes.

Q. And so this narrative text that we've been looking at is your narrative text in your police report from that day based on your recollection, right?

A. Yes.

Q. Based on your recollection at 3:04 a.m. on May 31st, 2020?

A. Yes.

Q. And so we do rely on body cam footage, of course, but we also rely on police reports in cases, right? Criminal cases or civil cases we rely on police reports, don't we?

A. Yes.

Q. Judges rely on them?

MR. BARTON: Objection to form.

Q. (BY MR. DEMIK) Is that right, judges rely on police reports?

A. Yes, I assume so.

Q. Prosecutors -- prosecutors rely on police reports, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes.

Q. (BY MR. DEMIK) Lawyers rely on police reports, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes.

Q. (BY MR. DEMIK) Okay. This -- this next part of your report states, "I also had to push an unknown subject level 3 back off the proper of the northbound proper of 35 in order to clear the roadway. The subject was non-compliant and refused to back off the highway when initially asked. The subject was able to stand back up and walk off the highway." Right?

A. Yes.

Q. And you've documented that because that was the use of force level 3, right?

A. Yes.

Q. Okay. And the reason why you -- you put it in that narrative is that you first gave the subject whoever this individual was -- what -- what did they look like? What were

they wearing and who were they?

A. I don't -- I don't recall. I haven't watch that video in three years.

Q. Okay. So your -- your recollection is better in your police report than it is now of who that was and what happened, right?

MR. BARTON: Object to the form.

THE WITNESS: Say that one more time?

Q. (BY MR. DEMIK) Sure. Your recollection in your police report where you talk about this individual that you backed off the proper -- northbound proper 35, your memory was better when you wrote that than it is now of what happened there, right?

A. Yes.

Q. All right. And the reason why you wrote that they were non-compliant was because I assume that's on the use of force continuum. You're aware of what that is, right?

A. Yes.

Q. And on the use of force continuum way over here at the beginning is giving an individual a verbal command, right?

A. Yes.

Q. So you give them a verbal command to exit the roadway for -- as an example here -- and "non-compliant" means you instructed them and they didn't do it, right?

A. Yes.

Q. And then on the use of force continuum you can get louder like, you know, when you -- when you issue those instructions that's moving along the force continuum, correct?

A. Yes.

Q. And you can use a taser if you need to if they're within range, right?

A. Whenever -- whatever -- whatever "reasonable" means, yes.

Q. You can use a baton before that, right?

A. Yes.

Q. Before that you can use your hands to physically push somebody if -- if you want to get -- if your objective and your direction is to get them off the roadway, right?

MR. BARTON: Object to the form.

THE WITNESS: Yes.

Q. (BY MR. DEMIK) Okay. And here this -- this -- this paragraph essentially says -- and I'm going to put it in my words and you correct me where I'm wrong -- you instructed this individual off the roadway to clear the roadway, they didn't do it and then you put hands on them I think you said, right? Or -- or I think you remembered earlier but you -- you physically touched them and then they complied and they got off the roadway. Is that right?

A. For the most part I believe so.

Q. Okay. Now, before you shot your shotgun from the

overpass the one time and the one individual that you shot, you did not issue a verbal command to that individual, correct?

A. No.

Q. That's all I have, Officer. If there's anything else that you think is important that you would like to say, I do this. It's just -- I'm not -- you know, if there's something you think I missed or there's something that you think is important to this case or this area of inquiry, I want to give you an opportunity to say it, too. I mean, Monte can ask you questions if you want to do it that way but this is just normally what I do.

Is there anything that you think is important to note for this case that I either forgot to ask you or you've got a burning desire to say?

A. Not that -- not that I can think of.

Q. Well, I thank you for your time, Officer. I know you really do have a tough job and I thank you for taking your time to do this and answer these questions. I wish you good luck and -- and have a good day.

We can go off the record, Monte, unless you want to ask questions?

MR. BARTON: Well, I want to make a comment to the record. We've discussed these two documents, COA 19342 and COA 2328, which I believe actually continues over to page COA 2329 and so I just want to be clear not necessarily causing

these to be exhibits but I want this whole segment in the deposition transcript to be clear that those were the documents that were referenced by Officer Harkless.

MR. DEMIK: That's absolutely fine. I -- I agree. You know, if you want to make them an exhibit, I will. I really -- as you can tell, I didn't share screen or go into them that way so that's why I didn't make them an exhibit. I have no problem clarifying for the record Bates 1932, Bates 2328 to 2329 were what we were discussing. If you want to put them in the record, I'm fine with that, Monte, but otherwise I think that clarification for the record will cover us.

MR. BARTON: I agree with you. I think that's clear enough and then I have no questions of the witness.

MR. DEMIK: Okay. Well, thank you very much, everyone. I appreciate your time and thanks for working with my technological difficulty. It's much appreciated. Thank you, Officer.

MR. BARTON: I will just say for the court reporter, we do want to read and sign.

THE REPORTER: Thank you.

VIDEO OPERATOR: That concludes our deposition. The time is 1:08 p.m. We're off the video record.

(Deposition concluded at 1:08 p.m.)

CHANGES AND SIGNATURE

WITNESS NAME: OFFICER DARRELL CANTU-HARKLESS DATE: 7/14/23

PAGE/LINE	CHANGE	REASON

I, OFFICER DARRELL CANTU-HARKLESS, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
OFFICER DARRELL CANTU-HARKLESS

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared OFFICER DARRELL CANTU-HARKLESS, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff, V. CITY OF AUSTIN AND JOHN DOES, Defendants. MODESTO RODRIGUEZ, Plaintiff, V. CITY OF AUSTIN AND JOHN DOES, Defendants.	)	CIVIL ACTION Case No. 1:21-cv-249-RP Lead Case

REPORTER'S CERTIFICATION
DEPOSITION OF OFFICER DARRELL CANTU-HARKLESS
JULY 14, 2023

I, Wendy S. Schreiber, Certified Shorthand Reporter No. 9383 in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER DARRELL CANTU-HARKLESS, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on

to the witness or to the attorney for the witness for examination, signature and returned to me by ;

That the amount of time used by each party at the deposition is as follows:

STEPHEN DEMIK, ESQ. - 03 HOURS:043 MINUTE(S)

MONTE L. 'MONTE' BARTON, JR. - 00 HOURS:00 MINUTE(S)

That pursuant to information given to the Deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

FOR THE PLAINTIFFS:

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I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of

the action.

Further certification requirements pursuant to the Federal Rules of Procedure will be certified to after they have occurred.

Certified to by me this 18th day of July, 2023.

_____Wendy Schreiber_____

Wendy Schreiber, Texas CSR 9383
Expiration Date: 05/30/24
MAGNA LEGAL SERVICES
Magna Registration No. 631
16414 San Pedro, Suite 900
San Antonio, Texas 78232
Job No. 999689 Phone: (866) 672-7880

FURTHER CERTIFICATION UNDER FEDERAL RULE 30(e)(1)

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to STEPHEN DEMIK, ESQ., Custodial Attorney;

That $_____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Federal Rule 30(e)(1), and that a copy of this certificate was

served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____, 2023.

Wendy Schreiber

Wendy Schreiber, Texas CSR 9383
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Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff, vs. CITY OF AUSTIN AND JOHN DOES, Defendants.	CASE NO. 1:21-cv-249-RP
MODESTO RODRIQUEZ, Plaintiff, vs. CITY OF AUSTIN AND JOHN DOES, Defendants.	CASE NO. 1:21-cv-1087-RP

****

ORAL AND VIDEOTAPED DEPOSITION OF

DETECTIVE GADIEL ALAS

JULY 31, 2023

VOLUME 1

****

ORAL AND VIDEOTAPED DEPOSITION OF DETECTIVE GADIEL ALAS, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on July 31, 2023, from 10:13 a.m. to 1:48 p.m., Zoom videoconference, before CHRYSTAL H. McDANIEL, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES
Remotely

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Joseph Alvarez – Magna Legal Services

ALSO PRESENT:

Alexis Lopez, Paralegal

C O N T E N T S

DETECTIVE GADIEL ALAS testifies: PAGE

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* * * * *

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STIPULATIONS

The attorneys for all parties present stipulate and agree to the following items:

That the deposition of DETECTIVE GADIEL ALAS is being taken pursuant to Notice;

That the deposition is being taken pursuant to the Federal Rules of Civil Procedure;

That pursuant to FRCP Rule 30(e)(1), the signature of the deponent was requested by the deponent or a party before the completion of the deposition;

That the original transcript will be submitted electronically for signature to the witness' attorney, Mr. Monte Barton, and that the witness or the witness' attorney will return the signed jurat and errata sheets to Magna Legal Services within 30 days of the date the electronic transcript is provided to the witness' attorney. If not returned, the witness may be deemed to have waived the right to make the changes, and an unsigned copy may be used as though signed.

(Proceedings began at 10:13 a.m.)

THE VIDEOGRAPHER: We are now on the record. This begins Recording No. 1 in the deposition of Gadiel Alas in the matter of Tyree Talley, et al. vs. City of Austin in the U.S. District Court for the Western District of Texas Austin Division 1:21-cv-249-RP.

Today is Monday, July 31st, 2023, and the time is 10:13 a.m. central. This deposition is being taken remotely Hendler Flores Law, PLLC. The videographer is Joseph Alvarez of Magna Legal Services and the court reporter is Chrystal McDaniel with Magna Legal Services.

Will counsel and all parties state their appearances and whom they represent.

MS. JOSEPH: This is Leigh Joseph of Hendler Flores here with -- excuse me -- my paralegal Alexis Lopez on behalf of the plaintiffs Tyree Talley and Modesto Rodriguez.

MR. BARTON: And I'm Monte Barton, lawyer for the defendants. And we are physically in City Hall, Austin, Texas.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

THE REPORTER: Officer, if you'll raise your right hand, I'll place you under oath.

WHEREUPON,

DETECTIVE GADIEL ALAS

of lawful age, being first duly sworn, says in reply to the questions propounded as follows:

* * * * * *

DIRECT EXAMINATION

BY MS. JOSEPH:

Q Good morning, Officer.

A Good morning.

Q Thank you for before here today.

Before we get started, I just want to talk about a couple of housekeeping matters.

Have you given a deposition before?

A I have.

Q Okay. So you have some familiarity with process.

How many times have you done it?

A Once or twice.

Q Okay. Were those both related to your work for Austin Police Department?

A Yes, ma'am.

Q Okay. Give me just kind of a quick summary of what -- why you were called to deposition in those past times.

A Sure. The first time was regarding an on-duty crash. That's the one that I'm a hundred percent certain

of. I can't remember if there was a second deposition or not.

Q Okay. You haven't testified with regard to the May -- or the 2020 protest situation before; is that right?

A Testified, no, ma'am.

Q Okay. And by "testify," I mean given a deposition or appeared in court?

A No, ma'am.

Q Okay. And I know that your lawyer, Mr. Barton, is in the room with you. Is anybody else in the room with you today?

A There's not.

Q Something that you probably remember from the deposition that you did before is our court reporter, Ms. McDaniel, is writing down everything that we say. And it becomes very difficult for her to do that if we talk over each other or interrupt each other. I will probably do that more than you do. I work really hard not to, but sometimes I just don't stop myself.

So I'm going to do my best not to interrupt you and to let you finish speaking. Will you do the same for me?

A Absolutely.

Q Thank you, sir.

Also, for our court reporter's sake -- you're

doing a great job so far -- but please do give her verbal answers as opposed to nods or shakes of the head or uh-huh huh-uh, which look kind of the same on the record. Okay?

A Yes, ma'am.

Q Thank you.

Finally, if I ask you a question that you don't understand, please ask me to rephrase it and I'll do my best to do that so that we can make sure we're understanding each other as we're talking today?

A Okay.

Q Okay. So if you answer my question, can I assume that that means you understood it?

A Yes.

Q How did you prepare for the deposition today?

A We had a deposition prep on last Thursday with Monte and the paralegal.

Q Okay. And I don't want to know the content of the conversation, that's not something that I'm allowed to know about, but I do want to know if you reviewed any documents during that prep session.

A We did.

Q What did you look at?

A There were several pieces of documentation we looked at. We looked at the federal filing from the lawsuit. We looked at a couple of departmental-issued

reports. We -- I believe those are all -- the department-issued reports and then what you guys filed.

Q Okay. The reports that you're talking about, what were those?

A There was an SIU-generated report. There was an IA-related report. There was a response to resistance detail report that we looked at, that just listed the response to resistance and that I had filled out one of those reports.

Q Okay. Do you have any of those documents with you today?

A Yes, ma'am.

Q Would you look for me -- at the bottom right-hand corner, there ought to be some numbers. It might say COA or Talley and then have a couple of numbers on the bottom right side of each page. Could you tell me what those numbers are.

A For each of the documents?

Q Yes.

A Okay. COA Talley 30070, COA Talley 001694, COA 1908, COA 2946, COA Talley 000076. The notice -- Notice of Deposition.

This one doesn't have a COA.

MR. BARTON: The copy of a complaint doesn't have a COA number.

Q (BY MS. JOSEPH) Great. Thank you, sir. Any others? Is that it?

A Another -- another complaint, no COA number; COA Talley 000063; COA Talley 000074; the complaint for Mr. Rodriguez, no COA number; and the complaint for Mr. Talley, no COA number.

Q Thank you for going through that for me.

Did you review any videos prior to the deposition today?

A Yes, ma'am.

Q Have you seen video of -- that was identified to you as being Modesto Rodriguez and the incident that occurred involving Modesto Rodriguez?

A Yes, ma'am.

Q Do you recall if that was a HALO camera or someone's body camera or what it was that you looked at?

A I believe it was HALO camera.

Q Okay. And did you just watch kind of the one angle from a HALO camera?

A I don't remember how many angles we watched.

Q Okay. Do you feel like you have -- if I talk about Modesto Rodriguez, you feel like you have an idea of who that is?

A After watching the video last week, yes, ma'am.

Q Okay. And same questions with regard to Mr.

Talley. Did you watch a video of the Talley incident?

A Yes, ma'am.

Q Did you watch both HALO and your body cam?

A Yes, ma'am.

Q Okay. And do you feel like having watched the video you have an idea of who Mr. Talley is?

A Yes, ma'am.

Q Okay. Did you watch your body cam around the time period that the Modesto Rodriguez incident occurred? Have you reviewed that?

A Yes.

Q Okay. Okay. Do you have -- I know you just read me all the numbers.

Did you bring anything else with you today other than the documents that you, you know, reviewed with Mr. Barton? Your own personal notes or anything like that?

A No. I have a brand new note pad that I'm going to be using to take notes today.

Q Okay. And if we talk to about bean bag rounds or kinetic impact projectiles, does that feel like we're talking about -- let me try this again.

Bean bag round is a type of kinetic impact projectile?

A Yes.

Q Okay. So if we talk about those, we both know

what we're talking about?

A Yes, ma'am.

Q Okay. And if I say firearm, I'm going to try to use that word to mean, like, what I think of as a gun with standard munitions in it as opposed to the so-called less-lethal munitions. Does that terminology work in your mind?

A If we -- if we differentiate firearm as a deadly weapon, yes.

Q Okay.

A Versus lethal.

Q Okay. We may talk about the shotgun -- the shotguns that were firing the bean bag rounds. And I'll try to be very clear in my questions. And, again, if I'm not, please tell me. Okay?

A Yes, ma'am.

Q Okay. Where are you from, Officer?

A I grew up in Houston.

Q How long have you been in Austin?

A Nine years tomorrow.

Q You know the date. That's impressive, yeah.

And how long with APD?

A A little over eight years commissioned.

Q Okay. What is the distinction "commissioned" mean?

A As a licensed peace officer, a little over eight years, but I've been with the department for -- it will be nine years on August 10th or August 11th.

Q Okay. Did you move here for the APD position?

A Yes, ma'am.

Q Okay. And had you been with any other police departments before you started working for APD?

A No, ma'am.

Q Do you have any military background?

A No, ma'am.

Q Okay. And what is your current rank within the department?

A I'm a detective.

Q How long have you been a detective?

A I promoted July of last year, and I was able to get a detective position October of 2022.

Q Okay. So what was your rank at the time of the 2020 protests?

A I was a senior police officer.

Q Okay. So I've been calling you officer. It sounds like it's more appropriate to refer to you as detective; is that right?

A Either way is fine.

Q Okay. Okay. Thank you, sir.

Okay. Just talking about your work at APD over

the last eight to nine years, depending on when we start counting, do you recall getting a written performance review on a regular basis?

A No.

Q No? Okay.

When is the last time that you got one?

A Are you -- are you talking more of like a yearly review?

Q Yeah, I'm not sure what the exact terminology would be, but, you know, kind of a document that you would discuss with a supervisor about how things are going for you at work.

A Sure. So there's -- there's a couple. One is if there's an issue that needs to be addressed, it's usually negative; and then the other is a yearly review, which we call an SSPR. That's --

Q Okay.

A -- yearly. And the last one I received I want to say was last October.

Q Okay. In that one that they did last October, do you remember some things that they were recognizing as achievements or praising you for?

A Sure. They talked about how I -- I mentored a lot of the younger officers on my shift, how scored pretty well on the promotion exam. Things -- things along those

lines. Pretty positive.

Q Okay. Was there anything that they put as an area for improvement?

A No, ma'am.

Q And have you ever received one of the negative, kind of, as-needed reviews since -- since you've been at APD?

A Sure. There was one last year around October for -- my body mic was not synced to my car during a response to resistance. And that could be for many things. It could be the battery is dead or it could just be that I was out of range. But for whatever reason, my chain of command believed that it needed to be documented.

Q Okay. Is that the only time you've --

A Yes, ma'am.

Q -- had one of the negative -- okay.

Before we get into kind of the specifics of what happened on May 30th, 2020, I want to talk about kind of preparedness and training, so I'll ask you a few questions in that regard.

Before the events of May 30th, 2020 -- well actually I need to ask you something first.

Were you out there responding to the protests on the 29th?

A Yes.

Q Okay. And did you -- were you equipped with a less-lethal on the 29th?
A I was not.
Q Okay. What was your role that day just real briefly?
A Just make sure that there was no property damage done to the front of the main.
Q Okay. So back to my question.
Before the events of May 30th, 2020, how many times -- like, on how many separate occasions had you fired a shotgun equipped with kinetic projectiles?
A So at least once a year for our yearly training.
Q Okay.
A I believe that was my -- May 2020 was my first time in an actual police response of firing a less-lethal shotgun.
Q Okay.
A And then --
Q I --
A -- also -- I'm sorry -- training at the academy, extra training that we received.
Q So for the yearly, kind of, recertification, tell me about firing the guns as part of that -- the shotguns.
Like, how long did you spend out there on the range? If you can remember, about how many shots did you

take? Kind of describe that part of the training for me.

A Sure. For the less-lethal, it's only two rounds. One, I believe, is either at 15 or 10 yards; and the other one is a little bit closer at 5 yards.

Q Okay. So those yearly trainings -- so you've done those, would it be accurate to say, for eight years? Like, you've done those eight times?

A Yes, ma'am. I believe there was a gap there for COVID where we didn't -- didn't train, but eight is probably a safe estimation.

Q Okay. Was it one year just the COVID -- the 2020 year that you didn't retrain?

A I believe so.

Q Okay. So as of May 30th, 2020, the last time you had fired one of this type -- one of these types of shotguns equipped with the -- the bean bag rounds was sometime in 2019?

A Yes, ma'am.

Q Do you remember the month?

A I don't.

Q Okay. And so if we say that it was approximately eight years that you've done this recertification, you'd fired about 16 rounds before May 30th, 2020, as part of that training. And then we'll talk about what you did at the academy separately.

A Right. So 2020, I was a five- to six-year officer, about 12 times, 12 to 14 times.

Q Okay. And still talking about the annual recertification, I understand there was a classroom component to that as well?

A No.

Q No? Okay.

Why don't you tell me what the annual recertification entails.

A For just the shotgun or the entire process?

Q What does the entire process cover? Does it cover, like, TASERs and stuff or...

A Yes, ma'am.

Q Let's talk just about the shotgun.

A Sure. It's the two rounds. One at the 15 -- it's either the 15- or the 10-yard line. And then the second round being a little closer at about the 5-yard line. You're -- you're firing at a metal target that's painted with red zones, yellow zones, and green zones. And in order to pass that certification, you have to hit green or yellow depending on your distance.

Q Okay. Okay. So if you're at the 5-yard mark, you have to hit green?

A Correct.

Q And if you're at the 10- to 15-yard mark, it can

be green or yellow?

A Yes, ma'am.

Q Okay. Is there any written test that's part of that recertification?

A No, ma'am.

Q Okay. And where do you report to do that? Do you report to a range?

A The range at the police academy.

Q Okay. So you report to the range, I'm here to do my recertification on the less-lethal shotgun, fire a couple of rounds, hit the right zones, and you're done?

A Well, then you have to do the TASER, you have to do the firearm. The other -- the other tools that we have on our -- on our belt.

Q Okay. So it's a whole tool belt -- the whole -- kind of is all addressed at once?

A Yes, ma'am. Your firearm, your TASER, your --

Q Okay.

A -- pepper spray, your baton, and the less-lethal shotgun.

Q That sounds a lot more efficient than going back for each item.

Okay. All right. So anything else about the training, the recertification on the so-called less-lethal shotgun that you can think of?

A No. The only other time that there was a specific training for the less-lethal is when they switched rounds where it was -- I'm sorry, the maximum efficiency range has changed, so they print out a training bulletin where it's just a PDF where it says it's no longer X, it's now Y. That's the --

Q Okay.

A -- only other specific (audio interference) was no hands-on shooting, anything like that additional.

Q Okay. Did that bulletin come out after the 2020 protests or before, if you recall?

A I don't recall.

Q Okay. Do you remember what the first maximum acceptable distance was and what the revised maximum acceptable distance was?

A The -- the maximum effective -- was 25 yards on the old marks. And the new ones, I believe, came in a little bit more, maybe 20 yards, but the biggest difference was that there was no standoff with the old round. There was a minimum distance that -- that you could shoot in. And --

Q Uh-huh.

A -- with the new round, there was no minimum.

Q Okay. Okay. Just so I understand, because I have no experience with firearms, that means that before

you had to be a certain distance away from your target in order to fire it; and, now, after the memo came out, with the new kind of round, you don't have to measure any minimum distance away from your target. Is that what you're saying?

A Yes, ma'am.

Q Okay. Thank you.

Had you ever impacted a human -- human being with one of the bean bag rounds before May 30th, 2020?

A I don't believe so.

Q Okay. Have you ever been hit with one?

A No, ma'am.

Q Okay. Let me go back now. We've been talking about recertification. I want to talk about the academy and what you -- what kind of work you did with this type of weapon when you were there.

So can you tell me about training on the impact projectiles while at the academy?

A Sure. I -- I believe there was a classroom component for the initial training that --

Q Uh-huh.

A -- included PowerPoint, some videos on proper use and best cases to use. And then there was hands-on training. I don't remember specifically how many rounds were fired during the training.

Q Uh-huh.

Do you think it was more than what you do at the recertification?

A Yes, ma'am.

Q Do you think it was, like, a certain number? Like, here are a couple of rounds for you to practice with? Or do you think it was, like, here's a bucket, fire as many as want until you feel comfortable?

A It definitely wasn't a bucket.

Q Okay.

(Simultaneous speakers).

A (Inaudible) I don't remember how many rounds it was.

Q Okay.

THE REPORTER: I'm sorry, I didn't get the answer. It definitely wasn't a bucket -- I didn't get the rest of that answer.

THE WITNESS: But I don't remember how many rounds it was.

Q (BY MS. JOSEPH) Thank you, Detective. That's my fault for speaking over you.

And did you take a test that covered this type of shotgun and -- and its usage as part of your academy training?

A I don't remember, specifically, if it was a

less-lethal specific test, but there were definitely less-lethal questions sprinkled throughout the many tests that we took.

Q Okay. Okay. While at the academy, focusing on -- on the less -- the so-called less-lethals, did you talk about -- did they teach you about effective distance where the munition has been?

A Yes, ma'am.

Q Do you remember what they taught you?

A The -- the maximum effective-sy [sic] range was 25 yards, so anything in between the 25 yards is where you wanted your target to be.

Q Okay. And if the potential target was more than 25 yards away, you shouldn't shoot at that target from that distance?

A I don't remember specifically said don't, but I know it was -- it was one of those where you need to consider you're responsible for every round that you shoot, so you have to be considerate of what's beyond that 25 yards.

Q Okay. In terms of other things that might be impacted?

A Correct.

Q And do you think that's because the accuracy of this type of weapon decreases as the distance increases?

A I believe it was because of the rounds that we were using. The manufacturer sets those parameters.

Q Uh-huh.

A And the manufacturer said that 25 yards was the max for that round to behave the way it's supposed to.

Q Okay. Okay. Do you know what that "behave the way it's supposed to" means? Like, what might happen beyond that maximum effective distance?

A I don't know, no.

Q Okay. Do you -- were you taught or do you know anything about changes -- potential changes to the accuracy of this type of weapon at the distance increases?

A Yes, which is why the 25 yards was the maximum range that you wanted to shoot.

Q Okay. Because the weapon can become less accurate or does become accurate as distance increases?

A The ammo, the -- the round that is shot. The weapon itself, depending on what it's shooting, it's going to be dependent on the round that is -- that is fired.

Q Okay. I understand. Let me try to ask my question better.

So the bean bag rounds that -- that were being fired out of the shotgun, that type of round becomes less accurate as the distance increases beyond the manufacturer's maximum recommended effective distance?

A So I don't know if it's accuracy or if it's the foot pounds per second, which makes it the effectiveness. I just know that beyond the 25 rounds -- 25 yards, excuse me, that that round is no longer as effective as the manufacturer developed it to be.

Q Okay. And is the pounds per second, like, how hard it hit?

A How fast it's shot out of the shotgun, which I believe will correlate to the -- the impact.

Q Okay.

A The -- yes, ma'am.

Q Okay. Have you ever been injured in the line of duty?

A Yes, ma'am.

Q Do -- do you mind if I ask you about that?

A Sure.

Q How -- how many times?

A A few. Some -- some minor and some major.

Q Okay. Were you injured during the 2020 protests?

A Some minor injuries, yes, ma'am.

Q Can you tell me about what those were.

A Sure. One of the first things that stands out very vividly is, as soon as I got on to 35, I had either a brick or a rock hit me in the head and helmet and it rung my bell a little bit. Later in the day, I was hit with

frozen water bottles to the -- to the limbs. Rocks the limbs. Those were pretty consistent throughout the day.

Q And when you say as soon as I got on 35, was that like Day 1, May 29th?

A No, that would have been May 30th.

Q May 30th, okay.

So May 30th, the day that these incidents we're here about occurred -- occurred, before the incident with Modesto Rodriguez or before the incident with Tyree Talley, you had been hit with objects during that day?

A Yes, ma'am. And the day before.

Q Okay. Tell me, if it's not too difficult for you, about the more serious injury or injuries that you've suffered in the line of duty.

A Sure. I think the most serious was a torn meniscus and some tears to my ACL/MCL during a response to resistance. The suspect didn't want to let us take him into custody and he kicked me to the front of my kneecap on my right knee. And just over time, that meniscus just went out.

I was -- I believe I was on light duty -- I think total time was probably three to five months. That was later in 2020, going into 2021.

Before that, as a rookie, I was in a foot pursuit. And as I was chasing the suspect, tripped over

some branches and split my left knee open, which needed some stitches.

Sprained wrist trying to take a person into custody.

All the other ones are, you know, having to take a couple of days off here and there to -- to ice and, you know, take some pain meds, but nothing -- nothing as serious as a torn meniscus.

Q Okay. Can you think of other times, other than the objects that you remember being hit with during the protests, and the torn meniscus incident where you were kicked, can you think of other times when your injury was -- like, you believe your injury was caused by someone else being aggressive toward you or impacting you? Does that question make sense?

A No.

Q Okay. I'm trying to -- to -- you know what, I'm just going to -- I'm just not going to ask that. It's too hard for me to phrase it.

Have you ever shot someone with a firearm?

A No, ma'am.

Q In your mind, is there a distinction between what I'm calling a firearm today -- a -- a gun loaded with more traditional bullet -- compared to a so-called less-lethal shotgun, a weapon loaded with kinetic impact projectiles?

A There is.
Q Tell me what that distinction is.
A A firearm is a deadly weapon. It's meant to end a threat. It causes death or serious bodily injury. The less-lethal used in the manner that it's supposed to is -- is not. It doesn't cause serious bodily injury or death.
Q Do you agree that the less-lethal can cause serious bodily injury or death?
A If used inappropriately, yes, ma'am.
Q And that would include -- inappropriate use would include hitting a target in a red zone?
A That could cause serious bodily injury or death, yes.
Q And would that also be inappropriate use of the shotgun to hit a target in -- in the red zone?
A Not unless that person poses a deadly -- a deadly threat.
Q Okay. So an officer would be authorized to target a red zone, if they're justified in using deadly force against the subject?
A Yes, ma'am.
Q Okay. But, otherwise, if they're not justified in using deadly force against a subject, it would not be appropriate to impact a subject in the red zone?
A Correct.

Q Okay. This may have never happened or it may have happened a lot. I'm just going to ask and we'll see how far -- how far we go.

Have you ever found yourself in a position where you felt like the use of deadly force was justified or warranted?

A Yes.

Q How many times?

A Enough. I don't want to quantify with a number, but there have been several times, yes.

Q Okay. During your response to the protests on May 30th, 2020, did you find yourself in a position where you felt like the use of deadly force was justified?

A No.

Q Was there a time during the couple of months that the 2020 protests lasted where you found deadly force to be justified?

A Personally?

Q Yes.

A No, ma'am.

Q Okay. We've been talking about the weapons a lot. I want to talk about another area of training.

Before the May 2020 protests, what type of training did you receive on protest policing or crowd control tactics?

A Sure. So I was assigned to the downtown area command from 2018 to halfway through 2019 -- about a year and a half. In that year and a half, I had what's called BPOT training, which is by public order. And it's basically, like, cops responding to protests. So I -- I received training for that.

There was at least twice before the 2020 that we did what's called mobile field force. You know, it's taught in the academy, but I believe there was refreshers on that.

Every once in a while, if there was a planned event, there would be shift-level training. And it could be anything from just going over the policy in the group with the rest of the shift or actually hands-on outside going through the -- the formations and proper techniques on to respond to a -- to a mass -- mass protest event.

Q Okay. Can you -- so you've told me about the BPOT training, the mobile field force, shift-level training. Any other types of training you can think of that would relate to protest policing or -- or crowd control?

A There were bulletins from, like, the FBI or the ATF throughout the years as different techniques are used or utilized out in the field by -- by people who are -- who are out there trying to harm a peaceful crowd. So

counter-protestors have used certain -- certain type of techniques that would be bulletins where it would identify what these techniques are.

For example, there was a time there where counter-protestors were using PVC pipe with cement on the inside. And they would put a sign on there and those were used as weapons. So a bulletin will come out and say, hey, everybody, be careful, these PVC pipes may be full of cement and used as weapons.

Q Oh, okay.

A That happened quite often.

Q Okay. Before the 2020 protests, do you recall ever reading about frozen water bottles or modifications made to water bottles --

A Yes, ma'am.

Q -- as something to be cautious of?

You do? Tell me what you recall in that vain.

A Sure. So frozen water bottles, obviously hardened water is going to hurt more than just a regular water bottle. Also, dry ice being used in half full water bottles. Sometimes the the water bottles will contain shrapnel, whether it's glass or tacks and things along those lines.

When you shake up some dry ice and water enough, it -- it will explode and make it a mini IED.

Q Okay. So you told me about the bulletins, the shift-level training, the mobile field force training, the BPOT training.

Can you think of any other training that addressed protest policing or crowd control?

A Not that I can recall.

Q Okay. I want to go back and talk in more detail about the types that you just told me about.

So the -- the BPOT training, that was the -- the officers on bicycles?

A Yes.

Q Tell me when you did that training.

A So I went downtown 2018 for south (inaudible) so that would have been March of 2018, right around the time when the Austin bomber was coming up. I believe that was 2018. And then I left a year and a half later. Through that, we responded on a shift level to -- to many just kind of impromptu rallies or -- or planned protests.

So on a shift, you would have what would be called a squad. And on the bicycle, you would just respond, whether it's keeping people who are protesting on the sidewalks versus on the street and blocking traffic. How to -- how to safely move people from, like, an entrance to a building. If they're blocking an entrance or an exit, how to -- how to move people that way. How to perform

arrests safely.

And then also integrating the BPOT with out mounting patrol, which are our horses, and the SRT, our Special Response Team.

Q So you talked about a couple of areas that they would teach on, like, keeping protestors off the road or how to arrest someone.

Can you go into more detail for me on, kind of, what they taught you on how to do those types of things in a protest or a crowd situation.

A Sure. So the bicycle was a force multiplier. What we were taught was that one officer on a bike can replace three to four SRT -- individual SRT officers just based on how much space the bicycle is -- is -- is taking up on a -- on a line.

So some of the tactics would be what's called scraping. So if you have a -- a group of protestors on the sidewalk, and they're not allowing people to access an entrance or an exit, we would do what's called scraping. So you would get off the bike, and with the bike, you're kind of just -- kind of like if you're -- if you're tucking a chair underneath a table, you're just doing that motion with a bike. And that's just --

Q Uh-huh.

A -- forcing them back and it clears up the area

that you want.

As far as arresting, the -- the main point of BPOT is to have a line of bicycles and officers to -- to separate where there's protestors and counter-protestors or whatever. Whatever the objective is for that particular deployment is how to properly and safely open that line to allow an arrest team to go out into the crowd, arrest somebody, have them bring them back behind the line of police officers and bikes and close that line back up. Those are the more common tactics that were -- that were used.

Q Okay. I see that Ms. McDaniel has a hand up. I'm just going to pause for a minute and ask her if -- if she has something she needs to address with us.

THE REPORTER: No. For some reason, automatically, when I ask someone to raise their hand to swear them in, it -- that pops up every time. It's a new feature. And, now, for some -- normally I can get it to come down, but for some reason, it's not, so...

MS. JOSEPH: Okay. It's funny it took me almost an hour to notice it. All right.

THE VIDEOGRAPHER: I can get it, actually. One second.

THE REPORTER: Thank you, Joseph.

THE VIDEOGRAPHER: No problem.

THE REPORTER: It's -- that's just the weirdest thing. I don't understand it. Go ahead.

Q (BY MS. JOSEPH) Okay. So the -- the training -- or the BPOT training contemplates arrests being made when members of the crowd are unruly or -- or engaged in criminal conduct?

A Yes.

Q Okay. I'm just thinking -- and I know I said I wanted to talk to you about training for a -- I want to ask you this because I'm thinking about it.

I've watched some video of May 30th, 2020, outside of headquarters. And I haven't noticed any bikes. Do you know where the BPOT team was that day?

A I don't know.

Q Okay. Do you recall seeing any members of that team on scene where you were on May 30th, 2020?

A I don't.

Q Okay. You -- you also talked about the mobile field force academy.

A The training --

(Simultaneous speakers).

Q The training. And I think I understand -- if I understand correctly, that happens at the academy, and then you took two refreshers?

A It sounds about right. It's been about two.

Q Okay. So, first, we'll go in order -- in chronological order this time. First, I want you to tell me about the academy and then I'll ask you about the refreshers.

So what did mobile field force academy training entail?

A Sure. So the -- the mobile field force is -- is utilized for large gatherings or -- or protests. There's specific tactics that are used and they're mostly just moving tactics, moving in a formation, moving as a squad with your riot gear, so it would be your helmet, your mask, a baton. It -- it's basically how to safely approach a large unruly crowd is what a mobile field force is.

Q Okay. Okay. And how -- how much time would you estimate they spend on that at the academy? Like, a couple of hours? Half a day? Three days?

A I don't recall. It may just be half a day. I don't think there's very much training that's done on it. That's -- because they're -- they're supposed to be shift-level refreshers when -- when large events are -- are planned, but I don't think it was a lot of time at the academy spent on it.

Q Okay. Was the academy more classroom training or did it also include, like, standing up and practicing formations and, you know, things like that?

A Both.
Q Both, okay.
As far as the refreshers are concerned, can you recall the last time you took a mobile field force refresher?
A Probably a couple of days after the end of May of 2020.
Q Okay. Okay. And then the one that you took before -- the -- can you recall the last one you took before the May 2020 protest?
A Yeah, it would -- it would have been within my first three years with the department. Sometime between 2015 and 2018 before I went downtown.
Q Okay. So it had been two years, maybe three, since you had had the mobile field force training as of May 30th, 2020?
A Yes, ma'am.
Q And do you know -- the refresher that you did right after May 2020, did everybody have to do that?
A I can't speak for other portions of the city. For the sector that I worked, we definitely did which was Frank Sector Southeast Austin. We --
Q Okay.
A -- did that on a shift level.
Q Okay. And what did -- did the content of the

refresher change after May 2020?

A I don't believe so. The -- the -- the tactics of mobile field force haven't really changed over the years.

Q Uh-huh. Okay. So that's easy, then. I can ask you one question about what these refreshers entailed.

Can you kind of tell me how long was it? What did -- what did you do?

A Yeah, it was -- wasn't very long at all. It would be done in showup, which is just your -- your pre-shift briefing. Lasts anywhere from 30 minutes to an hour. So we were there -- done the showup and I believe it was just going over the academy-produced PowerPoint for mobile field force.

Q And before we get to shift-level training, I want to go back to -- you mentioned SRT.

A Yes, ma'am.

Q What does that stand for?

A Special Response Team.

Q And is that something, like, a person may or may not be a member of the special response team? Is that appropriate terminology?

A Yes.

Q Okay. Are you a member of the special response team?

A I am not.

Q Okay. Have you been during your time at APD?
A No, ma'am.
Q Okay. And so you have not taken the special response team training? Or have you?
A I have not.
Q Okay. We're talking about protest events and crowd events. And I think you mentioned South by Southwest and -- I'm just thinking there -- there are quite a few times in Austin when large crowds gather, would -- would you say?
A Yes.
Q Okay. How many crowds do you think you have responded to over the years?
A In a protest setting or just crowds in general?
Q Let me first, if I can, ask you about crowds in general, like, thinking about something like South by Southwest. I think you guys have officers, you know, stationed around. So kind of these big crowds in general, festivals, protests, large crowds.
A Sure. Just about every weekend from 2019 to -- you know, two-thousand-nine -- two-thousand -- I'm sorry, '19 -- excuse me -- 2018/2019 for about that year and a half that I was downtown.
Q Uh-huh.
A That --

Q Okay.
A I mean, that was very consistent. And then before then, I mean, there -- there have been times on patrol where I've had to respond to bars outside of downtown or large parties. Crowds is something that we encounter all the time.
Q I understand from speaking with some other officers that, typically, the way it worked for them is somebody in their shift would typically check out a shotgun equipped with kinetic impact projectiles, kind of, every shift. Is that -- are you -- is that how it works for you?
A Yes, ma'am.
Q When -- when you were -- when you were stationed downtown and you were responding to crowds, you know, every weekend, did -- did anything different happen with respect to how many so-called less-lethals were present when you-all were responding to one of these crowd situations?
A Well, everybody is -- less-lethal shotguns is what you're asking about?
Q Yes, sir. Uh-huh.
A No, it -- from my time there, there was no less-lethal shotguns on 6th Street --
Q Okay.
A -- deployed out within the shifts. I mean, if they were in the car, they were in the car. But, no, there

-- there weren't officers standing outside with the less-lethal shotguns just waiting for a fight or a crowd.

Q Yeah. Okay. Let's talk about protests specifically now. Moving on from the crowds, generally.

How many protest events have you responded to?

A There's quite a few, 10 to 12 within my year and a half that I was there. A couple of protests that I volunteered to work overtime for. Quite -- there was quite a few that I -- that I've worked prior to May 2020.

Q Okay. And was the typical response to a protest different from what the response was on May 30th, 2020?

A Yes, ma'am.

Q Can you tell me how -- first, tell me what was typical and then you can tell me about the differences.

A Sure. So -- so the commonalities between the two, just regular protest and -- and May 2020, first goal was to protect the First Amendment. Everybody has a right to be out there to -- to either agree or disagree. Our job is to make sure that nobody gets hurt.

There's no criminal admission of property damage. Those are the commonalities between the two. The difference between a regular protest and May 2020 was that May 30th, 2020, was declared riot (inaudible), which allowed for different means of -- of -- of squashing the riot. None of the protests that I've worked prior to 2020

were declared riots.

Q Do you know if that was the chief who declared it a riot? Or who made that call?

A I don't recall.

Q Okay. Do you know why it was declared a riot?

A Yes, ma'am. It -- it got very -- very violent very early. I believe there was a group of officers -- a small group of officers that got overran on 35 who had rocks and bricks and water bottles, frozen water bottles, fireworks thrown at them. At that point, that's no longer a protest. You -- there was several hundred people participating in assaultive and riotous behaviors. That's when it was called a riot, I believe.

Q Okay. I feel like we've seen riotous behavior in Austin. I feel like we've seen -- is it -- I don't know, maybe -- is it -- let me try this better.

I feel like I've seen news reports about people like smashing glass and breaking into storefronts. Is that something that you've known of as happening in Austin?

A Prior to May 2020?

Q Yes.

A There's been groups conducting criminal mischief before prior to May 2020. I don't know if you remember the Blue Cat Cafe that was on Cesar Chavez.

Q Uh-huh.

A There -- there was a group of people that would go there pretty regularly and smash out windows at night, but that's not -- that's not a protest or -- or a riot at that point. I think it's just a group all participating in criminal mischief and property damage.

Q Okay. And I think you answered the question I was trying to ask, so thank you.

A Yeah.

Q What, if anything, changed in terms of how APD trained you to respond to a protest situation after May 30th, 2020?

A Yeah, less-lethal shotguns were taken away from line officers. They were specifically designated to SWAT.

Q What do you think about that change? Do you think that was a good change or a bad change?

A No, I think it was good.

Q Why do you think that was a good change?

A If you don't -- if you don't learn from past events, you're just going to keep on repeating the same -- the same, you know, results that you -- that you had. Giving that less-lethal shotgun to somebody who is more trained who's -- 90 percent of what they do in a day is training, I think it's -- it's -- it's far more superior than giving it to officers that, 90 percent of their day, is responding to calls.

Q What do you think -- is there anything else that you would say is kind of a lesson learned from the use of the less-lethal shotguns in May 2020?

MR. BARTON: Object to the form.

Q (BY MS. JOSEPH) And you can answer.

A Sure. They -- because of the use of the less-lethal shotguns on May 2020, they introduced another tool that's far better at crowd control than what the less-lethal was. I think that -- that has been very helpful for -- for a patrol officer compared to the less-lethal where -- where it has its very specific utilities versus the other tools that were introduced after the -- after the protest.

Q What are the tools that were introduced after that you're referencing?

A Sure. It's a pepper ball gun, which is basically a paint ball gun with pepper balls, which is -- instead of having pepper spray, which is a liquid form, you have that same active ingredient in powder form.

Q Do those explode on impact or prior to impact? How do those work?

A They're supposed to -- they're supposed to explode on impact, but if you -- if you fire one of those pepper balls too far out it's not going to have enough energy to explode.

Q Uh-huh.
A And if the -- if the round is damaged for whatever reason, whether it's already cracked, and when it's shot so that it comes out of the muzzle, it could explode. But it's designed to -- to explode or pop on impact.
Q Does -- have you shot one of these?
A Yes.
Q Do you know anything about the -- how hard the impact is of the pepper ball compared to the bean bag round?
A Yes. In order to be certified you have to get shot with -- with a pepper ball.
Q Okay. Okay. What did it feel like?
A Just like being hit with a paint ball. It stings with an hour or two and it leaves you a -- a bruise.
Q Okay. Do you think that it's less painful or less likely to cause injury, just from what you know about it, than the bean bag round?
A Yes.
Q Okay. Is that -- do you understand that to be one of the reasons for the switch?
A I -- I --
MR. BARTON: Object to the form.
THE WITNESS: I don't know if that's the

reason why they switched it. I think it's just an overall better tool for what it's used for.

Q (BY MS. JOSEPH) Okay. Are there other tools -- are there tools, plural, that were introduced that you now have access to for crowd control that you didn't before?

A Not me, personally, because I'm not SRT trained.

Q Okay.

A But I do believe they -- they made what's called a 40-millimeter, which is a foam round. They made that more accessible to SRT. And I believe that was just a SWAT team tool at that time.

Q Okay. And I'm going to go backwards for a minute to the pepper ball.

The way that somebody on shift used to check out a less-lethal, do they now do that with the pepper ball gun?

A Yes, ma'am.

Q Okay. So it kind of -- for the non-SWAT team, kind of, standard officer, the pepper ball gun kind of replaced the bean bag rounds?

A Well, they're still both available to a patrol officer. It's just going to be based on personal experience, personal reference.

Q Okay. Okay. I thought I heard you say that the bean bag rounds were only available to SWAT now. Did I

misunderstand?

A Yes, ma'am. Sorry. So the bean bags normally go to SWAT in a crowd control setting.

Q Ah, okay. I understand. Thank you.

I was hoping I would be able to ask you all about your training before I asked for a break, but do you mind taking about a five-minute break, Detective?

A Sure. That's fine.

MR. BARTON: That will be fine. Thank you.

THE VIDEOGRAPHER: Copy that. We are now going off the record. It is now 11:12 a.m.

(A break was taken from 11:12 a.m. to 11:21 a.m.)

THE VIDEOGRAPHER: We are now back on the record. It is now 11:21 a.m.

Q (BY MS. JOSEPH) Detective, we've been talking about your training before the break. I want to get back to that.

Before I do, I'll just ask if you had any discussions with your counsel. Not what they were. But did you have an opportunity to talk to Mr. Barton about the deposition during the break?

A No.

Q Okay. According to your training, what is a police officer's role during a protest?

A To protect the First Amendment.

Q Okay. Any other -- any other roles?
A Sure. So secondary to that is just to make sure that everybody is safe, protestors and counter-protestors alike; and then, third, would be protection of property.
Q Is there a hierarchy to whose safety is more important at a protest --
A Sure.
Q -- event?
Would you tell me what that is, please.
A So I wouldn't say specifically to a protest event, but just overall, in general, there's the priority of life scale.
Q Okay. What is that?
A (Audio interference) first, officers second, suspects third, and then property fourth.
Q And you cut out a little bit when you said the -- the first one. What was first?
A Innocents. Innocent people.
Q I thought you had said kids. And I -- I was thinking I'm all for protecting kids, but where do you adults fall on that? Okay. All right.
And does that priority of life scale ever change in given context or is that kind of always what you keep in in mind?
A No, that's pretty standard for me.

Q Okay. So we've been talking about training on weapons use, talking about crowd control and protest. I want to talk, now, about training on use of force. Okay?

I think he's about to leave.

What type of training did you get from the APD police academy on use of force?

A So there was a lot because there -- everything in our belt, other than handcuffs, could be considered as a use of force, so you need to know how -- how to properly identify situations where -- so we call them a response to resistance. APD doesn't really recognize the use of force, but they're -- the terms are used interchangeably.

Q Okay.

A So we're taught the different types of response to resistance. We're taught how to respond to them. We're taught defensive tactics and techniques on how -- how to overcome resistance. We're taught statutory and policy in regards to when a use of force or response to resistance is appropriate. And we're taught how to document it.

Q So I want to kind of go back through some of the things that you just identified.

Types of response to resistant situations. Can you tell me what the different types are.

A Sure. So APD, we -- we have identified four levels of -- of resistance that could be displayed or

demonstrated in an arrest setting. I'll start with the lowest, which is called a "passive resistance". So this is somebody who in words only is being -- is resisting. If I give you a command and you say no, that is passive resistance.

Second is what's called "defensive resistance". And that is when somebody is physically resisting you. So if I try to handcuff somebody and I go to bring their hand behind their back to apply a handcuff and they start using force to pull their hand away or try to break free, that's defensive resistance.

Aggressive resistance is when somebody is trying to actively assault you or hurt you. That is a subject who is being violent towards you, a subject who is trying to -- to hurt you. That's aggressive resistance. And the final is just deadly force or deadly resistance. And that's when somebody is trying to kill you or cause serious bodily injury.

So with those --

Q Okay.

A -- four types of resistants, there is what we call the response to those type of resistants. And then each level of resistance has the appropriate response to that resistance.

Q Okay. What is the appropriate response to

passive resistance?

A So that could be joint manipulation, so like a wrist lock or -- or just applying pressure to fingers. Very, very minimal-type force for a passive resistance.

Q And same question for defensive resistance, what's the appropriate response there?

A So what's approved and what's appropriate may not be -- in -- in that instance or just because somebody is -- is pulling their arm away from me, I -- I am approved to punch them in the face, but that may not be appropriate.

So for both active resistance and defensive resistance, you basically have all of your -- of your techniques and tools open to you, other than deadly force, so that could be TASER, that could be a less-lethal shotgun, strike with the baton, punches to the face, kicks to the body. Those are all appropriate for defensive and active resistance.

Q Okay.

A (Audio interference).

Q Okay. Or aggressive resistance.

So I feel like you're kind of describing a two-step analysis. Number one, what am I permitted to do; and number two, what is appropriate in this situation. Is that accurate?

A Yes, ma'am.

Q Okay. So what did -- what did APD teach you about making that appropriateness decision?

A You -- you basically have to judge that on your own merit of what you've experienced and what you -- you perceive the subject can do or not do. Again, it's all situational.

If you have a 10-year-old boy who is trying to rip his arm away from you as you're trying to move him to mom or whatever, yes, technically, that's defensive resistance but you're not going to punch a 10 year-old to the body or to the face.

So it's all situational in -- in what you're -- what you're trained and what your experience is going to dictate on how you're going to respond to that.

Q What -- like, what factors does APD give you to consider to kind of help make that decision?

A Sure. So there's the physical. Your -- your size and body type compared to the suspect's. Are you outnumbered? What -- what's the training that you perceive that person to have? There's a lot of things that you have -- that you take into consideration. Also, you've got to take the gravity of the situation into account.

For instance, if it's -- if it's a defensive-resistance person and he's trying to pull away from you, but you see that example, right, you see that he

may be running towards a weapon, that causes the severity of the situation to go up a little bit higher, right, so you have to respond to what's in front of you at that point, taking into account everything that I've already mentioned; your size, you know, are you outnumbered, are you in a crowd, are you inside somebody's house.

A lot of things -- is -- is it somebody who just robbed somebody at gunpoint or is it just somebody who is drunk in public? All those things get -- get accounted for.

Q Okay. So the location matters?

A Yes.

Q What the person -- what you've observed the subject doing in -- before this altercation is happening, matters?

A Yes.

Q Okay. What else? What are other factors that that you're supposed to think about?

A I think I covered most of them.

Q Okay. And I know that first responders, police officers, firefighters, others are often expected to make decisions quickly in a -- in a given situation.

Are you, as an officer, able to consider these factors that you've identified for me in the field in -- when you're in a real-life scenario?

A Yes.

Q Okay. So I started asking you about use of force training, started asking about determining whether force the appropriate. But I want to go back to kind of the original list you gave me about some of the training you got.

So the types of force, how to respond. I feel like we've covered those. Is there more?

A I don't think so.

Q Okay. So next let me ask you about defensive tactics.

What does APD teach with respect to defensive tactics?

A So handcuffing techniques, how to properly handcuff somebody safely. Part of defensive tactics you learn felony car stops, which is how to do a -- a -- how you risk a traffic stop on somebody who you reasonably may be armed or a threat.

There's a lot of hand-to-hand combat, ground fighting, conditioning, proper use of the TASER, the baton, your pepper spray. Those are all parts of defensive tactics.

Q Okay. And before I get to the statute, policy, and things like that, that you talked about. I want to ask you about another word: Deescalation. Is that part of the

response to resistance training that APD gives?
A Yes.
Q And what are you taught about deescalation?
A You should try to deescalate when appropriate, when feasible, when safe to do so. Deescalation --
Q And --
A -- isn't just using your voice. Sometimes you -- you do have to use physical force to deescalate a situation. That's all part of deescalation.
Q And is that also a consideration that comes into your mind when you're deciding what type of force to use, am I able to deescalate this situation or would this use of force help me do that?
A So for me, personally, if we can avoid a fight -- because I have been injured a lot and mostly in fights -- that -- that's my first go-to, but there have been situations where you just can't deescalate. You have to go hands-on right away which is part of deescalating.
Q Uh-huh.
A Me, just kind of the personality and the character that I have, if -- if I could talk somebody into handcuffs, that's -- that's a success for me. That -- that's how I want things to work.
Q Okay. So earlier we talked about this kind of two-step analysis, what am I permitted to do? What's

appropriate for me to do?

Would we add kind of a sub-step at the top of, can I deescalate this situation? Then if I can't, what -- what -- what am I permitted to do response-to-resistance-wise and evaluate what I should do?

Like, does that -- is that kind of where it falls in the thinking pattern?

A Yeah, I -- I would say that's fair to say. That's usually one of the first things that you should be doing.

Q Okay. When you talked about training, you talked about statute and policy as being part of the training.

Tell me what you're talking about when you reference statute.

A Sure. There's some Supreme Court decisions that -- that I guess govern use of force. You can't -- just because somebody is fleeing just to flee, you're not allowed legally to shoot in them in the back, right.

Q Uh-huh.

A Policy also says the same thing. But APD policy is more restrictive than what the Supreme Court or the Texas state law -- Constitution says that we can do. It's -- it's more restrictive.

Q So I think we're starting to talk about Section 1983 and excessive force claims.

Are those phrases or references something that you're familiar with?

A Is that US Code?

Q Yes, USC -- US Code Section 1983.

A Okay. I'm not super familiar with it, other than what -- you know, I know that our policy is more restrictive than our governing -- or U.S. governing or our Texas governing documents. So as long as I stay within policy, I know that I am not in violation of any other state or federal statutes.

Q Okay. Are you given any training on a police officer's personal liability exposure for using excessive force as part of your training?

A Qualified immunity, is that what you're --

Q Yeah --

A -- referring to?

Q -- tell me -- tell me about that.

A Sure. As long as an officer is -- is behaving under the color of law and within good faith, qualified immunity should be in play where personally an officer isn't held liable.

Q Okay. Anything else about that training about, kind of, excessive force and potential exposure that you recall?

A Not that I recall.

Q Okay. And then, lastly, as part of the use of force training, you mentioned documentation.

A Yes.

Q Is -- is that the response to resistance report?

A So there's a couple of forms of the documentation. The -- the response to resistance report is -- is documented within your -- your report -- your initial report or your supplemental report to that case.

Q Uh-huh.

A There's a details page, which basically you just go into detail on who was force used on, what type of force were you experiencing, how did you response to that -- how did you respond to that resistance, was there medical treatment, did they go to the jail, did they go to hospital or did they go to a mental facility. Those are the (audio interference) that the use of force or the response to resistance specific report.

Q Okay. Is there -- is there any other documentation completed after a response to resistance?

A Not by the officer. There's a chain of command review that's done.

Q You read a bunch of Bates numbers out for me at the very beginning of documents that you'd reviewed.

Did you review -- when -- when you were reviewing those documents, did you see all of the required reporting

as part of the documents that you looked at?

A You cut off on the first part, but I think you were asking me about the documents we reviewed at the beginning?

Q Yeah. Did you see everything that you were required to complete? Is that all included in the documents that you listed for me at the beginning?

A Yeah, so the only thing that wasn't in the packet was my supplemental report from May 3030 -- May 30, 2020. But the contents of that report was within a separate document.

Q That was a part of the stack?

A Yes, ma'am.

Q Okay. Would you mind telling me which document contains the May 30th supplemental report content.

A So it's the SIU report COATalley00370.

Q Okay.

A And I'll get you a page number.

Page 11 and 12.

Q Okay. Thank you.

A Yes, ma'am.

Q According to your training from APD, are individuals who protest committing an offense?

A No.

Q Okay. Is presence at a protest cause for

detainment or arrest?

A No.

Q What if the individual at the protest yells, is that cause for detainment or arrest?

A It depends on what's being yelled.

Q What if they're yelling verbal insults at the police?

A No.

Q Okay. What if the person at the protest throws a rock, is that cause for detainment or arrest?

A Yes.

Q Okay. Is it cause for both detainment and arrest?

A Yes.

Q Okay. What if the individual at the protest throws a water bottle, is that cause for detainment?

A Yes.

Q Is that cause for arrest?

A It could lead to an arrest.

Q Is it black and white, always cause for arrest, if someone throws a water bottle at a protest?

A No.

Q Okay. What are the circumstances that would make it cause for arrest versus not?

A Sure. If the water bottle injures somebody; if

the water bottle leads to -- to further assaultive behaviors; if the water bottle isn't just a water bottle, if it's a water bottle full of urine; or if it's a -- you know, a water bottle, like I mentioned, with dry ice on it that causes a small explosion.

A water bottle in itself can -- can -- is not always just a water bottle. It can also cause some serious injury so you would want to detain or -- or arrest a person that's doing that.

Q Okay. I'm going to jump ahead. And if we need to -- if I need to re-ask this question later, I can, but let me see if we can just get to it right now.

There was not cause to arrest Tyree Talley in the incident that we're here about; is that correct?

A I would disagree with you.

Q Okay. I'm going to revisit that -- that conversation in a little bit. Okay?

Is it cause for detainment if someone throws a paper clip?

A It could poke somebody in the eye, cause --

Q Okay.

A -- an injury. If somebody was offended by it, it's still an assaultive behavior.

Q So the -- the effect of the object thrown is an important consideration when deciding whether throwing an

object is cause for detainment or arrest?

A The setting, I would say.

Q The setting? Is that what you said?

A Yes.

Q Okay. Okay. What if someone throws a paper clip toward the police at a protest and it doesn't hit anyone, it falls to the ground? Is that cause for detainment or arrest?

A So you can, but it -- it would be something that would be very unfruitful when comparing it to the -- to the overall circumstances of hundreds and hundreds of people. You can't go out and detain somebody for throwing a paper clip.

Q It's a --

A You could --

Q -- waste of time?

A It's a waste of time, yes, ma'am.

Q Okay. Does an individual give up their right to be free from excessive force by participating in a protest?

A No.

Q Okay. Does an individual give up their right to be free from excessive force if they throw an object?

A No.

Q That's always a right someone has to be free from excessive force?

A I would agree.
Q Okay. Let's talk about communications training.
What training did you receive from APD about communicating with crowds?
A So other than just being a presence on scene, when I was downtown, we used a lot of flashlights and whistles as a means to communicate or disperse a crowd.
Q How did you use a flashlight?
A So you would put it on stream -- or the -- the strobe effect and flash it at somebody's face to gather their attention. Usually somebody who's on (inaudible) isn't carrying a flashlight, but I think most reasonable people know that cops carry flashlights.
So if there's a flashlight in your face or shining in your face, a reasonable person would know that it's a police officer trying to grab your attention.
Q Okay. Interesting. I actually wanted to ask you later on, in one of the videos, I see someone on the bridge with a flashlight. I thought they were targeting people.
Do you think it's more likely that they were trying to get the attention of the person they were flashing the light at? Or you don't know?
MR. BARTON: Object to the form.
THE WITNESS: It's --
Q (BY MS. JOSEPH) And I can --

A -- highly probable that they were trying to grab their attention. That's in my experience and my training.

Q Interesting. Okay.

And what do you do with whistles?

A Again, you know, some -- a regular person on 6th Street is not necessarily carrying whistles. Cops are -- are known to carry whistles during traffic, you know, control. It's -- it's something that's easily identifiable to -- to surround people that there's police presence.

So if you're -- if you're -- you see a fight starting or you're walking your way to your -- to a fight, the whistle is a way to announce to that group of people that the police are coming.

Q Okay. Anything else in the -- in your training other than flashlights and whistles?

A Just regular command presence, using your voice.

Q Are you taught to give a warning before shooting someone?

A No.

Q Okay.

A Sorry, are you -- are you referring to impacting somebody or shooting somebody with a deadly weapon/firearm?

Q Is there a difference?

A There is.

Q Okay. Are you taught to give a warning before

impacting someone with a kinetic progenetic tile?

A You give a warning when feasible, yes, ma'am.

Q Okay. And are you taught to give a warning before shooting someone with a firearm equipped with standard bullets?

A No. If you can, and time permits, you would want to. I would want to. But it's not part of the training where you have to identify yourself three times before shooting somebody.

Q Okay.

A Or a shotgun -- I'm sorry, for a less-lethal shotgun, you're supposed to give a three-part warning of impact, impact, impact.

Q Okay. And is that the full content of the warning -- impact, impact, impact -- or is there more to it?

A It's either that or impacting, impacting, but it's one -- it's basically just saying impact, yes, ma'am.

Q Okay. Is that -- if you know, is that more for other officers who may be around you or for the benefit of the subject?

A For the officers around you.

Q Okay.

A The -- the shotgun, the less-lethal bean bag rounds, does sound like a regular shotgun round going off,

so you don't want to cause a sympathetic response to an officer who may be armed with their pistol to think that the bad guy or the suspect is shooting at you. So the impact, impact, impact tells other people around you that this next loud boom or pop you're going to hear is a less-lethal.

Q Okay. Separate from the four levels of resistance that we talked about, was there specific guidance from APD as of May 30th, 2020, that told you under what circumstances you were allowed to discharge a shotgun containing kinetic bean bag rounds?

A Yes.

Q And what were those circumstances?

A Anybody participating in a riot, which would be somebody engaged in criminal mischief, somebody engaged in assault -- assaultive-type behaviors, those were the two main guidances that we had.

Q And is that -- was that written policy or was that instruction that day?

A Both. So there was policy for -- I can't remember if it was mobile field force, but there -- there is a policy -- there was a policy that stated that you could use a less-lethal for -- for those circumstances, but also verbal direction from the chain of command as we gathered -- as we all gathered getting ready to deploy into

the protest.

I think you froze. There you are.

Q Okay. You just came back.

So you were talking about verbal direction from the chain of command and then I couldn't hear you anymore.

A So I said that -- you asked if it was policy or a verbal command. I said it was both. There was policy --

Q Okay.

A -- in place where you -- you could -- you could respond to riotous behavior with a less-lethal shotgun, but it was also verbal guidance on that day before we all gathered and deployed to the protest.

Q Okay. What is criminal mischief?

A The -- the intentional damaging of personal or public property.

Q Okay. It's related to property?

A Yes.

Q Okay. So neither Mr. Rodriguez, nor Mr. Talley was engaged in criminal mischief that day that you were aware of?

A I -- I don't know what they did beforehand, but that I'm aware of for the short interaction that I had with Mr. Talley, I would not say that he was involved in criminal mischief.

Q Okay. And what -- you referenced assaultive-type

behaviors. Tell me more specifically what assaultive-type behaviors you were instructed justified the use of the less-lethal shotgun?

A Anybody throwing water bottles, rocks, homemade explosives, fireworks. Anybody who was doing something other than peaceful gathering where their actions could result in -- in -- injury.

Q What other times, other than what you just described to me, did APD instruct that constituted circumstances under which you could fire the less-lethal shotgun at a -- at a person?

A I'm sorry, can -- can you rephrase.

Q Yeah. So a minute ago I asked you, other than the four different levels of response to resistance that we talked about, were there other circumstances that APD permitted firing the less-lethal shotgun?

And you told me about some. And I just want to ask if there are anymore that you can think of?

A Yes, ma'am. There -- there's training that we received for what's called a barricaded subject or hasty-react training, which a less-lethal is a big component to that.

THE REPORTER: I'm sorry, that was -- I'm sorry that was called barricaded or AD?

THE WITNESS: Barricaded subject or

hasty-react.

Q (BY MS. JOSEPH) Does that have any -- in your mind, does that have any relevance to the events we're talking about today?

A Yeah, because the person doesn't necessarily have to be posing a physical threat to be impacted. So a barricaded subject is an armed person that's in some type of enclosed space, or somebody who is armed in such a way that an open space would be unsafe for officers to approach. So you would deploy the hasty-react team, which is four officers, one of them being a less-lethal shotgun-equipped officer.

Part of that training you're taught to draw a line in the sand of, if the subject passes the line in the sand and is still non-compliant, he can be impacted -- or they can be impacted.

Q Any other circumstances that APD authorizes use of the less-lethal shotguns that you haven't already told me about?

A Not that's taught to patrol. There are other instances where specialized units are allowed to use a less-lethal shotgun to break a window at a house or use it to -- to do like an attention-gathering technique, whether they deploy a bean bag to the door to -- to get -- to -- to gain somebody's attention who's inside.

Q Okay. We talked a lot about the analysis of whether to fire and what sort of force to use.

Is there anything else within APD policies and procedures that informs your -- an officer's decision of whether to discharge the so-called less-lethal shotgun?

A No, just policy and SOPs.

Q And did we already talk about what those entail?

A The -- the SOPs, I don't think we have, but it's -- it's --

Q Okay.

A -- basically just policy, where it's just very specific on standard operating when you're facing this -- when you're facing a certain situation, then these methods are -- are approved.

So I believe there's a standard operating procedure for mobile field force which included less-lethals, but that's also in policy.

Q Do you typically need supervisor approval before using a less-lethal shotgun?

A No.

Q I think you talked earlier about there having been some written policy and some verbal orders that were governing conduct -- conduct on May 30th, 2020. I want to talk briefly about the interplay between a verbal order and a written policy.

So is it accurate that a verbal order about a specific situation trumps written policy if there's a disagreement between the two?

A Yes.

Q Okay. What if an officer disagrees with a verbal instruction that he's given? What is that officer to do?

A Sure. So there's policy that states that you apply a separate equal level supervisor that's issuing that -- that order, discuss it with them; and then if the order stays, the officer is to -- to comply with the order un -- or else they're insubordinate.

Q Okay. And you referenced it, but I want to really make sure we're clear on what the order was on May 30th, 2020.

It's my understanding that the order was to impact or target, with the less-lethal shotgun, anyone who's throwing an object -- or anyone who threw an object. Is that accurate?

A People involved in riotous behavior, which to include people throwing things at protestors or officers.

Q So, I mean, what did they say -- so you get to the bridge, you report. What does your superior say to you? I mean, do they use the term "riotous behavior"? Or are they kind of more casual and give some, kind of, layperson language in terms of, here's what I want you to

do?

A Well, the -- the brief happened before we got to 35 bridge.

Q Okay.

A I -- I -- I responded downtown around -- excuse me -- around 2:30 and met with the on-scene commander in the parking lot of Republic Square Park where those --

Q Uh-huh.

A -- were -- our guidelines were issued to us. And, no, he -- he used riotous behavior, riot, assaultive behavior, people damaging property. Those were very specific things that were told to us.

Q Okay. We talked about the response to resistance report.

As of May 30th, 2020, what was the timeline that an officer had for completing one of those reports typically?

A So it kind of -- it changes. It's for downtown officers who -- who have a response to resistance (inaudible). Their chain of command, it's kind of understood to that chain of command that the next day they can come in and write the report after reviewing video -- body cam video or HALO footage.

However, some on patrol don't really have that benefit, especially at the time for 2020, because the

technologies wasn't that great. We were monitoring -- or you would review your body camera on your city cell phone or on a computer, and that took a long time to -- to upload.

But other than that, downtown area officers, you -- you were supposed to fill out a response to resistance that same day unless a supervisor gives you permission not to.

Q Okay. And in this specific instance on May 30th 2020, did a supervisor or commanding officer say that the reports did not have to be completed according to the normal timeline?

A I don't think there was specific timeline adjustments or anything like that, no.

Q Okay. All right. So you reported to -- I don't know this park. I can't remember the name of it. What was it called?

A Republic Square Park. It's the one right in front of the federal courthouse.

Q Okay. You reported to Republic Square Park about 2:30. Were you already scheduled to be on duty at that time?

A Yes, ma'am.

Q Okay. Had you already been working?

A My shift started at 2:00.

Q Okay. So where did you -- where were you coming from when you went to Republic Square Park?

A The south substation, south Austin.

Q Okay. And what happened when you got there?

A We waited -- so when we started our shift, once we finish loading up is when the order for the mobile field force deployment came down. So we responded and basically staged in the parking lot until all the other officers arrived.

Q How long do you think that took?

A I don't -- I'm not sure, because while we were there and while we were getting our briefing, the DPS troopers at the capitol got overran, so we all responded to the capitol. Thirty to 35 minutes maybe.

Q Okay. So you went over to the capitol. Did you go over there in a police car?

A I don't remember -- so we arrived at Republic Square Park in our car, but at some point, we all got loaded into CapMetro buses. And I can't remember if we went from the parking lot to the capitol in the bus, but I know we left the capitol -- or went from the capitol to 35 in the bus. I don't remember if we drove there or not.

Q Who -- was there someone else in your car with you when you first -- first arrived?

A Yes, ma'am. I was doubled with a shift mate.

Q Who was that?
A Timothy Cobaugh.
Q Okay. Did you stay with Officer Cobaugh most of the day?
A So we got split up on the buses, and then the initial wave of trying to get 35 back, we were split up. And it wasn't until we took a break that we found each other, again, and then kind of just stuck together for the rest of the night.
Q Okay. When did you take a break?
A It was a long time. We got to 35 -- maybe 30 minutes after we got to the capitol. And then from there, we were probably on 35 for another four and a half, five hours before we took a break.
Q Uh-huh.
A Maybe not that long. Maybe three and a half to four. We were there for a while.
Q Okay. So you probably had five, six hours of pretty intense response behavior at the capitol, and then at I-35 before you really had a break?
A So once we got to the capitol, there (audio interference) BPOT team was -- they would have kind of cleared the grounds. The capitol has fences all the way around, so they were able to kind of just lock the gates. So we weren't at the capitol very long. And we didn't

really experience much of the -- much of what was going on as the other officers on 35 were so we got redeployed to 35.

So from when we got to 35, 3:30, 4 o'clock until we left shortly before midnight I think. About nine hours and we probably only had a 25-minute break.

Q Okay. This is what my mind goes to, I'm sorry, if it's kind of personal. But how were you guys using the restroom, like, if you weren't able to take breaks?

A Yeah, we were sweating most of the liquid that we had in us.

Q Yeah, okay. It was hot?

A Very hot. No tree cover on 35.

Q And you're wearing your standard uniform plus some additional tactical gear?

A The only additional is the -- the Kevlar helmet with the face mask.

Q You didn't have an extra vest on or anything?

A No, ma'am, but we did have our long sleeves, which is part of the protest uniform that we're supposed to wear.

Q Okay. When you got dressed that day to report to work, did you know that it was likely that you would be responding to a protest?

A Yes.

Q How did you know that?
A Because I volunteered to.
Q Okay. And this was Day 2 so the protest had already been going on?
A (Nods head up and down.)
Q Okay.
A Yes, ma'am.
Q Why did you volunteer?
A As the senior officer on my shift, I had more experience in crowds, maneuvering in crowds, responding to hostile crowds compared to the younger men and women on my shift, that I didn't want to put younger officers in a position where they were -- they were experiencing that for the first time in such a large capacity.
Q Uh-huh. Because it ended up that everybody was out there anyway; is that right?
Everybody available ended up going?
A I -- I believe so. Individual shifts kind of governed who went towards the end of the night. I had (audio interference) supervisors that kept our -- our younger officers on the streets taking calls versus responding to downtown that night.
Q You talked to me about the language that was used in the verbal orders that were given at the park.
What was the chain of command there? Like,

who -- do you recall who the speakers were giving orders?

A I do. Lieutenant Christopher (inaudible). I believe he's the commander now. He was the main commander or supervising officer on the scene that day.

Q Would you say his last name again.

A Yes, Leluex. It's spelled L-E-L-U-E-X.

THE REPORTER: And earlier was that Timothy Cobal?

THE WITNESS: C-O-B-A-U-G-H.

THE REPORTER: Thank you.

Q (BY MS. JOSEPH) And did then Lieutenant Leluex, did he remain the person in charge of you when you were on the bridge?

A No.

Q Who became your senior commanding officer on the bridge?

A Yeah, so part of the -- the mobile field force is that multiple officers are condensed into separate teams, and each team had a set of supervisors. It changed because everything is so dynamic, but -- I don't remember what her name was, but she was a -- a corporal at the time. She was a -- my mobile field force supervisor or team leader for a majority of the time until nighttime, until after the break.

Q Okay. And so it was somebody different from her

when the Rodriguez and Talley incidents occurred?

A I believe so, because after the break, I didn't see her again.

Q Okay. Do you know who it was after that?

A No, ma'am.

Q Was the commanding officer -- one second, my ear plugs just died.

Can you hear me?

A Yes, ma'am.

Q (Audio interference) kind of circulating (audio interference) interacting with you? Any other officers?

THE REPORTER: I'm sorry, I'm only getting part of what you're saying.

MR. BARTON: Can't hear.

THE VIDEOGRAPHER: Should I maybe take us off record while we troubleshoot?

Yeah that's the best bet. We are now going off the record. It's now 12:08 p.m.

(A break was taken from 12:08 p.m. to 12:16 p.m.)

THE VIDEOGRAPHER: We are now back on the record. It is now 12:16 p.m.

Q (BY MS. JOSEPH) Officer, we took a short break. I had a technical issue with my head phones, but back on.

Let's talk further about the day of the incident, May 30th, 2020. Okay?

A (Nods head up and down.)

Q What did you understand your objective to be as you stood on the bridge in front of the police headquarters in your -- in your riot helmet holding that shotgun?

A Yeah, to protect the First Amendment, allow for people who are out there peacefully protesting and demonstrating to do so peacefully without a risk of being injured.

MS. JOSEPH: Can you hear music?

(A brief discussion was held off the record.)

Q (BY MS. JOSEPH) Now, what did you think of these protestors?

MR. BARTON: Object to the form.

THE WITNESS: I felt that they were exercising their right. I didn't have any -- any personal opinion one way or the other.

Q (BY MS. JOSEPH) When you looked down at them from the bridge, what did you see? Did you see individuals? Mothers? Fathers? Brothers? Sisters? Did you see a group that was putting you on edge and making you work extra hours?

Kind of tell me what your perception was when you looked down at this crowd.

MR. BARTON: Object to the form.

THE WITNESS: So it's -- it's all

situational. Everybody is an individual until everybody -- until a lot of people start working together. There were people peacefully protesting, there were people -- there were people out there with their kids, and then there were people out there that, from the second they got to the protest, their -- their goal was to incite violence, to incite particular reactions from people.

Q (BY MS. JOSEPH) You knew about George Floyd's murder?

A Yes.

Q Did you know, at this time, about Mike Ramos having -- having been killed during an interaction with Austin Police Department in April?

A Yes.

Q Did you know as you were standing out there that other police departments around the country had been vandalized or set on fire?

A Yes.

Q So I asked you before how you felt about the protestors, but now I'm just kind of -- how did you feel about being out there and being a part of the Austin Police Department's response to the protest?

Was it exciting? Was it scary? I know you had experience, you know, in -- in responding in crowds. Just kind of tell me what it felt like to be out there.

A It was a wide array of emotions. I was -- I was proud that I was able to be there and -- and participate in such a large demonstration and -- and -- though my role wasn't as a demonstrator, it was as a peacekeeper, that -- that brought some pride.

There were moments -- a lot of moments throughout that night where it was scary. There was -- there was a lot of things going on and a lot of situations that we were put in that -- that weren't very safe, that on a -- on a normal day would not -- would not happen. It was just a very wide range of emotions.

Q Were you thinking about COVID?

A No, not really.

Q Yeah. Do you watch the news?

A I do.

Q Where do you get your news?

A Mostly the internet, but I follow a lot of local reporters on -- on social medias. I -- I look at Statesmen. I look at Fox 7. Austin Chronicle every once in a while will have a very insightful article. I -- I mostly focus on local news. That's what effects me the most.

Q Uh-huh. Do you get your news from your social media accounts?

A I follow some -- some news personalities, yes.

Q Have you watched the George Floyd video?
A I did.
Q What was your, kind of, emotional response or feeling in response to that?
A I mirrored a lot of --
MR. BARTON: I was just going to object to the form, but go ahead and answer.
THE WITNESS: I mirrored a lot of the -- the frustrations that people had. I personally didn't -- didn't believe that the tactics employed were what was taught on a national level.
Q (BY MS. JOSEPH) Going back to May of 2020, I know you had been out responding to the protest on the 29th and then you came back around 2:30 on the 30th.
How much time do you think you had between working on the 29th and working on the 30th?
A Like time off?
Q Yeah.
A So we got off late that night. We got held over. Supposed to get off at midnight. I think we got to the front steps around 11:00, which is normally around the time that we're wrapping up our shift.
I -- I don't recall exactly what time we got off, but I did alter my -- my alarm the next morning to give me a couple more hours of sleep. Normally I would have woken

up at my normal time and had breakfast, coffee, worked out, and went in. And I definitely skipped my workout that day.

Q Do you think you got a restful night's sleep?

A Yeah, I think so.

Q Was there any kind of live communication happening between you and other officers or you and a commanding officer via, like, text message or following somebody on Facebook live? Like, any way that you were, kind of, keeping informed of what was going on in areas other than right where you were?

A Day of protest or leading up to?

Q Let's say day of, the 30th.

A So other than radio communications, officers communicating with each other, officers communicating with the command staff, or our HALO camera operators, I was monitoring some local Facebook lives when time permitted or when it was safe to do so. So --

Q Uh-huh.

A -- responding to the capitol, I was watching. I don't know if it was a local reporter or if it was one of our -- our local -- sorry, I'm not sure if was a local street reporter or if it was one of our local mainstream reporters that I was watching, but I was watching a live stream there.

From the capitol and 35, I was watching live

streams. Here and there, probably received some -- some text messages about what was going down -- or going on further down 35, because there were officers deployed at Ceasar Chavez and 35. Seeing what was still going on at the capitol. I believe there was a small group over at city hall.

So just kind of monitoring as much as I could via like live streams Facebook live.

Q How were you finding the live streams that you were watching?

A So I can't remember if it -- if it was -- if it was a news live stream that I was watching. They just post -- they posted it on their wall. So either KXAN or -- or KVUE had a link.

If it was like a street reporter, I believe it was -- somebody posted their link in a comment somewhere or something along those lines. It wasn't anybody that I was following previous. It was just somehow that day they came up, whether the algorithm brought me to that particular post or whatever it was.

Q Okay. If I'm being -- if I'm being -- thinking positively, I think I probably have another hour to hour and a half of questions that I need to ask you. And I do hear, like, spy music in the background while we're talking.

So let me ask you, would you like to take a slightly longer break to get a bite to eat while I solve my audio problem or would you rather just hold on a second while I fix it?

A Personally, I would rather just muscle through it.

Q Okay.

MS. JOSEPH: Then everyone please forgive me, but I do need to ask to go off the record again while I figure out what's happening.

MR. BARTON: Sure. And I -- you know, as far as a break, I mean, if you need 10, 15, 20 minutes, that's fine. Whatever -- whatever you need.

MS. JOSEPH: Okay. Sure -- if it -- it won't take that long. I will find something -- I may find a kid's headset to plug in, if I need to. I just need to make the sound stop.

MS. LOPEZ: Yeah, I think I know what it is as well, if we're off the record, Leigh --

THE VIDEOGRAPHER: We're --

THE REPORTER: We're not.

THE VIDEOGRAPHER: We're -- we're not yet actually. One second.

We're now going off the record. It is now 12:27 p.m.

(A break was taken from 12:27 p.m. to 12:28 p.m.)

THE VIDEOGRAPHER: We are now back on the record. It is now 12:28 p.m.

Q (BY MS. JOSEPH) Let's talk about kind of the formation of -- of the police out there on May 30th, 2020.

I don't believe that the roads around police headquarters were blocked; is that correct?

A I don't think they were. Not on -- not on the 30th.

Q Okay. And there weren't any barriers set up outside the APD headquarters other than the line of officers?

A I think they may have moved some of the water barriers on to the steps. But if they did, it would have been all at the bottom, not at the top of what we call the -- the patio.

Q Okay.

A I don't remember if that was on the 30th or if that was a couple of days before. I do remember seeing them, but I can't recall if it was on the 30th or not.

Q Okay. No stall horses standing up out there?

A No.

Q Can you identify any specific measures, other than the police line, that were taken to contain the crowd?

A The only containment that was set up was officers

on 35 to make sure the crowd didn't retake 35.

THE REPORTER: Sorry, did you say retake or overtake?

THE WITNESS: Retake.

THE REPORTER: Thank you.

Q (BY MS. JOSEPH) And at the time that the Rodriguez and Talley incidents occurred around the 9:00 p.m. hour, first half of that hour, I-35 was functioning normally, right?

A No, it was condensed to one lane.

Q Okay. And are you aware of any police officers having been tasked to directly interact with crowd members?

A (No verbal response).

Q Like, talk to people?

A I can remember officers engaging with -- with people out there that were protesting. I can't remember if it was on the 30th or not. I don't recall when that happened. If there was like a specific communications officer, no.

Q Okay. Do you know the distance from the top of the bridge on I-35 where you were standing straight down to the ground?

A I don't, no.

Q Would you agree that the way that you guys were instructed to set up with the row of police officers on

what you-all call -- is it the patio?
A Uh-huh.
Q And the row of police officers on 35, you had kind of walled in the majority of the crowd out there that day?
A I --
MR. BARTON: Object to the form.
THE WITNESS: I would not agree.
Q (BY MS. JOSEPH) Okay. The crowd has police officers on two different sides of them?
A Are you -- are you asking me --
Q Is that true?
A -- or are you --
Q Yeah, that's a question.
Is that -- is that accurate?
A No.
Q No? Okay.
But you did -- you did have officers set up on the bridge?
A Yes.
Q That were facing headquarters?
A Yes, ma'am.
Q Okay. And then you had officers in front of headquarters that were facing northeast?
A It would have been east.

Q East?
A (Nods head up and down.)
Q Okay. Okay. So the officers at headquarters are facing east and the officers on the bridge are facing west?
A Yes.
Q Okay. And there's people in between?
A Yes.
Q Okay -- the okay. Let me pull up some video.
So this is -- this is from the video Bates-labeled COA4616, which I believe is your body-worn camera. I'm going to play from the beginning, but I'm not going to play the entire video.
Can you tell from the screen that you see now, having watched some of your body worn camera footage before, if this is indeed your body worn camera?
MR. BARTON: I'd just like to state an objection, I guess would be appropriate thing. We are not seeing anything but kind of a blue flower.
MS. JOSEPH: Oh. Thank you.
All right. Just a minute.
MR. BARTON: And can you read, just at -- at your convenience, the time stamps as we go forward.
MS. JOSEPH: I will. And like I said, I'm going to start at the beginning, but I will read some.
Q (BY MS. JOSEPH) All right. How is that? Do you

see the --

(Simultaneous speakers).

A Yes, that looks like my body camera.

Q Okay. All right. Great. So I'm going to play this body camera labeled 4616 from the beginning. And I'll pause along the way, so that we can talk about it a little bit.

(Video was played.)

Q (BY MS. JOSEPH) So I'm going to pause right here at 5 seconds in.

And I don't see any protestors on 35 right now; is that correct?

A That's what it appears on the camera, yes.

Q Okay.

(Video was played).

Q (BY MS. JOSEPH) I'm going to pause again at 9 seconds and ask if you can tell or if you remember who the officer that we see here is, the -- the guy on your left?

A That would be my partner, Timothy Cobaugh.

THE REPORTER: I am so sorry, I need like 3 seconds. If you could pause for, like, 3 seconds.

MS. JOSEPH: Sure.

THE REPORTER: Okay. Sorry about that.

Q (BY MS. JOSEPH) I'm actually going to go back to the beginning. And the question I want to ask you,

Detective, is are you sure that the road is down to one lane at this point?

So let me play the beginning part, again, where we can see behind you.

(Video was played).

A It looks like it's the number one lane that's the only one that's open.

Q Okay. So somewhere north of where you're standing, I-35 has been reduced to one lane?

A Yes, ma'am.

Q Do you know how it was done? Like, with a car or with police officer bodies or...

A I believe it was cars and cones.

Q Okay. Okay. I'm going to advance the video to 1:53. And something is going to happen at about the 2:16, 2:17 mark. And I want to see, if we watch the next couple of minutes together, if you can help me figure out what -- what happened. Okay?

So I will direct your attention really to right in front of headquarters here.

(Video was played).

Q (BY MS. JOSEPH) I'm going to pause here at 2:19. And I think from watching and listening to your camera, later at about the 2:18 -- at about the 2:18 mark in the top right, like, the -- the timestamp, you're going to talk

about a flare. And you say something like "flare came from."

And I don't know if you can tell from right now or if I need to ask you again after I show you more video, do you think that's what just happened right now that somebody threw a flare or ignited a flare?

A Yeah, you could actually see it on the camera a couple of seconds before this. If you're looking at the One Austin Together banner, you go all the way to the left to the edge of that corner, trace that all the way down the floor, behind that tree, you'll see a flare kind of arch over and land on the patio.

Q Okay. Can you see my mouse?

A Can you shake it?

Q My -- my arrow?

A Yep, I see it now.

Q Is this the tree you're talking about?

A No, ma'am. You've got to go further to the left. It's the big tree.

That one.

Q This one back here?

A Yes, ma'am.

Q Okay. So you're able to see something thrown from there and land somewhere on the patio?

A Yes, ma'am. You -- you see it arch from where

that tree is over -- like you see it arch on the wall. You'll see the -- the lit flare on the background of the brick wall and then land on the patio.

Q Okay. And do you have any idea where Mr. Talley was when that happened?

A From watching the HALO camera, but not from personal experience from that day.

Q Yeah. So can we -- can we agree that he didn't throw the flare?

A I mean, what's the time frame from the flare to when Mr. Talley got impacted is a few seconds. I don't know -- I mean --

Q Yeah. If you don't know, that's okay.

A Yeah.

Q Okay. So I'm going to restart. And I think we will see the Talley incident within about 20 seconds of when I restart, so that's -- that's what we're looking for now.

So I'll direct your attention to the road in front of headquarters. Okay?

THE WITNESS: How do I make this big screen like yours?

Sorry, I'm trying how to make your screen bigger on my screen.

MS. JOSEPH: Okay.

MR. BARTON: Yeah, his screen is --
THE WITNESS: Still shows all the participants at the top.
MR. BARTON: -- different than mine, yeah.
THE WITNESS: There it goes.
MR. BARTON: Okay.
THE WITNESS: Okay. I'm ready --
Q (BY MS. JOSEPH) Got it?
A -- sorry about that.
Q Okay. So I'll restart playback. And just for reference, on the video playback timestamp, we're at 2 minutes and 19 seconds.
(Video was played).
Q Are you able to see Mr. Talley on the ground in the intersection?
A I think our (inaudible) lighting. I just see Officer Cobaugh right next to me.
Q Oh, okay. Let's see, let me play it a little further.
(Video was played).
Q (BY MS. JOSEPH) How about now?
A No, ma'am. There's really no (audio interference). It's just me looking up toward (audio interference).
THE REPORTER: He's cutting out really bad.

MS. JOSEPH: Okay. There's also some -- there's a disconnect between what I'm seeing and what the officer is seeing, so I'm going to stop the share.

Q (BY MS. JOSEPH) And did you see, kind of, what I'll refer to as the "Talley incident," Mr. Talley coming out and being impacted?

A Not in the video that was just playing.

Q No? Okay.

Let me try to reshare.

All right. So right now, you should see kind of a blurry picture that has Officer Cobaugh in it. I'm going to start playing at 2:44 on the playback bar and see if we are synced up again.

(Video was played).

MR. BARTON: (Inaudible) stop for just a second.

MS. JOSEPH: Sorry?

MR. BARTON: I think the timestamp on the AXON body timestamp if you --

MS. JOSEPH: Uh-huh.

MR. BARTON: If we can match that up because I'm -- I'm not sure if your elapsed time is the same as ours, even though you are sharing your screen. I don't know why they'd be any different, but it seems like AXON body stamp is easier for us to reference.

MS. JOSEPH: Okay. I don't mind doing that.

Q (BY MS. JOSEPH) So I just backed it up to where the AXON body stamp that I see is 2:17:09.

A Yes, I'm seeing the same.

Q Okay.

(Video was played).

Q (BY MS. JOSEPH) So I just paused it after Officer Cobaugh started shooting at Mr. Talley.

Is that what you just saw happen?

A No, we're -- we're at 2:17:30, 2:17:31, 2:17 -- 17:32. It's still playing. It's live.

Q Okay.

A He -- on my end, he just raised his shotgun and fired the first round and now it's paused --

Q Okay. All right. You --

A 2:17:38 is what we see.

Q Okay. Okay. Thank you. I've never had this happen before, so thanks for bearing with me as we try to make sure we're seeing the same thing.

So I believe that what we just saw on the video is Officer Cobaugh firing, what appears to be targeting Mr. Talley. Is that what you saw?

A Right now on my screen, all I can see is Officer Cobaugh raising his less-lethal and firing a round. I'm not -- my angle on the camera doesn't show who he was

targeting.

Q Okay. Okay. And at around this time, you are communicating via radio for the Frank sector. And you're trying to get in touch with somebody; is that right?

A So the first thing that I say is "Frank 601," which is my unique identifying call sign.

Q Okay.

A It's broken up into three different sections. So the letter in a call sign is going to indicate what sector you work, which is -- mine is Frank. The next number is going to indicate what shift you work, which was Frank 600s. And of the Frank 600s, I was the first call sign, so Frank 601.

So any time an officer talks on the radio, they're identifying themselves to whoever they are talking to. At that moment, I was talking to HALO trying to communicate to them where the flare had just been thrown from.

Q Okay. Okay. So you're not the designated radio guy. You're just -- you're the person who happens to be doing this?

A There is no designated radio guy.

Q Okay.

A Yeah, I just had -- I saw it come from over there and report it.

Q Okay. So when the Talley incident happens, your attention is kind of split between the radio communication that you're engaging in and observing Mr. Talley; is that accurate?

A Multitasking. Yeah, we're -- we're trained to be able to multitask and scan various different areas at the same time.

Q Okay. And that's what you're doing. You're -- you're multitasking?

A Yes.

Q Okay. And I'm going -- I'm going to play now from the 2:17:38 marked on your body cam stamp. I'm going to play just the rest of the incident to about the 2:38 mark where I tried to stop it before. Okay?

MR. BARTON: Okay. And let me just make an observation. It's not really an objection. But, like, his screen is different than the one I'm even seeing. And I don't know why, but the screen that he has there's a green outline of the video. And it says "You are viewing Leigh Joseph's screen."

And my screen, which is on a computer right next to him, does not have that but the -- the image looks to be the same. But, anyway, there's something kind of odd about the way this video is displaying.

MS. JOSEPH: Okay. I wonder if -- I mean,

would -- would we be better off if he looked at your screen, Monte?

MR. BARTON: I really -- I don't know. I just know that the -- it seems like there's a difference. Mainly, it's this green box.

MS. JOSEPH: Okay.

MR. BARTON: And -- and I've --

MS. JOSEPH: Did --

MR. BARTON: -- not had that happen before. Usually, it's two screens are -- you know, show the same thing, so...

MS. JOSEPH: Did you also have a lag when I played the video?

MR. BARTON: I did. Yeah, I had the same lag that he had.

MS. JOSEPH: Okay. Let's -- let's go off the record for a second and consult our -- our videographer.

MR. BARTON: Okay.

THE VIDEOGRAPHER: Copy that -- I'm sorry, let me -- okay. Copy that. We are now going off the record. It is now 12:50 p.m.

(A break was taken from 12:50 p.m. to 12:55 p.m.)

THE VIDEOGRAPHER: We are now back on the record. It's now 12:55 p.m.

Q (BY MS. JOSEPH) All right. So we're going to do the best we can. I think what's going to have to happen is you'll have to remind me if I stop the video and I try to start talking about it and it hasn't stopped playing on your end. Okay?

But I'm going to --

A Yes, ma'am.

Q -- try to give you a minute to let your video finish before I -- before I talk.

A Yes, ma'am.

Q So -- thank you, sir.

So I'm going to go back to about...

A 2:17:38 is when we stopped it last.

Q Okay. I can't quite there. I'm at 2:17:34. Okay? All right. Here we go.

(Video was played).

Q Okay. I paused at 2:17:43. Tell me when you're there.

A We're -- we're there.

Q Okay. What are -- I see, I believe, your so-called less-lethal shotgun in the frame. And I can't tell if you're shooting it or doing something different.

Can you tell me what's happening with your weapon in the -- in the seconds that we just watched.

A Yeah. So it seems like it skipped over some

lags, because when I reviewed the videos a little bit clearer, this is very choppy. There -- I know when I reviewed the video, there's at one point where I am firing a less-lethal, and then there's another point where I'm either -- I'm checking it to see whether or not it's loaded or -- or adjusting the sling. But this particular video segment that we just watched is hard to tell.

Q Okay. But you know from a prior viewing of your body camera video that you did fire the bean bag rounds toward Mr. Talley?

A Yes.

Q Okay. Do you know how many times you -- you shot?

A I fired one round at Mr. Talley.

Q Okay. And was there an issue with the weapon that you were trying to address?

A I don't remember.

Q Okay. We talked about you and we talked about Officer Cobaugh. Are you aware of any other officers who you saw firing toward Mr. Talley, targeting Mr. Talley?

A I did -- sorry. Day of, no. Just kind of since the three years since then -- yes, I've been made aware of others.

Q Okay. And who have you been made aware of?

A So based on just kind of what was named in the

federal complaint, I know it was an officer -- or now Detective Lynch, Officer Churney. Two other names that I just can't recall right now.

Q Okay. And this information is coming from the complaint?

A Yes, ma'am.

Q Okay. Did you get any other information about who fired toward Mr. Talley from within the Austin Police Department, whether talking to colleagues or some other way?

A Speaking with Officer Churney, we -- we learned that he was one of the ones that also fired.

Q Okay. Let me continue playback and we'll see what happens.

(Video was played).

Q Is it -- has it paused?

A Oh, I'm sorry, yes.

Q Okay.

A 2:17:53.

Q Okay. And I just want to confirm with you at this point that no officer attempts to go to Mr. Talley after he is impacted?

A It does not appear so on the video.

Q Okay. I'm going to resume playback.

(Video was played).

Q I believe we've just heard you and Officer Cobaugh discussing Mr. Talley; is that correct?

A Yes.

Q Okay. Can you just kind of summarize -- because the video is a little bit hard to hear -- what you guys are saying to each other.

A Yeah. So Officer Cobaugh makes mention that he believed that Mr. Talley knew that there was officers on 35. I tried to confirm with Officer Cobaugh what it was that he threw, and he also wasn't sure what it was that he threw, but we knew he threw something.

Q Okay. So you-all are in agreement, you don't think that Tyree Talley knew you were there?

A I -- I -- I don't know. I mean, people were throwing items directly under us all night. I don't know specifically if Mr. Talley knew if we were there or not. I don't know how long he was there that night.

Q And I'm sorry, I'm just trying to ask about the conversation. I think that's what you guys said to each other, but I can replay it if I need to.

A No, no, no, that's fine. Yes, Mr. Cobaugh -- Officer Cobaugh makes mention he believes that Mr. Talley did not know that we were there. I don't think that was my opinion at the time.

Q Okay. I thought I heard you agree. Did you hear

yourself say "yeah"?

A Yeah, I could -- it could be in agreement. It could also be just acknowledging what he says. I wouldn't say that's me agreeing with that opinion that Officer Cobaugh had.

Q Okay. Okay. And then Officer Cobaugh says that he thinks that Mr. Talley's actions were stupid?

A Uh-huh. That's what he said, yes, ma'am.

Q Do you know what specifically he's talking about?

A Throwing items towards police officers and protestors.

Q And you guys then talk about how you don't know what Mr. Talley threw, is that -- is that right? You didn't know what he threw in that moment?

A Correct.

Q Okay. I'm going to close this video and share with you what's been Bates-labeled as COA37547.

MR. BARTON: Could you read that Bates stamp number, again. Sorry.

MS. JOSEPH: 37547.

MR. BARTON: Okay. Thank you.

THE REPORTER: Are any of these exhibits?

MS. JOSEPH: They're not. We're just kind of using them as tools. Yeah, thank you.

THE REPORTER: Okay. Thank you.

Q (BY MS. JOSEPH) So we're now going back in time and we're going to view some of your body worn camera footage from the Modesto Rodriguez time frame, the time frame of that incident.

But, first, I just want to play a little bit of this for you and have you confirm for me that it is your body worn camera. Okay?

(Video was played).

A Do you have the audio? I don't think I saw this video --

Q Not yet.

A Okay.

Q I think it's going -- maybe will start. Let's see.

Audio starts for me at 9:19 -- 2:09:19.

(Video was played).

Q I think I finally heard your voice. Is that your -- your body worn camera?

A Yes, ma'am.

Q Okay. So during the time frame that we're watching in this video, I also don't see any protestors on I-35 when you turn around that direction. Is that right that there weren't any protestors on I-35 at that time?

A Yeah, I think once we took 35 -- once the police took 35, it was never retaken.

Q Okay. About what time of day did you-all take 35?

A So when -- once we left the capitol, I think I estimate around 3:30, 4:00 is when we got to 35. And it took us a couple of hours to retake it. So we -- we retook it before it got dark, I can say that for certain.

Q Okay.

A Yeah, so late evening.

Q Okay. Could you say that for several hours before the Rodriguez and Talley incidents you were not dealing with protestors behind you?

A Yes.

Q Okay. And of course during the Rodriguez and Talley incidents, you were not dealing with protestors behind you?

A Correct.

Q Okay. Okay. I'm going to resume -- actually, I'm going to back up for a second. I'm going to go back to 2:09:22. And I think in about 10 seconds, 10 or 12 seconds, we're going to see a guy -- an officer with a flashlight over here on the left side of your screen. And that's what I want to direct your attention to. Okay?

A Okay.

(Video was played).

Q Do you see his hand here holding the flashlight?

A Yes.
Q Do you know who that is?
A I don't.
Q Okay. Do you know what he's doing?
A He's spotlighting the crowd, whether it's to, you know, draw attention to that person or -- or to get that person's attention to the police. I can't say specifically what he was doing.
Q Okay. The flashlight could be used in any either capacity?
A Yes, ma'am.
Q Okay. All right. I'll continue playback from here.
(Video was played).
Q I'm going to stop it and take us back before the flashlight part that we were looking at. I'm going to go back to -- I'll start at 2:08:46 on your BWC timestamp.
(Video was played).
Q I'm going to represent to you, just for purposes of my next couple of questions, that the timestamp approximately where Modesto Rodriguez is injured is about 2:09:03.
And I think from my review of various videos connected with this litigation that when the Modesto Rodriguez incident occurs, we cannot see it on this body

cam. Do you agree with that?

If I'm --

A This is --

Q -- right about the timestamp, we did not just see the Modesto Rodriguez, right?

A Correct. If you're -- if -- the timestamp estimation is correct, I don't believe we saw it.

Q Okay. But I do think that I saw you kind of lift your shotgun as if you might be positioning it and then maybe put it back down. Is that what I saw?

A I wasn't looking for that, so I don't know --

Q Okay.

A -- what it was that -- that played.

Q Okay. Let --

(Simultaneous speakers).

A (Inaudible).

Q Let me go back a little bit with that in mind.

A 2:09:03 was the estimation?

Q Yes.

(Video was played).

Q And we don't have sound for that part, but I think -- I think that what I saw is just after 2:09:03 -- so if you're -- you're listening to my representations, then, just after the Modesto Rodriguez incident had begun and -- and shots had been fired, I think that I see you

raise your shotgun and put it back -- maybe put it back down.

Can you -- can you help me understand what's happening in those moments.

A Yeah, I'm definitely not in a shooting position. I don't have a stable platform. We're not -- we're not trained to shoot a shotgun and walk, so that's not a tactic that I know and not a tactic that I would deploy in such a very dynamic scenario -- dynamic scene as what we have here with a bunch of people around.

To me, it looks like the shotgun was slinged across my chest. And I was raising it. You can see the orange forearm up towards the air and the barrel pointed south towards those lines of officers. And then once it goes past that 2:09:03, several milliseconds after, the muzzle is more towards the service road.

At the time where we're estimating, 2:09:03, my muzzle would be pointed directly at the officer in front of me. And I wouldn't -- he didn't get shot, right?

Q Yeah.

A So I think that's what I'm doing. I think I'm -- I'm positioning my shotgun, my less-lethal, from a slung position to a ready-to-deploy position.

Q Okay.

(Simultaneous speakers).

Yeah, I thought maybe you heard the shot and you kind of started to lift the gun, like do they need my help, and then put the gun back down. Is that kind of what you're describing?

A No, I think I'm --

Q Okay.

A -- I'm -- what I'm doing is I'm getting to where I'm going to take position of my overwatch and readying my firearm -- my less-lethal at that moment. I don't -- I don't think I'm reacting to somebody being impacted because the next two officers in front of me aren't reacting either.

Q Okay. Okay. Do you know who they are?

A If you play it out a little bit, I might be able to make them out.

Q Okay.

(Video was played).

A No, I can't make that out.

Q Okay. So just to be clear on the Modesto Rodriguez incident, you don't have any specific recollection -- independent of the camera you watched after the fact -- of the Modesto Rodriguez incident; is that correct?

A Correct. I wasn't aware of that until the deposition prep from last week.

Q Okay. And you don't know whether you saw Modesto Rodriguez on May 30th, 2020?

A I do not recall, no.

Q Okay. And -- and you didn't fire the shotgun that you were holding around the 2:09:03 mark on the body cam video that we just watched?

A No. The shotgun would have been upside down. At that -- at that point, I didn't fire it.

Q Okay. We talk about Tyree Talley and the fact that you fired one shot at Tyree Talley.

Do you have any idea what the distance was between you and Tyree Talley when you fired that -- that shot?

A Yeah, it was -- it was within my limit that I impose onto myself. And I have put pretty strict 15 to 20 yards or -- in -- is where -- where my -- where I felt comfortable firing.

Q How were you able to measure 15 to 20 yards out?

A Just kind of just training and -- and life. You know, just estimate car lengths, things along those lines.

Q But, again, you told me earlier that you don't know how high up you were from the ground?

A No, but the stated overpass in downtown is 15 to 16 feet.

Q How many times did you reload the shotgun

throughout the day on May 30th?

A Sure. So I -- I indicated in my -- in my supplemental report that I -- I believe I fired anywhere from 20 to 24 rounds that day.

Q I don't expect that you were given 20 to 24 rounds when you first picked up the shotgun. Where did you get the additional rounds?

A There were supervisors walking up and down 35 handing out boxes.

Q Were the boxes identified -- how -- how were the boxes marked?

A By the specific branding from the manufacturer as less-lethal rounds.

Q Did they have an expiration date on them?

A I don't know.

Q Okay. Are you trained to evaluate the integrity of munitions, whether it be standard bullets, bean bag rounds, whatever it is before you use them?

A Yeah. So you -- you look at the end cap, which is metal. Because a lot of these rounds are shared, they can get beat up. I always inspected them. Mine -- my rounds were to the standard that I believe were going to be, you know, suitable for the day.

Q Okay. That inspection wouldn't have told you if they were expired?

A No, ma'am.
Q And that inspection wouldn't have told you if they had hardened?
A No.
Q Okay. So let's talk more about Mr. Talley.
He -- in -- in the video that we've seen and in the information that you're aware of, he threw one bottle one time; is that right?
A From -- from what I saw, he threw one object when I observed him.
Q Okay. And you now know that that one object was a regular plastic water bottle?
A It was a water bottle. I don't -- I can't tell from up there if it was regular or not.
Q Okay. You are not aware of any injuries caused by the bottle that Mr. Talley threw?
A I am not aware of any.
Q And you didn't see any sort of flare or other indication that the bottle was somehow explosive after he threw it?
A There's still a little bit of smoke on -- on the patio from the flare, but at the moment, I wouldn't be able to tell if it was or not.
Q Okay. So you don't have any evidence to say that what Mr. Talley threw was anything other than an ordinary

water bottle? You don't know one way or the other?
A Don't know one way or the other.
Q Did Mr. Talley's throwing the bottle of water cause you to fear for your physical safety?
A Not my personal safety, but protestors and officers on the patio, yes.
Q Do you agree with me that it would not have been appropriate to shoot Mr. Talley for the purpose of deterring people from throwing objects?
A Would I agree it would not be appropriate -- I'm sorry, can you re-ask.
Q Yeah. You can't shoot somebody with the purpose of deterrence?
A During a --
Q Stopping future conduct?
A During a riot, yes.
Q Okay. It's my fault because it was a bad question, because I don't really understand your answer.
So it would not have been appropriate to shoot someone like Mr. Talley for the purpose of deterring future conduct, correct?
A It was appropriate. In the circumstances that were -- we faced right then and there, throughout that night, that was appropriate.
Q Okay. Deterrence was an appropriate reason for

shooting?

A Yes.

Q Okay. And by "deterrence" I mean deterring future conduct was an appropriate reason for shooting?

A The -- the objective of firing the less-lethal rounds at people who were involved in assaultive behavior is to stop them from continuing their assaultive behavior, which is a strict deterrence.

Q Okay. Would it have been okay to shoot Mr. Talley so that other people wouldn't throw bottles?

MR. BARTON: Object to the form.

THE WITNESS: So are you asking, he threw the bottle, we impacted him to deter his future behavior, but also what kind of psychological impact it had on others? Because in that case, yes, that is appropriate. And that -- that's one of the -- the -- the -- one of the by -- one of the effects that happens with that, somebody sees that their riotous -- other person's riotous behavior is not being accepted, therefore that person will not participate in the riotous behavior.

Q (BY MS. JOSEPH) Okay. Take out the bottle he's throwing right then. Like, say, the bottle has already left his hand, he has thrown the bottle.

Is it appropriate to shoot him after he throws the bottle to deter future conduct?

A In the --

MR. BARTON: Object to the form.

THE WITNESS: In the circumstances that were presented, that Mr. Talley presented us, he was impacted -- he was still within that -- that action of the riotous behavior. He's still throwing a bottle. Yeah, I think it -- I think it's appropriate. The dynamics of the entire situation of -- from when he runs up, throws a bottle, and gets impacted, I believe that's all just one -- one event. It's the one event.

Q (BY MS. JOSEPH) And I just want to be clear, I'm not asking, like, if you think it was okay to shoot Mr. Talley. I -- I want to talk to you about that. But I'm specifically asking about a -- a reason for shooting Mr. Talley. Was this particular thing I'm asking about an appropriate reason?

So I just want to make that clear. And -- and I'll tell you, you know, the jury may watch this video, listen to expert testimony, listen to testimony of officers, and conclude that Mr. Talley was shot after the bottle left his hand.

So I -- I want to ask you about when it would or would not be okay to shoot him after the bottle leaves his hand so that the jury can hear about that. Does that make sense?

MR. BARTON: Object to the form.

THE WITNESS: I believe I understand your question, but I can't answer it in the way that you're looking to be answered because it's still all one event. He -- he threw the bottle --

Q (BY MS. JOSEPH) Uh-huh.

A -- his -- his action caused the reaction of the officers. He's still in the -- in that -- in that action of throwing the bottle, trying to get whatever -- whatever he's doing, that is still appropriate in my eyes.

Q Okay. So in your mind, whether the bottle is still in his hand or not at the time that officers shoot at him, doesn't matter because it's all part of the same event?

A Well, no, because if he's walking around with a water bottle in his hand, that's not -- there's nothing unlawful about that. It's the moment he decides to throw that bottle or that object, from when that bottle leaves his hand in that assaultive behavior of throwing it -- I think -- I think it's important to remember is that there's no way to know if that's a regular water bottle or whether it's a water bottle full of urine, frozen water, whatever it is. That action needs to be addressed. And I believe it was appropriately addressed within the time frame that it was addressed.

Q Okay. I -- I don't think my question was clear. I mean, I'm just really trying to make it a hundred percent clear what you're saying with respect to whether it's okay to shoot him before and after the bottle leaves his hand.

It sounds to me like you're saying because he threw the bottle, it was okay to shoot him after the bottle left his hand. Is that what you're saying?

MR. BARTON: Object to the form.

THE WITNESS: Yeah, he's -- he's still in the act of -- of an assaultive behavior. That -- that whole situation, and Mr. Talley's actions, is very dynamic. From when an officer picks up the site picture and when they decide to -- to fire that round, it -- it's not something that's going to be instantaneous. There is some -- a little bit of time frame -- a little bit of time that passes to make that conscious event -- conscious decision to fire. I -- I believe, yes, his actions whether the bottle was -- whether he was in the act of throwing the bottle or the act of getting away, still needs to be addressed.

Now, if it's five minutes later, I don't know if that's what you're asking, no, that's not appropriate. If he throws a bottle, disappears in the crowd, comes back out, and then he gets impacted, that's not appropriate, but that's not what happened in this

situation.

Q (BY MS. JOSEPH) Okay. And you feel like shooting at Mr. Talley after the bottle leaves his hand, in this throwing scenario, is compliant with the instructions that officers were given that day?

A Yes.

Q Okay. We talked earlier about some PDF documents and briefings that you had gotten about frozen water bottles or water bottles with shrapnel, and then things like that.

At the time that -- let's say at 9:00 p.m. on May 30th, 2020, were you aware of any water bottle having been tossed that day in Austin at these protests that contained something other than liquid water?

A Yes.

Q Okay. Tell me about that. How did you become aware of it? When did it happen? All of that.

A Sure. So when we got off of the bus on 35, there was many frozen water bottles that were still laying on -- on the ground. I, personally, got hit in the chest with a water bottle full of urine. Thankfully, the cap was still semi-secured on there where it didn't explode on impact covering me in urine.

There were water bottles that had bleach in them. And that was apparent through officers' uniforms walking

around.

So, yes, there was -- there was a lot of bottles being thrown that weren't just full or containing liquid water.

Q Okay. But you didn't have any indication that Mr. Talley or Mr. Rodriguez was responsible for those bottles that you saw?

A No.

Q I think we already talked about this, but you did not arrest Mr. Talley?

A Correct.

Q You did not have probable cause to arrest Mr. Talley?

A I did.

Q Let me show you some photos.

A Sure.

Q So I'm showing you what's been Bates-labeled as Talley1153.

Do you know that this is Mr. Talley lying on the ground with his hand over his face?

A Yes.

Q Okay. I don't know if you've seen photographs of his injuries, but I just wanted to give you the opportunity to know what happened to Mr. Talley and -- and what we're here about today.

This is -- this is -- what I'm showing you now is Bates-labeled as Talley1154. And it's a compilation of some of the injuries that Mr. Talley is claiming as a result of the incident.

Have you seen these before?

A Yes, ma'am.

Q Okay. I want to talk a little bit about the target zones with the less-lethal.

A Uh-huh. Yes, ma'am.

Q The ear is in the red zone, correct?

A It is.

Q Okay. And I'm not going to show you a photograph of this, but the penis or the groin area is also in the red zone?

A It is.

Q Okay. And the chest is in the red zone as well?

A Mid-sternum up, yes.

Q Do you agree with me based on the photographs you've seen that Mr. Talley is claiming -- some of the injuries Mr. Talley is claiming occurred in the red zone?

A The -- the one to the groin and the ear are red zone. Everything else is acceptable target areas.

Q Have you seen Modesto Rodriguez before?

A No, ma'am.

Q I'm showing you now Rodriguez000005.

This is -- this is Modesto. And just so that you're aware, he's -- he's claiming in this lawsuit injuries to his ankle here and -- and this injury up here. Okay?

What color -- I'm -- I'm circling this injury that I would say is kind of on his side chest in this photo.

What color is that zone in the less-lethal training zones guide?

A So I would -- I would say that that's more mid-rib cage. At that point, that's a green -- that's a green target.

Q And the ankle is red?

A I believe the feet is red.

Q Okay. Do you think that this impact spot right here that we see in the photograph, kind of on the ankle, is that red?

A No.

Q Okay.

A That's a green area.

So I'm -- I'm basing that on, if you look at his sock, his sock looks like it's pulled down between -- or below the ankle bone. So that's just --

Q Okay.

A -- right above the ankle. That would be a green

target.

Q Okay. Was it your intent to deliver deadly force when you fired at Mr. Talley?

A No.

Q But he was hit in red zones?

A Yes. His groin and his ear, he was -- he was impacted in those zones.

Q Was that an accuracy issue with the weapons?

A I wouldn't say accuracy issue. I would say just based on the dynamics of -- of a person moving while being impacted.

Q So because of the way his body was moving, officers who were targeting him with the so-called less-lethals were not able to ensure that they would hit him in a green zone or a yellow zone?

A It's hard to say what another officer was thinking, but, usually, if you -- if you -- if you receive an impact to a lower extremity, the body's natural reaction is to kind of just hunch down.

So it could be very well that the round that hit Mr. Talley in the ear was originally a mid-thigh or a lower extremity target, just based on going down to the ground. It took them on his ear. Same with his groin. If -- if they're -- if they're targeting the buttocks, and he turns around, it's going to hit you in the groin.

Q And -- and you don't know -- you don't know what happened exactly or why exactly he was hit in those places?

A I don't know either way, the way that you -- you --

Q Yeah.

A -- proposed the question saying I don't know.

Q But you know that because of the way he was moving, you weren't able to be sure that you wouldn't hit him in a red zone when you fired at him?

MR. BARTON: Object to the form.

THE WITNESS: Can -- can you rephrase that one, please.

Q (BY MS. JOSEPH) Yeah. And I'm just trying to confirm something that I think you said.

I think that you said because of the dynamics of the situation and how Mr. Talley's body was moving, you -- you couldn't be sure where a round was going to actually impact him?

A Right. So it's -- it's -- I think it's all dependent on where you're targeting. And based on the pictures, it -- it looks like all of the rounds hit green zones, other than the ones that were the groin and the ear, which we're taught not to target.

Q Okay. Were you disciplined at all with respect to your actions in the 2020 protests?

A I was not.

Q Do you have any history with internal affairs or SIU outside of these protests?

A Yes. I have been -- I have one sustained complaint against me. This came in 2015 based on a crash. From there in my ears, I have been the subject officer in IA. And every time I've been found to be compliant within law and within city policy.

Q Okay. Now, you told me about a report -- I don't think this has to do with IA or SIU, but you told me about a body cam issue, so we don't need to talk about that again, but --

A Oh, the --

Q -- tell me --

A -- Mike (audio interference).

Q Yeah, Mike. Sorry, yeah.

Tell me about every incident you can remember where you were investigated by internal affairs or SIU.

A So SIU was protest-related. For internal affairs, there was a crash -- the one in 2015. There was an allegation of -- it wasn't an excessive force allegation. I think it was more of a -- basically, what happened was, I made a traffic stop on a vehicle. They eluded and pulled into an alley. And as we got behind -- or as I got behind them, the female driver and male front

passenger tried to run back into the house. I stopped them from doing so.

Throughout my investigation, we were waiting to do a DWI investigation on the driver. She ended up urinating on herself. She made a complaint that that was -- I don't know what the actual allegation was, but I found that that was -- there was no policy violations.

There was an investigation for use of force -- or response to resistance that happened in 2018, in July -- July 4th of 2018 in downtown Austin off of 4th Street where a subject threatened bouncers at Rain Nightclub with a knife. My partner and I arrived. We found him engaged in a verbal disturbance with an unknown party right outside the bar.

When we went to take him into custody, he went for his knife a couple of times. And because of that, he was -- he was -- I punched him in the face quite a few times to -- to keep him from gaining that knife and using that against myself and my partner or others. That was -- that was investigated by IA and found to be within state law and policy.

I've been witness officer a couple of times for -- for some incidents. I don't remember, but those are -- those are mainly the subject officers and IA that I was involved in. And each time, I was found to be within

policy within state law.

Q Okay. Do you have any idea what Mr. Talley's intent was? Like, I mean -- let me ask this better.

You don't know what Mr. Talley was thinking when he threw a bottle, right?

A I don't know what he was thinking.

Q Okay. And you don't know what Mr. Rodriguez was thinking either?

A I don't remember seeing him there. I don't know what he was thinking.

Q Were you scared when you were on the bridge and when you shot at Mr. Talley? Were you scared?

A Not at that -- at that exact moment. I wasn't fear for my personal safety. I was in fear for other protestors and officers' personal safety.

Q Do you know former APD Officer Michael Harris?

A I don't think so.

Q Of your actions on May 30th, 2020, what are you proud of?

A I think I've mentioned it before. Just making sure that other protestors that were lawfully engaged in their First Amendment rights, that they're -- they were able to go out there and do it. There were thousands and thousands of people that were out there protesting and demonstrating and they all went home uninjured.

I believe I did -- personally, I believe I did a really, really good job of addressing those that were there to disrupt that.

Q Is there anything, thinking back on it, that you female like, ah, I should have done that differently or I wish I hadn't conducted myself that way?

A No, ma'am.

Q When you -- when you looked at APD's response, did you think that APD responded appropriately to the protest event on May 30th, 2020?

MR. BARTON: Object to the form.

THE WITNESS: Are you asking on the day or kind of just the after of it all happened?

Q (BY MS. JOSEPH) I'm kind of asking about the day right now.

A Sorry, so the question was what?

Q Do you think the response from the Austin Police Department on May 30th, 2020, was appropriate?

A I -- I do based on what we knew going into that day. The resources that we had available to us, I -- I think it was appropriate.

Q Looking at it now, do you think there are things that APD could have done differently or maybe should do differently next time?

MR. BARTON: Object to the form.

THE WITNESS: So a lot of policy changes got implemented afterwards, one of the big ones being less-lethals fired into a crowd. That was our training back then. From -- we've learned that that's not appropriate now and that that's changed. I think that's a very big -- I don't want to say benefit, but a -- but a positive to come out of that day, that weekend.

Q (BY MS. JOSEPH) So I'm going to ask you -- I'm going to try to ask you that, again, because there was an objection to my question.

So the -- the fact that policy changed so that less-lethals are no longer fired into a crowd by Austin Police Department officers, in your mind, is a positive outcome of what happened in the 2020 protests?

MR. BARTON: Object to the form.

THE WITNESS: The fact that a normal patrol officer with no SWAT or SRT training can no longer fire into a crowd with a less-lethal shotgun is a positive that came out of that day.

Q (BY MS. JOSEPH) Okay. There was an objection again. I'm going to try again.

Could you tell me a positive that you see that has come out of that day with respect to the less-lethal shotgun usage?

A Oh, yeah, it's -- it's -- a normal patrol officer

who doesn't have specialized training, whether they're on SWAT team or SRT, can no longer use a less-lethal in crowd control situations.

Q Thank you for bearing with me as I repeatedly asked that question.

I've tried to be thorough. I've taken up a lot of time today, but is there -- is there anything that you feel like, you know, somebody evaluating this situation really needs to know about, that I didn't ask you about, that you didn't get a chance to tell me about?

MR. BARTON: Object to the form.

THE WITNESS: No, I think you were very thorough.

Q (BY MS. JOSEPH) And when you haven't understood my questions today, you've asked me to rephrase them?

A I did.

Q Okay. So that the questions that you answered are questions that you understood?

A Yes.

Q Okay. Thank you, Detective?

MS. JOSEPH: I'll pass the witness.

MR. BARTON: Okay. I just have one question that I think it may be a question based on my failure to hear properly.

CROSS-EXAMINATION

BY MR. BARTON:

Q Earlier the question was asked of you, did you have probable cause to arrest Talley? And what was your answer? I don't think I heard your response.

A Yes. I believe there was probable cause to arrest Mr. Talley for riot.

Q Okay.

MR. BARTON: I don't have any further questions. Pass the witness -- or, I guess, terminate the deposition whenever you're ready.

THE VIDEOGRAPHER: All right. Anything else we need to state on record before I take us off?

THE REPORTER: Is this a read and sign or waive signature?

MR. BARTON: Oh yes, yes. I'm sorry, I normally jump in there with that.

Yes, we want to exercise the option to read and sign and -- for -- for the witness to read and sign. And, also, we, on behalf of the City, want to order a copy of the video and the transcript.

THE REPORTER: Okay. And did you want that in an e-trans, electronic format?

MR. BARTON: Oh, yes, yes, electronic format, please.

THE REPORTER: Okay. Thank you.

THE VIDEOGRAPHER: All right. This will conclude the deposition. It is now 1:47 p.m.

(Deposition concluded at 1:47 p.m.)

CHANGES AND CORRECTIONS

WITNESS NAME: DETECTIVE GADIEL ALAS - VOLUME 1

DATE: JULY 31, 2023

Reason Codes: (1) to clarify the record; (2) to conform to the facts; (3) to correct a transcription error; (4) other (please explain).

PAGE/LINE	CHANGE	REASON CODE

SIGNATURE

I, DETECTIVE GADIEL ALAS, have read the foregoing deposition and hereby affix my signature that the same is true and correct, except as noted on the previous page.

_____

DETECTIVE GADIEL ALAS

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared DETECTIVE GADIEL ALAS, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

_____

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REPORTER'S CERTIFICATE

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, CHRYSTAL H. McDANIEL, Certified Shorthand Reporter, in and for the State of Texas, certify that the foregoing deposition of DETECTIVE GADIEL ALAS was reported stenographically by me at the time and place indicated, said witness having been placed under oath by me; that review was requested pursuant to Federal Rule of Civil Procedure 30(e)(1); and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither counsel for nor related to any party in this cause and am not financially interested in its outcome.

Given under my hand on this the 14th day of August, 2023.

_____

CHRYSTAL H. McDANIEL, Texas CSR 11847
CSR Expiration: 2/29/2024

Time used by each party:
Leigh A. Joseph - 3 hours; 9 minutes
Monte L. Barton, Jr. - 0 hours; 1 minute

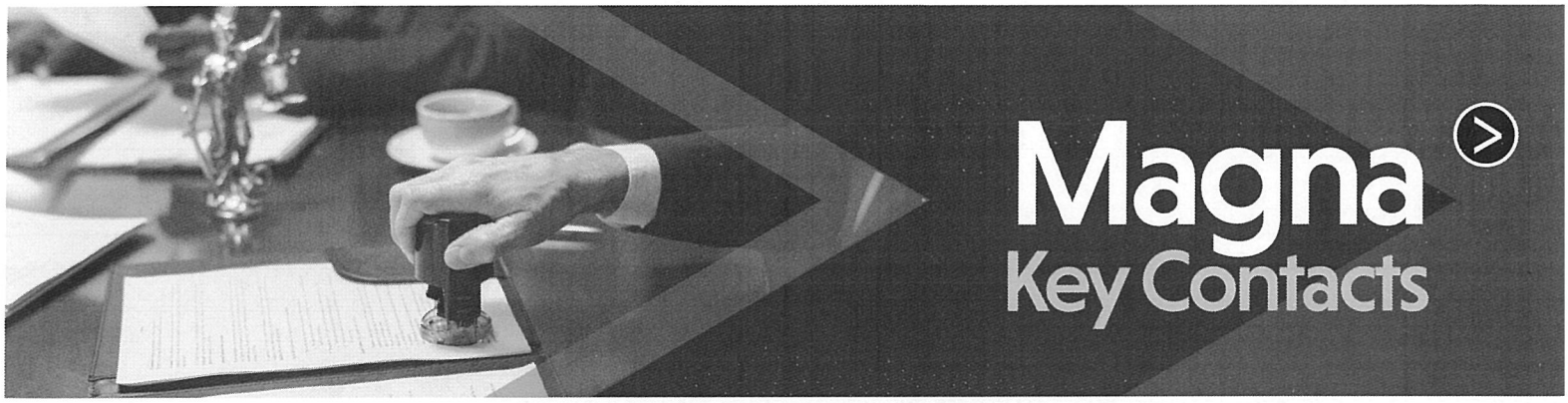

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Exhibit 9

what I'm hearing you -- that's your general practice. Is that a fair summary?

A. Yes.

Q. Okay. And my question is -- is -- I mean, do you see any problems with that practice, I guess?

A. With not doing a final review prior to a hearing, no, because I'm getting briefed along the way on any findings that could come up. If there was anything to come up during an internal affairs investigation that brought concern that we needed maybe a more immediate action on a training or a tactic or a tool or something, we would address that immediately, but reviewing an entire case file, I did not review entire case files until I was about to hold a disciplinary hearing.

Q. Well, my goodness. If you read the reports concerning Officer Felton and Officer Tang, they scream out the need for training and tactics revisions, right?

A. I would have to go back and look. We immediately changed policy that Monday or Tuesday, the policy changes were made regarding what we had observed on the 29th, 30th and 31st.

Q. What immediate changes to policy did you make the Monday after the protests?

A. Well, it was the Monday, Tuesday, it was the days after, I'm not going to say a specific date, but what we did was we clarified the policy on the use of kinetic energy projectiles, to say that they would not be fired into a crowd,

because we realized that unintended people were being struck with the projectiles, and so to just have an all-out prohibition on them being fired into a crowd, we put that in place. It is always the tool that is designed to be person-specific, not used just randomly into a crowd, so it was always designed for that, but since we saw the outcomes, we changed that.

And we -- we also have changed the language about the targeting of the head with the less lethal. I believe the previous language said something about -- about there being a need for immediate incapacitation, and the language should have been updated to say that it was -- unless it was a deadly force situation.

So that's -- the -- the not shooting into a crowd was put out verbally, and that -- and that every briefing with officers, when it actually showed up in written policy, I'm not sure of dates that that made it through the process of policy revision.

Q. Okay. And I -- And I appreciate that.

But you're telling me that those changes were made the week after -- within days after the protests?

A. Yes. I believe if we even go back and look into my conversation with the City Council, I believe I even referenced that, that we made that as an immediate change.

Q. But didn't you tell the City Council that the

Exhibit 10

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff	)	
	)	CASE NO. 1:21-cv-249-RP
vs.	)	LEAD CASE
CITY OF AUSTIN AND JOHN DOES, Defendants.	)	

MODESTO RODRIGUEZ, Plaintiff	)	
	)	CASE NO. 1:21-cv-1087-RP
vs.	)	
CITY OF AUSTIN AND JOHN DOES, Defendants.	)	

ORAL AND VIDEOTAPED DEPOSITION OF OFFICER GREGORY CHERNE

JULY 19, 2023

ORAL AND VIDEOTAPED DEPOSITION OF OFFICER GREGORY CHERNE, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on July 19, 2023, from 3:12 PM to 7:05 PM, before Tammy Pozzi, Certified Shorthand Reporter in and for the State of Texas, reported remotely by computerized stenotype machine from Bulverde, Texas, with the witness appearing from City Hall in Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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THE VIDEOGRAPHER: All right. We are now on the record. This begins the deposition of Gregory Cherne. Today is Wednesday, July 19th, 2023. The time is now 3:12.

The videographer is Dalton Terrell of Magna Legal Services. The court reporter is Tammy Pozzi of Magna Legal Services.

Will counsel and all parties present please state their appearances for whom they represent?

MS. JOSEPH: Leigh Joseph -- excuse me. Leigh Joseph here from Hendler Flores Law with my paralegal Alexis Lopez. We represent both plaintiffs, Tyree Talley and Modesto Rodriguez.

MR. BARTON: And I'm Monte Barton. I'm here representing the defendant in this lawsuit and also representing for purposes of this deposition Gregory Cherne.

THE VIDEOGRAPHER: All right. And will the court reporter please swear in the witness?

THE REPORTER: My name is Tammy Pozzi, CSR number 5629. I am reporting this deposition remotely by stenographic means from Bulverde, Texas. The witness is located at City Hall in Austin, Texas.

Officer, will you please raise your right hand?

THE WITNESS: (Complies.)

THE REPORTER: Do you solemnly swear or affirm that the testimony you are about to give in this cause will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE REPORTER: Thank you.

You may proceed.

MS. JOSEPH: Are you guys ready over there?

MR. BARTON: Yes --

MS. JOSEPH: All right.

MR. BARTON: We're ready.

MS. JOSEPH: Okay.

OFFICER GREGORY CHERNE,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. JOSEPH:

Q Officer, my name is Leigh Joseph. I'm a lawyer here in Austin, and I represent a couple of folks who were out there at the protest on May 30th, 2020 --

A Mm-hmm.

Q -- named Tyree Talley and Modesto Rodriguez. I'd like to talk with you about that today.

Before we get into the specifics, may I

ask, how do you pronounce your last name?
A It's Cherne, ma'am.
Q Cherne?
A Yes, ma'am.
Q Okay. And is it Officer Cherne, or is there a different title that I should address you with?
A Officer.
Q Okay. And Officer Cherne, have you given a deposition before?
A I have.
Q You have? Okay.
A Mm-hmm.
Q How many times?
A Several through the medical field.
Q Okay. And was that in your work as a chiropractor?
A Yes, ma'am.
Q Okay. Have you ever given a deposition in your capacity as an Austin Police Department officer?
A No, just been to court for ALR.
Q Okay.
A So I don't know if you'd consider that a deposition or not, but it's for --
Q Okay.
A -- for court --

Q And I --
A -- court for -- yes.
Q I might be able to guess what ALR means, but just in case, would you --
A Sure.
Q -- mind explaining that?
A Sure. It's license revocation. It's where someone fights to get their license back or if they determine that the person is going to get their license back.
Q Okay. So you've been -- you've been there as a witness in that sort of proceeding before?
A I'm the officer that actually arrested the person, yes, ma'am.
Q Okay. Okay. So this -- this deposition, even though we're talking to each other on computers from two different locations and -- and people are scattered all around, this is like a courtroom proceeding in that of course you're under oath and your testimony may actually be shown to the jury in this case at trial. So I just want you to understand that even though we're remote and it feels kind of informal, that's --
A Mm-hmm.
Q -- that's still what's going on here today, okay?

A Yes, ma'am. Yes, ma'am.
Q And is anybody in the room with you aside from Mr. Barton?
A Not at this moment, no, ma'am.
Q Okay. Now, tell me how you prepared for today's deposition. Before you answer, I want to be clear that I'm -- I'm not privy to the -- the conversations that you have with your lawyers, so aside from that, what did you do to prepare?
A Other than last week, nothing to prepare.
Q Okay. And what was last week?
A I reviewed two videos and was given a plethora of paperwork.
Q All right. What was that paperwork?
A A formal complaint, two cases, court cases, one for Talley, one for Modesto, a memo from IA, hard copies of it looks like CAD or use-of-force details pages including myself and other officers, then Austin Police Department general offense hard copy, officer-involved incident with the incident.
Do you want me to read --
Q Okay.
A Do you want me to read the incident number?
Q Sure, that would be great.
A So it's -- it's the go number. It's

2022-5008692.

Q Okay. Any other documents that you received and reviewed?

A Yeah, there's the R2R task force database forms, there's my narrative, my supplements, my reports. I think that -- and that's a different CAD number or case number.

Q Okay. And what's that one?

A This one is 2020-1510503.

Q Okay.

A I believe that's it, ma'am.

Q Okay. You referenced when you were going through those materials -- I -- I think it was maybe an RT -- RTR database or something that included yourself and other off -- you said including myself and other officers. What was -- do you remember what that was?

A So I've never seen this before until last week. It's --

Q Mm-hmm.

A There's a -- a sergeant reviewer, dates, lieutenant, the approving lieutenant, and it looks like video review.

Q Okay.

A It's -- yeah. And then it looks like what was reviewed on dates of service.

Q Okay. Does that document happen to have maybe in the bottom right corner what we call a Bates number? It might say COA or Talley --

A Yeah.

Q -- and then have a number. What does that --

A Yes, ma'am.

Q -- say?

A It's COA-Talley, T-A-L-L-E-Y --

Q Uh-huh.

A -- 000080.

Q Okay. Okay.

A Then I have -- go ahead.

Q Sorry. Continue. Were you going to tell me some other Bates numbers?

A Yeah, it gets -- it -- there's four total. There's --

Q Okay.

A -- 81, 82 and 83 all with --

Q Okay.

A -- Talley.

Q Okay. And you also said you reviewed a couple of videos.

A Yes, ma'am.

Q What were those?

A The Modesto and the Talley videos.

Q Body-worn camera, Halo? What -- what was the footage you saw?
A I was told it was a camera from the Main.
Q Okay.
A I don't know if that's Halo or not.
Q Okay. And were --
A It's not.
Q -- you told or do you have access to any sort of Bates number identifier for those two videos?
A I don't.
Q Okay.
MR. BARTON: Leigh, this is Monte Barton. Just for the --
MS. JOSEPH: Uh-huh.
MR. BARTON: -- record in -- in trying to be helpful, they are the videos that we have attached in previous depositions. In other words --
MS. JOSEPH: Okay.
MR. BARTON: -- we shared them -- the video we attached to the Talley deposition and then video that we attached in the Modesto deposition. And I think in the Modesto Rodriguez deposition there were several videos, but the one we showed him is -- I forget exactly which one but it's one that shows the incident that shows Main and Modesto, and then also the part in

front where the car comes in. I guess we showed him two -- showed him two --

THE WITNESS: Mm-hmm.

MR. BARTON: -- videos from the Modesto.

MS. JOSEPH: Okay. Thanks, Monte. That is helpful, kind of saves some time with me trying to narrow it down, so thank you.

Q (BY MS. JOSEPH): And so it sounds like, Officer Cherne, that you've seen some video of these incidents that depicted things that were not necessarily within your line of sight as the incidents were occurring; is that accurate? You saw things from a different angle --

A I --

Q -- on these two videos you were looking at?

A Yes, ma'am, from the opposite side.

Q Okay. Okay.

A But not saying that I saw those incidents. So I wasn't --

Q Okay.

A -- familiar -- I wasn't familiar with the Modesto --

Q Mm-hmm.

A -- incident at all until I showed up here and was given the paperwork --

Q Okay. Okay.
A -- so...
Q Understood. So I'm going to try to be -- be clear in that if I'm just asking you a question without referencing the videos that you've watched, I'm trying to ask about your personal knowledge from what you saw that day as opposed to something you later saw in a video. Does make sense?
A Yes.
Q Okay. Okay. Anything else you did to prepare for your deposition today other than review the things we've already discussed?
A You mean did I go through IA and have an investigation and the steps that the department did?
Q You mean steps with respect to investigating the incident?
A Mm-hmm.
Q No, I'm not asking you about that right now. Just if there's anything else that you did to feel comfortable sitting in the chair and having me ask you questions.
A No, ma'am.
Q Okay. I have a tendency to ask confusing questions, and you have already clarified with me when my question didn't make sense. Can I ask that you

continue to do that, and if -- if you don't understand my question, ask me to rephrase it, okay?

A Yes, ma'am.

Q Okay. And can we have an agreement that if you do answer my question, it means you understood it?

A Yes, ma'am.

Q All right, perfect.

One other thing before we kind of get into it, I want to -- I want us to understand each other when we're talking about some of the materials that were used at the -- at the protest events. If I say kinetic projectiles or beanbag rounds, do you know what I'm talking about?

A Yes, ma'am, KEPs.

Q Okay. Okay. And if I say firearm, does that to you mean I'm talking about a different kind of munition like --

A Yes, ma'am.

Q Okay. All right, perfect. So starting with some background, before the events of May 30th, 2020, how many times had you fired a shotgun that was equipped with kinetic projectiles, like the beanbag rounds?

A You're referring to the less-lethal?

Q Yes.

A Okay. So --

Q Mm-hmm.
A -- every year quals.
Q Okay. And quals stands for what?
A Qualifications.
Q Okay.
A And then at -- twice at SWAT training.
Q Okay. Was May 30th, 2020 the first time you had ever used one of these types of shotguns equipped with the kinetic projectiles in the -- in the field outside of a training context?
A Yes, ma'am.
Q Okay. Prior to May 30th, 2020, had you ever impacted another individual with a beanbag round?
A Yes, ma'am, in training.
Q Okay. Tell me about that.
A Live scenarios with SWAT, several scenarios where the training was based on the less-lethal shotgun.
Q Okay. And what did they have you do?
A We were trained in -- in tactical deployment of the less-lethal shotgun and the KEP through scenario training. One to two days, two to three days, I'm not -- I'm not quite sure how many days we were there, but based on scenario training.
Q And were you on both sides of the scenario during the course of the training --

A No, ma'am.
Q -- both -- no, you were only the shooter?
A Not always the shooter --
Q Okay. But --
A -- yeah.
Q -- but not ever the --
A Impacter.
Q -- what, hi -- yeah.
A Yes.
Q Okay. Okay.
A Mm-hmm.
Q So you have never been hit by one of these beanbag rounds before?
A No, ma'am.
Q Okay. And the -- the folks that y'all were shooting at in training, what were they wearing?
A Impacting?
Q Yes.
A Okay.
Q Mm-hmm.
A So from what I recall from training, normal clothes, sweatshirts, blue jeans, shorts, an array of clothing.
Q Okay. No special padding or body armor or anything?

A Oh, no, ma'am.
Q Okay. This is a -- this can be a difficult one to answer if -- if this has happened. Have -- have you ever impacted anyone with a firearm?
A No, ma'am.
Q A -- a human. Okay.
Have you ever discharged a firearm outside of a training exercise?
A Yes, ma'am, at the range --
Q Okay.
A -- personally.
Q Okay. Okay. And how about -- let me be more specific, then.
A Mm-hmm.
Q Have you ever discharged a firearm in the course of your duties as a -- an officer with APD?
A Oh, no, ma'am.
Q Okay. As an officer with APD, have you ever found yourself in a position where the use of deadly force was warranted?
A Can you repeat the question?
Q Yeah. In -- in your line of work as a -- as a police officer, have you ever been in a scenario outside of training, a real scenario where the use of deadly force was warranted or appropriate?

A Are you asking if it could have been used and not used or was used?
Q Either one. Yeah, I'm trying to ask either one, but I can break it down into two if that's easier.
A Well --
Q So let -- let me ask you this: Have you ever used deadly force?
A No, ma'am.
Q Okay. Have you ever been in a situation where you could have?
A Yes, ma'am.
Q Okay. How many times?
A I -- I don't count them, nor do I collect them. That being said is I would say off the top of my head, if we're -- two or three times.
Q Okay. Can you tell me about those times that you remember?
A Not that I recall. I do remember that being in those situations, it could have went that way, if --
Q Okay.
A -- if that makes sense.
Q Okay. Now, you referenced annually being qualified to handle the shotgun equipped with the kinetic projectiles.
A Mm-hmm.

Q So as of May 30th, 2020, did you hold current certification or qualification from APD to handle that type of weapon?

A Yes, ma'am.

Q And do you know when the last date of your certification was prior to the May 30th, 2020 incident?

A No, because I was also enrolled in the SWAT training, so those are above-and-beyond training.

Q Okay. So you did both. You did the standard qualification for the so-called less-lethal, and then you also did SWAT training, or did SWAT training take the place of --

A Oh, no.

Q -- the standard?

A It didn't take the place. It was above and -- there's several SWAT trainings I've -- I've actually been at. I've also been at ALERRT training, which is --

Q Mm-hmm.

A -- through the department, as well, and outside the department for TCOLE certification but never replaced annual quals.

Q Okay. When did you start at APD?

A March 2016.

Q When did you first qualify to use the so-called less-lethal shotguns?

A In the academy.
Q Okay. Since that time in the academy, has there ever been a time that your qualification lapsed and wasn't current?
A No, ma'am.
Q Okay. At the annual qualification training, is that different from what you're initially taught in the academy? Is it kind of a shorter recap or a different course, or is it the same thing?
A That's a good question. So the -- the quals are if you qualify with the less-lethal shotgun.
Q Okay.
A The training at the academy is --
Q Mm-hmm.
A -- class with the training --
Q Okay.
A -- so...
Q So then let me ask you to tell me more about what the qual -- is that -- is the qualification more of a like hands-on test --
A Yes, ma'am.
Q -- or -- okay.
Tell me what that involves, more details about that.
A Length of being at a target with acceptable

ranges targeting impacting, reassessing.

Q And is this all done through your demonstration of your knowledge in those areas by firing the -- the weapon?

A Yes, ma'am.

Q Is there a classroom component to the annual qualification?

A I believe we're in the classroom for a period of time to go over updates and new news and then go to the range after that.

Q Okay. And that -- that classroom time is really, like you said, for newer stuff. It's not a repeat of the here's how you use one of these, here are the different target zones, that sort of stuff. They -- they taught you that at the academy; is that --

A Yes.

Q -- right?

A -- ma'am. It's -- it's covered on the -- on the range, as well.

Q Okay. And how is that sort of thing covered on the range?

A Ask what the acceptable areas are, describe the areas where to avoid, what to expect --

Q Okay.

A -- when you do discharge.

Q So there's an oral component out there of question and answer?
A Every time I've done it, there seems to be, yes, ma'am.
Q Okay. Are there -- is it a group setting?
A Yes, ma'am.
Q Okay. And is it kind of anyone from the group can give the answer to the question, or everyone is asked the same series of questions separately?
A I'm just coming up on qual, so what I --
Q Uh-huh.
A -- remember from last year, as you --
Q Uh-huh.
A -- came up and as you load the rounds, the -- one instructor, it's one-on-one, but they're ty --
Q Okay.
A -- it is group -- it is group around you but it is one-on-one.
Q Okay. Okay. Is there anything else that you can remember about the training or certification on usage of these so-called less-lethal shotguns?
A Can you ask the question again?
Q Actually, let me ask you some other questions first.
Is there a specific target area that

you're taught to aim for when using this type of shotgun?

A Yes, ma'am.

Q And what is that?

A So it would be extremities, arms, legs, buttocks, staying away from head, neck, chest and spine, groin.

Q So you kind of split that into two groups, the acceptable areas to aim for and the areas to avoid, is that how they teach it to you?

A I'm just going off of what I recall on the target.

Q Okay. Are you familiar with target zones for the kinetic projectiles being zone 1, zone 2 and zone 3?

A No, I'm familiar with red, yellow and green.

Q Okay. Okay. Can you tell me of the areas of the body you just listed --

A Mm-hmm.

Q -- what would the green areas be?

A I can't differentiate between yellow and green, but I do know that red sticks out. So it would be face, head, neck, chest, groin and spine.

Q Okay. What do you -- what have you observed in your usage of these shotguns about their accuracy?

A Based on training or in the field?

Q Let's start with training.
A Okay. From where we impact, I would say the efficacy is very good. I -- I don't know --
Q Okay.
A -- percentages or --
Q Mm-hmm.
A -- ratios.
Q You -- you're a hunter I think I saw online; is that right?
A I try.
Q Okay. Do you have -- do you -- you have pretty good aim?
A I try.
Q Okay. So you usually hit what you're aiming for when you're in training and using one of these shotguns?
A Myself, ma'am?
Q Mm-hmm.
A Yes, ma'am.
Q Okay. And how about in the field? When you were using the shotguns equipped with the beanbag rounds on May 30th, 2020, what did you notice then about the accuracy?
A I would say it was accurate, efficate, you know, efficacy was good.

Q Mm-hmm. Okay. What do you know about the accuracy of this type of weapon as the distance between the shooter and the target increases?

A I haven't done research on the weapon itself. I haven't participated in any jail studies or peer review journals or any of that, so I -- I can't speak on that.

Q That's fine. So you haven't been trained on, say, the maximum effective distance of this type of weapon?

A Oh, 25 yards, but that's recommended by it sounds like manufacturer on the ammunition. That being said, is -- the rule is you're responsible for every round that you pull the trigger for. So if you're comfortable within that range and you feel that it will be efficate or accurate, then you determine if you take the shot.

Q Okay. And I notice --

A But I know --

Q Go ahead.

A No, go ahead.

Q I know I'm saying accurate and I think you're saying efficate. Will you tell me what that word means?

A The efficacy of it, but like --

Q Okay.

A -- just how efficate it is and/or accurate it is.

Q Okay. Okay. So you talked about being comfortable within that range of 75 yards and feeling like it would be efficate. What about outside that range of 75 yards? Are you trained that there are times when it's appropriate to still discharge the weapon at a target --

A For -- ma'am, are you saying 75 yards?

Q Oh, I meant 25 yards. I think I was thinking 75 feet. Thank you for your correction?

A Mm-hmm.

Q Yeah. Everything I just said but replace 25 -- replace 75 with 25.

A Okay.

Q So are you -- are you trained that if you are comfortable discharging the weapon at a target more than 25 yards away and you feel it would be efficate, that that's permissible --

A Yes, ma'am.

Q -- to do?

A Yes, ma'am.

Q Okay. And is there a limit, you know, Officer Cherne, by no means shoot this gun at target more than X amount of distance away? Or is --

A I --
Q -- it really left to your discretion?
A Yeah. I -- I've never been told outside 35, 45 -- like I don't have that research or --
Q Mm-hmm.
A -- data.
Q Okay. Yeah, and I'm not really asking you for research or data, just what you've been trained.
A Oh.
Q Yeah.
A Well -- yeah.
Q Okay. Where are you from?
A I'm from Cleveland, Ohio.
Q How long have you been in Texas?
A Since March 2016.
Q Okay. Did you move for the APD job?
A We moved from Chicago to here, yes, ma'am.
Q Okay. And that's when you became a peace officer, is when you started with APD?
A Yes, ma'am.
Q Okay. And what is your current rank within the police force?
A Senior police officer.
Q Okay. Do you know your badge number?
A 8196.

Q Okay. Have you ever been in the military?
A No, ma'am.
Q Okay.
A Military high school, military college if that counts.
Q Okay. Like ROTC?
A No, ma'am.
Q Oh.
A Culver Military Academy for high school.
Q Oh, okay.
A And then --
Q Oh, okay.
A -- Norwich Military College of Vermont.
Q Okay. So you've worked for APD for about seven -- little over seven years?
A Yes, ma'am.
Q How many times have you received a written performance review as part of your employment? Do they do that annually, twice a year, never?
A Annually plus supervisors, some supervisors monthly to meet --
Q Okay.
A -- your goal, see where you want to be --
Q Mm-hmm.
A -- see what write-outs you want to do, so...

Q Okay. So have you had one of those reports in July yet?
A I believe they're -- come out in September or for the follow --
Q Okay.
A -- the year prior, yes, ma'am.
Q Okay. And so the monthly report is not necessarily every month. It's just kind of on occasion?
A Yeah. It's to see, you know, what your needs are, where you want to be, what write-outs you want do to, what training you want to do, sergeants or --
Q Okay. Okay. And are you working toward moving up to a -- a particular rank or -- or goal within the department?
A Yes, ma'am. I'm on the list for detective corporal.
Q Okay. How many times have you been promoted since you started in 2016?
A Zero, because this was the first test I could take.
Q Okay. Okay. But -- but senior officer sounds good. That sounds higher than junior --
A You just --
Q -- officer?
A You just -- you just put your -- you -- I think

it's after you become off probation that you become an SPO. So --

Q Okay.

A So PPO -- PPO is probationary officer and then after probation, you become -- you're given the title.

Q Got it, okay. Okay. I'm going to talk about some more types of training. Before these protests in May of 2020, what type of training did you receive on protest policing or crowd control?

A So we had crowd control training in the academy and then -- they have initials for it, as well. There's another training for it prior to that.

Q And what did -- what did these trainings entail? Let's start with what you learned at the academy. So seven-plus years ago, what was that crowd control training?

A Drawing out diagrams of, you know, what positions you take, how -- how -- what maneuvers, tactical maneuvers along with who's in charge, how the -- how to form, what ranks are there, and then you go out to the racetrack and you practice those.

Q Okay. And how do you practice?

A Just scenario-based.

Q Okay. Is that at the Formula One track?

A At the academy.

Q Oh, there's a racetrack at the academy. Perfect.
A Well, it's a track.
Q Okay. Okay.
A Driver --
Q Okay.
A -- training, sorry.
Q Okay. And how much time do you think you spent on those topics of crowd control protest policing at the academy, approximately?
A I'd say most things at the academy were -- were a week to -- three days to a week. It was broken down into sections and training.
Q Okay. So you think probably at least three days were spent on crowd control and protest policing?
A Seven years ago, I -- yeah, my best guess will be anywhere between one to three days.
Q Okay. Okay.
A I don't want to miss the --
Q Sure, thank you for that. And you said there was another training that was abbreviated with initials. When was that one?
A So periodically we -- it -- it mattered what sector you were in. There were -- I was in three different sectors, started in Adam, went to Charlie,

Charlie to -- or Edward to Charlie, Charlie back to Adam.

So we would have shift training, and those shift trainings would be one-day training and the cadre, the FTS, sergeant and corporals would -- would pick the training, what we were going to do.

Q How many times was the topic protest or crowd control?

A One for sure that I can recall on the shift training.

Q Okay. Is the shift training documented like with a sign-in sheet or anything like that?

A It's during our workday, so it would be under our time card. So I -- not being a supervisor yet, I don't know how they document it.

Q Okay. Do you have any idea, like what year that was?

A It was between the -- two-and-a-half to almost three years that I was in Charlie, so '16, '17, maybe '18 to '20, '17 to '20, somewhere --

Q Okay.

A -- in there.

Q Okay. Before the May incident that we're here about?

A I actually just transferred sectors just prior

to this.

Q Okay. Just prior to --

A The riot.

Q -- the incident?

A Yes.

Q Okay. Okay. Can you think of any other training other than you did at the academy and the one, maybe more shift training --

A Mm-hmm.

Q -- sessions that covered crowd control and protests?

A Not specifically under crowd control or protests.

Q Okay. Did you receive any additional training on those topics after the May 2020 incident?

A There was a -- the chief put out a post-action plan either memo or email.

Q Okay. And that's it?

A Yes, ma'am.

Q Okay. Let me ask you some of these same types of questions about use of force.

MS. JOSEPH: He didn't go to camp today.

THE WITNESS: No worries.

Q (BY MS. JOSEPH): So tell me about the training that you've received, really looking at from the time

you started in 2016 up until the May 2020 incident, in use-of-force and use-of-force decision-making.

A Can -- can you explain that or ask that in a different way if you don't mind?

Q Yeah. So I'm assuming that you received use-of-force training at the --

A Yes, ma'am.

Q -- academy? Tell me about that.

A Can you expound on that? Because when you --

Q Sure.

A It's pretty broad. At the academy, scenario-based situations could include use of force, which would then include learning details pages, learning how to document them, what is use of force, the extent of levels of use of force, your -- your belt and your tools that you have to use. It was pretty extensive.

Q Okay. And I want to know about that. So first tell me, what is use of force?

A It's an action to stop another action or gain compliance of a subject.

Q Okay. Okay. And what are the levels?

A Level 1 through 4.

Q Okay. What is level 1?

A Deadly force.

Q When is it appropriate to use level 1 or deadly force?

A Against deadly force and/or -- I'll just keep it at that.

Q Okay. Are there other -- are there other times that it's appropriate to use level 1 or deadly force, or only against deadly force?

A Well, I think level 1 as well as a weapon or tool to someone's head.

Q Okay.

A Usually it's -- so I think that's how you would then handle that at that point.

Q Okay. Meaning if you see a -- a victim with a weapon or tool at their head, you can then choose to use deadly force against the person with the weapon or tool against their head?

A No. What I'm referring to is if you struck someone in the head.

Q That would -- could be considered deadly force?

A That could be considered a level 1.

Q That could be -- okay. Got it. Okay. Okay. So it's appropriate to use deadly force only in response to deadly force, but it can also be level 1 force if someone is struck in the head?

A Yes, ma'am.

Q So -- okay. Okay. What is level 2?
A Level 2 can -- there's a list. I know it changes periodically, but I'm not -- I wouldn't say that I have it memorized.
Q Okay. But you're out there in the field responding to, you know, action by someone or needing to gain compliance of a subject?
A Yes, ma'am.
Q You -- you have something in your mind that that means level 2 force. What -- what do you think of, you know, when you're out in the field and -- and you're thinking --
A So most of what we deal with is level 3 use of force, takedowns, dog bites, OC spray, the things that we have on our tool belt, so those are the most familiar ones to me.
Q Okay.
A Level 4, as well.
Q And level 4 would be the least amount of force?
A Yes, ma'am, resistance.
Q Okay. What else is on your tool belt besides the OC spray?
A It would be my asp, OC spray, my taser, my firearm, handcuffs, radio, handcuff key.
Q Is the taser a --

A Taser, yes, ma'am.
Q Is the taser considered level 3 force?
A I believe if -- if it makes contact -- please don't quote me on this, but I believe it's a -- a level 3. But if you miss or it doesn't connect or doesn't create MNI, then I believe it's now considered a level 4, but I don't want to be quoted on that.
Q Okay. And the firearm, is that always going to be a level 2 or level 1, or are there certain --
A I believe it's a level 1.
Q Okay. Okay. Okay. So I actually feel like I'm starting to understand 1, 3 and 4, but I still don't really know what 2 is. So I'm -- I'm not going to ask you to list everything written on the piece of paper --
A Okay.
Q -- but can you --
A I'd have to --
Q -- try and give me --
A -- look it up --
Q -- an i -- idea of what is level 2?
A I'd have to look it up without misspeaking.
Q Okay. You really just don't know?
A When -- yeah. When -- when we do our details page for use of force, there's a drop-down for it.
Q Okay. In the -- in the context of a law

enforcement officer like yourself working a crowd or protest like we had on May 20th -- or May 2020, what does the word de-escalation mean?

A De-escalation meaning bringing a situation down to -- I consider it bringing it down to a conversational piece, from a hyped-up situation to a non-hyped-up situation.

Q Are there tools available to you to help you deescalate a situation that are separate from the use-of-force tools that we've been talking about?

A Meaning like communication?

Q Sure. What else?

A I mean, you have -- you -- you're asking outside of your tool belt?

Q Uh-huh, yes.

A I -- I would say the -- it's -- it's the tools on your belt and the communication that you have, officer --

Q Okay.

A -- presence.

Q I'm sorry. What was the last part?

A Officer presence.

Q Okay. According to your training from APD, what is your role as a police officer during a protest event?

A During a riot or a protest?
Q Let's talk about both. First protest.
A So a protest is to maintain community health and wellness and see that no one is injured and/or property damaged.
Q No one is injured, and what was the last thing?
A Maintain that property isn't damaged.
Q Okay. Any other role that you have as a -- a police officer during a protest?
A Communicate with community I would say, allow people to speak their mind.
Q How does that role change? Before I get there, how do you define a riot as opposed to a protest? Tell me what each of those words mean.
A Seven or more people assembled with the intent of property damage and/or to injure people and interfering with police action or law enforcement action.
Q That sounds like you got it from somewhere. Is that written down somewhere?
A No, ma'am.
Q Okay. The seven or more sounds like some official -- kind of an official --
A Oh.
Q -- definition.

A Yeah, I -- I believe that's Penal Code or CCP.
Q That's what we're calling -- that's -- that's a riot?
A Yes, ma'am.
Q Okay. And a protest, then, could have more than seven people?
A I -- I believe they both could have seven people or more than seven people.
Q Okay. But the difference is the -- the intent of the crowd and whether they're interfering with the police?
A No, that's --
Q Is that accurate?
A No, ma'am. That's not what I said.
Q Okay. Tell me again.
A It's property damage, injury --
Q Mm-hmm.
A -- to people, as well as law enfor -- interfering with law enforcement action.
Q Okay.
A I'm -- yeah, I --
Q I think you said intent to damage property or injure people, but it's just the fact that property damage or injury to person is occurring?
A Or could occur. I --

Q Okay. So that actually sounds pretty tough to differentiate. I mean, you've got this crowd of 10 people, and nobody has been hurt, no property has been damaged, law enforcement has not been interfered with. How can you tell if those things could happen and it might be a riot instead of a protest?

A Are you giving me a scenario or...?

Q I guess. I'm just asking you a question.

A Okay.

Q Yeah.

A So if there's no property damage being I guess assumed and --

Q Mm-hmm.

A -- people aren't being injured or the possibility of them not happening and/or --

Q Mm-hmm.

A -- no one is interfering with law enforcement action --

Q Mm-hmm.

A -- it could be considered a -- a protest. I mean I think --

Q Okay.

A -- one -- one person could be a protest.

Q Okay. Yeah, it's the possibility that's confusing me. Like how do you know if this group of

people that hasn't, you know, done any of these things that you describe as riot --

A Mm-hmm.

Q -- has the possibility of doing them?

A I guess I don't understand the question.

Q When you're helping me understand the definition of riot --

A Mm-hmm.

Q -- you are talking about peo -- either certain things happening, injury to property, injury to people or the possibility of those things happening; is that correct?

A Well, I would say that it's protecting the community from property being damaged and/or injury to people or serious bodily injury or bodily injury. So the word possibly is -- is throwing me off there.

Q Okay. So you're not injecting possibility or something could happen into the definition of riot. Riot is when those things are happening?

A Yes, ma'am.

Q Okay. Okay. Okay. Let me see if I can get myself back on track. I think we talked about your role during a protest. What is a police officer's role during a riot?

A I would say maintaining community safety,

protect property and people and disperse the riot.

Q When you have a crowd and most of it would be defined as protesters but you have maybe one or two individuals within -- or I guess seven individuals within that would meet this definition of riot, how do you know what your role is? Is it -- let me stop there.

A Is there a question? I'm sorry.

Q Yeah.

A Can you --

Q How do you know what --

A -- ask me again?

Q How do you know what your role is --

A It's com --

Q -- when you have both?

A Okay. So it's protect community --

Q Uh-huh.

A -- and protect property and people from being injured. That would be my role. You said how was --

Q Okay. I think that's --

A -- what my role --

Q -- what you said your riot role was.

A Mm-hmm.

Q Okay. So if you have anybody within a group that you feel like meets the riot definition, you're going to take on the riot role. Is that what you're

saying?

A If there's seven or more people, by definition and by our training experience, I would say yes.

Q Okay. I just want to make sure you understand my question. Like you've got a hundred people --

A Mm-hmm.

Q -- and 93 of them are protesting but seven of them are acting riotously, you're going to take on the role of a police officer in a riot situation; is that correct?

A With the seven, is that what you're asking, or with the 93?

Q Well, maybe you're answering it with your question. So you're going to take on a different role depending on who you're interacting with?

A Yes, ma'am.

Q Okay.

A It would be like any other crime.

Q Okay. Okay. Okay. Are you familiar with the MFF, mobile field force?

A Yes, ma'am.

Q Is that something that you're a part of or were a part of in May of 2020?

A That was a -- the actual training that I was trying to come up with the initials on.

Q Ah.
A Yes.
Q Okay. Okay. Is it also a -- like does it make sense if I ask you why was the mobile field force dispatched on May 30th, 2020?
A So the -- BPOC -- I don't know what they stand for, but there's a specific unit that handles mobile field force --
Q Okay.
A -- and they're -- they're used in different capacities. I'm not part of mobile field force, so I can't speak on their SOPs or...
Q You've done the training, but --
A You --
Q -- you're not part of that group?
A Right. We've done the formation training.
Q Okay. Going back to protesters, is participating in a protest committing an offense?
A No, ma'am.
Q Okay. Is presence at a protest cause for detainment or arrest?
A Can you rephrase the question?
Q Is a person's attendance at a protest event --
A Mm-hmm.
Q -- cause to detain or arrest them?

A No, ma'am.
Q Okay. What if the person is yelling?
A No, ma'am. Well --
Q Okay.
A -- let me rephrase that.
Q Okay.
A It matters what they're yelling if somebody is offended by the -- by what they're yelling. So I would -- I would still say it's based on DOT language. There -- there are definite issues with some of the things that could be said if someone is offended, correct.
Q Okay. What if they're verbally insulting the police force with their yelling? Is that cause to detain or arrest them?
A No, ma'am.
Q Okay. What if this person who is at a protest event then throws a rock? Is that cause to detain or arrest them?
A If they're throwing rocks, ma'am?
Q (Moves head up and down.)
A I would say yes, ma'am.
Q Okay. What if such a person throws a water bottle? Is that cause to detain or arrest them?
A I would say if in the betterment of the

community or breach of the peace, then yes.

Q Okay. What does that part mean, if in the betterment for the community or breach of the peace?

A So our -- I guess you're referring to the people that were throwing water bottles? Is that what --

Q No. Right now I'm just kind of trying to understand, you know, what different actions would it be justifiable or appropriate for a police officer to arrest or detain someone at a protest.

So we talked about throwing a rock. Now we're on, you know, something like a plastic water bottle.

A I -- I don't understand the question, I'm sorry.

Q Okay. When I asked you if throwing a water bottle was cause for detainment or arrest --

A Mm-hmm.

Q -- you qualified your answer with a phrase, and I want you to explain to me what that phrase means.

A Well, if that -- if the water bottle is intended to hit someone or if they're just throwing it out into the field, then no, you're -- you know, there's no reason to detain that person. But if it's thrown at a person or intent to cause bodily injury or serious

bodily harm or death, then yes.

Q Okay. And how are you able to determine the intent of a person throwing an object?

A It would be the action of the person and what my observations are and if it was in the direction of a person that could have caused harm, bodily injury, serious bodily injury or death --

Q Okay.

A -- and used as a -- the intended use.

Q What if this same person instead of throwing a rock or a water bottle they throw a paperclip? Is that cause for detainment or arrest? You know what? Let me make it easier. Let me make it a paper airplane.

A Okay. So I would say the tool itself --

Q Mm-hmm.

A -- if it can cause serious bodily injury, harm, do harm to the community, a person, serious bodily injury or death, it would have to be the -- the weapon itself, I believe.

Q So under what circumstances would throwing a paper airplane be --

A I wouldn't imagine that would be, ma'am.

Q Okay. All right. What is your understanding of the phrase excessive force?

A Above and beyond the force that it would take

to stop the action.

Q Okay. And you know that we as Americans have a constitutional right to be free from excessive force?

A Yes, ma'am.

Q Okay. Were you trained on that Fourth Amendment right?

A Yes, ma'am, in the academy.

Q What did that training entail?

A Reading and being tested on it.

Q Like they would give you a hypothetical situation and ask you if the level of force used was appropriate, or what was the test like?

A Yes, ma'am.

Q Okay. Does an individual give up their right to be free of excessive force by attending a protest?

A No, ma'am, not just attending the protest.

Q Does an individual give up their right to be free of excessive force by attending a riot?

A No, ma'am. It -- I would say no, ma'am.

Q Does an individual give up their right to be free of excessive force if they throw an object?

A Depends on the object, depends on the intent. It depends where the object goes, what is the use of it.

Q If an individual throws an object with the intent to cause injury to someone else --

A Mm-hmm.
Q -- do they give up their right to be free from excessive force?
A Not from excessive force.
Q Okay. And then surely if an individual throws a bottle, an object without the intent to cause injury, they also do not give up their right to be free from excessive force?
A Correct, ma'am.
Q Okay. We talked about some of these definition as little bit earlier. We talked about protest versus riot. I want to understand a little bit more language that I've seen in the documents in this case. I've seen bystander, peaceful protester, violent protester and rioter. Can you help me understand the difference between those things?
For example, what's the difference between a bystander and a peaceful protester?
A Well, between those that you asked me about --
Q Mm-hmm.
A -- I would say there's a protester, there's a rioter, and then I would believe that if they're a bystander, they're either participating in the protest or they're not.
Q Bystander could be either one?

A Could be.
Q Okay. And what is a violent protester?
A I don't describe it as a violent protester. It's -- or I would say that's someone participating in the riot.
Q Okay. You actually do. I mean, I'm asking because --
A Yes.
Q -- these are your words.
A Okay.
Q So I can -- I can pull up the document if that would be helpful.
A Okay.
Q Give me just a second. This one. Okay. I'm going to share my screen.
Can you see this Austin Police Department General Offense Hard Copy? Is it on your screen?
A Yeah, I see part of it.
Q Okay.
A Yes, ma'am.
Q So just like right here for example, I was explained that our response was for violent protesters and rioting.
A Yes, ma'am.
Q So what's a violent protester as compared to a

rioter?
A That's how it was described to us as we went down there. So that --
Q Okay.
A -- that's the information I was given.
Q Okay. So you don't know what a violent protester is. That's just a word someone else used?
A Yes, ma'am.
Q Okay.
MR. BARTON: Leigh, can I -- just because that document has now, you know, kind of become part of the deposition, can you tell me the Bates number where that language was quoted from?
MS. JOSEPH: Yes, happy to. That was COA2257.
MR. BARTON: Okay.
MS. JOSEPH: Thank you for asking.
Q (BY MS. JOSEPH): Do you consider it part of your job to protect both protesters and rioters in addition to civil -- other civilians?
A I believe you protect all the community, ma'am.
Q Why?
A Can you ask that again?
Q Why?
A Why?

Q Mm-hmm.
A Because I believe everybody has the right to -- to be protected.
Q Okay. You talked earlier when I asked you about other tools that you had for de-escalation aside from your tool belt --
A Yes, ma'am.
Q -- you talked about communicating.
A Yes, ma'am.
Q Tell me about your training in communicating with crowds.
A Communicating with crowds?
Q Mm-hmm.
A I would say that as an officer it's one-on-one.
Q Okay. So you don't have any specific training in how to communicate with a crowd?
A Other than using LRAD, but that -- that's SWAT stuff. That's --
Q Okay.
A Yeah.
Q What's LRAD?
A It's a microphone that's used to communicate to -- to crowds to disperse.
Q Okay. Did y'all have the LRAD equipment --
A No.

Q -- out there on May 30th? No?
A No.
Q Okay.
A They -- I believe they used microphones and broadcasting devices from the cars to try to get the crowd to disperse.
Q At the May 30th, 2020 event?
A Yes, ma'am.
Q Okay. But you weren't a part of those actions?
A No, ma'am.
Q Okay. What training do you have in communicating with deaf individuals?
A At the academy I know that we had people come in and speak from the deaf community. I know that -- I believe that we had scenario -- a scenario of a deaf -- a gentleman on a traffic stop where we had to communicate with pen and paper, and then just on my calls.
Q Okay. I'm assuming if you didn't have any communications training specifically focused on crowds, you didn't have any communications training specifically focused on deaf crowds either, correct?
A Correct --
Q Okay.
A -- yes, ma'am.

Q As far as communications are concerned, are you trained to give a warning before discharging a weapon at an individual?

A What type of weapon, ma'am?

Q Let's talk about a -- a shotgun equipped with beanbag rounds.

A With a KEP?

Q Yes.

A If applicable.

Q Okay. When would -- when would giving a warning be applicable and when would it not?

A If you had the time to do so.

Q Okay. And what determines if you have the time?

A The action.

Q The action that the individual you're targeting is engaged in?

A Yes, ma'am.

Q Okay. In the context of throwing a water bottle like Tyree Talley and -- and Modesto Rodriguez in these --

A Mm-hmm.

Q -- cases, is that a situation where you're -- you would be expected to give a warning before shooting at someone with the shotgun equipped with the beanbag

rounds?
A Impacting?
Q Why do we distinguish between shooting and impacting when we're talking?
A With a KEP you're impacting the -- the subject.
Q Okay. So the -- my use of the word shooting doesn't feel appropriate to you?
A It's -- it -- in -- in my head it's just different. Using the word impacting is the way I was trained and I use it in everyday language I would say.
Q Okay. Okay. Can you understand that if I say shooting and I'm talking about the shotgun that has the beanbag rounds in it, I mean discharging the shotgun with the beanbag rounds at a person or --
A Yeah, it's just --
Q -- at a target?
A I would say it's --
Q Okay.
A -- semantics based on my training experience, so...
Q Okay. Okay. So you say impacting. I say shooting.
A All right.
Q We don't have to --
A Yeah.

Q -- we don't have to correct each other each time. We both --
A Sorry.
Q -- understand. Okay.
So if an individual is throwing a water -- I mean let's just take the scenario, you know, that these two cases bring to light. We have an individual at a protest --
A Mm-hmm.
Q -- event who has thr -- is throwing or has thrown a water bottle.
A Mm-hmm.
Q Do you have time, based on that conduct, to give a warning before shooting the shotgun equipped with the beanbag rounds?
A If time permitted, if it was applicable.
Q Okay. So is it applicable? Because you said applicability de -- is determined based on what the person is doing. So if you're --
A And time.
Q -- the person --
A And time. So when you target --
Q Okay?
A -- the -- the subject. So if --
Q Okay.

A -- if I'm late to target --
Q Mm-hmm.
A -- then I would say if it were applicable, then yes.
Q Okay. So if you're not the first person to shoot, you don't need to give a warning?
A No, I didn't say that. I was saying by timeframe, if and when I target the subject with the action or doing the action --
Q Mm-hmm.
A -- if it's applicable to give him the warning, then I would.
Q Okay.
A So it's based on time, perception, speed, the action.
Q Okay. So let's figure out when it's applicable and when it's not. So you see a person picking up a bottle and it looks like they are getting ready to throw it. Should you --
A Pardon me --
Q -- you give a warning? Should you give a warning --
A Well --
Q -- before shooting?
A I -- I wouldn't impact that person until he was

in --

Q Okay.

A -- in the action of throwing the bottle.

Q Okay. All right. So now the person has the bottle in hand and is winding up and you can tell they're in the act of arcing their arm forward to throw it.

A Mm-hmm.

Q Would you impact that person?

A If -- if in the action and I had them targeted, then yes.

Q Okay. Would you give a warning?

A If it were applicable.

Q Okay. Is it applicable?

A I don't know. Just because --

Q How do we figure that out? This is going to take a while.

A No, I understand. I --

Q Okay.

A It -- it's all based on individual scenarios. Each use of force is -- has its own standard guidelines and perception of what's happening.

Q Mm-hmm. So we're talking about a scenario. So what are we missing? Why can't you answer the question?

A I think I'm answering. I -- I -- if -- if and

when I target the person --

Q Mm-hmm.

A -- if I have the time and it's applicable to give him a warning, that said --

Q Mm-hmm.

A -- person, then -- then I would and it's ba -- it is in policy that if it's applicable to impact that person or give the warning prior to impacting, then yes.

But if I turn and it's not applicable and I see the bottle go and we impact as he's throwing or prior to throwing, then it wouldn't be applicable.

Q Okay. So you've targeted a person, you've seen this person pick up a bottle, extend their arm back, and now it's arcing forward to throw the bottle.

A Mm-hmm.

Q It sounds to me based on what you just said that you have time and it would be applicable to give a warning here; is that correct?

A Well, we're referring to split seconds and the action itself. So if I had the time to do so, I would do it, if it were possible.

Am I not answering the question?

Q I'm just not sure why you can't tell me yes or no.

A Because every use of force is going to be

different. If -- if I turn and I target the person and I have the time to say it, then -- then I would and that's then appropriate. But if I turn and my perception doesn't give me the time to say it -- because I'm going to probably see it before I could say it, then I can't put myself in a box and say yes, every time I would do that because every --

Q Okay.

A -- use of force is different.

Q Okay.

A I'm sorry if I didn't answer that.

Q That's okay. No, I appreciate it. So I assume, then, that -- do you have a specific recollection of what was happening each time you discharged your so-called less-lethal weapon on May 30th, 2020?

A Do I have a recollection?

Q A specific recollection of what was happening. Yeah --

A Yes.

Q -- like what the target was doing.

A A recollection of the whole scenario, yes.

Q Okay. Do you remember who you were shooting at and why each time you discharged the so-called less-lethal weapon on May 30th, 2020?

A Sorry. Ask the question again. I didn't hear it. I apologize.
Q That's okay. Do you remember who you were shooting at and why each time you discharged the weapon?
A Yes, ma'am.
Q Okay. Okay. So you can talk to me then specifically about whether you should have given a warning or not for every shot that you took on May 30th, 2020?
A No. You asked me if I recollect the -- if I recollect what those people were doing when I discharged my less-lethal. So I impacted people that were throwing items at the front step and the Main at -- of the department and/or people in the front, officers.
Q You cannot talk to me about whether you should have given a warning to any of the subjects that you targeted on May 30th, 2020; is that correct?
A No, ma'am. So what I'm saying is if it's applicable to give a warning, then I believe I gave a warning when it was applicable to do so.
Q Okay. So you -- in terms of giving warnings before shooting, your conduct was perfect, and we can analyze it by looking at your body cam and we would either hear a warning or not?
A I would say what's on body cam is what

happened. I can't say the word --

Q Okay.

A -- perfect.

Q Okay, I'm sorry. I've got to stop you. I need to take a break. Let's take about a five-minute break, okay?

A Okay.

MS. JOSEPH: Thank you. Okay.

THE VIDEOGRAPHER: Okay. We are now off the record at 4:26.

(Recess taken.)

THE VIDEOGRAPHER: All right. We are now back on the record at 4:36.

Q (BY MS. JOSEPH): Officer Cherne, I apologize for the abrupt nature of that break, but thank you --

A I was --

Q -- for the time.

A I was saying I feel like I upset you, so I --

Q No --

A -- never my intent, but I want to answer my questions and be up -- you know, as -- as clear as I can and it's not my intent to upset you.

Q Well, thank you, I appreciate that. And -- and neither is it mine to upset you. I know it must be hard to be sitting in that chair today several years after

all this happened --

A Yeah.

Q -- so...

Okay. Let's get back -- back to it.

A Okay.

Q And I -- I want to go to May 30th, 2020.

A Okay.

Q Were you scheduled to work that day?

A I was.

Q Okay. And what -- when you reported for duty that day, what were you doing?

A So we're -- our shift was 1:00 to 11:00, and we're -- we did our pre-checks. From pre-checks, we received a message that we were supposed to go downtown and report for an ONA.

Q And ONA stands for?

A Officer needs assistance. That's our highest call.

Q Okay. And was that the event outside headquarters?

A Yes, ma'am.

Q Okay. So when you came in that day, you did your briefing, and then you went right to the -- the scene outside --

A Yes --

Q -- headquarters?
A No, ma'am.
Q No, okay. So where did you go next --
A Okay. So --
Q -- after the briefing?
A -- I went to a barricade. I was assigned to a barricade up on I believe Mar -- MLK --
Q Mm-hmm.
A -- and 35. We shut the road down, the service road. So I stayed there and blocked the road off. I met officers from day shift and the motors unit there.
Q Okay. How long were you there?
A Four, five hours.
Q Okay. So from like --
A 1:00 to --
Q -- 1:00 to --
A -- 5:00?
Q -- 5:00?
A 1:00 to 4:00, 1:00 to 5:00.
Q Okay. And you're in your full black Austin police officer uniform -- Austin Police Department uniform, the usual --
A Blue, yeah.
Q Oh, blue. Is it dark blue?
A It is.

Q All right. All right. So you're in your dark blue uniform. Are you outside -- are you standing outside the vehicle while you're there at that bar -- barricade?

A Yeah. We use the vehicles to block the service road and then put our -- the -- they already had barricades set up to shut the road down for --

Q Okay.

A -- vehicles.

Q Okay. So it's May, you're in dark blue, you're outside just about after peak sun. You're out there all afternoon in -- in the hot sun. You're not comfortable. Is that --

A Actually, it was --

Q -- is that a --

A No, I was in and out of my car in the AC and --

Q Okay.

A Yeah.

Q Okay. So it wasn't too bad?

A Having the vehicle there was a -- a huge help with the AC in keeping very fresh, plus a cooler of water and food.

Q Nice. Okay. As I sit here with a portable fan in my --

A Yeah.

Q -- home office, I'm thinking outside is always miserable.

Okay. So you -- you go to the MLK barricade. You're there until about 4:00 or 5:00. And then what happens next?

A Everybody was ordered up to the bridge. From where we were, we had -- we had seen that a group of people -- I only knew them as observation of people taking over the highway --

Q Okay.

A -- several times.

Q Okay. And when you're talking about the highway and the bridge, you're talking about the area of I-35 right there near the police headquarters, what is that, 11th and 12 streets?

A Headquarters, 7th and 8th.

Q Oh, 7th and 8th. Is that what we're talking about right there at --

A Well, no. They were -- I mean -- I mean distance, I mean, they had shut down most of 35 on both sides, but -- I mean there's a distance from the Main that 35 was shut down.

Q Okay. Okay.

A And on the east side --

Q Because --

A -- as well.
Q Okay. Because of bodies physically --
A On the highway.
Q On the highway, okay. So you are directed to respond the -- everyone is directed to respond there?
A Yeah. That was -- that was after I used my car as protection from bottles, fireworks, and a pizza.
Q I'm sorry. I shouldn't laugh, yeah, but -- yeah. Okay. So you take your car from the MLK area?
A No. So I -- I -- I left my car there --
Q Mm-hmm.
A -- and -- because it was blocking the service road and moved up with the other officers on 35.
Q Okay. Okay. And what happens next?
A I -- well, I walked up to 35, saw two or three officers in the back of an ambulance getting treated for -- one of the officers got hit in the mouth with a water bottle. Another officer was -- had a contusion on their head from getting hit with a rock. So passed the ambulance, met with cadre, and then assigned a -- a spot on 35.
Q Okay. And is that -- first of all, what is cadre?
A It's sergeants, lieutenants, commanders.
Q Do you remember specifically who cadre was made

up of at that time?
A So at that point I could -- I could only remember one who was Lieutenant Volk --
Q Okay.
A -- that was up there, and he was helping with the people in the ambulance, the officers that were already injured.
Q Okay.
A And then you.
Q Do you -- sorry, go ahead.
A You could tell that there was Lieutenant Lalou on the radio who was taking command.
Q Okay. Did you know the other members of the cadre at that point, you just don't remember who they were, or did you not know them?
A I've -- I've never seen half of them.
Q Okay.
A So they pulled from everywhere, every OCD unit detectives, South, that -- even the officers I weren't -- I wasn't familiar with.
Q Okay. Okay. Is this the point when you are allotted or -- or handed the shotgun?
A The less-lethal, yeah.
Q Mm-hmm. Okay. And at some point I think you put on a helmet that had a face shield as part of it; is

that correct?
A Yes, ma'am.
Q What other gear do -- do -- do you -- well, do you put that on at the same time that you pick up the so-called less-lethal?
A You put your heavy vest on first. It has ceramic plates in it --
Q Okay.
A -- which goes.
Q Do you put on a --
A -- which goes --
Q Sorry.
A -- which goes over your -- that's okay -- which goes over your -- those are used in high-intensity si -- situations and only in those situations.
So we were told to don our gear, and -- which would be a plate over our plates based on the situation.
Q Okay. So you have two sets of plates on?
A At that point we did, yes, ma'am.
Q Okay. Two sets of plates, the helmet --
A Kev -- Kevlar helmet.
Q Any other piece of equipment or gear that's part of the heavy gear that you put on?
A Long-sleeve shirts based on the -- the ability

to protect your skin. So --

Q Okay.

A -- we -- we moved to -- oh, what is that? Tactical gear for -- for specific situations.

Q Okay.

A So it's to protect your arms, your shoulders. Then you -- you don on your heavier equipment, your Kevlar helmet, your face shield.

Q Have we talked about all of the equipment?

A I believe you have.

Q Okay. Okay. So you pick up the shotgun equipped with the kinetic --

A Mm-hmm.

Q -- projectiles. You put on your heavy gear. And what directives are you given in terms of using this shotgun?

A What directives, ma'am? So --

Q What are your orders with respect to the shotgun?

A We were told that if you see someone throwing items, to impact the people that were throwing items.

Q Okay. Was anything else said?

A The only directive I got when I got up there was protect the people down below from the people throwing items and impact them if you see them throwing

items.

Q So no clarification was given between -- well, as far as like when to impact someone before or after they throw an item?

A So you could hear that people were giving out commands of guy in white shirt, guy in blue shirt, pointing people out specifically, but based on my training experience, I only impacted the people that I targeted that weren't in a crowd, that were individual, not near other people at that point.

Q Okay. I appreciate that. Let me ask my question again --

A Sure.

Q -- because I don't think it came across.

So was any specific direction given to you about whether to impact or target I'm going to say the throwers --

A Mm-hmm.

Q -- before or after they engaged in the act of throwing?

A Well, that's what I was saying, was there were people pointing out people. If that were --

Q Mm-hmm.

A -- cadre giving orders to other people --

Q Mm-hmm.

A -- I can't speak on that. I can speak on the people that I impacted. I was given directives to impact the people that were throwing items.

Q Okay. Not after they threw it but in the act of throwing it?

A We were told to impact the people that were throwing items.

Q Okay. Okay. And -- leave it at that, okay.

So we talked about -- is it cadre?

A The cadre.

Q Ca -- we talked about the cadre and that we don't remember the entire -- you don't remember the entire makeup of it. Do you know who was in charge of the area where you were stationed on the bridge?

A There were a lot of stars and bars.

Q Okay.

A I mean, it -- to be frank and honest, I mean, everywhere you turn, there were stars and bars. That being said is I wasn't familiar with those people, and I -- I didn't even recognize half of them. So I -- I -- I could tell you the only person that I know because I looked at his nametag.

Q Did -- tell me if it works this way. Like if -- if there's someone up there with a higher rank than you --

A Mm-hmm.
Q -- and they tell you to do something, like even if you don't know their name --
A Mm-hmm.
Q -- they can still give you an order --
A Yes, ma'am.
Q -- if -- okay. Okay. So all those -- you know, to use your words, stars and bars up there could have been directing what was happening?
A They were directing and controlling crowd control --
Q Okay.
A -- treating the -- the hurt officers, and then training to manage --
Q Mm-hmm.
A -- what was happening behind us. So as we were on the bridge, the traffic got shut down to one lane. As we were standing there, people were throwing fireworks, baby powder, balloons filled with alcohol, Topo Chico bottles, water bottles, a pizza, like I said --
Q Mm-hmm.
A -- several items at us from behind.
So there was -- there was a line that would try to prevent that as we were standing up there,

but that's where the officers were getting hurt and that's why two of them were in the ambulance, because cars were driving behind us throwing stuff at us.

Q Okay. That sounds really scary.

So were -- were some of you facing where you could overlook the bridge and see what was going on down below and some of you were facing the traffic on I-35?

A No, you had to have eyes in the back of your head. You had to be 360 degrees, because I had baby powder all over my uniform. I had --

Q Mm-hmm?

A -- I think Play-Doh on my shoes, rock debris, crushed glass. Let's see what else. Oh, frozen water bottles that hit me in the helmet from behind. So we had to watch the front and the back.

Q How does that feel to have been serving this community for over four years and have people throwing things like that at you?

A It's an intense situation. It was something that I've never experienced, nor did I ever choo -- it's not a choice to be up there --

Q Yeah.

A -- at that -- you know, right? Like you wouldn't put yourself in that situation. But you know,

signing up for this and knowing what my job duties and tasks are, I just pictured, you know, if -- if my family were down there, you know, in a sense, that it -- it -- you're still protecting the people that are down there. So --

Q Yeah.

A -- that was important.

Q Yeah. Almost wonder if you have to turn it off a little bit. Like maybe when you get home the full impact of everything that just happened like hits you, you know, but while you're there you have to stay focused, like you said, on protecting -- protecting the people down below. Does it work like that kind of?

A I practiced medicine for a lot of years, so turning --

Q Okay.

A -- it on and off and trying to not accept other people's emotional stuff, I've learned that. You know, this job is -- you know, you can take it home, but you have to talk about it. So I have a supportive wife, and we have peer support here and we have an unbelievable sergeant and corporal that would sit us down and talk to you about how we're doing and check in on us and our mental health and if we needed a day off or a mental health day or --

Q Mm-hmm.
A So it's -- it's managing -- learning how to manage the totality of it all.
Q Yeah. Do you -- I think I read somewhere that you don't know who was next to you or behind you or the --
A Mm-hmm.
Q -- exact formation of people.
A Mm-hmm.
Q Do --
A Yeah --
Q And I think you told me today you don't even know everybody's name who was up there?
A Yeah. I mean, it's so funny because you -- you think of it as a small department now --
Q Mm-hmm.
A -- but standing up there and looking left and right, you don't know the person next to you and you don't know --
Q Mm-hmm.
A -- who the supervisor is or -- those things --
Q Mm-hmm.
A -- at that point when you see stars and bars.
Q Mm-hmm.
A You may have heard of them, but you don't know

them.

Q Was there anybody else in your immediate vicinity other than Lieutenant Volk --

A Mm-hmm.

Q -- that you did know?

A Let's see. I believe it was Lieutenant Perry was up there, but he was in the ambulance, as well, treating the officers and -- not off the top of my head.

Q Okay.

A Because I didn't know -- you know, I had joined a group of people that had come from the South and one that came from the East, so I wasn't -- I wasn't familiar with them.

Q Okay. Talking about just a little bit more on the mechanics of using the shotguns that day, when they handed it to -- did somebody hand it to you?

A Yes, ma'am. I replaced a day shift officer.

Q Okay. So the day shift officer handed off the -- the weapon to you as they went off duty or --

A And he went home, yes, ma'am.

Q Okay. And you probably don't know who that was?

A No, ma'am.

Q Okay. Do you then check to see if it's loaded and -- and how many rounds it --

A Oh, absolutely.
Q So how many rounds does it hold?
A I believe five.
Q Okay. Okay. So when you're first taking the -- the -- the gun and going into position, I guess you make sure it's fully loaded?
A I download it and then reload it.
Q Okay. Okay. And where do you get the -- the beanbag rounds themselves? Where are they?
A So they're at PCO normally.
Q Okay. What's PCO?
A It's police equipment --
Q Okay.
A -- so it's at the substation --
Q Mm-hmm.
A -- and you check them out.
Q Okay. But on May 30th, 2020, I'm -- I'm sure they were already there --
A Yes, ma'am.
Q -- on I-35?
A Yes, ma'am.
Q So where were they kind of on that scene? Were -- were they in a car, in a bucket?
A There was -- there were people and supervisors, officers --

Q Mm-hmm.
A -- that had them behind us that were distributing them.
Q Okay. Okay. So you didn't just go and get some. You had to -- somebody had to give them to you?
A Yes, ma'am.
Q Okay. Do you have any idea how many times you reloaded that shotgun over the course of the events on May 30th, 2020?
A I'd have to look at my report recollection on the videos.
Q Mm-hmm.
A -- to -- to give you a number.
Q Okay. At least once, maybe more?
A Yes, ma'am.
Q Okay. Do you think at least twice?
A I -- I would say yes, ma'am.
Q Okay. The -- the folks who are passing out or distributing the -- the beanbag rounds, are the -- the rounds in their original packaging, or how were they --
A Yes, ma'am.
Q -- collected?
A So they came -- they -- they were handed to us in a box.
Q Okay. So you receive a box and --

A No, box.
Q Oh, box, okay. For some reason I got the idea somewhere that they were in a bucket. They weren't in a bucket?
A Not from -- not from what I received.
Q Okay. Okay. You received a box of beanbag rounds in their original packaging from the distributor out there, and then you proceeded to load your weapon?
A I received them in a box. I don't know if they were in the original -- I --
Q Oh, okay.
A Yeah.
Q Okay. Thank you. Okay.
A I would assume, based on opening the box, that it would be like any other ammunition, that it would be coming from the distributor, but --
Q Uh-huh.
A -- I don't want to say that I know that for sure.
Q Okay. And this is probably going to show my, you know -- just that I haven't been in a situation like the one that you were in, but I'm -- I'm going to ask you, were -- were you able to inspect that box to look for, you know, are these rounds expired, are they still good? Is -- is that an action that you took when you

received the box?

A No, ma'am. I -- I checked the round before I put it my less-lethal to make --

Q Okay.

A -- sure that the casing is set and that there's --

Q Mm-hmm.

A -- no damage around the end.

Q Okay. And if the round was, say, you know, extra hard, or you know, something was different on the inside, would you be able to tell that through your check while you're up there, you know, on the bridge loading your weapon?

A No, ma'am.

Q Okay. Is it standard not to look for an expiration date on a box of ammunition in a situation like that?

A In a situation like that? It would be fair to say not -- you wouldn't be looking for that.

Q Okay.

A Or let me rephrase that. Me saying I didn't look for that in the situation I was in.

Q Okay. You were --

A I can't speak --

Q -- expecting --

A -- for anybody else.
Q Understood. Yeah. I mean, you're expecting that you're given appropriate ammunition that was --
A Proper equipment.
Q Proper equipment, okay. Okay. So you -- you have the face shield on. We talked about the gear that you put on.
A Mm-hmm.
Q Do you have it down --
A So it's periodic.
Q Mm-hmm.
A It was time-dependent, so sometimes having it down. When they lit the car on fire and started shooting upward into the bridge, I brought it down. But it was nighttime, and so I had it where if I needed to pull it down, I could. But to make sure that I had clear view, I had it propped up. But there --
Q Okay.
A -- were certain times when they set the mattress on fire and there was smoke and we were trying to evacuate the bottom portion of bridge that it was pulled down, as well as when they set the car on fire and I -- I -- I believe part of the bridge caught on fire, but I'm not quite sure. But we were escorted away from that area based on the fire.

Q Okay. And all of that fire happened -- well, are you able -- do you know this? All of that fire happened after Modesto Rodriguez and -- and Tyree Talley were impacted; is that right?

A I can't -- I don't believe so.

Q Do you know what time the car caught on fire?

A So based on times that I was given in the paperwork --

Q Mm-hmm.

A -- I thought the fire was earlier, because I thought it was still light out when they were lighting the car on fire.

Q Okay.

A I thought --

Q Okay.

A -- that the -- the mattress when fire came in to put it out. I could be mistaken, but...

Q Okay.

A And I don't really know much about the Modesto other than the video that I saw and what I read in the paperwork.

Q Okay. Okay. So did you sometimes discharge the -- the shotgun with the mask down and sometimes with it up?

A I would say the majority of my recollection is

the face shield up.

Q Okay. Okay. Did the face shield impact your ability to aim the -- the weapon?

A No, because I believe that most of my rounds, if not all of them, were when it was up.

Q Okay. Had it been down, it might have caused a problem?

A No, ma'am.

Q Okay. I think you understood me, but just -- I'm just going to ask you again.

A Sure.

Q If the face shield was down, would it have potentially impacted your ability to aim the shotgun?

A I don't believe so.

Q Okay.

A It's clear acrylic.

Q Okay. I didn't know if the physical bulk of it might have affected where you could put -- put the --

A Oh.

Q -- gun in relation to your face --

A No, ma'am.

Q -- your eye. Okay.

All right. So would you say that it's chaotic out there?

A Well, that's an understatement, yes, ma'am.

Q Okay. Will you describe for me -- just kind of set the scene. You've talked about some things that were happening, some things that were thrown toward you. Just kind of what did it sound like, what did it look like, kind of take us to that -- that scene.

A There were peaks and valleys of chaos and -- and aggressive nature from the rioters in between the protesters. When I got there, I did have the ability to stay in the car for the air conditioning, and like I said, for protection, as well, when things were being thrown at us from cars and people at that point.

What I knew was watching from where I was that crowd of people were taking 35 and standing, impeding high-speed levels of traffic, putting themselves in danger. I knew that officers had already been hurt and were being treated for certain things.

We had heard as we were coming down that officers were being hurt, that -- that it wasn't -- it wasn't a usual protest, if you will.

Q Okay. And --

A As I --

Q Okay.

A -- left -- as I left my barricade, you can see people grabbing everything that they could get their hands on between pipes, glass, even nails, rocks, Topo

Chico bottles, book bags, umbrellas, helmets, face shields, knee pads being thrown at us up on the bridge and actually making contact with the officers.

When the sun set, I would say that more things were being thrown because more people thought, it looked like, that it became more active because they thought that they weren't going to be seen or that they would run outside under the bridge, throw something, and then run back under the bridge.

Q Do you remember around when it became dark?

A No, I don't.

Q Okay. Do you have any idea if it was before or after 9:00 o'clock PM?

A Based on the video that I saw, it was dark, and I believe that it was 9:00 -- 9:00-something.

Q Okay. So you don't have a specific recollection of when it got dark three years ago, but you've seen a video that --

A Yeah. I mean it -- the video was dark.

Q Okay. Were you injured that day?

A I'm sorry, you froze.

Q Were you injured that day, Officer Cherne?

A I was not injured, but I had multiple -- how do we say -- condiments and objects all over my uniform --

Q Okay. I know you --

A -- on top of --
Q -- you talked --
A Oh, sorry.
Q I don't want to interpret you, yeah.
A On top of thinking that I wore my heavy vest and my helmet because there's several bottles and fireworks going off on my -- hit -- hit me in the helmet and my uniform.
Q Okay. I know that you talked a minute ago when you were setting the scene for us about officers having been injured out there.
A Mm-hmm.
Q Were -- were civilians injured out there, as well, that you saw?
A I did see that there was a medical team that kept wearing red and black and running in and out of the crowd and --
Q Mm-hmm.
A -- escorting people back underneath the bridge.
Q Okay. So yes, civilians were injured also?
A I would say yes, ma'am.
Q Okay.
A I saw several times that rocks were thrown and water bottles that didn't bounce --
Q Mm-hmm.

A -- thrown into crowds hitting civilians, as well.

Q Okay. I'm going to pull up a video and show it to you. While I put it up, I feel the need to tell you and the others here that I am not almost done. So -- so it's -- it's 5:00 PM, and I know a lot of people think of that as quitting time but you know, we have a little bit to go. And I just wanted to tell you that for pacing purposes --

A Mm-hmm.

Q -- okay?

All right. So this is Bates labeled as City of Austin 4588 for the record, and I'm going to try to start it at about 1 minute-30. Let me get it up for you.

MR. BARTON: And -- and Leigh, can I ask a question before you pulling it for the --

MS. JOSEPH: Yeah.

MR. BARTON: -- question? Is --

MS. JOSEPH: Sure.

MR. BARTON: -- this going to be captured on this deposition video? In other words, is this going to be included with the video deposition?

MS. JOSEPH: That is a great question for our videographer.

Are you able to record the screen-share as well as the witness? Dalton?

I -- I hope that it is. It would be my expectation that we're -- you know, we hired -- we hired them to record the full deposition. But if it -- if it isn't, this is Bate labeled 4588, and I'm starting at 1 minute-27 seconds.

MR. BARTON: Okay. And I don't want to add to your burden, but like if you could note the time it stops or just kind throw in the -- the timestamp if you think about it.

MS. JOSEPH: Sure.

Q (BY MS. JOSEPH): All right. So Officer Cherne, this -- it's my understanding that this is a clip from your body-worn camera from May 30th, 2020. I'm going to start playing it. If for some reason it's not your body-worn camera, tell me right way as soon as you know, okay? But I expect that it is.

A Okay.

Q Okay.

(Video played.)

Q (BY MS. JOSEPH): Okay. I stopped it at 2 minutes. Were you able to hear those voices talking?

A Yes.

Q Okay. Was one of tho -- was one of those your

voice?
A Yes, ma'am.
Q Okay. Somebody says something along the lines of I thought they were going to pull a doughnut. Is that you or someone else?
A That's not me.
Q Okay. And I think they're referencing a vehicle that -- my play bar was kind of covering it up, but --
A Okay.
Q -- but it pulled in and -- and drove by. Did you see that vehicle --
A No, ma'am.
Q -- in the video? No? Okay.
A No, ma'am.
Q Okay.
A I -- I don't know where you're referring either, sorry.
Q Oh, since I started pointing at my screen that you can't see?
A Yeah.
Q Sorry. Okay, sorry. Can you see my mouse?
A Yes.
Q Okay. Yeah, there was a -- a vehicle -- and I'll -- I'll play it for you again -- that kind of came

in from -- from this way and drove across the front. I'll have to figure out how to get this bar out of the way or -- or see if you --

A Okay.

Q -- can see through the blur.

A Are you saying it's in the intersection?

Q No. Here, let me just go back. All right. So I'm at 1.22, and you see those headlights kind of facing the bottom right corner of the screen that --

A No, ma'am.

Q -- may be a gray color car?

A No, ma'am. You're blocking -- the pictures of you guys are blocking it.

Q Oh, do you know how to move us? Monte can help you with that.

MR. BARTON: Yeah, I'm sorry. I should have moved that before. Okay. I've --

A Okay --

MR. BARTON: -- kind of moved it around.

A -- I see it now.

Q (BY MS. JOSEPH): Good, that will help.

Okay. So you see that car. So let me --

A Yes, ma'am.

Q -- me play it again, and -- and I'll pause it around the same spot I did before.

(Video played.)

Q (BY MS. JOSEPH): Okay. I paused at 1:54 this time. Did you hear I was afraid they were going to pull up a doughnut?

A Oh, yes, ma'am, I did hear that.

Q Okay. I -- it looks to me like that statement was made in reference to that car that drove by.

A Okay.

Q Is that what you think?

A It -- it very well could be, yes.

Q Okay. You don't re -- I know you're not the one who said it, but you were a part of the conversation. You don't --

A Okay.

Q -- remember?

A No, ma'am.

Q Okay. Okay. Let me play it again, and we'll hear this next part of the conversation.

(Video played.)

Q (BY MS. JOSEPH): Okay, I'm going to pause at 2:09. It sounds like one person is telling the other about -- is it Chief Manley's decision on using gas? Do you --

A Yes, ma'am.

Q -- did you hear --

A It sounds like he's --
Q -- that conversation?
A -- he's telling me or someone next to me or me that --
Q Okay.
A -- they were deciding if to use CS gas.
Q Okay. So you were not the person who says I don't care, spray it, I don't need a mask?
A No, ma'am. I -- go -- if you play it back, that would be great. Let me...
Q Okay.
(Video played.)
Q (BY MS. JOSEPH): And I stopped at it 2:08 because he started changing the --
A I --
Q -- subject.
A Yeah, I heard myself say yeah.
Q Okay. Okay. So you're the one -- you're not the one sharing that information. You're -- you're kind of the receiver of the information --
A Correct.
Q -- in that conversation?
A Yes, ma'am.
Q Okay. But it sounds like you're in agreement with the speaker in that you want the CS gas to be

deployed?

A No, I --

Q And --

A -- just said yeah.

Q Okay. What did yeah mean?

A If it's the next step and Chief Manley decides to do that, then that's the next step. If he's telling me that that's the plan, then that's the plan.

Q Okay. Yeah, it doesn't -- I mean, from what I hear it, it just --

A Right.

Q -- sounds more just like two guys talking, not somebody sharing an official plan --

A Well, it sounded --

Q -- right? I mean, it --

A -- it sounded like he knew more information than I did, and it sounded like it -- he knew that Chief Manley was going to implement something or he knew something more than I did.

Q Yeah. Okay. Okay. But you're not agreeing with him and his opinion that he wants the CS gas to be deployed when you say yeah?

A If -- if that's the plan to -- to implement the CS gas, then that's the next step. They're the tacticians and the tactical people. I wouldn't be

implementing it --

Q Mm-hmm.

A -- and -- nor have I had -- I haven't had exposure to the CS gas. I've never been gassed. Guys in the military have. So I -- I -- I don't -- I don't even know what the effects are of it.

Q Okay. Okay. And I -- I wanted to ask you that, so thank you for sharing. But I mean, I'm just -- what I hear is -- is one guy just kind of casually saying to another guy -- and I'm going to paraphrase it for --

A Mm-hmm.

Q -- you know, purposes of our conversation, the chief is not doing this, but I wish he would and then I hear the other guys say yeah.

A Oh, I took it the --

Q So --

A -- I took it the other way to say he had more information and --

Q Uh-huh.

A -- I don't know who's SWAT, who's not SWAT, who's military, not military. So --

Q Okay.

A -- I don't know who has information, who doesn't have information.

Q Okay. Okay. So at this point you're not standing there wishing that gas could be deployed so that this crowd would disperse?

A No, ma'am. I don't even know the effects of gas.

Q Okay.

A I don't know what instances you would use gas. I don't know how it would affect people down there. I don't know how far it would travel. I don't know if there's children down there. I -- I don't know any of that.

Q Okay. And you don't know the identity of the other voice?

A No, ma'am.

Q Okay. Going back to the car, you agree or we all know that a car can be or -- or is classified as a deadly weapon in certain circumstances, right?

A Could be, yes, ma'am.

Q Okay. And so this car drives in, and the other person says something about doing a doughnut --

A Mm-hmm.

Q -- thinking the car might have done a doughnut, right?

A I think what the person says is I thought he was going to do a doughnut or could have done a

doughnut, not that he did a doughnut.

Q Okay. Okay. So this other person is expressing to you that they thought the car might do something erratic as it was driving past?

A I -- it -- it could be, yes.

Q Okay. But nobody, not that person, not you, nobody else shot at the car?

A No, ma'am.

Q Okay. I'm going to play it again. There was a little bit of conversation that we started to hear when it changed the subject to did you see the guy in the whatever description of his clothes. I'm going to try to go back to that point. So I'm going to start playing it at -- at 2 minutes.

(Video played.)

Q (BY MS. JOSEPH): Okay. I stopped at 2:24. So we heard a person describing a white male with a brick in his hand, and that was the other speaker, right, not you?

A Yes, ma'am.

Q Okay. And then I think you said something -- you said carrying a rifle?

A Yeah, there --

Q It was you --

A -- was a --

Q -- that said that?
A We were -- we were told that there was a gentleman on -- in -- in the crowd with a rifle.
Q Okay. Did you see that person?
A I can't recall.
Q Okay. Did you see people with bricks?
A Yes, ma'am.
Q Okay. How many?
A I can't put a number on it.
Q More than five?
A I would say throughout the day, yes, ma'am.
Q Okay. Okay. Let me resume play here at 2:24.
(Video played.)
Q (BY MS. JOSEPH): Okay. I paused right at somebody was saying yep. Did you hear that?
A Yes, ma'am.
Q Okay. And I paused because something is about to happen that I want to ask you about. But again, the voice who said, now this is where you get an active shooter, was that the other speaker?
A I couldn't make it out.
Q Okay. Let me --
A And --
Q -- go back to that.
(Video played.)

A That's me, ma'am.
Q (BY MS. JOSEPH): Did you hear it -- that's you, okay.
A Yes, ma'am.
Q Okay.
A Yes, ma'am.
Q So what are you thinking where you're saying this is where you get an active shooter? Tell me more about kind of why you said that and -- and what led you to co -- that conclusion.
A You have a large group of people, you have somebody carrying around a rifle, you have someone that just tried to burn the building down that they -- I believe that they took into custody for trying to burn the building down with Molotov cocktails and a bag of Molotov cocktails. So this is where an amped-up situation could bring something to that extent out.
Q Okay. We talked a little bit earlier about compartmentalizing emotions when something like this is going, and I think I've told you at some point that I thought this sounded scary. Were -- were you scared?
A I wasn't scared, ma'am. I was -- it was an intense situation that as of the point in my eyes that people were getting hurt, officers were getting hurt, civilians were getting hurt, and that it seemed to

continue to amp up. There were fires, cars on fire, mattress on fire. It -- it didn't seem to be dying down --

Q Okay.

A -- or dispersing.

MS. JOSEPH: Okay. My AirPods are about to die. Let me just switch the pair. We don't need to go off the record. Just give me one sec.

Testing. Okay. Thank you. Sorry about that.

THE WITNESS: Mm-hmm.

Q (BY MS. JOSEPH): And maybe scared isn't the right word to use, because I don't mean to (audio distortion).

THE WITNESS: I lost you. I can't hear you.

MS. JOSEPH: Now I think I got it. Now can you hear me?

THE WITNESS: Yes, ma'am.

MS. JOSEPH: Okay. All right. Sorry about that.

Q (BY MS. JOSEPH): Yeah, I don't -- and maybe scared wasn't the right word because I don't mean to inject a negative in it and I know sometimes that word can have negative connotations.

But did you feel like you -- did you feel like your life was in danger?

A I felt it could be --

Q Okay.

A -- with -- with somebody running around with Molotov cocktails and rifles and -- there's a lot of people where you -- you can't see everything, you can't perceive everything, you can't observe everything, we're getting hit three -- you know, like I said, 360 degrees. You had to watch your back and the front, so...

Q Mm-hmm. Okay. I'm going to play this again, and it looks to me like something kind of happens, a little kind of skirmish or something outside headquarters. I'm going to play to it refresh your memory and then see if you know what happened, because I can't really tell from the video, okay?

MR. BARTON: And Leigh, before you do that, can I ask a question?

MS. JOSEPH: Sure.

MR. BARTON: And this just has to do with getting the monitor for his view. Is what we're about to see kind of to the left or to the right, because I'll move this listing of people the opposite way of where it's going to be.

MS. JOSEPH: Okay. It's --

MR. BARTON: Okay.

MS. JOSEPH: -- more to the right, kind of this crowd of people in the center and maybe something happening from the right.

MR. BARTON: Okay, thank you.

MS. JOSEPH: Yeah.

Q (BY MS. JOSEPH): All right. So we're at 2:37. I'm going to play it again.

(Video played.)

Q (BY MS. JOSEPH): I'm actually going to back it up because I don't know if I gave you enough context. Let me just go back here to -- go back to 2:28.

(Video played.)

Q (BY MS. JOSEPH): Do you have any idea what just happened?

A No, ma'am.

Q Okay. All right. Can you tell what the crowd is chanting?

A No, ma'am.

Q Okay. I'm going to play it some more, and I think that what they're chanting becomes more clear, so we'll see if we can make that out as we continue to listen, picking up here at 2:47.

(Video played.)

Q (BY MS. JOSEPH): Did you hear them saying

don’t shoot, hands up, don’t shoot --

A Yes.

Q -- hands up? Okay.

Okay. And we are approaching the event at issue with respect to Tyree Talley, so we’ll see if we can -- if you can see that on your body camera and -- and talk about that some, okay?

(Video played.)

Q (BY MS. JOSEPH): Okay. So we just paused at 3:23. You have discharged this weapon at this point; is that correct?

A I didn’t hear it discharge.

Q Okay. Are you preparing to fire --

A Looking --

Q -- preparing to shoot?

A Looking to target.

Q Looking to target, okay. That’s what you’re doing? Okay.

And I wanted to pause it to give you an opportunity -- and I can show you this again, too, but to see if you can locate Tyree Talley on the screen, because sometimes it can be hard to find someone with it all happening so fast.

And I think that he is right here where I’m pointing my mouse so we can watch around that area

and see -- see what we see happen, okay?
A I can't see.
MR. BARTON: Oh, I'm sorry. Let me move --
MS. JOSEPH: Oh, now we're on the left.
MR. BARTON: There we go.
Q (BY MS. JOSEPH): So we're -- we're restarting about --
A Okay.
Q -- 3:23 and -- and looking in this kind of left center -- left of center area.
(Video played.)
Q (BY MS. JOSEPH): I'm going to play that for you again because for me it helps --
A Okay.
Q -- to watch it more than once. Start at 3:18.
(Video played.)
Q (BY MS. JOSEPH): Okay. I'm going to pause at 3:37. And I -- I know that you don't know Tyree Talley, so for purposes of your deposition today, I'm going to represent to you that the man who I was circling with my mouse in the white T-shirt --
A Yes, ma'am.
Q -- is Tyree Talley, okay?
So with that assumption or representation

in mind --

A Mm-hmm.

Q -- I'll ask you a couple more questions.

You -- you targeted Tyree Talley, correct?

A Mm-hmm. Yes, ma'am.

Q Okay. How many times did you discharge the weapon at Tyree Talley?

A It looks to be twice, but I -- I couldn't tell.

Q Okay.

A Could be -- go ahead.

Q Did you say could be three?

A I -- based on the paperwork and the information in the paperwork.

Q Okay. Do you know if you impacted Tyree Talley?

A I do not.

Q Okay. Tyree Talley goes to the ground and is lying on the ground in the fetal position and shots continue to fire. Did you observe that?

A Could you replay it for me?

Q Yes. I'll start at -- at 3:20.

(Video played.)

Q (BY MS. JOSEPH): I can play it again if you need me to. Like I said, I know it's hard to see, you know, when it's happening quickly.

A Mm-hmm.
Q Were you able to tell on that viewing that Tyree Talley does go -- go to the ground and shots continue to be discharged toward him?
A It looks like he bends over and then --
Q Okay.
A -- goes to the ground.
Q Okay. So he bends over and shots continue to -- to be fired?
A Yes.
Q Okay. And then he goes to the ground and shots still continue to be fired?
A Could you play it again for me?
Q Yes.
(Video played.)
A It looks like the last shot was when he was bent over but going to the ground.
Q (BY MS. JOSEPH): Okay. If somebody who's better at analyzing these types of videos than us concludes that he was on the ground when the last shot was fired, you're not going to argue with that, though, right? Okay.
A Yeah.
Q Sorry. Is that a yes, I'm not going to argue?
A Yes, I'm not going to argue.

Q Okay. All right. And we definitely agree that shots continued to be fired towards Tyree Talley after he was neutralized, if he was any sort of threat?

MR. BARTON: Object to the form.

Q (BY MS. JOSEPH): And you can still answer.

MR. BARTON: Yeah, go ahead and answer if you understand the question.

A I don't understand the question, sorry.

Q (BY MS. JOSEPH): Okay. Now, was Tyree Talley a threat to anyone when he was bent over in half and being shot at?

A Well, I didn't know if he was picking up anything, items from the ground. I know that he was moving backwards, but I can't answer that question.

Q Because you don't know?

MR. BARTON: Object to the form.

Q (BY MS. JOSEPH): Is that correct; you -- you don't know the answer to that question?

A I -- can you ask the question again, I'm sorry? I -- I don't know what --

Q Sure.

A Yeah.

Q And I'll tell you because it throws people off sometimes, Monte -- Mr. Barton is allowed to object to my questions if he doesn't like the way that they're

phrased or feels like there's something improper about the way that I'm asking them in order to preserve it for us to deal with for the court later.

But unless he specifically instructs you not to answer --

A Okay.

Q -- and has a -- a reason for doing that, you can --

A Okay.

Q -- still answer. So he's just noting his objection for the record, okay?

A Okay.

Q So -- so the question is Tyree Talley was not a threat to anyone when he was bent over and being shot at, right?

A Well, I don't know if he was picking something up. He -- because he didn't stop, he bent over.

Q So you don't know whether he was a threat or not?

A Correct.

Q Okay.

MR. BARTON: I object to the form.

Q (BY MS. JOSEPH): And you continued to fire at him after he was bent over, correct?

A That's what the video shows.

Q So you continued to fire at him without knowing whether he was a threat or not?

MR. BARTON: Object to the form.

A It looked like he was picking something up, from my perspective, from where I was standing, because he stops, he bends over, and then it looks like he's picking something up and then goes down.

Q (BY MS. JOSEPH): Okay. And a minute ago you -- you had told me that you didn't know if he was picking something up, maybe he was. You don't know if he was a threat at that point. Is that still your testimony?

MR. BARTON: Object to the form. I believe it's a mischaracterization.

A Are -- are you asking if I -- sorry, I got lots of stuff going on here, so...

Q (BY MS. JOSEPH): Sure. Yeah, just a couple of minutes ago we were talking about whether Mr. Ty -- Mr. Talley was a threat when he was bent over and being shots at. Do you remember that conversation?

A Yes, ma'am.

Q Okay. And I think the conclusion of that was maybe he was picking something up, I don't know, so I can't tell you whether he was a threat or not?

A Well, he can still be a threat by picking

something up and turning around and throwing it. So he could still be a threat.

Q Okay. He could, but you don't know if he was or not, right? That's what you told me a minute ago.

A Right.

MR. BARTON: Object to the form.

Q (BY MS. JOSEPH): Okay. Okay. So just -- we, you know, kind of got back to that, established that that's still your testimony, that you don't know if he was a threat or not when he was bent over, and now we're adding the piece of you were still shooting at him.

So I mean, it -- to ask the question again, you shot at Tyree Talley at a point when you did not know whether he was a threat or not?

MR. BARTON: Object to the form.

A Watching the video, it looks like he's bending down to pick something up, so it still makes him a threat. That being said is I didn't know if he was picking something up and turning around to throw it. It looks like he's bending down to pick something up and then goes down.

Q (BY MS. JOSEPH): Okay. And you're getting that from watching the video?

A Yes, ma'am.

Q Okay. I'm going to play the video the rest of

the way through.

A Yes, ma'am.

(Video played.)

Q (BY MS. JOSEPH): Pausing one more time to ask, when I see your arm -- I think -- is that your arm?

A Yes, ma'am, I think so, or the firearm or...

Q When I see your arm kind of across the camera like that, I -- I think it's when you're holding the weapon up and -- and maybe aiming or targeting; is that accurate?

A No. I mean, the -- the firearm could be pointed at the ground at this point, which it would be because you reassess after the impact.

Q Okay. Okay. Tell me if you --

A I -- I don't know if my --

Q Tell me if you think anything different after you see kind of the way your arm moves around in the --

A Okay.

Q -- video more, okay? I might dock it out for you and ask you that again in a minute, but for now, let me play it the rest of the way through.

(Video played.)

Q (BY MS. JOSEPH): So I heard someone say reloading, and then a number of seconds later I think you started to reload; is that right?

A Yes, ma'am.
Q Is the person who said reloading earlier, is that you or someone else?
A I don't know.
Q Okay. Let me go back to there and we can listen specifically for that.
(Video played.)
Q (BY MS. JOSEPH): Well, we hit right on that. You -- can you tell if that was your voice?
A No, I can't tell.
Q Okay. Let me go back a little bit.
(Video played.)
Q (BY MS. JOSEPH): Are you able to tell if that's you saying reloading --
A I can't --
Q -- and reloading at that point?
A I can't tell.
Q Okay. But toward the end of the video, I think we actually see you reloading; is that right?
A Yes -- yes, ma'am.
(Video played.)
Q (BY MS. JOSEPH): And I played the video so I couldn't hear you. You said yes?
A Yes, ma'am.
Q Okay. So at this point, you have discharged

this shotgun at least five times because this is a -- throughout the course of the day because you're having to reload it, right?

A No, you -- no, ma'am. It's after you -- after you discharge, then you load -- you load rounds to keep it full. I did. And since it wasn't --

Q Okay.

A -- I put five rounds in there.

Q Okay. Okay. You can tell that I don't shoot these. So you may have shot it two or three times, but you had some empty slots, so you --

A Yes, ma'am.

Q -- filled it the rest of the way up?

A Yes, ma'am.

Q Okay. So I think we may have already talked about this. You did fire this shotgun loaded with the beanbou -- bag rounds at multiple different individuals this day?

A Yes, ma'am.

Q Okay. What caused you to target Tyree Talley?

A Based on the video that I saw, he ran up --

Q And let me stop you because if I can, I want you to go back to your memory instead of the video. If you can't do that, we'll talk about the video.

A I'm going to base it --

Q Okay.
A -- strictly off the video based on --
Q Okay.
A -- being three years ago.
Q Okay. All right. Go ahead.
A The video shows him running up, taking a -- a -- a walking start, then a running start, and throwing a water bottle at the officers or -- and people in front.
Q So where do we see that in your body cam video?
A I don't know. Do you want to go all the way back?
Q Let's see. What if I started about 2:37 where we saw that -- I asked you what it was and we didn't know, but something happened. I'll start at 2:35 and then we think whatever happened, happened after that. Does that work for you?
A I don't know what that means, but I'll go with what you say.
Q All right.
A All right. Well, let me play it, and if you think I didn't start early enough, then tell me, okay? And if you want to, you can just move all our little picture boxes to the top, because I'm not ever asking you about the top.

MR. BARTON: Okay. I'm going to try to get it to spread out a little differently.

MS. JOSEPH: Okay.

MR. BARTON: That's not any good here.

THE WITNESS: Yeah.

MR. BARTON: Okay. I think somehow it's better than it was.

Q (BY MS. JOSEPH): Okay. So I'm going to play starting at 2:35, and we are looking for what you described, Officer Cherne, of Tyree Talley throwing a water bottle, okay?

(Video played.)

Q (BY MS. JOSEPH): Were you able to see Mr. Talley throw a bottle?

A Not on that view.

Q Okay. I'm not able to see him at all until people start shooting at him. Is that when you first see him?

A No. I mean, the camera is one view, and it's one lens, so it's where my -- where it's placed on my shirt. So I -- I have -- I have periph -- I have a different view than the camera does, the lens does. So I'm able --

Q Oh --

A -- to --

Q -- sorry. I mean in the video, when I see the vide -- this video here that we're playing today, I don't see Tyree until people start shooting at him.

A Correct.

Q Is that when you first see him in the video? Okay.

A Yes, ma'am.

Q But yeah, let's talk about your view. So -- so you're -- you're saying that even though we don't see him in your body cam, you saw the action with your eyes?

A No. What I'm saying is there's a different view based on the camera being placed on my chest in my body armor --

Q Mm-hmm.

A -- that if I were to impact him, it was based on what I saw.

Q Okay. You don't recall seeing him throw a water bottle?

A Based on the video that you're saying that he threw a water bottle there, because you -- you had said that he was throwing something, so I'm assuming that he was throwing something based on what you had said, that he was impacted because he threw the water bottle or was throwing the water bottle, in the action of.

Q Okay. So let's pause for a minute. I didn't

mean to say he was throwing something at any point in the video because I don't see him doing that in this video.

What I'm trying to find out is did you see -- not on a video last week but on May 30th, 2020, did you see Tyree Talley throw a water bottle?

A I can't recall based on this video.

Q Okay. Are you familiar with contagious fire --

A I am.

Q -- and that phenomenon?

A I am.

Q Okay. Do you think any of that was going on out here on May 30th, 2020?

A I can speak for myself and say no.

Q Do you think it's worth looking into with respect to other officers?

A I think --

MR. BARTON: Object to the form.

A I think what pertains to me is what my training experience is and what I did during that day. So I can't -- I can't address that because I can't -- I can't tell you what other officers were thinking.

Q (BY MS. JOSEPH): Okay. At the time that you're targeting Tyree, what is the distance between you and Tyree?

A I don't have that calculation.
Q Estimate it for me.
A Within my efficacy and my accuracy.
Q Okay. Okay. Oh, can you -- okay. So you're saying that he was within your efficacy and accuracy. Can you estimate the distance for me?
A The distance where I would impact somebody and feel comfortable doing so.
Q I'm asking you for a number, even if it's a range.
A I --
Q And I have -- if I have to keep asking the question, it just makes it take longer.
A I --
Q So let me just, yeah, be real clear.
MR. BARTON: And I'm going to state an objection. If he can't give you a number, then he can't, so I object to the form of trying to force him to give a number, whether -- if he can't. If he can, give a number.
Q (BY MS. JOSEPH): Yeah, I'm not trying to force anything. Are you able to estimate in yards or feet how far Mr. Talley was from you --
A No, I would say --
Q -- at the time of --

A -- within -- within reasonable distance to impact him with the weapon that I had.

Q Okay. So you don't know if he was more or less than 25 yards away?

A No. I'm not -- I -- to put a number to it, I can't -- I -- I'm not going to put a number to it --

Q Okay.

A -- sorry.

Q You don't know if he was more than 50 yards away. You just don't know at all?

A No, ma'am.

Q Okay. What did you do after Tyree Talley was immobilized with respect to Tyree Talley?

A What did I do?

Q Mm-hmm.

A I -- I watched several people go to him, pick him up and move him from the position he was in.

Q Did you consider going to him?

A I couldn't get to him, ma'am, even if I tried.

Q Did you witness any APD officer going to him?

A I know there was a unit on the ground that was the unit that was handling the rifle, the Molotov cocktail, the breaking in the windows to businesses, so there was a unit down there.

Q Did you see them go to Tyree Talley?

A I don't recall. Not -- I don't see them on video going to him.
Q Okay. Did you have cause to detain or arrest Tyree Talley?
A I would say if we had -- he used the bottle as a weapon, he threw it at the Main to hurt officers with intent and/or civilians.
Q So yes or no, did you have cause to detain or arrest Tyree Talley?
A I would say for his actions he could be detained.
Q How -- how do you know what Tyree Talley's intent was when --
A Based on his actions.
Q Okay.
A Based on using a water bottle with a different intent than using a water bottle --
Q Okay.
A -- in regards to a -- as a weapon.
Q Would it have been appropriate to use deadly force against Tyree Talley under these circumstances?
A Are you asking is it reasonable?
Q If that's what your training is in order to decide, whatever decision factor you use under your training to determine whether to use deadly force. I

think you told me earlier it was you only use deadly force in response to deadly force.

A The water bottle was used as a weapon. It could have been frozen. It could have had items in it. It could have been a bomb. That being said, is we didn't know. So that being said is, I chose not to use deadly force.

Q Would you have been justified in using deadly force against Tyree Talley?

MR. BARTON: Object to the form.

A I can't answer that.

Q (BY MS. JOSEPH): Would it have been reason to be use deadly force against Tyree Talley?

A If I at that point believed it to be reasonable, I would have used deadly force, and I chose not to.

Q Okay. So based on the fact that you did not use deadly force -- which you didn't, right?

A Correct.

Q Okay. You're able to conclude that it would not have been reasonable to use deadly force against Tyree Talley in this situation?

A No. What I -- what I said was, is I chose not to use deadly force based on my training experience and used the tools that I had.

Q But you also said that if you had thought it reasonable to use deadly force, that you would have, right?

MR. BARTON: Object to the form.

A In -- in -- not in this situation. I did not believe the deadly force was applicable.

Q (BY MS. JOSEPH): Okay. Did Tyree Talley's action of throwing this water bottle cause you to fear for your physical safety?

A For my physical safety?

Q Mm-hmm.

A For the community and other officers, not for mine.

Q Okay. Did you have any reason to believe that Tyree Talley, the individual, had anything other than water in this bottle?

A I didn't know what was in the bottle, ma'am. I didn't know at all.

Q Did Tyree Talley give you any reason to believe before this incident occurred that he would have something else in the bottle?

A They just actually I believe by that time, I believe that the information came out that somebody was walking around with Molotov cocktails. So I don't know what was in that bottle. And with the information that

I had, it definitely could have been something else.
Q Did you have reason to believe that Tyree Talley had a Molotov cocktail?
A I don't know.
Q Okay.
A Did I -- you asked me if I had reasonable belief. I believe with the information I had anybody could have had a Molotov cocktail.
Q Yeah, and I'm trying to ask specifically about this guy. So had you observed anything about this guy that made you think, oh, that might not be water?
A Everything that was thrown I believed to be a weapon. Everything that was thrown at that point I believed to be a Molotov cocktail and could be used as a weapon. So --
Q Okay.
A -- yes.
Q So the answer is no, you did not observe anything specifically about Tyree Talley that made you think this guy probably has something else in his bottle? You made a general kind of assumption based on what was going on out there, right?
A I made a -- a reasonable -- reasonable suspicion/belief that anything being thrown could be a Molotov cocktail, because either we just took somebody

into custody or he was still outstanding.
Q Okay. And just to -- to close that off, nothing about Tyree made you think there was something different in his bottle?
A Every object that was being --
Q Okay.
A -- thrown --
Q Let me stop you, and I'm going to say yes or no, okay? All I want is a yes or a no.
Yes or no, nothing about Tyree made you think there was something different in his bottle?
A I didn't know what was in the bottle, so I couldn't assume what was in the bottle.
Q Okay. That's not a yes or a no, so I'm going to ask you again.
Yes or no, there was nothing about Tyree Talley that made you think something other than water was in his bottle?
A I'm -- I can't assume what was in the bottle. I can assume that he was -- he had something in his hand used as a weapon to throw it. With that --
Q Okay.
A -- being said is, I didn't know it was a water bottle. I didn't know what it was. It could have been a brick, it could have been a firework, it could have

been a pipe, it could have been anything.
Q It could have been a paper airplane?
A If you put in it those terms, I would assume that it's not throwing a paper airplane.
Q Okay. I'm going to -- I'm going to ask you this question again because I still haven't gotten a yes or a no, okay?
A Okay.
Q So --
MR. BARTON: And I'm going to object to form. I -- I don't think you can force a witness to give a yes or no answer, but you can certainly --
MS. JOSEPH: Okay.
MR. BARTON: -- check your question, and I think he's answering it several sometimes.
MS. JOSEPH: Okay.
MR. BARTON: Go ahead.
MS. JOSEPH: Okay. And Mr. Barton, if you'd please refrain from any further speaking objections, I would appreciate that.
MR. BARTON: Well, that's my --
Q (BY MS. JOSEPH): Officer Cher --
MR. BARTON: -- my objection is you're --
Q (BY MS. JOSEPH): Officer Cherne --
MR. BARTON: -- trying to -- it's an

objection to the form.

MS. JOSEPH: Okay, thank you.

MR. BARTON: You're trying to --

MS. JOSEPH: That's --

MR. BARTON: -- force an improper question into a yes or no answer. I believe the form of that question is improper, and --

MS. JOSEPH: Okay. You didn't think so --

MR. BARTON: -- I --

MS. JOSEPH: -- the last four times I asked it. You didn't object to the form of that question until right now.

MR. BARTON: You have asked --

MS. JOSEPH: Okay. When you're --

MR. BARTON: -- it so many times, it's --

MS. JOSEPH: Yeah.

MR. BARTON: -- dawned on me that it's improper because you --

MS. JOSEPH: Ah, ah --

MR. BARTON: -- didn't get an answer.

MS. JOSEPH: -- I see. Mm-hmm.

MR. BARTON: So I object. I object to the form. It's improper.

MS. JOSEPH: Okay. All right.

Q (BY MS. JOSEPH): Mr. Cherne, yes or no, did

anything specific about Mr. Talley make you think that he had something other than water in that bottle?

MR. BARTON: Object to form.

A Ma'am, I didn't know. And -- and that being said is --

Q (BY MS. JOSEPH): Okay.

A -- I knew he had the intent of throwing something to hurt people in front of him.

Q You -- you knew that he had the intent to throw something to hurt people in front of him?

A That was his action.

Q How on earth did you know what was in his mind?

A As he walked up to where he was going to throw it, he walked a substantial space and then took a running start, based on the video, reared back and threw something at a group and crowd of people. That would give me the insight that he had intent to throw something to hurt someone.

Q Gives you insight but not knowledge, right?

A Okay.

Q You don't know what was in his mind at that moment, do you?

MR. BARTON: Object to the form.

A No, ma'am.

Q (BY MS. JOSEPH): Okay. Okay. I'm going show

you some photos. Let me share my screen. All right. Can you see that picture of the man in the black hat and orange shirt?

A Yes, ma'am.

Q Okay. I'm going to represent to you that this is Modesto Rodriguez. You may know that from materials that you've seen prior to the deposition.

A I've never seen him before. I've just seen --

Q Okay.

A -- video of said person.

Q Okay. So as -- as you can -- do you see in the photo that Modesto is -- is bleeding both on his right ankle and his left chest?

A Yes, ma'am.

Q Okay. And I'm going to represent to you that we have evidence we're going to present to the jury that -- that these two injuries were caused by beanbag munitions, okay? So we'll just take that hypothetical while we're talking because I'm not going to ask you to come to that conclusion, okay?

So assuming that these two injuries on Modesto were caused by beanbag rounds fired by Austin police officers, I want to talk about these target areas, okay?

So what color is an ankle in the

red-yellow-green color chart for using the shotgun armed with the beanbag rounds?

A I -- I don't know what color it is.

Q Okay. So you don't know whether you should or shouldn't shoot someone in the ankle with this type of weapon?

A I believe that's an acceptable area.

Q Okay. So you think it's a green or yellow, but you don't know for sure?

A I'd have to look at the -- the logo.

Q Okay.

THE WITNESS: Can I use the --

Q (BY MS. JOSEPH): And -- and the --

MR. BARTON: Hey, Leigh? And --

MS. JOSEPH: Yeah.

MR. BARTON: -- you can go ahead and finish this answer, but I think deponent needs a break --

THE WITNESS: Sorry. I just --

MR. BARTON: -- for rest -- restroom --

MS. JOSEPH: Sure.

MR. BARTON: -- restroom break.

MS. JOSEPH: Of course. Yeah, let me ask you one more question, then we'll take a break, okay?

Q (BY MS. JOSEPH): What color in the

red-yellow-green is -- is the chest?
A That's a side.
Q Well, a minute ago we said this was the left chest, and you agreed with that.
A That's a side --
Q Oh, that's --
A -- what I --
Q -- the side, okay. So this is the side, then. Do you call this the chest or the abdomen?
A I would say that's his side.
Q Okay. But I -- I understand you're saying it's to the side of his body, to the lateral side of his body --
A Mm-hmm.
Q -- but as far as height on his torso --
A Mm-hmm.
Q -- is that shot more in the chest area or the abdomen area? It's fine if you --
A I --
Q -- don't know, too.
A Yeah, I -- I don't know. I'd say I don't know.
Q Okay.
A Yeah.
Q So without labeling where this shot is, only looking at the picture -- and this is Bates labeled

Rodriguez 5 -- is -- is that injury in a green, yellow or red zone?

A I would believe that's an acceptable spot.

Q Okay. Meaning you don't believe it to be a red zone?

A I'd have to look at the model, the -- the target.

Q Okay. So you --

MR. BARTON: He's really got to --

MS. JOSEPH: I know.

MR. BARTON: He needs --

MS. JOSEPH: I know. I'm sorry this is taking longer. I -- I've got to ask this question, though.

Q (BY MS. JOSEPH): So you don't know if that --

MR. BARTON: No, Leigh, I mean -- I --

Q (BY MS. JOSEPH): -- injury --

MR. BARTON: -- (crosstalk) --

Q (BY MS. JOSEPH): -- green, yellow or red?

MR. BARTON: -- the toilet, so I think that question --

Q (BY MS. JOSEPH): Just answer -- do you know if the injury is green, yellow, red or not?

A I'd have to look at the model.

MS. JOSEPH: Okay. You don't know.

A I'd have to look at the model.
Q (BY MS. JOSEPH): And you're -- that means I don't know, right?
THE WITNESS: Ma'am, forgive me. I really have to use the bathroom. I apologize --
MS. JOSEPH: Okay.
THE WITNESS: -- but this is --
MS. JOSEPH: All right.
THE WITNESS: I mean...
MR. BARTON: Let's take a five-minute refreshment break. Off the record.
THE VIDEOGRAPHER: Okay. We are now off the record at 6:06 PM.
(Recess taken.)
THE VIDEOGRAPHER: All right. We are now back on the record at 6:12 PM.
A I'm sorry about that, ma'am. I --
Q (BY MS. JOSEPH): I wasn't trying to torture you. I needed to ask you that line of questions, and so we can apologize to each other again, but we'll --
A Yeah.
Q -- we'll just -- yeah.
Did -- I do need to ask you, though, if you had any privileged conversations with Mr. Barton during that break.

A He said hang in there, it's -- it's a long day.
Q Don't -- okay. Yeah, don't tell me what he said if -- if it is privileged, yeah. But if it's -- if it's not, then fine --
A Okay.
Q -- continue, yeah.
Okay. So is the answer no, you did not have any privileged conversations during the break?
A If you could explain what privilege and unprivileged -- I don't know -- I don't know the difference.
Q Okay. Let me just ask you a different question, and I -- I think you already answered. Did you speak with Mr. Barton during the break?
A I did.
Q Okay. Did you speak about like the substance of the case?
A If you could ask that differently, that would be awesome.
Q Let me just move on.
A Okay.
Q We talked a lot earlier and warning before shooting with these so-called less-lethal shotguns.
A Yes, ma'am.
Q Did you warn Tyree Talley before shooting?

A I don't remember. That being said is I did my due diligence in attempting to warn every time it happened or fire my less-lethal.

Q You've gotten -- you've kind of filled in your memory with videos that we've referenced throughout the deposition, both the one I showed you and the one you -- you watched with Mr. Barton. Does the video indicate to you whether you warned Tyree Talley before shooting?

A Watching the video and -- and listening, I -- I -- I don't believe so, but I don't know.

Q Okay. Should you have?

A In that instance, it happened so fast that if it's applicable, I'm going to. In that case, I -- in that case, I'm going to say that it seemed to happen relatively really fast.

Q Mm-hmm.

A So I -- I don't have that answer if I did or didn't. It just happened so fast.

Q Okay.

A It was a split --

Q And --

A Go ahead.

Q Do you think you needed to, or you don't have an answer to that question?

A I don't have an answer for that. I --

Q Okay. Okay. Let me show you some different photos. Okay. This is Tyree Talley. Can you see him on your screen?

A I can.

Q Okay. And I just wanted to give you a chance to see these people, too, because I -- I didn't know if you had. So, you know, meet Modesto and -- and meet Tyree, right?

So looking at Tyree, I'm going to show you some photos of the injuries that he's alleging in this lawsuit, okay? And these aren't all of them --

A Mm-hmm.

Q -- but -- but they're -- they're some of the injuries that he sustained allege -- that he's alleging he sustained in the incident --

A Yes, ma'am.

Q -- okay? So I'm now going to ask you some similar questions to what we were talking about right before the break.

A Okay.

Q What color is the ear in the red-yellow-green?

A I'd have to review the -- the chart, but I believe red.

Q Okay. What color is this area here?

A I'd have to review the color, but I would say

that's accurate, acceptable.
Q Okay. So you think it's probably green or yellow? Is that what you mean when you say acceptable? And then I don't have to ask you --
A Oh.
Q -- that every time.
A Yes, ma'am. Yes, ma'am.
Q Okay. Okay. And what about here? What color --
A Acceptable.
Q -- is -- okay.
And I'm -- we're looking at -- just so that anybody can make sense of this later, we're looking at some photos contained within Talley 1136 to 1154, although this isn't all of those pages. And we've looked at the ear and what I would describe second as the kind of back of the upper right arm in two different locations. Does that sound accurate to you, Officer Cherne?
A Can you repeat it.
Q Yeah, I'm just trying to describe for the record --
A Yeah.
Q -- what we just looked at.
A Okay. You kind of --

Q So we looked at --
A Yeah.
Q -- we looked at the ear, and then I would say this is kind of the back of the upper right arm. It's Bates labeled 1140. And then the third picture we talked about is Bates labeled 1150. So I'm not asking you a question right now. I'm just identifying that.
So now looking at this photograph on your right that's labeled 11:43, do you know what color zone this part of the arm is?
A Acceptable.
Q Okay. And now I've turned the page to 1144. What about this back of the arm here near the elbow?
A Acceptable.
Q Okay. And we see a lot of things in 1142. I'm going to skip to 1147 and focus you on these injuries to the back of the upper thigh.
A Accept -- acceptable.
Q Okay. And now we're looking at the right buttock on 1138.
A Acceptable.
Q Acceptable --
A Yes.
Q -- is that what you said?
A Yes, ma'am.

Q Okay. And now here on 1145 and 1146, we see the two hips -- kind of the side hips. Is that --
A Acceptable.
Q That's an acceptable area?
A Yes, ma'am.
Q Okay. And then I think 11 -- I don't want to try to convince you what 1139 is right now, so I'm going to skip it for the -- and looking at 1149, I think is going to be pretty similar to when we were talking about Modesto Rodriguez.
A I would say acceptable.
Q You would say acceptable here?
A Yes.
Q Okay. And then let me ask you about one or two other areas that might not have been in the photos. What about the penis?
A So unacceptable --
Q Okay.
A -- as in a red area I'd say, genitals --
Q Okay.
A -- that you don't --
Q Okay.
A -- aim at those areas.
Q Okay.
A It doesn't mean --

Q -- and --
A -- that -- oh, go ahead.
Q Oh, the chest.
A I don't --
Q And --
A -- see it.
Q -- the -- the picture is not going to correspond right now, but what about the chest?
A I'd say the front chest to somewhere nipple-wise down, I guess it would be by target, I would say that area is red.
Q Okay. And how far down does the red go? All the way to the groin?
A Yes, ma'am.
Q Okay. Okay. Stop my share.
A Again, I'd have to look at the model, but...
Q Okay. That's -- okay. And it's obvious but just to put it out there, you did not arrest Tyree Talley?
A No, ma'am.
Q And you did not arrest Modesto Rodriguez?
A I -- I -- I'm not familiar with Modesto, but no, I did not arrest him.
Q Okay. You did not have probable cause to arrest Tyree Talley?

MR. BARTON: Object to the form.

Q (BY MS. JOSEPH): You can answer that.

A I -- ask it again, I'm sorry. I -- I heard fast -- it was fast, so go ahead and say --

Q You did not have probable cause to arrest Tyree Talley?

A I -- I don't believe we had a victim, so no. I would say no.

Q Okay. How long can your body cam record?

A We have new body cams now.

Q Okay. Thank you for that clarification. Let's go back to May of 2020, the body cam you had then. How long could that one record?

A I have no idea.

Q Okay. Was it more or less than 30 minutes?

A Oh, more.

Q Okay. More or less than an hour?

A More.

Q Okay. I understand that there were some difficulties with the body camera that day, though, and that you needed to conserve your camera for some reason. Can you kind of explain to me what was going on with your camera that day?

A I know it's battery-operated. I didn't know how long we would be down there, so tried to conserve it

to using it and implementing it as we took police action.

Q Okay. And was that an instruction that you received from someone higher up?

A Our policy is the camera should be on when you're taking police action.

Q Okay. And is standing there trying to get 35 cleared and -- and keeping people safe, and you know, all of this work that you were doing over the course of hours on May 30th, 2020, is that -- were you engaged in police action that whole time?

A No.

Q Okay. So were you instructed to -- when were you supposed to -- to turn -- I mean you said police action, but I'm not a police officer. I don't really know what that means. So when were you supposed to turn it on, and when were you supposed to turn it off?

A When we take police action.

Q But what does that mean?

A So when we have interaction with the public and when we're taking police action.

Q Can you explain what police action is without using the phrase police action?

A Doing my said duties with the community to record the event and the conversation that we have with

them.

Q But you were doing your duty the whole time you were on duty on the bridge, right?

A No, ma'am. I wasn't engaged with somebody the whole time. So the conversation that we said procedure that -- the camera didn't have to be on at that time. I was not taking police action.

Q Okay. It needed to be on when you were targeting someone?

A Yes, ma'am. It didn't --

Q Okay.

A So we were told to do the best we can with the cameras to get them on as -- when we took police action.

Q Okay. And that was the instruction -- that was the instruction, do the best you can with police cameras to get them on when you take police action?

A Yes, ma'am.

Q Okay. And who did that instruction come from?

A My -- the supervisors on the bridge.

Q Okay. But you -- and you did -- I -- I'm sure you did the best you can, but your camera did not record every time you fired; is that correct?

A Correct, ma'am.

Q Okay. Before the May 30th -- wait. This question isn't going to make any sense, it's because I

didn't ask you about policies yet.

Okay. So talk to me about what was required as of May 30th, 2020 by APD after discharging and impacting someone with this so-called less-lethal shotgun.

A Sorry. Ask the question in a different manner, if you don't mind.

Q Sure. So what was required of you --

A Mm-hmm.

Q Let me just be really specific. What was required of you report-wise --

A Okay.

Q -- after targeting and impacting Tyree Talley?

A At the end of the night we were told to write a supplement under a case number stating that we were down there.

Q Okay. But as far as APD policies are concerned, like what --

MS. JOSEPH: Would you excuse me for one -- one moment? I'm sorry. Sorry.

THE WITNESS: No worries.

MS. JOSEPH: Guitar.

Q (BY MS. JOSEPH): So what did -- what did APD policy require of you reporting-wise after discharging the so-called less-lethal weapon and -- and impacting

someone?
A We were --
Q Like the general orders, the special orders, whatever they were, what did they say to do?
A We were told to go back to the sub, we will be directed for the next days to see what to -- what was to come, but write a supplement stating that you were down there.
Q Okay. And you're telling me about I think an instruction that you were given maybe that day, but I'm trying to ask about the written policies.
A Mm-hmm.
Q Can you tell me what the written policies required of you?
A Write a report and do a details page for the --
Q Okay.
A -- response resistance.
Q Okay. So were you told something different from what the written policy said?
A Yes, ma'am.
Q Okay. And did you eventually write the report as required by the written policy?
A Yeah. A couple days later we were told to document what -- what we could, and what we remember.
Q Okay. Okay. And how many reports or

supplements to reports did you write related to the May 30th, 2020 events?

A We were given a directive 20-something days later to go through every video, write a report and document.

Q Okay.

A So I don't --

Q I --

A -- have the --

Q I think I have three. I think I have -- the -- what's confusing me is -- is they all say supplement or follow-up, but let -- let me show you what I have and maybe you can help me figure out if I'm missing anything or if that's all of it, okay?

A Okay.

THE WITNESS: Were there more than three? Six, seven.

Q (BY MS. JOSEPH): And if you're count -- are you counting kind of reporting documents?

A You asked me --

Q I heard you counting.

A Yeah, you asked me how many supplements.

Q Mm-hmm.

A So --

Q If you have Bates numbers on those documents,

that might be the fastest way for us to -- to do this if --

A So I have --

Q -- if you feel like you have all of them in front of you.

A I don't know if this is all of them.

Q Okay.

A What I have --

Q All right.

A -- in front of me is what I can report on.

Q Okay. Tell me what -- just the -- I'm going to call it the Bates range, the Bates number on the first page and the last page --

A Yes.

Q -- of each -- okay.

A COA2318, page 721 of 1460. COA2319, page 722 of 1460. COA2320, page 723 of 1460. COA2321, 724 of 1460. COA1952, page 355 of 1460. COA2257, page 660 of 1460. COA2258, page 661 of 1460. COA2259, page 662 of 1460.

Q Okay. And that's everything you're aware of sitting here today as far as written documentation by you of the May 30th, 2020 event?

A That was provided to me, and all --

Q Okay.

A -- the -- all the documents are locked.
Q Are those all -- are those all authored by you or do they contain statements made by you?
A Yes, ma'am.
Q Okay. And are you aware of anything else that you authored that's not in that stack related to May 30th, 2020?
A I have no idea based on -- this is the information I got because it was locked.
Q What does that mean it was locked?
A With IA investigation, they -- they lock the case number down and the notes and the pictures and the -- we don't have access to them.
Q Oh, so you can't conduct a search yourself?
A No.
Q Okay. Okay.
A Yeah.
Q So when you have a -- a written policy about how things are supposed to go and then you have, you know, something happen and you get a verbal order as oppo -- about what's supposed to happen next, like in this case where you had the written policy about documentation and then the directive that you received was a little bit different from the policy, what are you supposed to do? Are you supposed to follow the verbal

directive or the written policy, or what?
A The directive.
Q Okay. Do you know why there was a directive that was different from the written policy?
A I can't answer that.
Q Okay. Because you don't know or you're not supposed to answer?
A I'm sorry?
Q Is it -- can you not answer because you don't know or because someone told you not to tell the answer?
A Oh, no. I'm a -- I'm low man on the totem pole.
Q Okay. Okay.
A Yeah.
Q Just --
A Just --
Q -- making sure.
A -- I do what I'm told.
Q Okay. Is it -- is it APD policy to protect its officers?
MR. BARTON: Object to form.
A I don't understand that question.
Q (BY MS. JOSEPH): Is there some sort of statement within APD's policies and procedures that it's important to protect each other and officers on the

force?

A Absolutely not.

Q Okay. And I just mean like from physical danger. Are you supposed to take care of each other out there?

A Your -- your question is vague and in a sense misleading. You -- you -- you said is it -- is it an unwritten rule to protect each other or -- because --

Q No, no, no. I -- I -- it's funny, I'm surprised at your reaction to my question. I thought this would be a resounding yes. Like as a pe -- as a police officer, are you supposed to take care of each other?

A Oh, yes, and --

Q Keep each other safe?

A Well --

Q Okay.

A -- we're supposed to keep ourselves safe as well as the community, yes. And --

Q Okay.

A -- that wasn't the question you asked, sorry. It was --

Q Okay, okay.

A -- it was -- it -- it was more geared towards protect ourselves --

Q Oh, okay.
A -- so --
Q Yeah. The next question was going to be are you supposed to keep the public safe. So I think you answered both for me at once, yes and yes?
A Yes.
Q Okay.
A Sorry.
Q But I -- I do want to ask you this, and this might be the harder question. If you have to choose between protecting an officer or protecting a citizen, what do you choo -- is there guidance that you're given on how you make that choice?
A You mean like priority of life scale?
Q Yeah, I guess so.
A Victim first.
Q Okay. Okay. I want to ask you another definition, and it's something else I saw -- and I can pull it up if I need to, but I saw the phrase aggressive resistance in some of your reporting. Can you tell me what aggressive resistance means?
A I'd have to look up the -- the full definition, but that means.
Q Mm-hmm.
A -- it's -- it's an -- it's a force towards you

or someone else that is either the attempt to hurt you or someone else.

Q Okay. And APD's policy to protect the Constitution and the amendments thereto, is that something you're tasked with doing?

A Yes, ma'am.

Q Okay. And that would include protecting the exercise of First Amendment rights?

A Yes, ma'am.

Q Okay. And that would include protecting the Fourth Amendment right to be free from excessive force?

A Yes, ma'am.

Q Okay. As of May 30th, 2020, did you typically need supervisor approval before discharging a shotgun that was loaded with kinetic rounds or beanbags?

A Supervisor approval?

Q Uh-huh.

A No, ma'am.

Q Okay. Had you ever completed a response-to-resistance re -- report before this incident?

A Yes, ma'am.

Q Can you tell me how many times?

A No, ma'am.

Q Okay. More than five?

A Yes, ma'am.
Q Okay. Do you have any history of being investigated by internal affairs?
A Yes, ma'am.
Q Tell me about that.
A My first investigation was due to this --
Q Okay. What -- what happened?
A I saw people running out from underneath a bridge, or a group of -- I don't know if -- I -- I can't recall the number, several in a group -- they would run out, they would throw a water bottle, a brick, a rock, a pipe, an object at me. They ran underneath before either -- you know, any action could be taken.
I said that they were cowardly, acting like cowards, and my -- I got a written reprimand for it -- I believe written.
Q Well, let me show you -- and I'll mark this as an exhibit. I'll mark this as Exhibit 1 to your deposition.
(Exhibit 1 introduced.)
Q (BY MS. JOSEPH): Is this document a reflection of what you're telling me about? Let me see if I can --
A I believe so. Oh, it's an oral reprimand.
Q Okay. Okay.
A I'm sorry, I thought it was written, but it's

oral. I had to --

Q That's --

A -- sign it.

Q That's okay. What's the difference between a written and oral reprimand?

A It's the -- the level of infraction and what's determined based on policy violation.

Q Okay. What's worse?

A It would be written.

Q Okay.

A But there's first offense, second offense, there's -- there's a matrix for it.

Q Okay. So this was first offense oral?

A I -- yes, ma'am.

Q Okay. And -- and you said -- and I think it's documented right here. You referred to a group of protesters as -- as cowards, and that was the cause for this oral reprimand; is that correct?

A Yes, ma'am.

Q Okay. And what were your feelings generally about the protesters out there? You described a specific group that you said you were talking about when you referred to them as cowards. So tell me kind of what you thought about the people out there that day.

A I don't -- I don't have emotion or feeling to

the people that were down there. I felt bad for the people that were protesting in a --

Q Mm-hmm.

A -- legit manner. That being said --

Q Mm-hmm.

A -- said is when I saw a cowardly act, I commented on it, so -- I -- I'm the tennis guy. I'm neutral. You know, I'm the tennis man, so for me, it's --

Q Okay.

A -- you can't have feeling or bias.

Q Okay. Okay.

A But this was based on an act, not a person.

Q Okay. Now, I think that you referenced another internal affairs investigation or action that happened after this one.

A Yeah. There -- there's actually a car accident in my first year that I was here, and I know that that went to internal affairs because I believe that every car accident does -- don't quote me on that --

Q Mm-hmm.

A -- to see if you're at fault or not at fault.

Q Mm-hmm.

A So --

Q Oh, you were involved in a car accident?

A Yes, ma'am.
Q Okay.
A So I was --
Q Okay.
A -- I was T-boned in a car running code to a -- to a call.
Q Okay. Okay.
A The car came out from behind a semi and hit my car, and -- and I was taken to the hospital.
Q Okay. And you think but don't know that every time a police officer is involved in a car accident it goes to IA?
A I think SAU and IA have to clear you --
Q Okay.
A -- but don't quote me on that because I know that there's an investigation crash, there has to be -- it all has to be drawn out, that --
Q Okay.
A -- so -- and I know going to the hospital they determine fault or no fault.

So yes, there was another IA investigation post that --
Q Okay.
A -- done --
Q Okay. And I'm sorry I'm getting confused on

the timeline because I think you said the car --

A Okay. Said the --

Q -- accident was --

A -- car accident?

Q -- first. Yeah, go ahead.

A Okay.

Q Tell me about it.

A Car accident was first.

Q Uh-huh.

A 2020 was second.

Q Okay.

A And the third was a conversation -- I'm a mental health officer. So I went to the hospital to help a juvenile, and the woman spoke Russian and I thought she was Polish. I asked if she was Polish so that I could speak to her in Polish to gain rapport with her child because I know she was going through a hard time.

Q Mm-hmm.

A We committed the child, and mom wanted to sign her over to the state. So I did ask her since we couldn't build that rapport several questions about, you know, why would you want to sign your child over. Because as soon as I walked in the hospital, she said where's my paperwork to sign my child over, I'm done.

And as a father, that was -- that was a -- you know, something to say, okay, we got to find -- figure out a new deal. There was a huge language barrier between me and mom. Mom had --

Q Mm-hmm.

A -- had it. She wanted to complain that I didn't handle myself appropriate as a mental health officer because I wouldn't take her away from her and make her a ward of the state. Based on me not taking her and making her a ward and she had to deal with the child, she sent this to IA. I was cleared and exonerated.

Q So suffice it to say, the only oral written reprimand of any kind that you've ever gotten is Exhibit 1 that we looked at a moment ago with respect to the cowards comment?

A Yes, ma'am.

Q Okay. Let me show you a particular supplement, because I want to look at some certain language in it. And actually, I am getting close, and I really appreciate your patience with me today as I ask you all these questions.

A You have a -- you have a job to do.

Q Okay. It's here. So let me share my screen. And I am on the page that's Bates labeled COA2318. To

give you some context, here's the first page of this document. It looks -- I think this is one of the later reports that you wrote related to May -- later supplements related --

A Well, that's --

Q -- to May 30th, 2020.

A -- that's not the same page I have.

Q Oh, I'm showing you the front page. The page that I said out loud that I want to talk about is here.

A Okay. Yes, ma'am, I have it.

Q Okay. So I want to look at this big paragraph at the -- that -- that carries on to the next page.

And I see this language, I understand that kinetic energy projectiles are less likely to result in death or serious physical injury. I understand that approved munitions are justified and may be used in an effort to compel individuals to cease their actions when such munitions present a reasonable option for resolving the situation at -- at hand. I understand -- I understand, and it goes on.

That looks to me like pretty formal language that may have been written by somebody else, so that's my question to you. Were you asked to include that language within this supplement, or are those your words?

A No, those are my words.
Q Okay. And actually now that I've met you, I don't have as many questions about it as I did when I read it first, so...
Okay. You were familiar with the state of the country around May 30th, 2020. And by that I mean you knew we were in a pandemic, you knew that George Floyd had been murdered, you knew that Mike Ramos had been murdered. All of this is stuff that was in -- within your knowledge reference when this -- this protest on May 30th is going on, right?
A Am I familiar with it? Is that what you're asking?
Q Just -- you knew that --
A Yes.
Q -- all that was out there?
A Yes, everyone --
Q Okay.
A -- did, yeah.
Q You knew -- did -- did you know that the El Paso police station had been vandalized I think the day before?
A No.
Q Okay.
A I don't --

Q Or the --
A -- watch the news.
Q You don't watch any news?
A We don't watch TV.
Q Okay. Do you -- like my husband gets his news from Twitter. Do you do anything like that?
A I don't have a Twitter account, no, ma'am.
Q Okay. Do you have an e --
A I have a Facebook.
Q Okay.
A But that's to check --
Q So you --
A -- on my -- yeah --
Q Okay.
A -- go ahead.
Q But you may see whatever news comes across Facebook in your feed, but not much probably?
A No, mine is hunting, casitas, moving to Costa Rica. No, I don't -- I -- I think that's all -- I think it kills your brain, to be honest.
Q Okay.
A I'll be honest with you.
Q Okay. And APD had not had some sort of official like things are happening to police stations like El Paso and Minneapolis and y'all need to be aware

of this. Nothing like that had -- had come out that you recall?

A I mean, the -- the buzz of the country was, you know --

Q Mm-hmm.

A -- that things were happening all over.

Q Yeah.

A There were no specifics on this happened here and this happened here and this -- there -- there weren't really show-ups at that time. It was get downtown and protect the city, get downtown and protect --

Q Hmm.

A -- the people. It was --

Q Okay. Everybody is not taking time to go have a big meeting about it --

A Not that --

Q And --

A -- I know of. I mean, I wasn't invited.

Q Yeah. Okay. Have you seen the George Floyd video?

A I've seen parts of it, but I'm not going to watch it. I don't watch it.

Q Yeah.

A I've only seen pictures, actually. I've never

seen the video. And then most of the other stuff is hearsay, like as in I'm not going to wrap my brain around it, you know.

Q Yeah. What do you think -- I mean, what do you think about those officers and about what happened?

A You're asking my opinion. I don't --

Q Yeah.

A -- have an opinion about it.

Q Okay.

A To be honest, it doesn't affect -- it affects my job, it affects the future of the country --

Q Mm-hmm.

A -- but it doesn't have a direct effect on my family and four children. So I know that the country is -- at that point was falling apart --

Q Mm-hmm.

A -- to the extent I have to protect my family and state internal. So I don't have an opinion about it.

Q Have you heard of the -- I think they call themselves to the chagrin of the Ra -- the Ramos family, I think they call themselves the Mike Ramos Brigade. Have you heard of them?

A No.

Q Okay.

A Is that for or against?
Q That I can't tell you. I -- I ju -- I don't --
A Oh.
Q -- know much about them. Yeah, I was --
A No, you're --
Q -- I was going to ask you -- ask you what --
A -- if you're asking --
Q -- you know.
A -- that question, then it's --
Q Yeah.
A -- have no idea.
Q Yeah. This is always fun to try to reach back, but I -- I've got to ask just in case you wear a sleep tracker or something or it was an unusual night. How much sleep did you get the night before May 30th? Was it unusual, your normal amount? Do you have any idea.
A I mean, if my wife lets me sleep in, I get 11 hours. No, I can't recall. I mean, I wouldn't --
Q That --
A -- say it's anything out of the ordinary to say that, you know, that I get an hour -- like it -- nothing -- nothing spurs me to say that's any different than any other day.
Q Okay. Now, when you were going back to your time on the bridge on May 30th, were you messaging with

other officers like through some sort of app or text message or emails, anything like that while it was going on?

A My wife to let her know I was okay. Some of my friends here at the department that I was okay where I was in case --

Q Mm-hmm.

A -- they were up there.

Q Mm-hmm.

A But I don't have any specific app that I communicate with other officers or any of that. When I leave, I leave.

Q Okay.

A Yeah.

Q Okay. Does the department have anything other than like email that they would use to push a message out to all of you?

A Spok, that's the paging --

Q Okay.

A -- system of where to be and how to be.

Q Okay. Is that --

A But it's not a mess -- it -- it's a message system --

Q Is that radio or --

A No, no.

Q Okay.
A Spok or Spok or what -- whatever they call it, it's just a --
Q Mm-hmm.
A -- paging system to say, you know, alpha bravo or -- you know --
Q Uh-huh.
A -- this is what's changing, so it's just -- it's a -- it's a -- a paging system.
Q Okay. Okay.
A Because we got away from our pagers. Other than that, there's communication between the -- the department and officers as supervisor.
Q Okay.
A I mean, unless you know something I don't, then they should be on.
Q Clearly I don't by my questions.
A I'm just asking. Maybe I'm missing something.
Q Yeah. No, you talked about blocking -- putting up some barriers around MLK. Were there roads blocked surrounding headquarters --
A Oh, I have no idea.
Q -- at the time --
A When I -- when I --
Q Okay.

A -- got down there, I was just told to go to this spot and we knew nothing.

Q Okay.

A I knew one of my partners went to the south end because he -- he sent me a message saying where he was going, to the south side, because we were both --

Q Uh-huh.

A -- driving down there, but I have no idea.

Q Okay. When you fire a -- a weapon, whether it's a so-called less-lethal or a firearm, my understanding is that one of the things you need to be aware of is -- I think it's called the backstop, like what kind of the -- the final background area is from where you're shooting. Is this something that's --

A Oh.

Q -- connecting with --

A You're referring to --

Q -- anything in your mind?

A -- you're referring to what's beyond the target.

Q Yes.

A Yes.

Q Mm-hmm.

A You take it --

Q Is there a --

A -- into consideration.
Q Okay. I -- I'm curious about the way that you guys were set up that day, because it seemed like there were police officers kind of spread out across from each other.
A Mm-hmm.
Q And so I'm wondering if you know anything about kind of why y'all were in the position you were in with some officers at headquarters and some officers on the bridge.
A I don't -- I don't know the tactics to it.
Q Okay.
A We can refer back to Talley --
Q Uh-huh.
A -- with -- with the back stop being the trajectory is down to the ground. He was --
Q Mm-hmm.
A -- by himself, not in a crowd.
Q Okay.
A The round would have hit the ground and not hit anybody else because he was out by himself.
So when we look at field of view and backstop --
Q Mm-hmm.
A -- that has to be taken into consideration.

Q Okay.
A The other I don't -- I don't have the tactical -- why we were up and down and...
Q Okay. Okay. I'm going to ask you a few more questions and we'll get you home to your family very soon --
A Okay.
Q -- okay?
Of your actions taken on May 30th, 2020 with respect to this event, what are you proud of?
A That's subjective. Objectively, I -- I -- I don't -- I mean, when you ask --
Q It's -- it's meant --
A -- when you --
Q -- to be a subjective question --
A Okay.
Q -- yeah.
A So --
MR. BARTON: Object to the form.
A You -- if you're asking me an emotional question of what I'm proud of --
Q (BY MS. JOSEPH): Mm-hmm.
A -- based on the situation, the people that made it out unscathed and unhurt, I'm proud that we got them out of there and that they're not hurt.

Q Mm-hmm.
A I'm proud that, you know, the officers that were hurt actually healed up and came back to the department and didn't leave.
Q Mm-hmm.
A You know, the -- I can't really have a subjective answer other than what I said, I mean, because really my job is objective, not subjective.
Q So turning to the more objective view, what did you do right --
MR. BARTON: Object to the form.
Q (BY MS. JOSEPH): -- object -- objectively?
MR. BARTON: Object to the form.
A I believe that with the people that were impacted I handled myself within policy, within law, and at some point they ended, right, so that's --
Q (BY MS. JOSEPH): Mm-hmm.
A -- subjective.
Q Mm-hmm.
A Objectively, stopped the road, from people getting hit on the road.
Q Mm-hmm.
A Objectively, handled myself in a professional manner other than the one action that I was disciplined for.

Q Mm-hmm.
A And objectively, you know, kept the people safe that were able to be safe. I'd say that's objective.
Q Mm-hmm. Objectively, are you able to identify anything that you could have done better?
MR. BARTON: Object to the form.
A I mean, that's subjective, not objective.
Q (BY MS. JOSEPH): Well, okay. Let me try to ask it better, then. Like is there anything that when you evaluate it objectively based on your training and APD's policies and things like that, you see I didn't really hit that one quite right on the nose?
A I would mean -- I would say I wish it never happened, objectively. To put us in that situation and put people in that situation objectively, I wish everybody would have went home. Objectively, I wish that people weren't throwing bottles. I wish that I wasn't hit with multiple things, objectively. What could --
Q Mm-hmm.
A -- I have done better, objectively, that none of it happened.
Q Mm-hmm. I mean, I -- it's hard for me to ask you this because I appreciate the work that you do and I want you to know that, but is -- is there anything that

you're able to identify that you did wrong when you evaluate your actions against police policy and training?

A I -- I believe that I acted within policy and within the --

Q Mm-hmm.

A -- law.

Q Okay. And I -- I want to ask you the same question about the officers around you. Did -- did you observe any actions being taken around you that did not comport with department policy or the directives that y'all were given?

A If I would have seen something that I believe that was out of line or outside law and policy, it's my duty and job to stop them and correct the action.

So if you're asking me objectively, then I'm saying that I believe that the officers around me acted within -- around me and the -- what I observed --

Q Mm-hmm.

A -- operated within law and policy.

Q Do you know a former APD officer, Officer Harris?

A Harris, no.

Q Okay.

A Should I?

Q I don't know.
A What's his first name?
Q If -- if you know -- if you know a Harris, I'll try to figure out his first name. If you -- if you don't, then I'll just move on.
A No, I'm not familiar with him.
Q Okay.
MS. JOSEPH: I am -- I am probably finished, but give me about five minutes to look at my notes and make sure I don't have any last follow-up questions, okay?
THE WITNESS: Yeah.
MS. JOSEPH: All right. So we can go off the record.
THE REPORTER: The time is 7:01. We are off the record.
THE VIDEOGRAPHER: I apologize. We are now off the record at 7:02.
(Recess taken.)
THE VIDEOGRAPHER: All right. We are now back on the record at 7:03.
Q (BY MS. JOSEPH): Okay. So we have been talking for close to four hours and I have tried to be very thorough, but is there anything that you think is important about the events of May 30th, 2020 that I have

not asked you about?
A Yeah. You -- you asked me a question, and it was a little muddled, so I -- I just -- you asked me if I had probable cause to arrest Tyree Talley.
Q Mm-hmm.
A I had probable cause to impact Tyree Talley, and that's my -- my objective thought process, because it wasn't -- it didn't seem to go all the way around and I was waiting for it -- the question to be asked in -- because you've been very thorough -- to ask that second question but I didn't --
Q Okay.
A Yeah.
Q So your answer on that previous arrest question stands, but you are adding the information for me because I didn't ask the question did you have probable cause to impact him, and your answer is yes?
A Yes.
Q Okay. Okay. Anything else?
A Not that I can think of other than -- yeah. I'm tired.
Q Okay. If -- if you didn't understand one of my questions today, did you clarify or ask me to rephrase?
A I attempted to.
Q Okay.

A You have and --
Q Okay.
A -- but I attempted to.
Q All right. So other than snack time when I got a little snarky, if you answered the question, we can go back to that agreement at the beginning, and it means you understood it?
A I -- do I say yes?
Q Please do if it's true.
A Okay, yes.
Q Okay.

MS. JOSEPH: All right. I'll pass the witness. Thank you, Officer.

MR. BARTON: Yes. We have -- I have no questions of the witness, but I do want to -- and so we can go off the record, but I do want to exercise the option to read and sign.

And I also want to get a copy of the transcript and the video and am hopeful that we can get an expedited copy by the middle of next week if that's possible.

THE REPORTER: Yes, sir, that's fine.

Ms. Joseph, do you need expedited, as well?

MS. JOSEPH: Not at this time.

THE REPORTER: Thank you.

MS. JOSEPH: Although I will say what I said earlier today. If you're expediting and it's ready, I don't mind getting it early --

THE REPORTER: Thank you.

MS. JOSEPH: -- without -- yeah. Mm-hmm.

THE VIDEOGRAPHER: All right. We are now off the record at 7:05.

(Proceedings concluded.)

CHANGES AND SIGNATURE

WITNESS NAME: OFFICER GREGORY CHERNE JULY 19, 2023

PAGE	LINE	CHANGE	REASON

I, OFFICER GREGORY CHERNE, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

OFFICER GREGORY CHERNE

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared OFFICER GREGORY CHERNE, known to me or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office on this _____ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My Commission Expires: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, Plaintiff	)	
	)	CASE NO. 1:21-cv-249-RP
vs.	)	LEAD CASE
CITY OF AUSTIN AND JOHN DOES, Defendants.	)	

MODESTO RODRIGUEZ, Plaintiff	)	
	)	CASE NO. 1:21-cv-1087-RP
vs.	)	
CITY OF AUSTIN AND JOHN DOES, Defendants.	)	

REPORTER'S CERTIFICATE

ORAL AND VIDEOTAPED DEPOSITION OF OFFICER GREGORY CHERNE

JULY 19, 2023

I, TAMMY POZZI, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER GREGORY CHERNE, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the Witness.

I further certify that pursuant to FRCP Rule 30(e)(1) that the signature of the Deponent was requested by the Deponent or a party before

the completion of the deposition and is to be returned within 30 days from date of receipt of the transcript.

If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

That the amount of time used by each party at the deposition is as follows:

Ms. Leigh A. Joseph (3 hours 35 minutes)

Mr. Montel L. 'Monte' Barton, Jr. (no time)

I further certify that I am neither attorney, nor counsel for, related to, nor employed by any of the parties to the action in which this testimony is taken. Further, I am not a relative or employee of any attorney of record in this cause, nor do I have a financial interest in the action.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Case No. 1:21-cv-249-RP**
	§	
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
	§	
Defendants.	§	

PLAINTIFF'S MOTION TO STAY RULINGS ON CERTAIN PENDING MOTIONS

For the reasons set forth below, Plaintiff hereby requests this Court stay its rulings on the following pending motions until Plaintiff has had the opportunity to review material discovery and present relevant evidence to the Court:

- Defendant City of Austin's Motion for Summary Judgment (Dkt.43), along with Plaintiff's Response (pending Motion to File Under Seal at Dkt. 55) and Defendant's Reply (Dkt. 66)

- Defendants' Combined Motion to Dismiss and, in the alternative, Motion for Summary Judgment as to Claims Premised Upon Actions by John Doe(s) (Dkt. 44), along with Plaintiff's Response (pending Motion to File Under Seal at Dkt. 56) and Defendant's Reply (Dkt. 67)

- Plaintiff's Motion for Leave to File First Amended Complaint (Dkt. 53), along with Defendant's Response (Dkt. 68) and Plaintiff's forthcoming reply. (Plaintiff includes this motion as part of the request because it contains related issues and would best be considered alongside the other two.)

Plaintiff requested relevant emails from pertinent City of Austin officials as part of discovery in this matter. In response, Defendant has been producing voluminous emails to Plaintiff in batches via Box link. Ex. 1, P. Chavez Emails. Defendant produced the most recent batch on August 31, 2023. Ex. 1. Defendants have yet to produce the entire body of discovery, and Plaintiff awaits the next batch.

Plaintiff believes these emails contain information material to multiple issues in this case, including qualified immunity, negligence, and Plaintiff's *Monell* claims. For example, Chief Joseph Chacon's emails reflect that he had been notified of a Police Executive Research Forum Report on Less Lethal Technologies (noting potential problems with less lethal weapons and encouraging communication with a subject before deployment) more than three months before Austin police shot Plaintiff with a less lethal shotgun. Ex. 2, Feb. 12, 2020 Email Bates Labeled COA-General Protest.0061899. Email evidence further serves to contradict Defendant's position that the situation was a spontaneous emergency. Emails reflect that the May 30, 2020 protest was on Defendant's radar as early as May 28, 2020 at 7:20 am, and that the Special Response Team was strategizing and planning for the protest before 10:00 that morning. Ex. 3, Collected Emails Bates labeled COA-General Protest.0040792-0040797. And emails also reflect that two days before the protest, Austin police leadership was preparing for the chance the event would get "out of control." Ex. 4, Collected Emails Bates labeled COA-General Protest.0064028-0064031.

Importantly, Plaintiff only received Chief Brian Manley's and Assistant Chief Robin Henderson's email production on August 31, 2023 and has not yet finished downloading them or had an opportunity to review. Plaintiff continues to await production of emails from City Manager Spencer Cronk and others. These are likely to contain additional important evidence related to Austin police and City policies covering the conduct complained of on May 30, 2020, as well as evidence of awareness and ratification of the complained of conduct. Defendant has moved to strike some of Plaintiff's summary judgment evidence related to Chief Manley's awareness of police officer conduct on May 30, 2020. Dkt. 65. Although the Court should deny that motion, its pendency underlines the need for Plaintiff to review these additional materials.

Not only is the email production incomplete, but it is also very large. To date, Plaintiff has downloaded more than 455 GB of email data produced by Defendant, and the process continues. Because the emails are being produced through Box, Plaintiff must first download them—a time consuming process with this volume of data—and then organize them for review before he can even begin the process of reviewing their contents.[1]

Not all the emails have been produced yet, and a meaningful review of those already produced will take a substantial amount of time.[2] Accordingly, Plaintiff conferred with Defendant whether Defendant would agree to a stay of the Court's decision on certain pending motions to give Plaintiff an opportunity to review the emails. This way, Plaintiff can make sure the Court is not missing important evidence when ruling on dispositive motions that would potentially terminate the case. Although Defendant indicated that it would not necessarily oppose a continuation of the trial date, Defendant objected to a stay of the Court's rulings on its dispositive motions.

Plaintiff respectfully requests that the Court stay its rulings on the identified pending motions until November 8, 2023 to give Plaintiff an opportunity to review and present relevant evidence necessary to a full consideration of the issues. The requested stay is necessary to ensure the Court has the necessary evidence before it to render a decision fairly on the evidence. This stay will necessarily delay the trial date (which Plaintiff does not believe Defendants oppose), and would likely prompt the Court to shift other pretrial deadlines, such as the deadline for pretrial documents and the pretrial conference date**.**

[1] Plaintiff requested that Defendant produce the emails via hard drive instead, but Defendant did not agree to Plaintiff's request.

[2] The emails are not the only outstanding discovery Plaintiff awaits. To date, Defendants have not produced employment files for any of the requested officers.

Dated: September 11, 2023

Respectfully submitted,

HENDLER FLORES LAW, PLLC

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901 S. MoPac Expy., Bldg. 1, STE 300
Austin, Texas 78746
Telephone: (512) 439-3200

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for the Defendant on Wednesday September 6, 2023 and Thursday September 7, 2023 and that counsel for the Defendant confirmed Defendant's opposition to the relief requested herein.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record on September 11, 2023 via the Court's CM/ECF system.

Leigh A. Joseph

From: Chavez, Priscilla
To: Leigh Joseph; Scott Hendler
Cc: Laird, Gray; Barton, Monte; Smith, Carol; Alexis Lopez; Stephen Demik
Subject: RE: Rodriguez: D COA"s Supp Emails Production
Date: Thursday, August 31, 2023 3:53:04 PM

Hello,

Update, the emails for the following persons have been uploaded:
Ann Kitchen
Brian Manley
Natasha Harper- Madison
Sabino Renteria
Paige Ellis
Robin Henderson (should be done loading by end of today)

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Thursday, August 10, 2023 4:23 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>;

EXHIBIT 1

Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello all,

Defendant City of Austin is serving it's fourth supplemental Responses to P's 1st RFPs. The production bates labeled COA 41198-43390 has been uploaded to the same link as below.

Update, the emails for the following persons have been uploaded:
Steve Adler
Farah Muscadin
Mark Spangler

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Friday, August 4, 2023 11:28 AM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com

EXHIBIT 1

Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello all,

Update, the emails for the following persons have been uploaded:
Jimmy Flannigan
Kathie Tovo
Richard Guajardo
Leslie Pool

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Tuesday, August 1, 2023 4:10 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Rsps to P's ROGs

Hello all,
Attached are the Defendant City of Austin's Responses to Plaintiffs ROGs with the signed verification attached.

EXHIBIT 1

Also to update that emails for the following persons have been uploaded:
Delia Garza
Joseph Chacon
Alison Alter
Gregorio Casar

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Wednesday, July 26, 2023 7:03 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: Rodriguez: D COA's Rsps to P's 3rd RFPs, RFAs, ROGs and Supp Rsps to RFPs 1-16

All,

Attached are the Defendant City of Austin's Responses to Plaintiff's Third Request for Production (RFP 17-141). Defendant City of Austin is also attaching supplemental responses to Plaintiff's RFPs 1-15, and RFP 16.

EXHIBIT 1

Please Note:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.
The emails for Brent Dupree, Jason Staniszewski, and Kenneth Casaday are completely uploaded. The rest will be supplemented.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

EXHIBIT 1

EXHIBIT 2 FILED UNDER SEAL

EXHIBIT 3 FILED UNDER SEAL

EXHIBIT 4 FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	
	§	**Case No. 1:21-cv-249-RP**
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO STAY RULINGS ON CERTAIN PENDING MOTIONS

BEFORE THE COURT is *Plaintiff's Motion to Stay Rulings on Certain Pending Motions.* The Court, having read and considered the Motion, finds that the Motion should be and is hereby **GRANTED.**

The Court will delay its rulings on the following motions for two months following the date of this Order:

- Defendant City of Austin's Motion for Summary Judgment (Dkt.43);
- Defendants' Combined Motion to Dismiss and, in the alternative, Motion for Summary Judgment as to Claims Premised Upon Actions by John Doe(s) (Dkt. 44); and
- Plaintiff's Motion for Leave to File First Amended Complaint (Dkt. 53).

Trial in this matter is reset for _____, and the pretrial conference will be rescheduled accordingly.

IT IS ORDERED.

SIGNED AND ENTERED this ____ day of _____ 2023.

_____
HONORABLE JUDGE PRESIDING

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
	§	
Plaintiff,	§	**Case No. 1:21-cv-249-RP**
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
	§	
Defendants.	§	

SUPPLEMENT PROVIDING EXHIBIT 26 TO PLAINTIFFS' RESPONSE TO DEFENDANT CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

When Plaintiff filed his Response to Defendant City of Austin's Motion for Summary Judgment (Filed under seal at Dkt. No. 55), the deposition transcript of Jeffrey Greenwalt, the City of Austin's corporate representative, was not yet available. Accordingly, in his Response, Plaintiff referenced deposition testimony of Assistant Chief Greenwalt as "forthcoming." Plaintiff hereby submits Exhibit 26, the Greenwalt Deposition Transcript, and provides specific references to the portions cited below:

Response Location	**Text**	**Cite to Ex. 26**
P4	Testimony from the City's corporate representative confirmed same rounds circulate indefinitely until used without being taken out of circulation when expired.	37:02-23
P8	The City admits to weapons not performing as expected and expresses sympathy for protesters who did not throw any item, but stands by its actions against people like Plaintiff, who officers targeted with excessive force for a minor action.	26:09-15; 128:03-07, 09-19; 129:16-20, 22-130:05

Plaintiff respectfully requests that the Court consider this Supplement, along with Exhibit 26, and, for the reasons stated within Plaintiff's Response, deny Defendants' Motion in full.

Dated: September 14, 2023

Respectfully submitted,

HENDLER FLORES LAW, PLLC

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shendler@hendlerlaw.com
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record on September 14, 2023 via the Court's CM/ECF system.

Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, PLAINTIFF	§	
V.	§	CASE NO. 1:21-CV-249-RP LEAD CASE
CITY OF AUSTIN AND JOHN DOES, DEFENDANTS.	§	
MODESTO RODRIGUEZ, PLAINTIFF	§	
V.	§	CASE NO. 1:21-CV-1087-RP
CITY OF AUSTIN AND JOHN DOES, DEFENDANTS.	§	

****

ORAL AND VIDEOTAPED DEPOSITION OF
ASSISTANT CHIEF JEFFREY GREENWALT
AUGUST 2, 2023

****

ORAL AND VIDEOTAPED DEPOSITION OF ASSISTANT CHIEF JEFFREY GREENWALT, PRODUCED AS A WITNESS AT THE INSTANCE OF THE PLAINTIFFS, WAS TAKEN IN THE ABOVE-STYLED AND -NUMBERED CAUSE ON THE 2ND DAY OF AUGUST, 2023, FROM 9:07 A.M. TO 1:26 P.M., BEFORE KAREN GONZALEZ, COMMISSIONED NOTARY, IN AND FOR THE STATE OF TEXAS, REPORTED BY MACHINE SHORTHAND, REMOTELY FROM DALLAS COUNTY, TEXAS, PURSUANT TO THE TEXAS RULES OF CIVIL PROCEDURE, THE TEXAS SUPREME COURT EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER AND THE PROVISIONS STATED ON THE RECORD OR ATTACHED HERETO.

A. YES, MA'AM.
Q. AND THE BEANBAG ROUNDS THAT IMPACTED TYREE TALLEY, WERE FIRED BY APD OFFICERS?
A. THAT'S CORRECT.
Q. AND I DON'T THINK THIS IS NECESSARY, BUT JUST FOR THE RECORD, WHEN I SAY APD WE BOTH UNDERSTAND THAT I MEAN AUSTIN POLICE DEPARTMENT?
A. UNDERSTOOD.
Q. OKAY. APD OFFICERS WERE FOLLOWING ORDERS WHEN THEY SHOT TYREE TALLEY?
A. THEY WERE FOLLOWING THEIR TRAINING, I DON'T KNOW THAT THEY WERE ORDERED TO NECESSARILY SHOOT SOMEBODY ON THE SPOT, BUT THE POLICY THAT THEY -- THAT THEY WERE GOVERNED BY AND THE TRAINING THAT THEY RECEIVED WAS HOW THEY MADE THEIR DECISIONS THAT DAY.
Q. TYREE TALLEY WAS IMPACTED TWELVE TIMES BY BEANBAG ROUNDS.
A. IS THAT A QUESTION?
Q. YES.
A. I SAW A LOT OF BRUISES ON HIM, I DIDN'T COUNT THEM, SO I COULDN'T TELL YOU HOW MANY TIMES HE WAS -- IT WAS NUMEROUS, I'LL TELL YOU THAT.
Q. OKAY. AND TYREE TALLEY WAS INJURED?
A. CORRECT.
Q. OKAY. GO THROUGH THOSE SAME BASIC QUESTIONS WITH

THE RIOT AND PROTESTS OR BEFOREHAND?

Q. BEFOREHAND?

A. SO, JUST OUT OF EASE OF TRANSPORT THEY WOULD BE SENT TO THE SUBSTATIONS IN THE BOX, AND THEN THE PROPERTY CONTROL OFFICER, OR TECHNICIAN THIS IS A CIVILIAN, WHO HANDS OUT THE PROPERTY IN ORDER TO PREPARE THE EQUIPMENT, THEY WOULD TAKE IT OUT OF THE BOX --

Q. UH-HUH.

A. -- RUBBER BAND IT, AND GET IT READY. AND THEN AT THE END OF THE DAY, WHEN THE OFFICER IS DONE THEY HAND THE AMMUNITION BACK IN THE SAME FORMAT, AND THEY GIVE IT TO THE NEXT OFFICER. SO YOU MAY HAVE THE SAME FIVE AMMUNITIONS BE HANDED OUT, CHECKED OUT AND TURNED BACK IN DOZENS, AND DOZENS, OF TIMES.

Q. UH-HUH.

A. AND THE BOX --

Q. OKAY --

A. -- AND THE BOX IS LONG GONE. SORRY TO INTERRUPT YOU, BUT THE INITIAL BOX IT CAME IN, WOULD BE LONG GONE.

Q. OKAY. SO AT THAT POINT THERE'S NO WAY OF KNOWING, FOR EXAMPLE, WHETHER THEY'RE EXPIRED, OR NOT, OR WHEN THEY EXPIRE?

A. EXACTLY.

Q. OKAY. AND SO IS THERE A ROOM OR A STORAGE UNIT SOMEWHERE WHERE THE -- KIND OF STOCKPILE OF BEANBAG

BEING REVENGEFUL, AND THAT'S JUST NOT TRUE. AND I THINK WE HAVE A RESPONSIBILITY TO PUT THAT OUT THERE.

Q. SO, IS IT TRUE THAT APD HAS -- HAVE MADE PUBLIC STATEMENTS SAYING, "YES, THE OFFICERS BEHAVED APPROPRIATELY," OR "FOLLOWED POLICY," OR SOMETHING TO THAT EXTENT?

A. YES.

MR. BARTON: OBJECT TO THE FORM.

Q. (BY MS. JOSEPH) WITH RESPECT TO THE DISCHARGE OF THE SO-CALLED LESS-LETHAL SHOTGUNS?

A. YEAH. AND I CAN'T REMEMBER THE EXACT WORDS THAT WERE USED SO, I DON'T REMEMBER IF THE WORDS WERE THAT EVERYTHING WAS WITHIN POLICY. BUT I REMEMBER THAT CHIEF CHACON DID MAKE A PUBLIC STATEMENT IMMEDIATELY AFTER THE INDICTMENTS WERE ANNOUNCED BY THE DA'S OFFICE. AND HE SAID SOMETHING OVER THE LINES OF, NOT UNDERSTANDING WHY ANYTHING AMOUNTED TO A CRIMINAL VIOLATION, I JUST DON'T REMEMBER HIS EXACT WORDS. BUT, YES, IT WAS AN ENDORSEMENT OF THE OFFICERS.

Q. OKAY. DO YOU KNOW APPROXIMATELY WHAT MONTH AND YEAR THAT STATEMENT WOULD HAVE BEEN MADE?

A. IT WAS 2021 AND -- NO, HOLD ON. I REMEMBER IT BEING ON AN ANNIVERSARY, OR JUST BEFORE AN ANNIVERSARY. AND SO I WANT TO SAY IT WAS LIKE MAY/JUNE TIMEFRAME. I'M JUST GETTING MIXED UP ON '21 VERSUS '22.

Q. OKAY.
A. IT WAS -- IT WAS IMMEDIATELY AFTER THE DA ANNOUNCED -- INDICTMENTS. AND IT WAS RIGHT AT THE SAME -- IT WAS THE EXACT SAME TIMEFRAME WHERE SOME OF THE CIVIL SUITS HAD BEEN WITHHELD.
Q. OKAY. OKAY. DO YOU REMEMBER ANYBODY ELSE OTHER THAN CHIEF CHACON, THAT YOU COULD THINK OF WHO HAS -- ON BEHALF OF APD, APPROVED OF THE OFFICER'S CONDUCT WITH RESPECT TO THE LESS-LETHAL SHOTGUNS?
MR. BARTON: OBJECTION TO THE FORM.
A. CAN -- CAN YOU SAY THAT AGAIN?
Q. (BY MS. JOSEPH) YES. SO WE'RE TALKING ABOUT WHO HAS KIND OF SPOKEN ON BEHALF OF APD TO SAY, YES, THIS WAS WITHIN POLICY, OR WHATEVER WORDS THEY USED, TO SAY, YOU KNOW, WE THINK OUR OFFICERS DID RIGHT. AND I -- YOU TOLD ME ABOUT CHIEF CHACON. SO THE QUESTION IS, IS THERE ANYBODY ELSE YOU CAN THINK OF WHO HAS SPOKEN ON BEHALF OF APD, OR WHO IS A HIGHER UP AT APD WHO HAS SPOKEN OUT AND SAID A POSITIVE AFFIRMATION OF THE USE OF THE LESS-LETHALS?
MR. BARTON: OBJECT TO THE FORM.
A. I DON'T HAVE LIKE A COMPLETE LIST. I KNOW CHIEF DID IT ON THE NEWS THAT DAY. I'VE DONE IT, IN SEVERAL SETTINGS WHERE I WAS ASKED TO SPEAK AND PEOPLE ASKED QUESTIONS, I JUST TELL THEM EXACTLY, YOU KNOW, WHAT I

THINK ABOUT LIFE, AND DISHONEST, AND TRANSPARENT. SO I TOLD THEM WHAT I THOUGHT, SO OTHER THAN ME AND HIM, I DON'T KNOW WHO ELSE, BUT I'M NOT SAYING THAT IT DIDN'T HAPPEN IN ANY OTHER TYPE OF FLUID SITUATION WHERE A CONVERSATION OCCURRED.

Q. (BY MS. JOSEPH) OKAY. HOW ARE FORCE COMPLAINTS AGAINST AN INDIVIDUAL OFFICER TRACKED? LIKE, COULD I GO AND SAY, I WANT TO KNOW HOW MANY TIMES CHIEF GREENWALT HAS, YOU KNOW DEALT WITH A RESPONSE TO RESISTANCE SITUATION AND HAD A COMPLAINT FILED AGAINST HIM. IS THERE AN EASY WAY FOR ME TO LOOK AT THAT?

A. YEAH. I MEAN, THE VERSE X YOU CAN TRACK AND SEE HOW MANY TIMES A SPECIFIC OFFICER HAS BEEN INVOLVED IN AN R2R, OR USE OF FORCE. THAT'S PRETTY SIMPLE --

Q. UH-HUH.

A. -- TO FIND.

Q. UH-HUH.

A. BUT THE SECOND HALF TO YOUR QUESTION WAS KIND OF A DIFFERENT QUERY AND THAT'S AND INVOLVED WITH A COMPLAINT, RIGHT? SO NOW WE HAVE TO --

Q. UH-HUH.

A. -- CHECK WITH INTERNAL AFFAIRS ON, HOW MANY COMPLAINTS, AND THEN MATCH IT UP TO THE USE OF FORCE, TO ANSWER YOUR QUESTION.

Q. OKAY. SO IT WOULDN'T BE EASY TO SEE, YOU KNOW,

I FURTHER CERTIFY THAT PURSUANT TO FRCP RULE 30(F)(1) THAT THE SIGNATURE OF THE DEPONENT:

X WAS REQUESTED BY THE DEPONENT OR A PARTY BEFORE THE COMPLETION OF THE DEPOSITION AND THAT SIGNATURE IS TO BE BEFORE ANY NOTARY PUBLIC AND RETURNED WITHIN 30 DAYS FROM DATE OF RECEIPT OF THE TRANSCRIPT. IF RETURNED, THE ATTACHED CHANGES AND SIGNATURE PAGE CONTAINS ANY CHANGES AND THE REASONS THEREFOR;

WAS NOT REQUESTED BY THE DEPONENT OR A PARTY BEFORE THE COMPLETION OF THE DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES OR ATTORNEYS IN THE ACTION IN WHICH THIS PROCEEDING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY OR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

CERTIFIED TO BY ME THIS 22TH DAY OF AUGUST, 2023.

KAREN A. GONZALEZ
NOTARY IN AND FOR THE
STATE OF TEXAS
NOTARY: 132644762
MY COMMISSION EXPIRES:
AUGUST 26, 2024
MAGNA LEGAL SERVICES
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
	§	
Plaintiff,	§	**Case No. 1:21-cv-249-RP**
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
AND JOHN DOES,	§	
	§	
Defendants.	§	

SUPPLEMENT PROVIDING EXHIBIT 7 TO PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS AND, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS PREMISED UPON ACTIONS BY JOHN DOE(S)

When Plaintiff filed his Response to Defendants' Combined Motion to Dismiss and, in the Alternative, Motion for Summary Judgment as to Claims Premised Upon Actions by John Doe(s) (Filed under seal at Dkt. No. 56), the deposition transcript of Jeffrey Greenwalt, the City of Austin's corporate representative, was not yet available. Accordingly, in his Response, Plaintiff referenced deposition testimony of Assistant Chief Greenwalt as "forthcoming." Plaintiff hereby submits Exhibit 7, the Greenwalt Deposition Transcript, and provides specific references to the portions cited below:

Response Location	**Text**	**Cite to Ex. 7**
P4-5	And, even in light of Austin's large deaf population, the City provided no communication aids or services for deaf individuals present that day.	132:11-22
P5	With protests happening around the country, the Austin Police Department was on notice protests were coming. The chief of police at the time, Brian Manley, had days to work with his team in preparation.	28:03-29:20
P7	The City did not hire a forensic consultant to review the video footage, nor attempt any reconstruction.	*See* 177:05-22. 179:14-22
P28	In fact, the City's corporate representative testified that the Austin Regional Intelligence Center (ARIC) should have had days' advance knowledge of the likely protest situation.	29:12-20
P28	He was not able to flesh out the details of that group's knowledge or of the protest planning, despite his claim that he was prepared to testify in response to all topics on his deposition notice. *Correction: Chief Greenwalt did not state that he was prepared to testify in response to "all topics." He specifically excluded topics related to conversations specific officers had with their supervisors. Ex. 7 at 24:07-12.*	29:12-30:14
P31	No one who has been deposed in this case (shooting officers included) claims responsibility for overseeing the quality of the munitions and making sure they were not expired. In fact, the City's corporate representative could not even testify with certainty whose responsibility that was.	40:04-41:04

Plaintiff respectfully requests that the Court consider this Supplement, along with Exhibit 7, and, for the reasons stated within Plaintiff's Response, deny Defendants' Motion in full.

Dated: September 14, 2023

Respectfully submitted,

HENDLER FLORES LAW, PLLC

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Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
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ASSISTANT CHIEF JEFFREY GREENWALT
AUGUST 2, 2023

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ORAL AND VIDEOTAPED DEPOSITION OF ASSISTANT CHIEF JEFFREY GREENWALT, PRODUCED AS A WITNESS AT THE INSTANCE OF THE PLAINTIFFS, WAS TAKEN IN THE ABOVE-STYLED AND -NUMBERED CAUSE ON THE 2ND DAY OF AUGUST, 2023, FROM 9:07 A.M. TO 1:26 P.M., BEFORE KAREN GONZALEZ, COMMISSIONED NOTARY, IN AND FOR THE STATE OF TEXAS, REPORTED BY MACHINE SHORTHAND, REMOTELY FROM DALLAS COUNTY, TEXAS, PURSUANT TO THE TEXAS RULES OF CIVIL PROCEDURE, THE TEXAS SUPREME COURT EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER AND THE PROVISIONS STATED ON THE RECORD OR ATTACHED HERETO.

MAGNITUDE OF THE NUMBERS AND THE VIOLENCE THAT OCCURRED WITH IT.

Q. I MEAN THEY KNEW THAT PEOPLE WERE GOING TO TAKE TO THE STREETS IN PROTEST OF WHAT HAPPENED TO GEORGE FLOYD AND -- AND MIKE RAMOS?

A. YEAH. I THINK THERE WAS DEFINITELY AN INDICATION THAT AROUND THE COUNTRY, INCLUDING AUSTIN, THERE WAS GOING TO BE SOME PROTESTS. THEY JUST DIDN'T KNOW --

Q. UH-HUH.

A. -- TO WHAT SIZE AND TO WHAT DEGREE A VIOLENCE MIGHT COME WITH THAT.

Q. THE PROTESTS AROUND THE COUNTRY ACTUALLY STARTED DAYS BEFORE -- I THINK THE FIRST ONE I KNOW ABOUT RELATED TO GEORGE FLOYD, WAS ON MAY 26, 2020, IS THAT A FACT YOU'RE FAMILIAR WITH?

A. NO, MA'AM, BUT I DON'T DISPUTE IT.

Q. OKAY. SO -- AND THE PROTESTS IN THE CITY OF AUSTIN BEGAN ON WHAT DATE?

A. I KNOW THE -- THE MOST IMPACTFUL ONE, THE ONE INTENDED WAS THE 30TH. THERE COULD HAVE BEEN SOME TRICKLERS OUT THERE THE NIGHT BEFORE, ON THE 29TH.

Q. UH-HUH. OKAY. SO IF THE MAY 26TH DATE IS CORRECT, ABOUT WHEN THE -- THE GEORGE FLOYD PROTEST BEGAN AROUND THE COUNTRY, THE CITY HAD A NUMBER OF DAYS BEFORE MAY 30TH, TO THINK ABOUT WHAT MIGHT BE HAPPENING

IN AUSTIN AND PLAN A -- PLAN A RESPONSE?
A. CORRECT.
Q. OKAY. NOW, I JUST LEARNED OF THIS, SO I'M NOT GOING TO BE VERY WELL VERSED ON IT. BUT I BELIEVE THERE'S A TEAM OR A GROUP CALLED ARIC, A-R-I-C, THAT HELPS THE CITY STAY ABREAST OF POTENTIAL HAPPENINGS?
A. CORRECT. YEAH, AUSTIN REGION INTELLIGENCE CENTER, IS WHAT THAT ACRONYM STANDS FOR.
Q. OKAY. WHEN DID -- OR DO YOU CALL IT ARIC OR A-R-I-C, HOW DO YOU REFER TO IT?
A. ARIC.
Q. ARIC, OKAY. WHEN DID ARIC FIRST NOTE THAT THERE MAYBE SOME PROTEST EVENTS COMING TO AUSTIN RELATED TO GEORGE FLOYD AND MIKE RAMOS, EXCUSE ME RAMOS?
A. YEAH, I DON'T HAVE THE EXACT DATE, BUT I CAN TELL YOU THEY'RE OPERATING PROCEDURES ARE, THEY WOULD HAVE KNOWN PRETTY QUICK. LIKE, AS SOON AS THE INFORMATION STARTED -- PRESENTED ITSELF IN THE NEWS AND SOCIAL MEDIA, THEY WOULD HAVE BEEN KNOWLEDGEABLE OF THAT, AND FUNNEL THAT TO THE REST OF THE DEPARTMENT.
Q. OKAY. AND HOW DO THEY DISSEMINATE INFORMATION TO APD GENERALLY?
A. SO, IT'S EITHER DONE JUST VIA REGULAR E-MAIL, OR THEY MIGHT DISTRIBUTE WHAT'S -- WHAT'S CALLED AN INTELLIGENCE BULLETIN, WHERE THEY SEND IT OUT TO THE

DEPARTMENT, OR IF IT IMPACTS REGIONALLY, THEY MIGHT SEND IT OUT REGIONALLY.

Q. OKAY. DO YOU KNOW, WERE THERE ANY INTELLIGENCE BULLETINS THAT CAME OUT PRIOR TO MAY 30TH, 2020, ABOUT THE POTENTIAL PROTEST EVENTS?

A. I DON'T HAVE THEM, BUT I WOULD ASSUME THAT THERE WAS. THEY USUALLY ARE ON TOP OF THAT SORT OF THING. AND WHETHER IT WAS DONE IN AN INTELLIGENCE BULLETIN OR JUST AN E-MAIL, I WOULD THINK THAT THEY WERE ON TOP OF THAT.

Q. OKAY. BUT YOU WOULDN'T BE ABLE TO TALK TO ME TODAY ABOUT THE CONTENT OF WHAT -- WHAT MIGHT HAVE BEEN IN THERE?

A. NO, MA'AM.

Q. OKAY. I UNDERSTAND FROM AN AFTER ACTION REPORT THAT I REVIEWED THAT I THINK THE CITY WANTED TO INCREASE STAFFING OF THE ARIC UNIT AFTER THESE PROTESTS. DO YOU KNOW HOW -- HOW MANY STAFF THE ARIC UNIT HAD AS OF MAY 30TH, 2020?

A. SO, THEY HAVE -- I KNOW, THEY HAVE ONE LIEUTENANT, WHO IS CONSIDERED THE DIRECTOR THERE. THEY -- THEY'RE OVERSEEN BY A COMMANDER WHO HAS OTHER DUTIES, BUT THE LIEUTENANT THAT'S SPECIFIC TO ARIC. AND THEY HAVE ONE SERGEANT. THEY USED TO HAVE EIGHT OFFICERS, BUT THEY CIVILIANIZED FOUR OF THOSE POSITIONS. SO, THEY

DATE --

Q. OKAY.

A. -- A DATE OF ISSUE, I WOULD ASSUME.

Q. OKAY. AND IS THAT SOMEONE FROM THE LEARNED SKILLS DEPARTMENT OR IS THERE SOMEONE WHO SUPERVISES THE ARMORY? WHOSE THE PERSON I SHOULD BE ASKING ABOUT HOW EXACTLY THE AMMUNITIONS ARE STORED?

A. ANYBODY IN THAT CHAIN OF COMMAND. THERE'S A COMMANDER OVER TRAINING, A LIEUTENANT AND SERGEANT OVER THE LEARNED SKILLS UNIT THAT WOULD BE ABLE TO GIVE YOU SOME OF THE MORE SPECIFIC DETAILS AS TO HOW THAT WORKS.

Q. DO YOU KNOW THEIR NAMES?

A. CURRENTLY I DON'T -- I DON'T REMEMBER WHO IT WAS IN 2020 -- WELL, I MIGHT KNOW SOME OF THEM. SO RIGHT NOW THE COMMANDER IN TRAINING IS WADE LYONS AND THERE'S A DECLARATION BY HIM THAT WAS GIVEN TO YOU GUYS, I THINK. IN --

Q. UH-HUH.

A. -- 2020, I THINK THE COMMANDER IN TRAINING WAS MARK SPANGLER. I DON'T KNOW WHO THE LIEUTENANT OR SERGEANT WAS AT THE TIME. BUT NOW THE SERGEANT -- I BELIEVE THE SERGEANT OR LIEUTENANT, I CAN'T REMEMBER HIS RANK, BUT I THINK JASON FERRERA IS THE INDIVIDUAL THAT'S OUT THERE NOW. THEY'VE HAD -- WE'VE HAD A LOT OF TURNOVER AND PEOPLE MOVE AROUND A LOT, SO I APOLOGIZE

FOR THAT. I CAN GET YOU THAT NAME. BUT --
Q. OKAY.
A. -- WADE LYONS WILL BE THE BEST PERSON TO START WITH.
Q. OKAY. HE'S THE CURRENT COMMANDER?
A. THAT'S CORRECT.
Q. OKAY. I DON'T KNOW THAT YOU'RE GOING TO KNOW THIS, BUT I NEED TO ASK YOU. DO YOU KNOW WHAT PROCESS THEY GO THROUGH OUT THERE TO CONFIRM THAT THE AMMUNITIONS THEY'RE STORING ARE WITHIN THEIR EXPIRATION DATE?
A. I KNOW THAT THEY ISSUE THEM OUT, YOU KNOW, BEFORE THEY'RE EXPIRED. I THINK THE PROBLEM IS THAT ONCE THEY'RE ISSUED OUT, THERE'S NO WAY TO TRACK THEM AFTER THAT, AND THEY COULD POTENTIALLY BE CHECKED-IN CHECKED-OUT OVER AND OVER FOR MONTHS, OR YEARS. THAT'S WHERE IT GETS LOST.
Q. OKAY. DO YOU KNOW IF THEY KEEP ANY SORT OF WRITTEN OR ELECTRONIC RECORD OF THE ISSUED DATE OR EXPIRATION DATE OF THE VARIOUS TYPES OF AMMUNITIONS THAT THEY STORE?
A. NO.
Q. OKAY. BUT COMMANDER LYONS WOULD KNOW?
A. HE WILL -- HE WOULD BE ABLE TO SPEAK TO THAT.
Q. OKAY. SO HERE'S WHAT I'M GATHERING, BECAUSE ITS

SITUATION.

Q. OKAY. HAVING REVIEWED THE VIDEO -- VARIOUS VIDEOS OF THE PROTEST EVENT ON MAY 30TH, 2020, IT'S OBVIOUS THAT THERE WERE DEAF PEOPLE PRESENT; ISN'T IT?

MR. BARTON: OBJECT TO THE FORM.

A. MY UNDERSTANDING IS THERE WERE SOME PEOPLE IN THE FRONT, THAT WERE USING SIGN LANGUAGE. SO, I DON'T ARGUE WITH WHAT YOU'RE SAYING, BUT I NEVER SAW THAT ON VIDEO MYSELF, SO I JUST WANT TO DISTINGUISH THAT PART FROM THE FRONT PART OF MY ANSWER.

Q. (BY MS. JOSEPH) UNDERSTOOD. IF AUSTIN HAS A LARGE DEAF POPULATION --

A. YES, MA'AM.

Q. -- AN ATTENDANCE BY DEAF INDIVIDUALS AT A PROTEST EVENT IN AUSTIN IS SOMETHING THAT SHOULD BE EXPECTED?

A. CORRECT.

Q. ON MAY 30TH, 2020, APD DID NOT HAVE ANY WAY OF EFFECTIVELY COMMUNICATING WITH THE DEAF INDIVIDUALS WHO WERE PRESENT AT THE PROTEST?

A. NOT OFFICIALLY. WE HAVE A HANDFUL OF PEOPLE AT APD WHO ARE SIGN LANGUAGE INTERPRETERS, I DON'T KNOW IF THEY WERE PRESENT OR NOT.

Q. OKAY. HERE'S YOUR DICTIONARY TEST, DEFINE EMERGENCY?

MR. BARTON: OBJECT TO THE FORM.

CHANCELLOR'S NAME IN PREPARATION FOR TODAY. AND I -- I REMEMBER HIM BEING A PART OF THAT. AND WE COULD START THERE, AND I'M SURE THAT'S A -- I'M SURE THAT'S A LIST THAT WE CAN RECREATE.

Q. DO YOU KNOW WHAT QUALIFICATIONS WERE LOOKED AT TO DETERMINE WHETHER TO INCLUDE SOMEBODY ON THE R2R TASK FORCE.

A. I BELIEVE, THEY WERE ALL SERGEANTS AND ABOVE. I DON'T -- I'M NOT 100 PERCENT SURE ABOUT THAT. BUT I KNOW THERE WERE AT LEAST DETECTIVES OR ABOVE. AND GENERALLY SPEAKING WE LOOK AT PEOPLE THAT DON'T HAVE ANY SORT OF DISCIPLINE IN THEIR OWN HISTORY, THAT ARE -- WHAT'S THE WAY I CAN EXPLAIN THIS THE BEST. NOT JUST CAPABLE BUT THE MORE AMBITIOUS PEOPLE, THE MORE CAPABLE WHO ARE MORE CAPABLE OF DOING IT THE MORE THOROUGH INVESTIGATION.

Q. OKAY. SO THIS GROUP DIDN'T NECESSARILY HAVE ANYBODY IN LINE, WHO WAS LIKE, TRAINED IN MEASURING POINT TO POINT ON A VIDEO OR, YOU KNOW, THAT SORT OF TECHNICAL KNOWLEDGE THAT WOULD HAVE JUST BEEN LUCKY, IF SOMEBODY HAD THAT KIND OF KNOWLEDGE?

A. YEAH -- I DON'T KNOW IF THAT WAS INCLUDED OR NOT.

Q. AND AS FAR AS WHAT EXACTLY THE R2R TASK FORCE DID, LIKE, DID THEY ATTEMPT TO DETERMINE WHEN EACH OFFICER SHOT IN RELATION TO WHEN MR. TALLEY THREW THE

THAT FROM, YOU KNOW, DAY ONE AT THE POLICE DEPARTMENT. AND THE POLICE ACADEMY THAT, THAT'S SOMETHING THAT HAPPENS. AND SO IN -- IN OUR WORLD WE UNDERSTAND THAT. SO WE DON'T PUT IN OUR SHAREPOINT REVIEWS NECESSARILY THE WHOLE EXPLANATION OF WHY IT MIGHT TAKE LONGER TO STOP, BECAUSE THIS IS THEIR INTERNAL REVIEW TO ALERT PEOPLE AT THE POLICE DEPARTMENT AS TO WHAT HAPPENED, AND WHETHER OR NOT WE FEEL LIKE IT'S OBJECTIVELY REASONABLE. IF THERE WAS AN INSTANCE WERE THEY WAITED TO LEAVE, THEN THEY WOULD HAVE DOCUMENTED, "HEY, THIS IS JUST AN UNREASONABLE AMOUNT OF TIME." BUT TO JUSTIFY, SO TO SPEAK, OR ARTICULATE WHY IT WAS OKAY, IT'S JUST NOT NEEDED IN THIS --

Q. ARE YOU AWARE OF ANY OTHER INVESTIGATIONS INTO THE TALLEY OR RODRIGUEZ INCIDENT, OTHER THAN WHAT MIGHT HAVE BEEN DONE BY MY LAW FIRM -- YOU KNOW THE PLAINTIFF'S ATTORNEYS, OR APD IN THE CITY?

A. JUST LIKE THE INDEPENDENT EXPERT, CHIEF MILLER -- MILLER, IS THAT HIS NAME? THAT'S -- THAT'S THE ONLY THING I'M AWARE OF. APD'S INTERNAL AFFAIRS, THE R2R USE OF FORCE TEAM, TASK FORCE, AND THEN THE INDEPENDENT EXPERT.

Q. OKAY. AND MILLER WAS RETAINED BY THE CITY, IN THIS CASE -- HE WAS -- HE WAS PAID BY THE CITY FOR THE WORK HE DID IN THIS CASE, RIGHT?

I FURTHER CERTIFY THAT PURSUANT TO FRCP RULE 30(F)(1) THAT THE SIGNATURE OF THE DEPONENT:

X WAS REQUESTED BY THE DEPONENT OR A PARTY BEFORE THE COMPLETION OF THE DEPOSITION AND THAT SIGNATURE IS TO BE BEFORE ANY NOTARY PUBLIC AND RETURNED WITHIN 30 DAYS FROM DATE OF RECEIPT OF THE TRANSCRIPT. IF RETURNED, THE ATTACHED CHANGES AND SIGNATURE PAGE CONTAINS ANY CHANGES AND THE REASONS THEREFOR;

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CERTIFIED TO BY ME THIS 22TH DAY OF AUGUST, 2023.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, *Plaintiff,*	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
CITY OF AUSTIN AND JOHN DOES, *Defendants.*	§	

DEFENDANT CITY OF AUSTIN'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs' First Amended Complaint [Doc. No. 77]. Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' First Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

INTRODUCTION

Defendant denies the allegations contained in the Plaintiff's "Table of Contents" and "I. Introduction" sections (including all parts identified with numbers or letters and all unnumbered parts and paragraphs) of Plaintiff's First Amended Complaint.

II. Parties

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' First Amended Complaint.

1. Defendant admits upon information and belief that Tyree Talley is a resident of Austin, Texas.

2. Defendant admits the allegations contained in Paragraph 2.

3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

5. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

6. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

7. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

8. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

9. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies same.

III. Jurisdiction

10. Admitted.

11. Defendant admits the allegations contained in Paragraph 11.

12. This paragraph calls for a legal conclusion which does not require a response. Defendant denies any allegations which may be construed to allege fault or liability against any defendants.

IV. Venue

13. Defendant admits the allegations contained in Paragraph 13.

V. Facts

A. Defendant denies the allegations contained in Subpart A subheading.

14. Defendant denies the allegations of the subheading V. Facts, and denies the allegations of the subpart A. and denies the allegations of Paragraph 14.

15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the First Amended Complaint and therefore denies same.

16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the First Amended Complaint and therefore denies same.

17. Upon information and belief, Defendant admits that Tyree Talley threw an object attempting to assault police officers. The remaining allegations are denied.

18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of the First Amended Complaint and therefore denies same.

19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the First Amended Complaint and therefore denies same.

20. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the First Amended Complaint and therefore denies same.

21. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of the First Amended Complaint and therefore denies same.

22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the First Amended Complaint and therefore denies same.

23. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of the First Amended Complaint and therefore denies same.

24. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 of the First Amended Complaint and therefore denies same.

25. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 25 of the First Amended Complaint and therefore denies same.

26. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 26 of the First Amended Complaint and therefore denies same.

27. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 of the First Amended Complaint and therefore denies same.

28. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 28 of the First Amended Complaint and therefore denies same.

29. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 of the First Amended Complaint and therefore denies same.

30. Defendant denies the allegations contained in Paragraph 30.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant denies the allegations contained in Paragraph 33.

34. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 34 of the First Amended Complaint and therefore denies same.

35. Defendant admits the allegations contained in Paragraph 35.

B. Defendant denies the allegations contained in Subpart B subheading.

36. Upon information and belief, Defendant admits that Paragraph 36 contains an accurate partial quote from the Journal op-ed. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 36 of the First Amended Complaint and therefore denies same.

VI. Claims - Defendant denies the allegations contained in Section VI. and Subpart A subheading.

37. Defendant adopts and incorporates its responses to the preceding paragraphs of the First Amended Complaint.

38. Defendant admits the allegations contained in Paragraph 38.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40.

41. Defendant denies the allegations contained in Paragraph 41.

B. Defendant denies the allegations contained in Subpart B subheading.

42. Defendant adopts and incorporates its responses to the preceding paragraphs of the First Amended Complaint.

43. Defendant admits the allegations contained in Paragraph 43.

44. Defendant denies the allegations contained in Paragraph 44.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48.

C. Defendant denies the allegations contained in Subpart C subheading.

49. Defendant adopts and incorporates its responses to the preceding paragraphs of the First Amended Complaint.

50. Defendant denies the allegations contained in Paragraph 50.

D. Defendant denies the allegations contained in Subpart D subheading.

51. Defendant adopts and incorporates its responses to the preceding paragraphs of the First Amended Complaint.

52. Defendant admits the allegations contained in Paragraph 52.

53. Defendant admits the allegations contained in Paragraph 53.

54-58. Defendant denies the allegations contained in Paragraphs 54-58.

E. Defendant denies the allegations contained in Subpart E subheading.

59. Defendant adopts and incorporates its responses to the previous paragraphs of the First Amended Complaint.

60-62. Defendant denies the allegations contained in Paragraphs 60-62.

F. Defendant denies the allegations contained in Subpart F subheading.

63. Upon information and belief, Defendant admits the allegations contained in Paragraph 63.

64. Upon information and belief, Defendant admits the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant denies the allegations contained in Paragraph 66.

VII. Damages -- Defendant denies the allegations contained in Subpart VII.

67. Defendant adopts and incorporates its responses to the previous paragraphs of the First Amended Complaint.

68. Defendant denies the allegations contained in Paragraph 49.

VIII. Request for jury trial

69. Paragraph 69 of Subpart VIII merely contains Plaintiff's request for a jury trial and thus no response is required of the Defendant.

IX. Prayer

70. Paragraph 70 of Subpart IX -- Defendant denies these allegations and specifically denies that the Plaintiff is entitled to any relief whatsoever of and from the Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.

4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief, Litigation

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Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 29th day of September, 2023.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, *Plaintiff*,	§ §	
v.	§	Case No. 1:21-cv-00249-RP
CITY OF AUSTIN, BENJAMIN LYNCH, GADIEL ALAS, TIMOTHY COBAUGH, DARRELL CANTU-HARKLESS, JOSEPH HETHERSHAW, GREGORY CHERNE, and JUSTIN WRIGHT, *Defendants*.	§ § § § § § § §	

OFFICER DEFENDANTS' 12(b)(6) MOTION TO DISMISS OR, IN THE ALTERNATIVE, 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendants, Officers Benjamin Lynch, Gadiel Alas, Timothy Cobaugh, Darrell Cantu-Harkless, Joseph Hethershaw, Gregory Cherne, and Justin Wright, jointly file this combined Motion to Dismiss or, in the alternative, motion for judgment on the pleadings. Plaintiff's § 1983 claims against the individual officers are time barred as a matter of law because they were not sued until after the expiration of the limitations period, and would show the Court as follows:

I. FACTUAL AND PROCEDURAL INTRODUCTION

A. APD officers impacted Plaintiff in response to him throwing a projectile toward other officers on May 30, 2020.

1. On May 30, 2020, a riot[1] occurred in the City of Austin that began as a protest against the excessive force used against George Floyd by a Minnesota police officer.[2] Plaintiff committed the criminal offense of participating in a riot[3] by throwing a projectile at or near APD officers—one of hundreds thrown during the riots.[4] Certain APD Officers independently reacted simultaneously by impacting Plaintiff Talley with their less lethal bean bag shotguns.[5]

B. Plaintiff filed his lawsuit against the City in March of 2021 but waited to join the officer defendants until over three years after the subject incident.

2. Plaintiff filed his original lawsuit against the City of Austin and John Doe defendants on March 15, 2021—nine months and fifteen days after the subject incident.[6] The claims against the

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[1] *See* TEX. PEN. CODE § 42.02 (codifying the legal definition of a riot in Texas, namely that "'riot' means the assemblage of seven or more persons resulting in conduct which: (1) creates an immediate danger of damage to property or injury to persons; (2) substantially obstructs law enforcement or other governmental functions or services; ***or*** (3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.").

[2] *See e.g.,* Harley Tamplin, *Some businesses looted, fires set as downtown Austin protests continue into the night*, KXAN (June 1, 2020), https://www.kxan.com/news/local/austin/some-businesses-looted-fires-set-as-downtown-austin-protests-continue-into-the-night/; *see also e.g.,* Eddie Gaspar, *A weekend of protest and mourning: George Floyd's death spurs demonstrations in Texas cities*, THE TEXAS TRIBUNE (May 31, 2020), https://www.texastribune.org/2020/05/29/george-floyd-texas-protest-photos-houston-dallas-austin/.

[3] *See* TEX. PEN. CODE § 42.02(b) ("A person commits an offense if he knowingly participates in a riot.").

[4] *See* Pl.'s First Amd. Compl., Dkt. 77, pg. 5 (admitting that "[Plaintiff Talley] tossed…[a] water bottle in the general direction of officers."); *see also* Defs' Combined Mot. to Dismiss and Mot. Summ. J., Dkt. 44-7, **Ex. 7,** *Video from APD Headquarters* (COA 37537), **21:16:20 – 21:16:34**, filed on 7/31/23.

[5] *See id.* at pgs. 5-6.

[6] *See* Pl.'s Orig. Compl., Dkt. 1, filed on 3/15/21.

John Doe officers consisted of § 1983 Excessive Force and First Amendment Retaliation.[7] Plaintiff failed to exercise the required due diligence to learn the identities of the John Doe Defendants within the two-year statute of limitations discussed *infra*. Long after the limitations period had expired, Plaintiff finally filed a motion for leave to amend the petition to formally sue the officer movants on August 22, 2023—almost three years and three months after the subject incident.[8] The Officer Defendants move herein for the Court to dismiss all claims against them as being time barred by the applicable statutes of limitation.

II. ARGUMENT AND AUTHORITIES

3. "A motion made pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for a judgment on the pleadings is governed by the same standards as a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim."[9] "Therefore, a Court must address whether the complaint states a claim for which relief may be granted."[10] "[T]he inquiry focuses on the allegations in the pleadings' and not on whether the 'plaintiff actually has sufficient evidence to succeed on the merits.'"[11] A plaintiff's lawsuit will not survive a motion to dismiss if the facts pleaded do not raise the right to relief "above the speculative level," even if the facts are viewed in the light most favorable to the plaintiff.[12]

A. Plaintiff's claims are governed by a two-year statute of limitations.

4. "The statute of limitations for a suit brought under § 1983 is determined by the general

[7] *Id.* at pgs. 12-13.
[8] *See* Pl.'s Mot. for Leave to File First Amd. Compl., Dkt. 53, filed on 8/22/23.
[9] *Amin-Akbari v. City of Austin, Tex*., 52 F. Supp. 3d 830, 835 (W.D. Tex. 2014) (citing *Morris v. PLIVA, Inc.*, 713 F.3d 774, 776 (5th Cir.2013)).
[10] *Id.* (citing FED. R. CIV. P. 12(b)(6)).
[11] *Ackerson v. Bean Dredging LLC,* 589 F.3d 196, 209 (5th Cir. 2009).
[12] *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007).

statute of limitations governing personal injuries in the forum state."[13] Texas has a two-year statute of limitations for personal injury claims.[14] "Therefore, because the incident of which Plaintiff complains occurred on [May 30, 2020], any claim brought after [May 30, 2022] is barred by the statute of limitations."[15] Any "amendment [to substitute in named defendants for John Does], however, either ***must be made within the applicable limitations period or must relate back to the date of the original complaint; otherwise, it will be time-barred***."[16]

B. Plaintiff's claims against the Officer Defendants are time-barred as a matter of law and cannot related back to the filing of the original complaint.

5. Plaintiff's claims against the Officer Defendants are time-barred as a matter of law and must be dismissed. Plaintiff's act of filing suit against John Doe Defendants before the expiration of limitations does not save his claims asserted against the Officer Defendants in his amended Complaint. The Fifth Circuit has explained that the naming of a John Doe defendant does not toll the statutes of limitation for defendants who are later identified and joined to the suit:

> The claims against the named defendants are thus time-barred unless they "relate back" to the original filing of the complaint per Federal Rule of Civil Procedure 15(c). We have held, however, that ***an amendment to substitute a named party for a John Doe does not relate back under rule 15(c).*** [*Jacobsen v. Osborne*, 133 F.3d 315, 320-22 (5th Cir. 1998)] (reasoning that rule 15(c) requires a "mistake concerning the identity of the proper party" and that use of a John Doe moniker does not constitute a "mistake"). Accordingly, because Whitt's claims against the named defendants are time-barred, it would have been futile for Whitt to amend, so the district court appropriately denied the motion to amend. Furthermore, and relatedly, ***the court properly granted summary judgment to the John Does, because any claims against parties named in their place would be barred by limitations***.[17]

[13] *Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001) (citation omitted).
[14] *See* TEX. CIV. PRAC. & REM. CODE § 16.003(a).
[15] *See Amin-Akbari*, 52 F. Supp. 3d at 839.
[16] *Taylor v. City of Winnfield*, 191 F.R.D. 511, 513 (W.D. La. 2000) (emphasis added) (citing *Pullman Co. v. Jenkins,* 305 U.S. 534, 536-37, 59 S.Ct. 347, 348-49 (1939)).
[17] *Whitt v. Stephens Cnty*., 529 F.3d 278, 282-83 (5th Cir. 2008) (emphasis added).

6. Rule 15(c) is meant to allow an amendment changing the name of a party to relate back to the original complaint ***only*** if the change is the result of error, such as misnomer or misidentification.[18] Plaintiff's untimely joinder of these Officer Defendants thus cannot—and does not—legally relate back because the failure to add them was ***not*** the result of a misnomer or misidentification. Rule 15(c) of the Federal Rules of Civil Procedure provides in relevant part:

> An amendment of a pleading relates back to the date of the original pleading when ... within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, *and* (B) knew or should have known that, ***but for a mistake concerning the identity of the proper party***, the action would have been brought against the party."[19]

When a plaintiff subsequently names "a 'John Doe' defendant, ***there [is] no 'mistake' in identifying the correct defendant; rather, the problem [is] not being able to identify that defendant***."[20] Plaintiff herein simply failed—or neglected to even make any attempts—to identify the Officer Defendants before the statute of limitation ran. Such failure does not have any legal remedy—whether via Rule 15(c) or otherwise—and must result in the dismissal of claims against the Officer Defendants.

7. This Court has dealt with similar scenarios in past § 1983 lawsuits.[21] In *Amin-Akbari*, for example, the plaintiff had been involved in an incident that occurred on June 10, 2011 that resulted in him filing a § 1983 lawsuit against the City of Austin and John Doe defendant police officers on June 7, 2013—three days before the statute of limitations was set to run out.[22] The plaintiff then

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[18] *Taylor,* 191 F.R.D. at 513 (citing *Jacobsen v. Osborne,* 133 F.3d 315, 320 (5th Cir. 1998)).
[19] FED. R. CIV. P. 15(c) (emphasis added).
[20] *Jacobsen v. Osborne,* 133 F.3d 315, 321 (5th Cir. 1998) (emphasis added).
[21] *See e.g., Henry v. City of Taylor*, 2008 WL 2557489, at *3 (W.D. Tex. Jun. 19, 2008), aff'd, 336 Fed. Appx. 410 (5th Cir. 2009); *Robinson v. Hamilton*, 2010 WL 456942 (W.D. Tex. Feb. 03, 2010) (report and recommendation).
[22] *Amin-Akbari*, 52 F. Supp. 3d at 834.

filed an Amended Complaint on April 21, 2014. This Court granted leave to amend, the City of Austin filed a motion for judgment on the pleadings, and this Court determined that the issue before it was thus simply "whether the claims against these now-named officers…relate back to the date of the original complaint."[23] This Court noted that it was the plaintiff's own actions—namely waiting until right before the limitations had run—that "precluded his ability to identify the proper names of the John Doe defendants by not allowing himself time to conduct discovery."[24] This Court determined that dismissal based on limitations was the necessary result.

8. Plaintiff's own actions herein likewise "precluded his ability to identify the proper names of the John Does Defendants by ***[outright failing to] conduct [any] discovery***" whatsoever before the limitations period had lapsed.[25] Plaintiff could have filed the lawsuit sooner—a temporal fact which was found to be dispositive in *Amin-Akbari*—but chose not to. Plaintiff could have pressured or formally compelled the City of Austin to tender its Initial Disclosures in the roughly one year and three months between the filing of his lawsuit and the limitations deadlines, but he chose not to. Plaintiff could have sent other written discovery requests or conducted depositions but ostensibly ***chose not to propound any discovery requests*** whatsoever to learn the identities of the officers before the statute of limitations expired. For the purpose of Rule 15(c), there was no mistake that caused these Officer Defendants to be *mis*identified—Plaintiff simply ***failed to make any attempt whatsoever*** to identify them in the fifteen months between the suit being filed and the limitations period expiring. Nothing about Plaintiff's extraordinarily late joinder of the Officer Defendants meets the requirements of Rule 15(c) to relate back as a matter of law, and Plaintiff's complete failure of diligence should not be rewarded by allowing him to sue parties long after the

[23] *Id.* at 839.
[24] *Id.* at 842.
[25] *See id* (emphasis added).

applicable statutes of limitations have expired—especially given the timing and nature of the discovery that has taken place since then as discussed *infra*.

C. Plaintiff deposed the Officer Defendants after the limitations had run, creating an expectation that they were testifying as witnesses rather than as parties facing liability exposure.

9. Most of the Officer Defendants herein testified in depositions in the summer of 2023—long after the applicable statutes of limitation had expired. Any deponent in that situation would believe he could testify without any fear of personal liability exposure. Moreover, any such deponent would have no reason to demand independent legal counsel to protect his own interests, nor put in the same amount of deposition preparation inherently commensurate with being a defendant party rather than a fact witness. Plaintiff's attempt at an ***extraordinarily*** legally-untimely joinder creates a stark prejudice against—and disadvantage for—the Officer Defendants as a result of them being hoodwinked into testifying as witnesses-now-turned-parties retroactively over a year after the limitations period had expired. The deposition testimony is now locked in. Equity demands that Plaintiff not be rewarded for his total failure of diligence by allowing him to move forward with a lawsuit against deponents who had no reason to believe their testimony could expose them to potentially ruinous legal liability when they testified under oath as part of this lawsuit.

10. Plaintiff has accordingly failed to state a claim against these Officer Defendants for which relief can be granted because it was filed against them ***long*** after the statutes of limitation had expired. Legal precedents from this Court, the Fifth Circuit, and elsewhere demonstrate quite clearly that Plaintiff's claims cannot be held to relate back to the original filing date pursuant to Rule 15(c) or otherwise. There are likewise no legal grounds that could permissibly toll the limitations period—***especially*** not for more than a years' time. Plaintiff demonstrated a complete

failure of ***any*** diligence whatsoever toward timely identifying the officers. Likewise, Plaintiff's act of deposing the Officer Defendants as witnesses-now-turned-parties creates an undue prejudice that simply cannot be cured short of a dismissal with prejudice. Plaintiff may continue onward with his claims against the City, but law and equity both require that Plaintiff's claims against the Officer Defendants be dismissed.

III. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants, Officers Benjamin Lynch, Gadiel Alas, Timothy Cobaugh, Darrell Cantu-Harkless, Joseph Hethershaw, Gregory Cherne, and Justin Wright, respectfully request that the Court grant this Motion to Dismiss or, in the alternative, Motion for Judgment on the Pleadings, and dismiss the Plaintiff's claims against them with prejudice with all costs assessed to the Plaintiff. Defendants further request any additional relief to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail and/or U.S. First Class Mail, in accordance with the Federal Rules of Civil Procedure, as follows:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, *Plaintiff,* v. CITY OF AUSTIN, BENJAMIN LYNCH, GADIEL ALAS, TIMOTHY COBAUGH, DARRELL CANTU-HARKLESS, JOSEPH HETHERSHAW, GREGORY CHERNE, AND JUSTIN WRIGHT, *Defendants*.	§ § § § § § § § § § § § § §	Case No. 1:21-cv-00249-RP **Lead Case**
MODESTO RODRIGUEZ, *Plaintiff,* v. CITY OF AUSTIN AND JUSTIN WRIGHT, *Defendants.*	§ § § § § § § § § § § § § §	Case No. 1:21-cv-01087-RP

PLAINTIFFS' MOTION TO COMPEL COMPLETE AND PROPER DISCOVERY RESPONSES AND PRODUCTION FROM DEFENDANT CITY OF AUSTIN

Plaintiffs Tyree Talley and Modesto Rodriguez (Plaintiffs) file their Motion to Compel Complete and Proper Discovery Responses from Defendant City of Austin (the City) pursuant to

Federal Rule of Civil Procedure 37.[1] As outlined below, Plaintiffs made numerous attempts to resolve the issues addressed herein between the parties but have been unable to do so. Plaintiffs therefore request the Court's assistance in resolving the issues so that fair and proportionate discovery may be obtained as contemplated by the Rules. Plaintiffs respectfully request an oral hearing to aid the Court in resolving the issues raised herein.

I. Introduction

These cases are based on Austin Police Department conduct during the protests in 2020 arising out of the murders of George Floyd, Michael Ramos, and others at the hands of the police. Austin police shot both Plaintiffs repeatedly with "bean bag rounds" fired from "less lethal" shotguns during the protests on May 30, 2020. Despite Plaintiffs' counsel's repeated attempts to confer, the City has failed to provide proportionate, discoverable information important to Plaintiffs' claims.

Plaintiff received the City's Answers to First Set of Interrogatories and Responses to Third Request for Production on July 26, 2023. **Ex. A**, Def. City of Austin's Resps. to Pltf.'s First Set of Interrogs. (Talley); **Ex. B**, Def. City of Austin's Resps. to Pltf.'s Third Rqst. for Prod. (Talley); **Ex. C**, Def. City of Austin's Resps. to Pltf.'s First Set of Interrogs. (Rodriguez); **Ex. D**, Def. City of Austin's Resps. to Pltf.'s Third Rqst. for Prod. (Rodriguez). Plaintiffs noted numerous deficiencies (one significant issue being the absence of files pertaining to the individual officers now named as defendants in this litigation) and began the meet and confer process four days later,

[1] The Court consolidated these cases for discovery purposes on March 7, 2022 (Doc. 6).

on July 30, 2023. **Ex. E**, Emails between L. Joseph and G. Laird dated July 30, 2023 to August 15, 2023. During a telephone call between counsel on August 15, 2023, counsel for the City agreed to investigate the issues raised by Plaintiffs and share findings and positions with Plaintiffs' counsel on or before August 29, 2023.

By September 19, 2023, defense counsel had not responded to the issues raised by Plaintiffs. Plaintiffs' counsel sent defense counsel a letter reiterating the August 15, 2023 conversation and requesting amended and supplemental responses by September 26, 2023. **Ex. F**, Ltr. from L. Joseph dated Sept, 19, 2023. Defense counsel's only response came on that same date, in an email proposing a joint motion for continuance and new proposed scheduling order based on the addition of officer defendants to the cases. **Ex. G**, Email from M. Barton dated Sept, 19, 2023. In that email, defense counsel stated their position that Plaintiffs' discovery issues "fit[] into this continuance thought process too." *Id.*

Alongside Plaintiffs' attempts to address the other issues with the City's discovery responses, Plaintiffs patiently awaited the City's production of emails that it indicated were responsive to Plaintiffs' discovery requests. Over the course of two months, Plaintiffs patiently awaited the City's complete production of these emails, only to find that the City had engaged in a classic document dump, providing nearly 1TB of data for Plaintiffs to sift through, much of it nonresponsive to Plaintiffs' requests. On top of that, the City ignored Plaintiffs' instructions regarding production format and provided the emails in .pdf format without their original metadata, dramatically increasing the cost and difficulty of sorting through them.

Plaintiffs have spent months attempting to work out these issues with the City and offering solutions, but the City has taken no action to correct its inadequate discovery responses and

production. Therefore, Plaintiffs respectfully request the Court's assistance in resolving the issues. These cases are currently set for jury selection and trial to begin on February 12, 2024 (Doc. 63).

II. Legal Standard

This Court has clearly stated the legal standard for reviewing a motion to compel discovery on multiple occasions as follows:

> The scope of discovery is broad. *Crosby v. La. Health Serv. and Indem. Co.*, 647 F.3d 258, 262 (5th Cir. 2011). Federal Rule of Civil Procedure 26 provides that, unless otherwise limited by court order, parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(1). "A discovery request is relevant when the request seeks admissible evidence or 'is reasonably calculated to lead to the discovery of admissible evidence.' " *Crosby*, 647 F.3d at 262 (quoting *Wiwa v. Royal Dutch Petrol. Co.*, 392 F.3d 812, 820 (5th Cir. 2004)).
>
> A party seeking discovery may file a motion to compel after conferring in good faith to secure that discovery without court action. Fed. R. Civ. P. 37(a). If the motion is filed and granted, the Court must order the resisting party to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. Fed. R. Civ. P. 37(a)(5).
>
> "Once a party moving to compel discovery establishes that the materials and information it seeks are relevant or will lead to the discovery of admissible evidence, the burden rests upon the party resisting discovery to substantiate its objections." *Hobbs v. Petroplex Pipe & Constr., Inc.*, No. MO:17-CV-00030-DC, 2018 WL 3603074, at *2 (W.D. Tex. Jan. 29, 2018); *see also McLeod, Alexander, Powel and Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990). "A party objecting to discovery must state with specificity the objection and how it relates to the particular request being opposed, and not merely that it is overly broad and burdensome or oppressive or vexatious or not reasonably calculated to lead to the discovery of admissible evidence." *Id.*; *see also Carr v. State Farm Mut. Auto. Ins. Co.*, 312 F.R.D. 459, 469 (N.D. Tex. 2015) (stating that the party resisting discovery has the burden to "specifically object") (citing *McLeod*, 894 F.2d at 1485).

E.g., BidPrime, LLC v. SmartProcure, Inc., No. 1:18-CV-478-RP, 2018 WL 6588574, at *1 (W.D. Tex. Nov. 13, 2018).

III. Matters at Issue

A. Answers and Responses

Interrogatory Number 5 asks the City to identify individuals injured by Austin police officers with kinetic projectiles on May 30, 2020, along with the officers who injured the individuals and the time and location of each incident. Exs. A, C. After objecting based on relevance and claiming that the question "mischaracterizes facts and evidence," the City provided a chart largely answering the question. However, the City omitted incident times from its answer. The relevance objection should be overruled, the "mischaracterization" objection is inappropriate, and the City should supplement its answer with timing information.

The City has repeatedly claimed throughout this lawsuit that its officers were responding to an "emergency" when they shot Plaintiffs. Whether the times of other similar incidents on May 30, 2020 are clustered together or spread throughout the day is important information for evaluating the extent of "emergency" as well as the officers' pattern and practice of conduct over the course of the day. The information is relevant to Plaintiffs' Fourth/Fourteenth Amendment and *Monell* claims and is proportional to the needs of the case.

Interrogatory Number 6 and **Request for Production 25** seek information as to police officers disciplined for conduct on May 30 or May 31, 2020. Exs. A-D. To Request for Production 25, the City objects—without explanation—that the request is "overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery." The City also objects that Interrogatory 6 is overbroad and seeks information that is not relevant. It then goes on to reference ongoing criminal proceedings as preventing the disciplinary process from concluding. If an officer has yet to be disciplined because of a pending criminal proceeding against him, Plaintiffs would consider that nonresponsive to this Interrogatory. What Plaintiffs are requesting is information as to discipline

that has occurred. By requesting this information for only two discrete dates—May 30 and 31, 2020—Plaintiffs have narrowly tailored their request. Accordingly, Plaintiff requests that the Court overrule the City's objections and require supplementation.

Interrogatory Number 17 also seeks post-incident information. This Interrogatory seeks information as to changes made to use of force policies, practices, and training at the Austin Police Department since the date of the incidents at issue. Exs. A, C. The City objects to Interrogatory 17 with a general assertion that the interrogatory "seeks information that is irrelevant to this lawsuit" and nothing more. Plaintiffs can only assume that the City is intending to lean on Federal Rule of Evidence 407 to support its argument. But that evidentiary Rule does not control the discovery stage of the litigation, particularly since Rule 407 expressly contemplates circumstances under which subsequent remedial measures are admissible. *See Ambler v. Nissen*, No. 1:20-CV-1068-LY, 2023 WL 443806, at *5 (W.D. Tex. Jan. 26, 2023) (discussing instances where events after the incident at issue can be probative and allowing such discovery).

Interrogatory Numbers 7 and **18** seek information within the City's exclusive possession about use of expired munitions on May 30, 2020 and directly impact Plaintiffs' negligence claims against the City. Exs. A, C. To Interrogatory 7, the City again objects on overbreadth and relevance. Again, the question is narrowly tailored and relevant. To Interrogatory 18, the City does not object, but refers only to a group of documents that do not clearly answer the question as to what ammunition was in use on the day of the incidents at issue. Accordingly, Plaintiff requests that the Court overrule the City's objections to Interrogatory 7 and require supplementation of both answers.

Request for Production Numbers 17 and **23** seek the service record and training records for a discrete list of officers placed at the scene at the time of the incidents. Exs. B, D. The City

objects, without explanation, that the Requests are "overbroad, ambiguous, unduly burdensome, and exceed[] the scope of discovery[.]" This obfuscation of discoverable materials is consistent with the City's past conduct. For example, in *Roque v. City of Austin*, No. 1-17-CV-00932-LY, 2018 WL 5848988 (W.D. Tex. Nov. 7, 2018) the City objected to the plaintiff's request for the subject officer's disciplinary, use of force, Internal Affairs, and personnel records, forcing the plaintiff to move on the issue. *Id.* at *2. However, in apparent recognition that these items are discoverable, the City supplemented its discovery to produce the requested items before the hearing on the plaintiff's motion to compel. *Id.*

In the present case, Plaintiffs offered to narrow the breadth of the Request and reduce the burden on the City by limiting the list of officers to only those alleged to have shot Plaintiffs, but the City has not even produced those files. Plaintiffs therefore request that the Court overrule the objections and order supplementation for all the requested officers. *See Carnaby v. City of Houston*, No. CIV.A.4:08-CV-1366, 2008 WL 4546606, at *3 (S.D. Tex. Oct. 10, 2008) (noting, in a police officer shooting case, that internal affairs division investigative files and personnel files of subject officers are discoverable subject to redaction of confidential personal information); *Rynearson v. Richter*, No. SA-11-CA-705-XR, 2012 WL 12864335, at *3 (W.D. Tex. Aug. 29, 2012) (granting motion to compel and ordering production of information from officer's personnel file that reflects copies of charges, complaints, grievances, and disciplinary proceedings against him).

Request for Production Number 24 seeks factual information obtained in the investigation of the incidents, specifically involving a discrete list of Austin police officers. Exs. B, D. The City refers Plaintiffs to a number of documents produced but only after objecting that

the Request is "overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery[.]" Plaintiffs request that the Court overrule the City's objections, and require supplementation, if any.

Request for Production Number 36 seeks reports reflecting the number of people injured by Austin police use of kinetic projectiles for a narrowly tailored period including the date of the incidents, the following day, and the three and a half years since. Exs. B, D. Again, the City refers Plaintiffs to documents, but only after lodging its standard and insufficient boilerplate objection that the Request is "overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery[.]" Plaintiffs request that the Court overrule the City's objections, and require supplementation, if any.

Request for Production Number 18 seeks documents concerning complaints about Austin police interactions with deaf individuals for a narrowly tailored two-year period. Exs. B, D. This Request directly impacts Plaintiffs' claims under the Americans with Disabilities Act and the Rehabilitation Act. The City lodges the same boilerplate objection without explanation, and this time does not refer Plaintiffs to any responsive documents. Plaintiffs request that the Court overrule the City's objections, and require supplementation, if any.

B. Email Production

Plaintiffs Third Request for Production to Defendant City of Austin included narrowly tailored requests for email messages. The requests specified the time frame of the emails requested, the subject matter, and the senders/recipients. Ex. H, Pltf.'s Third Rqst. for Prod. to Def. City of Austin, Nos. 21, 22, and 41 (emails are potentially responsive to other requests in the third set as well). Federal Rule of Civil Procedure 34(b)(1)(C) permits the requesting party to specify the form in which electronically stored information is to be produced, and Plaintiffs spent nearly a page and half of instructions clarifying their expectations and requirements with respect to electronically

stored information in the event the City opted not to produce the emails in the format they are used in the ordinary course of business, i.e., native format. These instructions set forth the metadata Plaintiffs requested for emails as follows:

> Email Author
> Email Recipient
> Email CC
> Email BCC
> Email Received Date
> Email Sent Date
> Email Received Time
> Email Sent Time
> Email Received Date and Time
> Email Sent Date and Time
> Email Importance.

Ex. H, p.5.

Naturally, Plaintiffs expected the City to comply with FRCP 34(b)(2)(D)-(E), which requires it to confer on any issues with the requested form for producing electronically stored information and produce the ESI in the form it is ordinarily maintained or another reasonably useable form. But the City did not. Instead, without conferring, the City produced the emails in a converted .pdf format without metadata. The City took over a month after its responses were due to produce the files. The City informed Plaintiffs on September 11, 2023 that it completed its email production. Ex. I, Collected Emails, p. 3-4.

Issues arose with the City's unilaterally chosen method of production, and Plaintiffs' vendor was not able to download all the files. Plaintiffs first alerted the City of the download issue on October 10, 2023 and diligently worked to obtain the remainder of the files. Ex. I, p. 2. Despite Plaintiffs' diligent efforts, and Plaintiff's counsel hand-delivering an external thumb drive to the City's offices on October 18, 2023 and forwarding a pre-paid shipping label, the City placed the Federal Express shipment in its USPS outgoing mail, delaying Plaintiff's vendor's receipt of the

files until October 31, 2023. Ex. J, Collected Emails, p. 2-5; Ex. K, Email Confirming Receipt. Plaintiffs were finally able to begin reviewing the **941.3 GB** of emails in November.

Metadata is essential to efficient review of a large email set and is inherent in native files. Among many other things, metadata increases filtering options (such as date sent or received), verifiably connects the attachments to the messages they accompanied, and clearly identifies duplicate emails. Many courts have recognized the need to produce metadata. All the City needed to do to produce the emails to Plaintiffs with their metadata included is ***not*** spend significant hours and resources converting the files to another (.pdf) format.

Furthermore, the City did not review its voluminous production for responsiveness to Plaintiffs' requests. As discussed further below, Plaintiffs' initial review revealed numerous documents not apparently responsive to Plaintiffs' requests. It is "[the City's] 'responsibility to provide meaningful responses to [Plaintiffs'] requests for production,' and it is [the City's] responsibility to review its documents 'to identify those that are responsive to specific requests.'" *CUCS Unlimited Contracting Services, Inc. v. Comdata Inc.*, No. 3:17-CV-01158, 2019 WL 483313, at *7 (M.D. Tenn. Feb. 7, 2019) (quoting *Orchestrate HR, Inc. v. Trombetta*, 178 F. Supp. 3d 476, 510 (N.D. Tex. 2016), objections overruled sub nom. *Orchestrate HR, Inc. v. Trombetta*, No. 3:13-CV-2110-KS-BH, 2016 WL 5942223 (N.D. Tex. Oct. 13, 2016)). "Although Defendant is permitted to refer Plaintiff[s] to documents as they are kept in the usual course of business, this does not permit Defendant to provide Plaintiffs with unnecessary documents so as to be unduly burdensome." *Haughton v. D.C.*, 315 F.R.D. 424, 429 (D.D.C. 2014), objections overruled, 161 F. Supp. 3d 100 (D.D.C. 2014).

Plaintiffs need not bear the burden of the expense of going through all of a defendants' production to determine responsiveness of documents when a "cursory review" of the production demonstrates nonresponsive documents. *Orchestrate*, 178 F. Supp. 3d at 37-38. In these instances

of overproduction, courts tend to order the producing party to supplement their responses to designate the specific page ranges for finding responsive documents and/or identify the particular request to which it believes each document is responsive. *E.g., Id.* at 510; *Haughton*, 315 F.R.D. at 429; *CUCS Unlimited*, 2019 WL 483313 at *7. "[A] responding party has the responsibility to provide a meaningful response and review voluminous documents to identify those that are responsive to specific requests." *Moser v. Navistar Int'l Corp.*, No. 4:17-CV-00598, 2018 WL 3614012, at *4 (E.D. Tex. July 27, 2018) (citing *Orchestrate,* 178 F.Supp 3d at 510.).

But instead of reviewing the files and culling them to responsive information, the City chose to expend significant resources converting them, thereby removing the metadata and increasing the burden and difficulty of Plaintiffs' review. "The advisory committee notes for the 2006 amendments to Rule 34 provide guidance that Defendants' option to produce in a reasonably usable form does not mean that they are free to convert electronically stored information from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome for Plaintiff to use the information efficiently in the litigation." *White v. Graceland Coll. Ctr. for Prof'l Dev. & Lifelong Learning, Inc.*, 586 F. Supp. 2d 1250, 1264 (D. Kan. 2008).[2]

In a telephone call with Plaintiffs' counsel on November 10, 2023, counsel for the City stated that he took no part in the gathering of the emails, he had not reviewed the files or directed their review prior to production in this case, and that he did not know of anyone on the legal team

[2] In *White*, the defendants converted emails to .pdf, printed them, and produced the paper copies. *Id.* at 1264. While the City stopped short of producing paper files and provided searchable .pdfs, the same principles control here. The City converted native emails into a different form that makes Plaintiffs' review more difficult or burdensome.

having reviewed them. Defense counsel further indicated that the City gathered the emails and created the .pdf files years ago, before his employment with the City began. The City freely admits that they did not review this data for responsiveness to Plaintiff's discovery requests. *See, e.g.,* Ex. L, Collected Emails, pp. 1-3 (stating about the voicemails, "They were not listened to before production. When the email boxes were searched by CTM they may have grabbed all voicemails.").

Plaintiffs are reviewing the near *terabyte* of data using the most economical method they could find—Plaintiffs are paying third party vendor Lexbe a base contract price of **$3,000 per month** to house the data within their electronic discovery review tools. Plaintiffs—who are two individual victims of violence at the hands of Austin police—are being forced to spend upwards of $20,000.00 to review the City's production. Based on Plaintiffs' counsel's review to date, Plaintiffs' counsel believes that the production set would decrease by more than half if the City had removed duplicates and made any sort of reasonable effort to exclude extraneous non-responsive materials.

For example, the City produced at least 302 emails related to voicemails that the City's counsel stated he had not reviewed. Ex. M, List of Voicemails; Ex. N, Example Voicemail Email. It produced a 778 page/253 MB document that appears to relate to use of a particular individual's driveway and includes a traffic impact study.[3] Plaintiff's counsel has also collected a random

[3] This 778-page document is not attached. For reference, it is labeled COA-General Protest.0503249_[CONF]_Fwd_Email and approval from TxDOT.

sampling of 214 documents totaling almost 6 GB that appear wholly unrelated to this litigation. Ex. O, List of Nonresponsive Sampling**.** This list is only a sampling based on the limited review conducted to date and includes only a small fraction of such documents. The City's document dump tactic is costing Plaintiffs tremendous resources. The loss is compounded by lack of specifically requested metadata.

IV. Conclusion

WHEREFORE, Plaintiffs respectfully request that this Court GRANT this Motion, overrule the City's objections, require the City to supplement its answers and responses within 10 business days, identify to which requests for production the specific emails produced are responsive and/or cull the production as it should have done before producing, produce native email files or otherwise provide email metadata, and grant such other or further relief as the Court deems proper under the circumstances.

Dated: December 7, 2023

Respectfully submitted,

HENDLER FLORES LAW, PLLC

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred repeatedly with counsel for Defendant City of Austin in good faith via email and telephone in effort to resolve the issues addressed herein without Court action.

.

Leigh A. Joseph

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to all know counsel of record via the Court's CM/ECF e-filing system on December 7, 2023.

.

Leigh A. Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-RP**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants.	§	

DEFENDANT CITY OF AUSTIN'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

To: Plaintiff, Tyree Talley, by and through his attorneys of record, Scott Hendler and Leigh Anne Joseph, HENDLER FLORES LAW, PLLC, 301 S. MoPac Expressway, Bldg. 1, Suite #300, Austin, Texas 78746, and Rebecca Webber, 4228 Threadgill Street, Austin, Texas 78723.

Pursuant to the Federal Rules of Civil Procedure, Defendant City of Austin makes the following responses to Plaintiff's First Set of Interrogatories subject to the existing protective order in the case [Doc. 28].

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION
/s/ Monte L. Barton, Jr.
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ATTORNEYS FOR DEFENDANTS

EXHIBIT A

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this July 26, 2023.

Via E-Mail:

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ATTORNEYS FOR PLAINTIFF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

EXHIBIT A

GENERAL OBJECTIONS

Each and every interrogatory ("Request") is subject to the general objections set forth below. These general objections are incorporated by reference into each specific response as if fully set forth therein.

1. The City objects to Plaintiff's definition of "identify" or "identity" to the extent that it seeks any confidential or protected information. Current or former City employees may be contacted through counsel.

2. The City objects to any requests that seeks information no longer in the City's possession, custody, or control pursuant to the City's records retention policies and is under no obligation to take extraordinary measures to search for or obtain such information.

3. The City objects to any request that seeks or may be deemed to impose a requirement or burden beyond the requirements of the Federal Rules of Civil Procedure or any other applicable law, rule or order.

EXHIBIT A

DEFENDANT'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATOREIS

INTERROGATORY NO. 1: Identify the officer or officers who shot Plaintiff. If you are unable to do so, describe the efforts APD and/or the City of Austin has made to identify the officer or officers who shot Plaintiff.

ANSWER:
The City would direct plaintiff to the IA investigation that was conducted regarding this incident. *See* COA-Talley 001-099 (IA #2021-0261). The investigation concluded that the following officers may have fired less lethal rounds at the plaintiff, after plaintiff throws an object at the officers standing on the front porch of APD Headquarters:

Benjamin Lynch #6802
Gregory Cherne #8196
Gadiel Alas #7835
Timothy Cobaugh #8383
Michael Harris #8542 (inactive)

Defendant would also direct plaintiff to any depositions that have been taken in the case.

INTERROGATORY NO. 2: Identify all individuals with knowledge of facts relevant to the claims and allegations at issue in this lawsuit, and describe the nature and scope of each person's knowledge.

ANSWER:
Please see the list of officers that are identified in Interrogatory No. 1. Also, defendant would direct plaintiff to any depositions that have been taken in this case and defendant's Initial Disclosures and any amendments or supplements made in this case.

Additionally, defendant would identify Sgt. Billy Parks #4568, as the Internal Affairs investigator that conducted IA #2021-0261.

Finally, defendant would direct plaintiff to documents produced in this case relevant to associated Requests for Production. *See* documents Bates labeled COA 39580-39607 (R2R Smartsheets for deposed officers). These documents identify APD personnel that reviewed BWC video of officers.

INTERROGATORY NO. 3: If you contend that some other person or legal entity is, in whole or in part, liable to Plaintiff in this matter, identify that person or legal entity and describe in detail the basis of said liability.

ANSWER:
On May 30 and 31, 2020, APD officers used force, including the discharge of beanbag rounds, in response to violence and threats of violence by large crowds. Accordingly, Mr. Talley is seen on video throwing an object at the officers standing on the front porch of APD Headquarters. The

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plaintiff himself bears responsibility for the events resulting in Mr. Talley being struck by a beanbag round.

INTERROGATORY NO. 4: Please identify all training, instructions, policies, and procedures that you contend concern or govern the conduct of the officers described in the complaint.

ANSWER:
Please see all parties' pleadings, motions, and discovery responses served in this matter and the corresponding Modesto Rodriguez matter, which is consolidated with this matter for purposes of discovery. Also see all deposition testimony in these associated matters.

Also, please see the following documents that have been produced in these matters. *See* specifically:

COA 001-786 (APD General Orders in effect 4/21/20 – 5/31/20)
COA 3155-4535 (Training documents)

INTERROGATORY NO. 5: Identify all individuals who were shot or injured by Austin police officers with kinetic projectiles on May 30, 2020 and identify the officer or officers who shot or injured such individuals and the time and location of the shooting.

ANSWER:
The City objects that this interrogatory seeks information that is irrelevant to this lawsuit and that it mischaracterized facts and evidence. Subject to and without waiver of the foregoing objections, the City responses as follows:

On May 30 and 31, 2020, APD officers used force, including the discharge of beanbag rounds, in response to violence and threats of violence by large crowds. The City's investigation of this matter is ongoing and the City's ability to disclose information in its possession is restricted by *Garrity v. New Jersey,* 385 U.S. 493 (1967), and Texas Local Government Code § 143.089. Based on the information available that the City is permitted to disclose, it is the City's understanding that the individuals listed in response to Interrogatory No. 5 have been identified or self-identifed as having been struck by beanbag rounds discharged by APD officers on May 30 or May 31, 2020. To the extent that the City has been able to identify the officers that fired the bean bag rounds that struck the referenced individuals, the officers are listed below.

Name	Date of Injury	Location of Incident	Subject Officer(s)
Campbell, Adam	05/30/2020	IH 35 feeder road by APD HQ	UNKNOWN
Alexander, Saraneka a/k/a Martin, Saraneka	05/30/2020	8th and IH35 SB frontage	Kyu An #8190 Daniel McCameron #
Fuentez, Cesar	05/30/2020	UNKNOWN	Benjamin Hart #7544
Ayala, Brad Levi	05/30/2020	800 Blk of IH35 NB frontage	Nicholas Gebhart #7298
Barton, Bomani Ray	05/30/2020	900 Blk of IH-35 NB proper	Kyu An #8190

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Howell, Justin	05/30/2020	700 Blk of IH35 SB frontage (Main)	Jeffery Teng #8443 or Kyle Felton #8900
Short, Zachary	05/30/2020	Near upper deck IH35	UNKNOWN
Underwood, Nicole	05/30/2020	800 Blk of IH35 SB proper	John Siegel #8142
Avvocato, Sage	05/30/2020	UNKNOWN	UNKNOWN
Cates, Tracy	05/30/2020	UNKNOWN	UNKNOWN
Arawn, Steven	05/30/2020	Hillside east of IH35 near APD Main HQ	UNKNOWN
Williams, Meredith	05/30/2020	800 Blk N IH35 NB frontage	Joseph Cast #7764
Volter-Jones, Ge'Micha	05/30/2020	1000 East Riverside	Derrick Lehman #6794
Doe, Hank	05/30/2020	UNKNOWN	UNKNOWN
Evans, Antony	05/31/2020	800 N IH35 SB frontage	Kyle Felton #8900
Drake, Maredith	05/31/2020	800 N IH35 SB frontage	Chance Bretches #7289
Herrera, Jose	05/30/2020	800 N IH35 SB frontage	James Morgan #8215
Chavez, Arianna	05/31/2020	UNKNOWN	UNKNOWN
Kirsch, Sam	05/31/2020	800 Blk of IH35 NB proper	Rolan Rast #8221
Talley, Tyree	05/30/2020	APD Main	Officers potentially identified: Benjamin Lynch #6802 Gregory Cherne #8196 Gadiel Alas #7835 Timothy Cobaugh #8383 Michael Harris #8542 Justin Wright #8976
Rodriguez, Modesto	05/30/2020	APD Main	UNKNOWN
Sanders, Alyssa	05/31/2020	300 Blk W. Cesar Chavez	Eric Heim #7995
Warkoczewski, Christine	05/31/2020	800 Blk IH35 SB Proper	Justin Berry #6134, Alexander Lomovstev #6317, Todd Gilbertson #7066, Jaime Carrillo #4834, Jeremy Fisher #7537, Christopher Irwin #7210, or Joshua Jackson #8546

INTERROGATORY NO. 6: Identify any APD officer who has been disciplined in any fashion by Austin Police Department or City of Austin for conduct or inaction that occurred on May 30, 2020 or May 31, 2020 or that was related to such conduct or inaction. In addition to officers disciplined for firing kinetic projectiles or using unreasonable force, this question specifically seeks the identity of any officer in a supervisory or bystander role on May 30, 2020 or May 31, 2020 who was disciplined in any fashion for permitting officers to shoot innocent people with less lethal weapons or for failing to stop such conduct.

ANSWER:

The City objects that this interrogatory is overbroad and seeks information that is not relevant to this lawsuit. Subject to and without waiver of the foregoing objection, pursuant to Texas civil

EXHIBIT A

service law, the disciplinary process remains open with regard to allegations in any incident until 30 days after the conclusion of a related criminal proceeding. Criminal proceedings are still pending in multiple cases stemming from several May 30 and 31, 2020 protest related incidents. Specifically in response to Mr. Talley, please see the investigation associated with this incident, that was previously produced as documents Bates labeled COA 001-099 (IA #2021-0261).

INTERROGATORY NO. 7: If any munitions (including kinetic projectiles or bean bag rounds) were used by APD officers on May 30, 2020 that had passed its expiration date, please identify the type of munition, the date of expiration, the officer who fired it, explain why it was used, and whose responsibility at the City or APD to prevent the use of expired munitions.

ANSWER:
The City objects that this interrogatory is overbroad and seeks information that is not relevant to this lawsuit. Subject to and without waiver of the foregoing objections, the City's investigation of this matter is ongoing. Additionally, the City directs plaintiff to documents being produced in association with Requests for Production in this case. See COA 4536-4587 (munitions purchase information); 40601-10833 (munitions contracts and purchases); 39841-39877 (APD After Action Report – September 2022).

INTERROGATORY NO. 8: Identify all individuals shot with kinetic projectiles by Austin Police Department officers that the City of Austin, Chief Manley, or the Austin Police Department's leadership believes should not have been shot with a kinetic projectile and identify the officer who shot the individuals for the following dates or time periods:

a. On May 30, 2020;

b. Any other point in time between January 1, 2017 to the present

ANSWER:
The City objects that this interrogatory seeks information that is irrelevant to this lawsuit and that it mischaracterized facts and evidence. Subject to and without waiver of the foregoing objections, on May 30 and 31, 2020, APD officers used force, including the discharge of beanbag rounds, in response to violence and threats of violence by large crowds. The City's investigation of this matter is ongoing and the City's ability to disclose information in its possession is restricted by *Garrity v. New Jersey,* 385 U.S. 493 (1967), the Texas Local Government Code § 143.089. Based on the information available that the City is permitted to disclose, it is the City's understanding that the individuals listed in response to Interrogatory No. 5 have been identified or self-identified as having been struck by beanbag rounds discharged by APD officers on May 30 or May 31, 2020.

INTERROGATORY NO. 9: Identify all APD command personnel who had a role in planning APD's response to the protests on May 30, 2020. Be certain to identify their chain of command up through Chief Brian Manley.

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ANSWER:
Chief Brian Manley
Chief of Staff Troy Gay
Assistant Chief Joseph Chacon
Assistant Chief Richard Guajardo
Assistant Chief Jennifer Stephenson
Assistant Chief Robin Henderson
Assistant Chief Brent Dupree
Commander Michael Eveleth served as Duty Commander and SRT Commander.
Commander Lee Rogers served as SRT Commander.
Commander Jason Staniszewski served as SRT Commander.

INTERROGATORY NO. 10: Identify all APD command personnel who had a role in supervising APD's response to the May 30, 2020 protest. Please be certain to identify their chain of command up through Chief Brian Manley.

ANSWER:
Chief Brian Manley
Chief of Staff Troy Gay
Assistant Chief Joseph Chacon
Assistant Chief Richard Guajardo
Assistant Chief Jennifer Stephenson
Assistant Chief Robin Henderson
Assistant Chief Brent Dupree
Commander Michael Eveleth served as Duty Commander and SRT Commander.
Commander Lee Rogers served as SRT Commander.
Commander Jason Staniszewski served as SRT Commander.

INTERROGATORY NO. 11: State the full name, rank and job title of any and all individuals who contributed to answering these interrogatories. Please identify what Interrogatories each identified person assisted in answering.

ANSWER:
Numerous APD personnel contributed in part to these interrogatory answers as well as City of Austin Law Department personnel. APD personnel who contributed include: Chief Joseph Chacon, Assistant Chief Robin Henderson and Assistant Chief Jason Staniszewski.

INTERROGATORY NO. 12: Describe with particularity all policies, practices and/or procedures adopted or implemented by APD and which were in effect on May 30, 2020, to ensure that all APD personnel complied with existing policies and procedures with regard to the use of force against individuals, including excessive force.

ANSWER:
Defendant directs Plaintiff to documents that reference APD's policies and procedures that were

EXHIBIT A

in effect on May 30, 2020 and are being produced in response to associated Requests for Production in this case. *See* COA 0001-0786 (APD General Orders effective 4/21/20 – 5/31/20).

INTERROGATORY NO. 13: Describe with particularity all weapon-specific policies, practices or procedures with regard to the use of force adopted or implemented by APD and which were in effect on May 30, 2020, to include any training and certification requirements an officer must meet before being permitted to carry and use authorized weapons, and specifically including "less lethal" weapons.

ANSWER:
Defendant directs Plaintiff to documents that reference APD's policies and procedures that were in effect on May 30, 2020 and are being produced in response to associated Requests for Production in this case. *See* COA 0001-0786 (APD General Orders effective 4/21/20 – 5/31/20). Defendant specifically references Chapter 2 – Response to Resistance and Pursuit and Chapter 8 – Equipment Policies.

INTERROGATORY NO. 14: Describe with particularity all policies, practices or procedures adopted by APD and which were in effect on May 30, 2020, to ensure that APD use of force training and procedures complied with applicable law.

ANSWER:
Defendant directs Plaintiff to documents that reference APD's policies and procedures that were in effect on May 30, 2020 and are being produced in response to associated Requests for Production in this case. *See* COA 0001-0786 (APD General Orders effective 4/21/20 – 5/31/20). Defendant specifically references Chapter 2 – Response to Resistance.

INTERROGATORY NO. 15: Describe with particularity APD's use of force training for patrol and other relevant officers in effect on May 30, 2020, including but not limited to use of force decision making, the Fourth Amendment and related law, interactive exercises illustrating proper use of force decision-making, and use of de-escalation techniques.

ANSWER:
APD provides both cadets and officers with extensive mandatory training regarding use of force decision making, the Fourth Amendment and related case law, as well as interactive scenario exercises to ensure all officers are well educated in proper use of force techniques and decision-making and de-escalation techniques.

INTERROGATORY NO. 16: State whether APD maintains and tracks use of force measurements (and if so, for how long it has done so), including, but not limited to the number of force complaints sustained against specific officers, the number of officers who has more than one instance of force found to violate policy, the circumstances of each use of force found to violate policy.

EXHIBIT A

ANSWER:
The City objects that this interrogatory is overbroad and seeks information that is not relevant to this lawsuit. Subject to and without waiver of the foregoing objections, APD maintains detailed records on every officer regarding any alleged and/or sustained policy violations. Any complaint that is not found to be a policy violation, which resulted in discipline, is protected under Texas Local Government Code § 143.089.

INTERROGATORY NO. 17: Please identify any and all changes that have been made to your policies, practices and/or training procedures relating to the use of force by APD officers or employees since May 30, 2020.

ANSWER:
The City objects that this interrogatory seeks information that is irrelevant to this lawsuit.

INTERROGATORY NO. 18: Please identify the "less lethal" munitions used by APD on May 30, 2020, including manufacturer, make, and any other known information about the munitions themselves.

ANSWER:
Defendant directs Plaintiff to documents that reference "less lethal" munitions that are being produced in response to associated Requests for Production in this case. *See* COA 4536-4587; 40601-10833.

EXHIBIT A

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this day appeared ROBIN J. HENDERSON by me first duly sworn, stated that she/he has read the foregoing answers to interrogatories, she/he is familiar with the facts stated therein, and they are true and correct.

#3441

Robin Henderson

SUBSCRIBED AND SWORN TO before me on the 31 day of July, 2023.

JANET D. DEATON
Notary Public, State of Texas
Notary ID# 12666105-8
My Commission Expires
MARCH 29, 2025

NOTARY PUBLIC STATE OF TEXAS

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:21-cv-00249-DH**
	§	
CITY OF AUSTIN AND JOHN DOES,	§	
Defendants.	§	

DEFENDANT CITY OF AUSTIN'S RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION

To: Plaintiff, Tyree Talley, by and through his attorneys of record, Scott Hendler, Leigh Anne Joseph and Stephen Demik, HENDLER FLORES LAW, PLLC, 301 S. MoPac Expressway, Bldg. 1, Suite #300, Austin, Texas 78746, and Rebecca Webber, 4228 Threadgill Street, Austin, Texas 78723.

Pursuant to the Federal Rules of Civil Procedure, Defendant City of Austin makes the following responses to Plaintiff's Third Request for Production subject to the existing protective order in the case [Doc. 28].

Defendant City of Austin, by and through counsel, makes available the documents and things listed below for inspection and review by legal counsel of Plaintiff.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION
/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311
ATTORNEYS FOR DEFENDANTS

EXHIBIT B

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this July 26, 2023.

Via E-Mail:

Scott M. Hendler
State Bar No. 09445500
shender@hendlerlaw.com
Leigh A. Joseph
State Bar No. 24060051
ljoseph@hendlerlaw.com
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Rebecca Ruth Webber
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4228 Threadgill Street
Austin, Texas 78723
Telephone: (512) 669-9506

ATTORNEYS FOR PLAINTIFF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

EXHIBIT B

GENERAL OBJECTIONS

Each and every request for production ("Requests") is subject to the general objections set forth below. These general objections are incorporated by reference into each specific response as if fully set forth therein.

1. The City objects to Plaintiff's definition of "identify" or "identity" to the extent that it seeks any confidential or protected information. Current or former City employees may be contacted through counsel.

2. The City objects to any requests that seeks information no longer in the City's possession, custody, or control pursuant to the City's records retention policies and is under no obligation to take extraordinary measures to search for or obtain such information.

3. The City objects to any request that seeks or may be deemed to impose a requirement or burden beyond the requirements of the Federal Rules of Civil Procedure or any other applicable law, rule or order.

EXHIBIT B

DEFENDANT'S ANSWERS TO
PLAINTIFF'S THIRD REQUESTS FOR PRODUCTION

REQUEST NO. 17: Produce all documents related to the complete service record for the below police officers who shot (or who is suspected of shooting) Plaintiff during the Incident.

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

EXHIBIT B

REQUEST NO. 18: Produce all documents concerning charges, claims or other complaints involving APD conduct in interactions with deaf individuals, for conduct that occurred on or between June 1, 2018 to May 30, 2020.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 19: Please produce any and all written memoranda, use of force reports, other reports, correspondence, documents, e-mails, texts, photographs, video or audio tapes, or other writings or recordings relating to the events of the May 30, 2020 protest and the investigation into the subject incident.

ANSWER:
Defendant City of Austin refers the plaintiff to documents Bates numbered:

Produced September 2, 2022
COA 1576-3154
COA 4588-4622

Produced March 10, 2023
COA 37535-37804

Produced July 13, 2023
COA 37805-39632

Defendant City of Austin refers the plaintiff to COA 39845-39993, COA 40585-40591 Radio Traffic, and COA 40592, COA 40593 HQ CCTV.

COA 1576-3154, COA 37805-39632, COA 39973-39993, COA 40585-40593 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked *CONFIDENTIAL.*

REQUEST NO. 20: Please produce the product manual or materials provided by the manufacturers or entity from which you purchased the product for any projectile fired by an APD officer on May 30, 2020 or May 31, 2020.

ANSWER:
Defendant City of Austin refers the plaintiff to documents bates labeled COA 39994-40008.

EXHIBIT B

REQUEST NO. 21: For the period Jan 1, 2018 to the present unless otherwise specified: please produce all email or text messages sent by or received by Brian Manley concerning:

a. The use of kinetic projectiles;
b. The shooting of any individual who alleges he or she was harmed by a projectile fired by an APD officer;
c. Training concerning the use of kinetic projectiles;
d. Manley's removal or potential removal as APD Chief of Police after May 31, 2020;
e. Authorizing or permitting APD officers to fire kinetic projectiles at individuals:
    i. On May 30, 2020;
    ii. On May 31, 2020; and
    iii. After May 31, 2020 to the present.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Without waiving these objections, Defendant City of Austin refers the plaintiff to documents bates labeled COA 40009-40039 which are Brian Manley's text messages.

Defendant City of Austin will supplement with emails bates labeled COA-General-Protest 0317555-0417139 Brian Manley. Due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

COA General Protest 0317555-0417139 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked *CONFIDENTIAL.*

REQUEST NO. 22: For the period January 1, 2020 to the present, unless otherwise specified, please produce all email or text messages to or from (1) any assistant chief of police or their staff; (2) Ken Cassady; (3) Spencer Kronk or his staff; (4) Mayor Adler or his staff; any member of the City Council or their staff, the person or persons the City claims had tactical command of the police force during the May 30 or May 31, 2020 protests, or any member of the Austin Police Department who provides training to APD officers concerning:

a. The dangers of using kinetic projectiles;
b. The shooting of any individual who alleges he or she was harmed by a kinetic projectile fired by an APD officer;
c. Training concerning the use of kinetic projectiles;
d. Manley's removal as APD Chief of Police after May 31, 2020;
e. Any investigation into police misconduct or potential misconduct by APD officers on May 30, 2020 or May 31, 2020.

EXHIBIT B

f. Authorizing or permitting APD officers to fire kinetic projectiles at individuals:
   i. On May 30, 2020;
   ii. On May 31, 2020; and
   iii. After May 31, 2020 to the present.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Subject to and without waiving objections, Defendant City of Austin refers to COA 40040-40584 which are City council and city manager text messages.

Defendant City of Austin will supplement production of the following emails. Please check the box link for items that will be added. You will be notified once the uploads are complete.

COA-General-Protest 0030000-0038220	Brent Dupree
COA-General-Protest 0038221-0056631	Jason Staniszewksi
COA-General-Protest 0060448-0095086	Joe Chacon
COA-General-Protest 0108587-0152192	Mark Spangler
COA-General-Protest 0152193-0164849	Richard Guajardo
COA-General-Protest 0164850-0198591	Robin Henderson
COA-General-Protest 0199050-0239615	Troy Gay
COA-General-Protest 0246542-0300312	Farah Muscadin
COA-General-Protest 0300313-0306308	Jennifer Stephenson
COA-General-Protest 0307326-0307747	Kenneth Cassady
COA-General-Protest 0423817-0474487	Alison Alter
COA-General-Protest 0474488-0505196	Ann Kitchen
COA-General-Protest 0505197-0519800	Delia Garza
COA-General-Protest 0519801-0541571	Gregorio Casar
COA-General-Protest 0541572-0551323	Jimmy Flannigan
COA-General-Protest 0551324-0593374	Kathie Tovo
COA-General-Protest 0593375-0604089	Leslie Pool
COA-General-Protest 0604090-0700844	Mayor Adler
COA-General-Protest 0700845-0724646	Natasha Harper-Madison
COA-General-Protest 0724647-0743139	Paige Ellis
COA-General-Protest 0743140-0762595	Ray Arellano
COA-General-Protest 0762596-0802815	Sabino Renteria
COA-General-Protest 0802816-0856000	Spencer Cronk

Due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

All items bates labeled COA General Protest are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked *CONFIDENTIAL*.

EXHIBIT B

REQUEST NO. 23: Please produce any and all written memoranda, reports, correspondence, documents, e-mails, photographs, video or audio tapes, or other writings or recordings reflecting receipt of information or training on the use of "less lethal" weapons, crowd control, deaf communications, and/or use of force on or before May 30, 2020 by any of the following:

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

EXHIBIT B

REQUEST NO. 24: Please produce all records, documents, interviews or other material that resulted from the investigation into the subject matter of this Complaint and any other internal affairs, Special Investigation Unit, or Office of Police oversight investigations involving any of the following:

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Defendant City of Austin refers the plaintiff to documents bates labeled COA-Talley 001-099 (IA #2021-0261); 370-423 (SIU#2022-5008692); 1694-1708 (IA#2020-1125).

EXHIBIT B

Defendant City of Austin refers the plaintiff to documents bates labeled COA 39580-39632.
Defendant City of Austin refers the plaintiff to review any officer supplements entered in COA 1576-3154 and COA 37805-39579.
Supplements of the officers deposed in this incident are bates labeled as COA 1841, 1992, 2662-2665, 2286-2287 (Lynch). COA 1932, 2328-2329, 2726-2729, 2801-2805 (Cantu-Harkless). COA 1908, 2946 (Alas), COA 1952, 2257-2259, 2318-2321, 2717-2718 (Cherne), COA 2094, 2479, 376677-37682, 38338, 38723, 39595-39597 (Hethershaw), COA 2292, 2313, 2469, 37782-37789, 38536, 38557, 38713, 39441 (Wright), and COA 1964, 2598, 2946-2947 (Cobaugh).

COA 1576-3154, 37805-39579, 39580-39632 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 25: Please produce any documents reflecting any corrective or disciplinary measures APD issued or enacted as a consequence of conduct from May 30, 2020 or May 31, 2020.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under Fed. R. Civ. P. 26(b), since it is not proportional to the needs of the case.

Without waiving these objections, the City responds by noting that it has not completed its disciplinary review process for all involved officers at this time. Austin Police Department has suspended its investigations into these incidents pending the outcome of criminal proceedings.

Defendant City of Austin refers the plaintiff to COA-Talley 1707-1708, Officer Cobaugh was disciplined for a protest related incident. Defendant City of Austin refers the plaintiff to documents bates labeled COA 39845-39993 for policy changes implemented.

COA-Talley 1707-1708 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 26: Please produce any documents concerning the expiration or hardening of munitions used by APD during the May 30, 2020 and May 31, 2020 protests.

ANSWER:
Defendant City of Austin refers the plaintiffs to documents bates labeled COA 39973-39993, Review Task Force Report.

COA 39973-39993 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 27: Please produce all documents concerning the dangers of kinetic projectiles in your custody or control.

EXHIBIT B

ANSWER:
Defendant City of Austin refers the plaintiff to items previously produced under documents bates labeled COA 0001-1575 APD Policies and COA 3155-3334, and COA 3744-4535 Less Lethal Trainings.

COA 3155-3334, COA 3744-4535 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 28: Please produce the Austin Police Department policy manual (whether known by this or any other name) that you contend was in effect on May 30, 2020 and May 31, 2020.

ANSWER:
Defendant City of Austin refers the plaintiffs to responsive policies already produced in response to RFPs 5, 6, 7. COA 0001-1575.

REQUEST NO. 29: Please produce all correspondence between the City of Austin and any member of the news media concerning the use of "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) by Austin police officers on May 30, 2020 and May 31, 2020. The period of this request is May 30, 2020 to the present.

ANSWER:
Defendant City of Austin refers the plaintiff to documents bates labeled COA 40834-41067.

REQUEST NO. 30: Please produce all communications, including, but not limited to, recordings of radio traffic, shift turnout meetings, or other orders, which authorized any Austin police officers to fire kinetic projectiles at individuals on May 30, 2020 or May 31, 2020.

ANSWER:
Defendant City of Austin refers the plaintiff to COA 0001-1575 APD Policies and Procedures, also see Audios bates labeled as COA 40585-40591

COA 40585-40591 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 31: Please produce a copy of each lawsuit alleging that on May 30 or 31, 2020, an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.)

ANSWER:
Defendant City of Austin refers the plaintiff to the following list of civil actions filed in either the United States District Court for the Western District of Texas or Travis County District Court. The complaints would be equally available to the Plaintiff from Court Pacer or Travis County Odyssey.

EXHIBIT B

Van Os v City of Austin; 1:22-cv-00522
Howell v City of Austin; 1:21-cv-00749
Alexander v City of Austin; 1:22-cv-00520
Arawn v City of Austin; 1:20-cv-01118
Avvocato v City of Austin; 1:22-cv-00516
Cates v City of Austin; 1:20-cv01258
Chavez v City of Austin; 1:20-cv01174
Evans v City of Austin; 1:20-cv001057
Sanders v City of Austin; 1:22-cv-00314
Volter-Jones v City of Austin; 1:22-cv-00511
Warkoczewski v City of Austin; 1:21-cv-00739
Barton v City of Austin; 1:22-cv00221
Campbell v City of Austin; 1:22-cv-00517
Kirsch v City of Austin; 1:20-cv-01113
Fuentez v City of Austin; 1:22-cv-00316
Ellis v City of Austin; 1:22-cv-00315
Williams v City of Austin; 1:22-cv-00042
Drake v City of Austin; 1:20-cv-00956
Beuhler v City of Austin; 1:21-cv-00054
Gallagher v City of Austin; 1:20-cv-00901
Underwood v City of Austin; 1:22-cv-00032
Herrera v City of Austin; 1:20-cv-01134
Ayala v City of Austin; D-1-GN-22-002431

REQUEST NO. 32: Please produce a copy of each jury verdict against the City of Austin or any of its current or former employees arising from an allegation that an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) on May 30 or 31, 2020.

ANSWER:
None.

REQUEST NO. 33: Please produce a copy of all documents concerning any written complaints or lawsuits that the City of Austin, the Austin Police Department, or any Austin Police Department employee settled which alleged that an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) on May 30 or 31, 2020.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

EXHIBIT B

REQUEST NO. 34: Please produce all documents concerning the revision or decision not to revise any of the City of Austin's policies, procedures, instructions, or practices governing any aspect of the use of "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.), during the period from January 1, 2015 to present.

ANSWER:
Defendant City of Austin refers the plaintiff to COA 0001-1576 APD Policies and Procedures, COA 3878-3882 produced September 2, 2022.

COA 39845-39877, Austin Police Announcement of key changes to policing and protests and the After Action Report; COA 40594-40600 APD memos regarding policy changes.

COA 39973-39993 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 35: Please produce all documents relating to the City of Austin's inventory of "less lethal" munitions, including ammunition and weapons capable of firing kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) during the period January 1, 2019 to present.

ANSWER:
Defendant City of Austin refers the plaintiff to documents produced September 2, 2022 bates labeled COA 4536-4587. Defendant City of Austin also refers the plaintiff to documents bates labeled COA 40601-40833

COA 4536-4587, COA 40601-40833 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 36: Please produce all reports showing the number of people injured by APD employees' use of "less lethal" weapons, including kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) For the following periods:

a. 5/30/2020;
b. 5/31/2020; and
c. 6/1/2020 to the present.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Subject to and without waiving our objection the Defendant City of Austin refers the plaintiffs to documents bates labeled COA 1576-3154 and COA 37805-39632.

COA 1576-3154 and COA 37805-39632 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

EXHIBIT B

REQUEST NO. 37: Please produce the attendance rosters, deployment reports, time sheets, and any other documents identifying each and every police officer who had access to "less lethal" munitions and who was stationed or responded to the protest outside the Austin police department headquarters on May 30, 2020.

ANSWER:
Defendant City of Austin refers the plaintiff to documents bates labeled COA 41068-41142.

COA 41068-41142 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 38: Please produce any documents relied upon by the City to respond to Plaintiff's interrogatories.

ANSWER:
Defendant City of Austin refers the plaintiff to all production produced in this litigation.

REQUEST NO. 39: Please produce all communications to or from the Office of Police Oversight concerning:

a. Incidents on May 30, 2020;
b. Incidents on May 31, 2020; or
c. Incidents involving weapons dubbed "less lethal" by APD that resulted in any alleged injury for the period January 1, 2015 to the present.

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 40: All internal and external communications concerning violations of APD policies by APD officers on May 30, 2020, May 31, 2020 (the date of the protests).

ANSWER:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 41: For the period January 1, 2017 to the present unless otherwise specified: please produce all email, text messages, and other communications sent by or received by any secretarial staff, assistants, support staff, or other staff who work in, or report directly to, the Austin Police Department's Office of the Chief of Police concerning:

EXHIBIT B

a. The dangers of using kinetic projectiles;
b. The use of kinetic projectiles;
c. The shooting of any individual who alleges he or she was harmed by a kinetic projectile fired by an APD officer;
d. Training concerning the use of kinetic projectiles;
e. Complaints or allegations that an APD officer improperly failed to intervene to stop or mitigate another peace officer's use of force;
f. Brian Manley's removal or potential removal as APD Chief of Police after May 31, 2020; or
g. Authorizing or permitting APD officers to fire kinetic projectiles at individuals;
    i. On May 30, 2020;
    ii. On May 31, 2020; and
    iii. After May 31, 2020 to the present.

ANSWER:

Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MODESTO RODRIGUEZ,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 21-cv-01087-RP**
	§	
CITY OF AUSTIN AND OFFICER JOHN DOE	§	
Defendant.	§	
	§	

DEFENDANT CITY OF AUSTIN'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33, Defendant City of Austin serves its responses to Plaintiff's First Set of Interrogatories.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ H. Gray Laird III
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ATTORNEYS FOR DEFENDANT

EXHIBIT C

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 26th day of July, 2023.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

EXHIBIT C

GENERAL OBJECTIONS

Each and every interrogatory ("Request") is subject to the general objections set forth below. These general objections are incorporated by reference into each specific response as if fully set forth therein.

1. The City objects to Plaintiff's definition of "identify" or "identity" to the extent that it seeks any confidential or protected information. Current or former City employees may be contacted through counsel.

2. The City objects to any requests that seeks information no longer in the City's possession, custody, or control pursuant to the City's records retention policies and is under no obligation to take extraordinary measures to search for or obtain such information.

3. The City objects to any request that seeks or may be deemed to impose a requirement or burden beyond the requirements of the Federal Rules of Civil Procedure or any other applicable law, rule or order.

DEFENDANT CITY OF AUSTIN'S RESPONSES TO PLAINTIFFS FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1: Identify the officer or officers who shot Plaintiff. If you are unable to do so, describe the efforts APD and/or the City of Austin has made to identify the officer or officers who shot Plaintiff.

ANSWER:
Defendant City of Austin cannot identify an officer with any specificity. Cobaugh, Lynch and Cherne had timestamps of possible less lethal impacts. Plaintiff Rodriguez did not file a complaint via any channel so that an investigation into the incident could commence. APD has reviewed the various bodycams to attempt to identify the officer(s).

INTERROGATORY NO. 2: Identify all individuals with knowledge of facts relevant to the claims and allegations at issue in this lawsuit, and describe the nature and scope of each person's knowledge.

ANSWER:
Please see the list of officers that are identified in Interrogatory No. 1. Also, defendant would direct plaintiff to any depositions that have been taken in this case and defendant's Initial Disclosures and any amendments or supplements made in this case.

Finally, defendant would direct plaintiff to documents produced in this case relevant to associated Requests for Production. *See* documents Bates labeled COA 39580-39607 (R2R Smartsheets for deposed officers). These documents identify APD personnel that reviewed BWC video of officers.

INTERROGATORY NO. 3: If you contend that some other person or legal entity is, in whole or in part, liable to Plaintiff in this matter, identify that person or legal entity and describe in detail the basis of said liability.

ANSWER:
On May 30 and 31, 2020, APD officers used force, including the discharge of beanbag rounds, in response to violence and threats of violence by large crowds. Accordingly, Plaintiff Rodriguez is seen on video throwing an object at the officers standing on the front porch of APD Headquarters. The plaintiff himself bears responsibility for the events resulting in Mr. Rodriguez being struck by beanbag rounds.

INTERROGATORY NO. 4: Please identify all training, instructions, policies, and procedures that you contend concern or govern the conduct of the officers described in the complaint.

EXHIBIT C

ANSWER:
Please see all parties' pleadings, motions, and discovery responses served in this matter and the corresponding Modesto Rodriguez matter, which is consolidated with this matter for purposes of discovery. Also see all deposition testimony in these associated matters.

Also, please see the following documents that have been produced in these matters. *See* specifically:

COA 001-786 (APD General Orders in effect 4/21/20 – 5/31/20)

COA 3155-4535 (Training documents)

INTERROGATORY NO. 5: Identify all individuals who were shot or injured by Austin police officers with kinetic projectiles on May 30, 2020 and identify the officer or officers who shot or injured such individuals and the time and location of the shooting.

ANSWER:
The City objects that this interrogatory seeks information that is irrelevant to this lawsuit and that it mischaracterized facts and evidence. Subject to and without waiver of the foregoing objections, the City responses as follows:

On May 30 and 31, 2020, APD officers used force, including the discharge of beanbag rounds, in response to violence and threats of violence by large crowds. The City's investigation of this matter is ongoing and the City's ability to disclose information in its possession is restricted by *Garrity v. New Jersey,* 385 U.S. 493 (1967), and Texas Local Government Code § 143.089. Based on the information available that the City is permitted to disclose, it is the City's understanding that the individuals listed in response to Interrogatory No. 5 have been identified or self-identifed as having been struck by beanbag rounds discharged by APD officers on May 30 or May 31, 2020. To the extent that the City has been able to identify the officers that fired the bean bag rounds that struck the referenced individuals, the officers are listed below.

Name	Date of Injury	Location of Incident	Subject Officer(s)
Campbell, Adam	05/30/2020	IH 35 feeder road by APD HQ	UNKNOWN
Alexander, Saraneka a/k/a Martin, Saraneka	05/30/2020	8th and IH35 SB frontage	Kyu An #8190 Daniel McCameron #
Fuentez, Cesar	05/30/2020	UNKNOWN	Benjamin Hart #7544
Ayala, Brad Levi	05/30/2020	800 Blk of IH35 NB frontage	Nicholas Gebhart #7298
Barton, Bomani Ray	05/30/2020	900 Blk of IH-35 NB proper	Kyu An #8190

EXHIBIT C

Howell, Justin	05/30/2020	700 Blk of IH35 SB frontage (Main)	Jeffery Teng #8443 or Kyle Felton #8900
Short, Zachary	05/30/2020	Near upper deck IH35	UNKNOWN
Underwood, Nicole	05/30/2020	800 Blk of IH35 SB proper	John Siegel #8142
Avvocato, Sage	05/30/2020	UNKNOWN	UNKNOWN
Cates, Tracy	05/30/2020	UNKNOWN	UNKNOWN
Arawn, Steven	05/30/2020	Hillside east of IH35 near APD Main HQ	UNKNOWN
Williams, Meredith	05/30/2020	800 Blk N IH35 NB frontage	Joseph Cast #7764
Volter-Jones, Ge'Micha	05/30/2020	1000 East Riverside	Derrick Lehman #6794
Doe, Hank	05/30/2020	UNKNOWN	UNKNOWN
Evans, Antony	05/31/2020	800 N IH35 SB frontage	Kyle Felton #8900
Drake, Maredith	05/31/2020	800 N IH35 SB frontage	Chance Bretches #7289
Herrera, Jose	05/30/2020	800 N IH35 SB frontage	James Morgan #8215
Chavez, Arianna	05/31/2020	UNKNOWN	UNKNOWN
Kirsch, Sam	05/31/2020	800 Blk of IH35 NB proper	Rolan Rast #8221
Talley, Tyree	05/30/2020	APD Main	Officers potentially identified: Benjamin Lynch #6802 Gregory Cherne #8196 Gadiel Alas #7835 Timothy Cobaugh #8383 Michael Harris #8542
Rodriguez, Modesto	05/30/2020	APD Main	UNKNOWN
Sanders, Alyssa	05/31/2020	300 Blk W. Cesar Chavez	Eric Heim #7995
Warkoczewski, Christine	05/31/2020	800 Blk IH35 SB Proper	Justin Berry #6134, Alexander Lomovstev #6317, Todd Gilbertson #7066, Jaime Carrillo #4834, Jeremy Fisher #7537, Christopher Irwin #7210, or Joshua Jackson #8546

EXHIBIT C

INTERROGATORY NO. 6: Identify any APD officer who has been disciplined in any fashion by Austin Police Department or City of Austin for conduct or inaction that occurred on May 30, 2020 or May 31, 2020 or that was related to such conduct or inaction. In addition to officers disciplined for firing kinetic projectiles or using unreasonable force, this question specifically seeks the identity of any officer in a supervisory or bystander role on May 30, 2020 or May 31, 2020 who was disciplined in any fashion for permitting officers to shoot innocent people with less lethal weapons or for failing to stop such conduct.

ANSWER:
The City objects that this interrogatory is overbroad and seeks information that is not relevant to this lawsuit. Subject to and without waiver of the foregoing objection, pursuant to Texas civil service law, the disciplinary process remains open with regard to allegations in any incident until 30 days after the conclusion of a related criminal proceeding. Criminal proceedings are still pending in multiple cases stemming from several May 30 and 31, 2020 protest related incidents. Specifically in response to Mr. Talley, please see the investigation associated with this incident, that was previously produced as documents Bates labeled COA 001-099 (IA #2021-0261).

INTERROGATORY NO. 7: If any munitions (including kinetic projectiles or bean bag rounds) were used by APD officers on May 30, 2020 that had passed its expiration date, please identify the type of munition, the date of expiration, the officer who fired it, explain why it was used, and whose responsibility at the City or APD to prevent the use of expired munitions.

ANSWER:
The City objects that this interrogatory is overbroad and seeks information that is not relevant to this lawsuit. Subject to and without waiver of the foregoing objections, the City's investigation of this matter is ongoing. Additionally, the City directs plaintiff to documents being produced in association with Requests for Production in this case. See COA 4536-4587 (munitions purchase information); 40601-10833 (munitions contracts and purchases); 39841-39877 (APD After Action Report – September 2022).

INTERROGATORY NO. 8: Identify all individuals shot with kinetic projectiles by Austin Police Department officers that the City of Austin, Chief Manley, or the Austin Police Department's leadership believes should not have been shot with a kinetic projectile and identify the officer who shot the individuals for the following dates or time periods:

a. On May 30, 2020;

b. Any other point in time between January 1, 2017 to the present

ANSWER:
The City objects that this interrogatory seeks information that is irrelevant to this lawsuit and that it mischaracterized facts and evidence. Subject to and without waiver of the foregoing objections, on May 30 and 31, 2020, APD officers used force, including the discharge of beanbag rounds, in response to violence and threats of violence by large crowds. The City's investigation of this

EXHIBIT C

matter is ongoing and the City's ability to disclose information in its possession is restricted by *Garrity v. New Jersey,* 385 U.S. 493 (1967), the Texas Local Government Code § 143.089. Based on the information available that the City is permitted to disclose, it is the City's understanding that the individuals listed in response to Interrogatory No. 5 have been identified or self-identified as having been struck by beanbag rounds discharged by APD officers on May 30 or May 31, 2020.

INTERROGATORY NO. 9: Identify all APD command personnel who had a role in planning APD's response to the protests on May 30, 2020. Be certain to identify their chain of command up through Chief Brian Manley.

ANSWER:
Chief Brian Manley
Chief of Staff Troy Gay
Assistant Chief Joseph Chacon
Assistant Chief Richard Guajardo
Assistant Chief Jennifer Stephenson
Assistant Chief Robin Henderson
Assistant Chief Brent Dupree
Commander Michael Eveleth served as Duty Commander and SRT Commander.
Commander Lee Rogers served as SRT Commander.
Commander Jason Staniszewski served as SRT Commander.

INTERROGATORY NO. 10: Identify all APD command personnel who had a role in supervising APD's response to the May 30, 2020 protest. Please be certain to identify their chain of command up through Chief Brian Manley.

ANSWER:
Chief Brian Manley
Chief of Staff Troy Gay
Assistant Chief Joseph Chacon
Assistant Chief Richard Guajardo
Assistant Chief Jennifer Stephenson
Assistant Chief Robin Henderson
Assistant Chief Brent Dupree
Commander Michael Eveleth served as Duty Commander and SRT Commander.
Commander Lee Rogers served as SRT Commander.
Commander Jason Staniszewski served as SRT Commander.

INTERROGATORY NO. 11: State the full name, rank and job title of any and all individuals who contributed to answering these interrogatories. Please identify what Interrogatories each identified person assisted in answering.

ANSWER:
Numerous APD personnel contributed in part to these interrogatory answers as well as City of Austin Law Department personnel. APD personnel who contributed include: Chief Joseph Chacon, Assistant Chief Robin Henderson and Assistant Chief Jason Staniszewski.

INTERROGATORY NO. 12: Describe with particularity all policies, practices and/or procedures adopted or implemented by APD and which were in effect on May 30, 2020, to ensure that all APD personnel complied with existing policies and procedures with regard to the use of force against individuals, including excessive force.

ANSWER:
Defendant directs Plaintiff to documents that reference APD's policies and procedures that were in effect on May 30, 2020 and are being produced in response to associated Requests for Production in this case. *See* COA 0001-0786 (APD General Orders effective 4/21/20 – 5/31/20).

INTERROGATORY NO. 13: Describe with particularity all weapon-specific policies, practices or procedures with regard to the use of force adopted or implemented by APD and which were in effect on May 30, 2020, to include any training and certification

requirements an officer must meet before being permitted to carry and use authorized weapons, and specifically including "less lethal" weapons.

ANSWER:
Defendant directs Plaintiff to documents that reference APD's policies and procedures that were in effect on May 30, 2020 and are being produced in response to associated Requests for Production in this case. *See* COA 0001-0786 (APD General Orders effective 4/21/20 – 5/31/20). Defendant specifically references Chapter 2 – Response to Resistance and Pursuit and Chapter 8 – Equipment Policies.

INTERROGATORY NO. 14: Describe with particularity all policies, practices or procedures adopted by APD and which were in effect on May 30, 2020, to ensure that APD use of force training and procedures complied with applicable law.

ANSWER:
Defendant directs Plaintiff to documents that reference APD's policies and procedures that were in effect on May 30, 2020 and are being produced in response to associated Requests for Production in this case. *See* COA 0001-0786 (APD General Orders effective 4/21/20 – 5/31/20). Defendant specifically references Chapter 2 – Response to Resistance.

INTERROGATORY NO. 15: Describe with particularity APD's use of force training for patrol and other relevant officers in effect on May 30, 2020, including but not limited to use of force decision making, the Fourth Amendment and related law, interactive exercises illustrating proper use of force decision-making, and use of de-escalation techniques.

ANSWER:
APD provides both cadets and officers with extensive mandatory training regarding use of force decision making, the Fourth Amendment and related case law, as well as interactive scenario exercises to ensure all officers are well educated in proper use of force techniques and decision-making and de-escalation techniques.

INTERROGATORY NO. 16: State whether APD maintains and tracks use of force measurements (and if so, for how long it has done so), including, but not limited to the number of force complaints sustained against specific officers, the number of officers who has more than one instance of force found to violate policy, the circumstances of each use of force found to violate policy.

ANSWER:
The City objects that this interrogatory is overbroad and seeks information that is not relevant to this lawsuit. Subject to and without waiver of the foregoing objections, APD maintains detailed records on every officer regarding any alleged and/or sustained policy violations. Any complaint that is not found to be a policy violation, which resulted in discipline, is protected under Texas Local Government Code § 143.089.

INTERROGATORY NO. 17: Please identify any and all changes that have been made to your policies, practices and/or training procedures relating to the use of force by APD officers or employees since May 30, 2020.

ANSWER:
The City objects that this interrogatory seeks information that is irrelevant to this lawsuit.

INTERROGATORY NO. 18: Please identify the "less lethal" munitions used by APD on May 30, 2020, including manufacturer, make, and any other known information about the munitions themselves.

ANSWER:
Defendant directs Plaintiff to documents that reference "less lethal" munitions that are being produced in response to associated Requests for Production in this case. *See* COA 4536-4587; 40601-10833.

EXHIBIT C

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this day appeared ROBIN J. HENDERSON by me first duly sworn, stated that she/he has read the foregoing answers to interrogatories, she/he is familiar with the facts stated therein, and they are true and correct.

#3441

Robin Henderson

SUBSCRIBED AND SWORN TO before me on the 31 day of July, 2023.

JANET D. DEATON
Notary Public, State of Texas
Notary ID# 12666105-8
My Commission Expires
MARCH 29, 2025

NOTARY PUBLIC STATE OF TEXAS

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MODESTO RODRIGUEZ,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 21-cv-01087-RP**
	§	
CITY OF AUSTIN AND OFFICER JOHN DOE	§	
Defendant.	§	
	§	

DEFENDANT CITY OF AUSTIN'S RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION

TO: Plaintiff, Modesto Rodriguez, by and through his attorney of record, Rebecca Webber, Webber Law 4228 Threadgill Street, Austin, Texas 78723 and Scott Hendler, HENDLER FLORES LAW, PLLC 901 S. Mopac Expressway, Bldg 1, Suite 300, Austin, Texas 78746.

Pursuant to Federal Rule of Civil Procedure 34, Defendant City of Austin serves its responses to Plaintiff's Third Request for Production.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
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Telephone (512) 974-1342
Facsimile (512) 974-1311

EXHIBIT D

ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 26th day of July, 2023.

Via E MAIL and Box Link:
Box Link: https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

EXHIBIT D

DEFENDANT CITY OF AUSTIN'S RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION

REQUEST NO. 17: Produce all documents related to the complete service record for the below police officers who shot (or who is suspected of shooting) Plaintiff during the Incident.

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

EXHIBIT D

REQUEST NO. 18: Produce all documents concerning charges, claims or other complaints involving APD conduct in interactions with deaf individuals, for conduct that occurred on or between June 1, 2018 to May 30, 2020.

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 19: Please produce any and all written memoranda, use of force reports, other reports, correspondence, documents, e-mails, texts, photographs, video or audio tapes, or other writings or recordings relating to the events of the May 30, 2020, protest and the investigation into the subject incident.

RESPONSE:
Defendant City of Austin refers the plaintiff to documents Bates numbered:

Produced September 2, 2022
COA 1576-3154
COA 4588-4622

Produced March 10, 2023
COA 37535-37804

Produced July 13, 2023
COA 37805-39632

Defendant City of Austin refers the plaintiff to COA 39845-39993, COA 40585-40591 Radio Traffic, and COA 40592, COA 40593 HQ CCTV.

COA 1576-3154, COA 37805-39632, COA 39973-39993, COA 40585-40593 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked *CONFIDENTIAL.*

REQUEST NO. 20: Please produce the product manual or materials provided by the manufacturers or entity from which you purchased the product for any projectile fired by an APD officer on May 30, 2020 or May 31, 2020.

RESPONSE:
Defendant City of Austin refers the plaintiff to documents bates labeled COA 39994-40008.

EXHIBIT D

REQUEST NO. 21: For the period Jan 1, 2018 to the present unless otherwise specified: please produce all email or text messages sent by or received by Brian Manley concerning:

a. The use of kinetic projectiles;
b. The shooting of any individual who alleges he or she was harmed by a projectile fired by an APD officer;
c. Training concerning the use of kinetic projectiles;
d. Manley's removal or potential removal as APD Chief of Police after May 31, 2020;
e. Authorizing or permitting APD officers to fire kinetic projectiles at individuals:
    i. On May 30, 2020;
    ii. On May 31, 2020; and
    iii. After May 31, 2020 to the present.

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Without waiving these objections, Defendant City of Austin refers the plaintiff to documents bates labeled COA 40009-40039 which are Brian Manley's text messages.

Defendant City of Austin will supplement with emails bates labeled COA-General-Protest 0317555-0417139 Brian Manley. Due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

COA General Protest 0317555-0417139 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked *CONFIDENTIAL*.

REQUEST NO. 22: For the period January 1, 2020 to the present, unless otherwise specified, please produce all email or text messages to or from

(1) any assistant chief of police or their staff;
(2) Ken Cassady;
(3) Spencer Kronk or his staff;
(4) Mayor Adler or his staff; any member of the City Council or their staff, the person or persons the City claims had tactical command of the police force during the May 30 or May 31, 2020 protests, or any member of the Austin Police Department who provides training to APD officers concerning:

a. The dangers of using kinetic projectiles;

EXHIBIT D

b. The shooting of any individual who alleges he or she was harmed by a kinetic projectile fired by an APD officer;
c. Training concerning the use of kinetic projectiles;
d. Manley's removal as APD Chief of Police after May 31, 2020;
e. Any investigation into police misconduct or potential misconduct by APD officers on May 30, 2020 or May 31, 2020.
f. Authorizing or permitting APD officers to fire kinetic projectiles at individuals:

i. On May 30, 2020;
ii. On May 31, 2020; and
iii. After May 31, 2020 to the present.

RESPONSE:

Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Subject to and without waiving objections, Defendant City of Austin refers to COA 40040-40584 which are City council and city manager text messages.

Defendant City of Austin will supplement production of the following emails. Please check the box link for items that will be added. You will be notified once the uploads are complete.

COA-General-Protest 0030000-0038220	Brent Dupree
COA-General-Protest 0038221-0056631	Jason Staniszewksi
COA-General-Protest 0060448-0095086	Joe Chacon
COA-General-Protest 0108587-0152192	Mark Spangler
COA-General-Protest 0152193-0164849	Richard Guajardo
COA-General-Protest 0164850-0198591	Robin Henderson
COA-General-Protest 0199050-0239615	Troy Gay
COA-General-Protest 0246542-0300312	Farah Muscadin
COA-General-Protest 0300313-0306308	Jennifer Stephenson
COA-General-Protest 0307326-0307747	Kenneth Cassady
COA-General-Protest 0423817-0474487	Alison Alter
COA-General-Protest 0474488-0505196	Ann Kitchen
COA-General-Protest 0505197-0519800	Delia Garza
COA-General-Protest 0519801-0541571	Gregorio Casar
COA-General-Protest 0541572-0551323	Jimmy Flannigan
COA-General-Protest 0551324-0593374	Kathie Tovo
COA-General-Protest 0593375-0604089	Leslie Pool
COA-General-Protest 0604090-0700844	Mayor Adler
COA-General-Protest 0700845-0724646	Natasha Harper-Madison
COA-General-Protest 0724647-0743139	Paige Ellis
COA-General-Protest 0743140-0762595	Ray Arellano
COA-General-Protest 0762596-0802815	Sabino Renteria

Due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product."

All items bates labeled COA General Protest are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked *CONFIDENTIAL.*

REQUEST NO. 23: Please produce any and all written memoranda, reports, correspondence, documents, e-mails, photographs, video or audio tapes, or other writings or recordings reflecting receipt of information or training on the use of "less lethal" weapons, crowd control, deaf communications, and/or use of force on or before May 30, 2020 by any of the following:

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837

gg. Justin Wright, AP8976
hh. James Bronson, AP8881

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 24: Please produce all records, documents, interviews or other material that resulted from the investigation into the subject matter of this Complaint and any other internal affairs, Special Investigation Unit, or Office of Police oversight investigations involving any of the following:

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976

hh. James Bronson, AP8881

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Defendant City of Austin refers the plaintiff to documents bates labeled COA 39580-39632.
Defendant City of Austin refers the plaintiff to review any officer supplements entered in COA 1576-3154 and COA 37805-39579.
Supplements of the officers deposed in this incident are bates labeled as COA 1841, 1992, 2662-2665, 2286-2287 (Lynch). COA 1932, 2328-2329, 2726-2729, 2801-2805 (Cantu-Harkless). COA 1908, 2946 (Alas), COA 1952, 2257-2259, 2318-2321, 2717-2718 (Cherne), COA 2094, 2479, 376677-37682, 38338, 38723, 39595-39597 (Hethershaw), COA 2292, 2313, 2469, 37782-37789, 38536, 38557, 38713, 39441 (Wright), and COA 1964, 2598, 2946-2947 (Cobaugh).

COA 1576-3154, 37805-39579, 39580-39632 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 25: Please produce any documents reflecting any corrective or disciplinary measures APD issued or enacted as a consequence of conduct from May 30, 2020 or May 31, 2020.

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under Fed. R. Civ. P. 26(b), since it is not proportional to the needs of the case.

Without waiving these objections, the City responds by noting that it has not completed its disciplinary review process for all involved officers at this time. Austin Police Department has suspended its investigations into these incidents pending the outcome of criminal proceedings.

Defendant City of Austin refers the plaintiff to COA-Talley 1707-1708, Officer Cobaugh was disciplined for a protest related incident. Defendant City of Austin refers the plaintiff to documents bates labeled COA 39845-39993 for policy changes implemented.

COA-Talley 1707-1708 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 26: Please produce any documents concerning the expiration or hardening of munitions used by APD during the May 30, 2020 and May 31, 2020 protests.

RESPONSE:
Defendant City of Austin refers the plaintiffs to documents bates labeled COA 39973-39993, Review Task Force Report.

EXHIBIT D

COA 39973-39993 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 27: Please produce all documents concerning the dangers of kinetic projectiles in your custody or control.

RESPONSE:
Defendant City of Austin refers the plaintiff to items previously produced under documents bates labeled COA 0001-1575 APD Policies and COA 3155-3334, and COA 3744-4535 Less Lethal Trainings.

COA 3155-3334, COA 3744-4535 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 28: Please produce the Austin Police Department policy manual (whether known by this or any other name) that you contend was in effect on May 30, 2020 and May 31, 2020.

RESPONSE:
Defendant City of Austin refers the plaintiffs to responsive policies already produced in response to RFPs 5, 6, 7. COA 0001-1575.

REQUEST NO. 29: Please produce all correspondence between the City of Austin and any member of the news media concerning the use of "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) by Austin police officers on May 30, 2020 and May 31, 2020. The period of this request is May 30, 2020 to the present.

RESPONSE:
Defendant City of Austin refers the plaintiff to documents bates labeled COA 40834-41067.

REQUEST NO. 30: Please produce all communications, including, but not limited to, recordings of radio traffic, shift turnout meetings, or other orders, which authorized any Austin police officers to fire kinetic projectiles at individuals on May 30, 2020 or May 31, 2020.

RESPONSE:
Defendant City of Austin refers the plaintiff to COA 0001-1575 APD Policies and Procedures, also see Audios bates labeled as COA 40585-40591

COA 40585-40591 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 31: Please produce a copy of each lawsuit alleging that on May 30 or 31, 2020, an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.)

RESPONSE:
Defendant City of Austin refers the plaintiff to the following list of civil actions filed in either the United States District Court for the Western District of Texas or Travis County District

Court. The complaints would be equally available to the Plaintiff from Court Pacer or Travis County Odyssey.

Van Os v City of Austin; 1:22-cv-00522
Howell v City of Austin; 1:21-cv-00749
Alexander v City of Austin; 1:22-cv-00520
Arawn v City of Austin; 1:20-cv-01118
Avvocato v City of Austin; 1:22-cv-00516
Cates v City of Austin; 1:20-cv01258
Chavez v City of Austin; 1:20-cv01174
Evans v City of Austin; 1:20-cv001057
Sanders v City of Austin; 1:22-cv-00314
Volter-Jones v City of Austin; 1:22-cv-00511
Warkoczewski v City of Austin; 1:21-cv-00739
Barton v City of Austin; 1:22-cv00221
Campbell v City of Austin; 1:22-cv-00517
Kirsch v City of Austin; 1:20-cv-01113
Fuentez v City of Austin; 1:22-cv-00316
Ellis v City of Austin; 1:22-cv-00315
Williams v City of Austin; 1:22-cv-00042
Drake v City of Austin; 1:20-cv-00956
Beuhler v City of Austin; 1:21-cv-00054
Gallagher v City of Austin; 1:20-cv-00901
Underwood v City of Austin; 1:22-cv-00032
Herrera v City of Austin; 1:20-cv-01134
Ayala v City of Austin; D-1-GN-22-002431

REQUEST NO. 32: Please produce a copy of each jury verdict against the City of Austin or any of its current or former employees arising from an allegation that an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) on May 30 or 31, 2020.

RESPONSE:
None.

REQUEST NO. 33: Please produce a copy of all documents concerning any written complaints or lawsuits that the City of Austin, the Austin Police Department, or any Austin Police Department employee settled which alleged that an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) on May 30 or 31, 2020.

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 34: Please produce all documents concerning the revision or decision not to revise any of the City of Austin's policies, procedures, instructions, or practices governing any aspect of the use of "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.), during the period from January 1, 2015 to present.

RESPONSE:
Defendant City of Austin refers the plaintiff to COA 0001-1576 APD Policies and Procedures, COA 3878-3882 produced September 2, 2022.

COA 39845-39877, Austin Police Announcement of key changes to policing and protests and the After Action Report; COA 40594-40600 APD memos regarding policy changes.

COA 39973-39993 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 35: Please produce all documents relating to the City of Austin's inventory of "less lethal" munitions, including ammunition and weapons capable of firing kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) during the period January 1, 2019 to present.

RESPONSE:
Defendant City of Austin refers the plaintiff to documents produced September 2, 2022 bates labeled COA 4536-4587. Defendant City of Austin also refers the plaintiff to documents bates labeled COA 40601-40833

COA 4536-4587, COA 40601-40833 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 36: Please produce all reports showing the number of people injured by APD employees' use of "less lethal" weapons, including kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) For the following periods:

a. 5/30/2020;
b. 5/31/2020; and
c. 6/1/2020 to the present.

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

Subject to and without waiving our objection the Defendant City of Austin refers the plaintiffs to documents bates labeled COA 1576-3154 and COA 37805-39632.

COA 1576-3154 and COA 37805-39632 are designated confidential/privileged documents

pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 37: Please produce the attendance rosters, deployment reports, time sheets, and any other documents identifying each and every police officer who had access to "less lethal" munitions and who was stationed or responded to the protest outside the Austin police department headquarters on May 30, 2020.

RESPONSE:
Defendant City of Austin refers the plaintiff to documents bates labeled COA 41068-41142.

COA 41068-41142 are designated confidential/privileged documents pursuant to the Protective Order for this case and are watermarked CONFIDENTIAL.

REQUEST NO. 38: Please produce any documents relied upon by the City to respond to Plaintiff's interrogatories.

RESPONSE:
Defendant City of Austin refers the plaintiff to all production produced in this litigation.

REQUEST NO. 39: Please produce all communications to or from the Office of Police Oversight concerning:

a. Incidents on May 30, 2020;

b. Incidents on May 31, 2020; or

c. Incidents involving weapons dubbed "less lethal" by APD that resulted in any alleged injury for the period January 1, 2015 to the present.

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 40: All internal and external communications concerning violations of APD policies by APD officers on May 30, 2020, May 31, 2020 (the date of the protests).

RESPONSE:
Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

REQUEST NO. 41: For the period January 1, 2017 to the present unless otherwise specified: please produce all email, text messages, and other communications sent by or received by any secretarial staff, assistants, support staff, or other staff who work in, or report directly to, the Austin

Police Department's Office of the Chief of Police concerning:

a. The dangers of using kinetic projectiles;
b. The use of kinetic projectiles;
c. The shooting of any individual who alleges he or she was harmed by a kinetic projectile fired by an APD officer;
d. Training concerning the use of kinetic projectiles;
e. Complaints or allegations that an APD officer improperly failed to intervene to stop or mitigate another peace officer's use of force;
f. Brian Manley's removal or potential removal as APD Chief of Police after May 31, 2020; or
g. Authorizing or permitting APD officers to fire kinetic projectiles at individuals;

    i. On May 30, 2020;
    ii. On May 31, 2020; and
    iii. After May 31, 2020 to the present.

RESPONSE:

Defendant objects to this request on the grounds that it is overbroad, ambiguous, unduly burdensome, and exceeds the scope of discovery under FED. R. CIV. P. 26(b), since it is not proportional to the needs of the case.

EXHIBIT D

Leigh Joseph

From: Leigh Joseph
Sent: Tuesday, August 15, 2023 1:39 PM
To: Laird, Gray
Cc: Chavez, Priscilla; Smith, Carol; Alexis Lopez; Barton, Monte
Subject: RE: Talley and Rodriguez cases - Defendant's discovery responses

Follow Up Flag: Follow up
Flag Status: Flagged

Gray,

Thank you again for your time this morning to discuss our issues with your client's discovery responses. To recap our conversation, here is what my notes reflect. Please let me know if you have a different understanding.

- Interrogatory 5- you agreed to consider whether you can add times
- Interrogatory 6- you agreed to consider whether your objection is addressed and you can fully answer with the clarification that the question is focused on protests outside of police headquarters
- Interrogatory 7- you agreed to supplement this response if possible to indicate concrete information (if known) about whether expired rounds were used and whose responsibility it was to prevent the use of expired munitions
- Interrogatory 17- you agreed to discuss with Monte whether you are able to provide a response
- Interrogatory 18- you agreed to confirm whether more information is available regarding which munitions were in use on 5/30/20 and supplement this answer

- Request for Production 17, 23, and 24- you agreed to evaluate the volume of information and whether you continue to assert objections if the question is limited to the following officers: Benjamin Lynch, Gadiel Alas, Timothy Cobaugh, Darrell Cantu-Harkless, Michael Harris, Joseph Hethershaw, Gregory Cherne, and Justin Wright
- Request for Production 18- you agreed to look into responding and what the issue might be, i.e., searching for the information, voluminous information, or something else
- Request for Production 25- You agreed to consider whether you might be able to respond more fully without objection to a rephrasing of this question. Here is my proposed phrasing: Please produce any documents reflecting any corrective or disciplinary measures APD issued or enacted as a consequence of officer conduct responding to protests outside of police headquarters from May 30, 2020 or May 31, 2020.
- Request for Production 33- you agreed to provide me a list of case styles for the lawsuits. For complaints that did not result in lawsuits, (e.g., like the complaint filed by Talley but not Rodriguez) you agreed to look into whether you could provide the complaints themselves, as opposed to "all documents concerning"
- Request for Production 36- you agreed to look into whether such a report exists

I look forward to hearing from you with respect to your findings and positions on or before August 29.

Best regards,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

EXHIBIT E

From: Laird, Gray <gray.laird@austintexas.gov>
Sent: Tuesday, August 8, 2023 8:36 AM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>
Subject: RE: Talley and Rodriguez cases - Defendant's discovery responses

Leigh,

I have some time Thursday morning from 8:00 to 10:30. Thanks. Gray

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Monday, August 07, 2023 1:10 PM
To: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>
Subject: RE: Talley and Rodriguez cases - Defendant's discovery responses

External Email - Exercise Caution

Gray/Monte,

I received the verifications and additional supplementation. Thank you.

When is a good time for a call with one or both of you to discuss the remaining issues?

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Leigh Joseph
Sent: Sunday, July 30, 2023 11:34 AM
To: gray.laird@austintexas.gov; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <ALopez@hendlerlaw.com>
Subject: Talley and Rodriguez cases - Defendant's discovery responses

Good morning Gray and Monte,

We received your client's discovery responses served on Wednesday 7/26/23. To the extent that anything is being withheld from production on the basis of privilege, this email constitutes a request for a privilege log pursuant to FRCP 26(b).

Also, I would like to discuss the city's answers to the following interrogatories and requests for production in both the Talley and Rodriguez cases. Please let me know when you are free to confer within the next ten days. It is my hope that we can resolve these issues without having to involve the Court.

Interrogatories: 5-7, 12-18
Requests for Production: 17, 18, 23-25, 33, 36, 39-41

Also, when can we expect supplementation of verifications for the interrogatories? When will the emails be uploaded in entirety?

Thank you.

Leigh A. Joseph
Attorney

901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
Tel: 512-439-3207| Fax: 512-439-3201
Ljoseph@hendlerlaw.com
www.hendlerlaw.com

Please consider the environment before printing this email. Think green…
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Hendler Flores Law

901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
Tel: 512-439-3200 | Fax: 512-439-3201

LEIGH A. JOSEPH
ATTORNEY
512-439-3207
ljoseph@hendlerlaw.com

September 19, 2023

VIA EMAIL
City of Austin
Attn: H. Gray Laird
gray.laird@austintexas.gov
Attn: Monte L. Barton, Jr.
monte.barton@austintexas.gov
P.O. Box 1546
Austin, Texas 78767

RE: ***Talley v. City of Austin et al*, 1:21-cv-00249-RP, filed in the Western District of Texas**
***Rodriguez v. City of Austin et al*, 1:21-cv-01087-RP, filed in the Western District of Texas**

Dear Mr. Laird and Mr. Barton:

I am writing to follow up our conversation on August 15, 2023 about the plaintiffs' issues with your clients' discovery responses in the above-referenced cases. During that conversation, we discussed several issues, which I will recap below, and agreed that you would share your position on the issues by August 29, 2023. To date, I have not seen further communication from your office about these issues. Therefore, I am writing to make another attempt to resolve these issues in hopes we can avoid the need to involve the Court.

- Interrogatory 5- you agreed to consider whether you can add times
- Interrogatory 6- you agreed to consider whether your objection is addressed and you can fully answer with the clarification that the question is focused on protests outside of police headquarters
- Interrogatory 7- you agreed to supplement this response if possible to indicate concrete information (if known) about whether expired rounds were used and whose responsibility it was to prevent the use of expired munitions
- Interrogatory 17- you agreed to discuss whether you are able to provide a response
- Interrogatory 18- you agreed to confirm whether more information is available regarding which munitions were in use on 5/30/20 and supplement this answer

- Request for Production 17, 23, and 24- you agreed to evaluate the volume of information and whether you continue to assert objections if the question is limited to the following officers: Benjamin Lynch, Gadiel Alas, Timothy Cobaugh, Darrell Cantu-Harkless, Michael Harris, Joseph Hethershaw, Gregory Cherne, and Justin Wright[1]
- Request for Production 18- you agreed to look into responding and what the issue might be, i.e., searching for the information, voluminous information, or something else
- Request for Production 25- You agreed to consider whether you might be able to respond more fully without objection to a rephrasing of this question. Here is my proposed phrasing: Please produce any documents reflecting any corrective or disciplinary measures APD issued or enacted as a consequence of officer conduct responding to protests outside of police headquarters from May 30, 2020 or May 31, 2020.
- Request for Production 33- you agreed to provide me a list of case styles for the lawsuits. For complaints that did not result in lawsuits, (e.g., like the complaint filed by Talley but not Rodriguez) you agreed to look into whether you could provide the complaints themselves, as opposed to "all documents concerning"
- Request for Production 36- you agreed to look into whether such a report exists

You have had ample time to evaluate the requests in light of our conversation and determine your position. To the extent you are willing to amend/supplement your clients' responses, please provide those amended and/or supplemental responses by **Tuesday, September 26, 2023**. If we do not receive amended/supplemental responses by September 26, 2023, we will be forced to seek the Court's assistance in procuring discoverable information to which our clients are entitled.

Please feel free to call or email me to further discuss.

Sincerely,

HENDLER FLORES LAW, PLLC

Leigh A. Joseph

[1] For RFP 17, please note that Texas Local Government Code Section 143.089 does not prevent disclosure of the officers' "G Files" in the Western District of Texas. *Ambler v. Nissen*, No. 1:20-CV-1068-LY, 2023 WL 443806 at *2 (W.D. Tex. Jan. 26, 2023) ("The Court agrees with Plaintiffs that Texas Local Government Code § 143.089 does not apply in federal court"); *Roque v. City of Austin*, No. 1-17-CV-00932-LY, 2018 WL 5848988 at *2 (W.D. Tex. Nov. 7, 2018) ("The City's objection founded on the Texas statute fails, as Federal Rule of Evidence 501 dictates that federal common law, not state law, governs the privileges in federal question cases."); *Roque v. Harvel*, No. 1:17-CV-932-LY-SH, 2019 WL 5265292 at *9 (W.D. Tex. Oct. 16, 2019) ("The Court concludes that even assuming Texas courts' recognition of a privilege here, the federal common law presumption of public access to judicial records outweighs the state law policies behind the privilege for certain police personnel records, particularly in this Section 1983 case concerning the conduct of the Austin Police Department and its officers.")

EXHIBIT F

Leigh Joseph

From: Barton, Monte <Monte.Barton@austintexas.gov>
Sent: Tuesday, September 19, 2023 11:02 AM
To: Leigh Joseph; Laird, Gray
Cc: Chavez, Priscilla; Smith, Carol; Alexis Lopez
Subject: Talley/Rodriguez ||||||| Discovery and Trial Setting Issues

Follow Up Flag: Follow up
Flag Status: Completed

Hello Leigh,

I recall the Plaintiff's earlier motion for a stay of at least 3 months to review emails and things. Based on the Court's ruling last week, it looks like that request was not specifically addressed with the order granting leave for the Amended Complaints in both cases.

So, our calendars show the following:

– – –

09/26/23	Talley – CV-16(f) Pretrial documents due (14 days prior to pretrial conf.)
09/27/23	Rodriguez – CV-16(f) Pretrial documents due (14 days prior to pretrial conf.)
09/28/23	Talley/Rodriguez – Amended Answers due
10/03/23	Talley – CV-16(g) Pretrial documents due (7 days prior to pretrial conf.)
10/04/23	Rodriguez – CV-16(g) Pretrial documents due (7 days prior to pretrial conf.)
10/10/23	Talley – Final pretrial conference
10/11/23	Rodriguez – Final pretrial conference
10/30/23	Talley/Rodriguez – Deadline to submit Joint Jury Charge
11/06/23	Jury Trial

– – –

With the addition of the officers as actual defendants, we expect some additional discovery may be necessary, especially if independent legal counsel is retained to represent the officers.

Please consider a joint motion for continuance and recommended time frames for a new proposed scheduling order.

Also, I have just now received your email/letter regarding discovery issues (below). I think that fits into this continuance thought process too.

Please let us know your suggestions. I will be around at your convenience.

Sincerely yours,

Monte L. Barton Jr.
Assistant City Attorney
City of Austin Law Department
P.O. Box 154610
Austin, Texas 78767-1546
Direct 512-974-2409
monte.barton@austintexas.gov

EXHIBIT G

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Tuesday, September 19, 2023 10:46 AM
To: Barton, Monte <Monte.Barton@austintexas.gov>; Laird, Gray <gray.laird@austintexas.gov>
Cc: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>
Subject: Talley/Rodriguez Discovery Issues

External Email - Exercise Caution

Monte and Gray,

Please see the attached correspondence. I look forward to your response on or before September 26, 2023.

Thank you,

Leigh A. Joseph
Attorney

901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
Tel: 512-439-3207| Fax: 512-439-3201
Ljoseph@hendlerlaw.com
www.hendlerlaw.com

Please consider the environment before printing this email. Think green…
This message is intended only for the use of the addressee and may contain information that is **PRIVILEGED** and **CONFIDENTIAL**, and/or may contain **ATTORNEY WORK PRODUCT**. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of the message and its attachments, if any, destroy any hard copies you may have created, and notify us immediately. Thank you.

CAUTION: This is an EXTERNAL email. Please use caution when clicking links or opening attachments. If you believe this to be a malicious or phishing email, please report it using the "Report Message" button in Outlook or forward to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Tyree Talley, Plaintiff	§	
v.	§	**Case No. 1:21-cv-00249-RP**
City of Austin and John Does, Defendants.	§	

PLAINTIFF'S THIRD REQUEST FOR PRODUCTION TO DEFENDANT CITY OF AUSTIN

To: **Gray Laird – gray.laird@austintexas.gov**
CITY OF AUSTIN
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
ATTORNEY FOR DEFENDANT CITY OF AUSTIN

Plaintiff TYREE TALLEY, by and through the undersigned counsel of record, respectfully serves his Third Request for Production to Defendant City of Austin. Pursuant to Federal Rule of Civil Procedure 34, defendant is requested to respond within 30 days after service of these requests, by emailing the responses to ALopez@hendlerlaw.com or producing them electronically to Hendler Flores Law, PLLC, 901 S. MoPac Expy., Bldg.1 STE 300, Austin, TX 78746 via a file sharing program so they are received on or before the due date. If defendant does not have access to a file sharing program, Counsel for Plaintiffs will provide a link where the responses and attachments can be uploaded for delivery.

EXHIBIT H

TABLE OF DEFINITIONS/ABBREVIATIONS

The following definitions and abbreviations are set forth for the purpose of clarifying the meaning of various words and phrases contained herein in order to expedite discovery, i.e., (a) to help you fully and accurately understand the objectives of this discovery effort and (b) to simplify and assist you in your efforts to locate and furnish the relevant information and documents. It is expressly stipulated and agreed by the Plaintiff that an affirmative response on your part will not be construed as an admission that any definition or abbreviation contained hereto is either factually correct or legally binding on you.

A. "You" and "your" refer to City of Austin.

B. "Defendants" refers to the City of Austin and all individual defendants, both individually and collectively.

C. "Plaintiff" means Plaintiff Tyree Talley.

D. "Statement" includes any written or graphic statement, signed or otherwise adopted or approved by the person making it and any stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

E. "The Incident" refers to the incidents described in Plaintiffs' Original Complaint and/or all amended versions thereof that form the basis for this lawsuit.

F. "Document," "Documents," or "Documentation" includes any item whether printed or recorded or reproduced by any other electronic or mechanical process or written or produced by hand: agreements, communications, reports, charges, complaints, correspondence, telegrams, memoranda, electronic mail, applications, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, schedules, charts, videos, audio or audio recordings, graphs, worksheets, reports, notebooks, note charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports or records of investigations or negotiations, opinions or reports of consultants, bills, statements, invoices, and all other writings of whatever nature, photographs, motion picture film, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, tape recordings, disks, data sheets or data processing cards, any marginal comments appearing on any document or thing, or any other written, recorded, transcribed, filed or graphic master, however produced or reproduced, to which Defendant or its agents, representatives, or attorney will have or have had access.

In the event any item requested is unavailable due to loss or destruction of documents, loss of memory, failure to keep documents, or otherwise, please identify the nature of the information, the last known person to have possession of the documents or information, the circumstances involved, and the date of each event.

G. "Person" is defined as any natural person or business, legal or governmental entity or association."

H. "Concerning" means relating to, referring to, describing, evidencing or constituting.

I. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

J. The terms "AND," "OR," "ANY," and "ALL" shall be construed conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope.

K. "DESCRIBE IN DETAIL" and "STATE IN DETAIL" mean to give a complete and full description concerning the matter about which the inquiry is made, including to identify the person involved, along with dates, times, places, amounts, and other particulars that make the answer to the request for admission fair and meaningful.

L. "RELATED TO," "RELATE TO," and "RELATING TO" mean constituting, defining, containing, embodying, reflecting, identifying, discussing, concerning, stating, referring to, involving, evidencing, evaluation, criticizing, substantiating, dealing with, mentioning, or in any way pertaining to.

M. "Identify" when referring:

(1) to a natural person, means to state his or her full name and present or last known residential address and the present or last known place of employment; Local Rule CV-26(b)(3);

(2) to a firm, company, business, trust, corporation, partnership, association, governmental agency, governmental unit, or other organization and/or entity, means to state its full name and present or last known business address and phone number;

(3) to a statement and/or admission, means to identify who made it, who took or recorded it, and all others, if any, present during the making thereof; to state when, where and how it was taken or recorded, and to identify who has present possession custody or control thereof and/or who last had possession, custody, or control thereof;

(4) to tangible things, recordings, photographs, videotapes, motion pictures, x-rays, and/or radiographic films means to give a reasonably detailed description thereof, including, if applicable, when, where, and how made; to identify who made it, and who has present possession, custody or control thereof, and/or who last had possession, custody or control thereof;

(5) to any contribution, indemnification, reimbursement, and/or insurance agreement or policy means to set forth the policy or agreement holder, all additional insureds, the policy or agreement number, the identity of the person, company, or entity issuing the policy or agreement, the anniversary dates of the policy or

agreement, the inclusive dates of coverage, and the type of coverage (whether claims made, occurrence, or other).

N. "Police Department" or "APD" means the police department for Austin, Texas.

INSTRUCTIONS--REQUESTS FOR PRODUCTION

All Requests for Production are subject to the following Instructions:

(1) The Requests for Production shall be deemed not to call for identical copies of documents. However, documents with handwritten notes, editing marks, or any other mark that differentiates the document shall not be deemed identical to one without such modifications, additions or deletions.

(2) Each document produced pursuant to this Request for Production is to be identified in such production by the specific number of the Request for Production with respect to which it is produced.

(3) This Request for Production is a continuing document request. If, any time after your response and production pursuant to this Request, you learn of, or otherwise come into possession, custody or control of, additional documents called for by this Request, such documents are to be produced, and identified as set out in the preceding paragraph.

(4) Documents that are regularly maintained stapled, clipped, or otherwise physically attached to other documents are to be produced in their stapled, clipped or otherwise physically attached form.

(5) As used herein, the singular includes the plural number, and vice versa. The past tense includes the present tense, and vice versa, where the clear meaning is not distorted by change of tense.

(6) If an objection to any Request is made, the reason(s) shall be stated specifically as to each separate request.

(7) If you believe that any written discovery is requesting privileged information, pursuant to Fed.R.Civ.Proc. 26(b)(5), the party must state (1) that the information or material responsive to request has been withheld, (2) the request to which the information or material relates, (3) the privilege or privileges asserted, and (4) a description of the documents, communications, or tangible things not being disclosed.

(8) Plaintiff specifically requests all responsive electronically stored information, including, but not limited to, emails, draft emails, electronic log files, and cellular data, to be provided to Plaintiff in the same format as it is kept in the ordinary course of business, or in the following reasonably accessible format:

a. For each custodian and type of electronically stored information, include the following directories, as applicable, organized into volumes.

Data - Load files (.DAT, .OPT and .LFP).

Images - PDF files or single page TIFF/JPG with minimum resolution of 300 dpi.

Natives – The underlying electronic file in any format used in the ordinary course of business.

Text - Extracted Text or Optical Character Recognition data.

b. The Data Load File as follows:

(i) Including a header row with standard Concordance field names or information as well as:

Field Name Description	**Field Name Description**
Production Begin	The beginning bates number of the record. Must match a page identifier in the OPT/LFP files.
Production End	The ending bates number of the record
Page Count	Number of pages
File Path	Link to native files if present
Custodian	Person from whose device or account the file has been copied
MD5 Hash	
Attachment Begin	Beginning Bates number of each attachment (for emails)
Attachment End	Ending Bates number of each attachment (for emails)

for emails, the following metadata should be extracted and produced as a load file:

Email Subject
Email Author
Email Recipient
Email CC
Email BCC
Email Received Date
Email Sent Date
Email Received Time
Email Sent Time
Email Received Date and Time
Email Sent Date and Time
Email Importance

for non-email electronic files, the following metadata should be extracted and produced as a load file:

File Name
File Author
File Last author
File Created Date
File Created Time
File Modified Date
File Modified Time
File Extension

(ii) Sorted in ascending order by the beginning bates number.

(iii) .DAT load file with delimiters listed in the table below.

Value	**Character**	**ASCII Number**
Column	b	(020)
Quote Character	'TI	(254)
Newline	®	(174)
Multi-Value	;	(059)
Nested Values	\	(092)

REQUESTS FOR PRODUCTION

REQUEST NO. 17: Produce all documents related to the complete service record for the below police officers who shot (or who is suspected of shooting) Plaintiff during the Incident.

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

ANSWER:

REQUEST NO. 18: Produce all documents concerning charges, claims or other complaints involving APD conduct in interactions with deaf individuals, for conduct that occurred on or between June 1, 2018 to May 30, 2020.

ANSWER:

REQUEST NO. 19: Please produce any and all written memoranda, use of force reports, other reports, correspondence, documents, e-mails, texts, photographs, video or audio tapes, or other writings or recordings relating to the events of the May 30, 2020 protest and the investigation into the subject incident.

ANSWER:

REQUEST NO. 20: Please produce the product manual or materials provided by the manufacturers or entity from which you purchased the product for any projectile fired by an APD officer on May 30, 2020 or May 31, 2020.

ANSWER:

REQUEST NO. 21: For the period Jan 1, 2018 to the present unless otherwise specified: please produce all email or text messages sent by or received by Brian Manley concerning:

a. The use of kinetic projectiles;

b. The shooting of any individual who alleges he or she was harmed by a projectile fired by an APD officer;

c. Training concerning the use of kinetic projectiles;

d. Manley's removal or potential removal as APD Chief of Police after May 31, 2020;

e. Authorizing or permitting APD officers to fire kinetic projectiles at individuals:

i. On May 30, 2020;

ii. On May 31, 2020; and

iii. After May 31, 2020 to the present.

ANSWER:

REQUEST NO. 22: For the period January 1, 2020 to the present, unless otherwise specified, please produce all email or text messages to or from (1) any assistant chief of police or their staff; (2) Ken Cassady; (3) Spencer Kronk or his staff; (4) Mayor Adler or his staff; any member of the City Council or their staff, the person or persons the City claims had tactical command of the police force during the May 30 or May 31, 2020 protests, or any member of the Austin Police Department who provides training to APD officers concerning:

a. The dangers of using kinetic projectiles;

b. The shooting of any individual who alleges he or she was harmed by a kinetic projectile fired by an APD officer;

c. Training concerning the use of kinetic projectiles;

d. Manley's removal as APD Chief of Police after May 31, 2020;

e. Any investigation into police misconduct or potential misconduct by APD officers on May 30, 2020 or May 31, 2020.

f. Authorizing or permitting APD officers to fire kinetic projectiles at individuals:

i. On May 30, 2020;

ii. On May 31, 2020; and

iii. After May 31, 2020 to the present.

ANSWER:

REQUEST NO. 23: Please produce any and all written memoranda, reports, correspondence, documents, e-mails, photographs, video or audio tapes, or other writings or recordings reflecting receipt of information or training on the use of "less lethal" weapons, crowd control, deaf communications, and/or use of force on or before May 30, 2020 by any of the following:

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062

w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555
dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

REQUEST NO. 24: Please produce all records, documents, interviews or other material that resulted from the investigation into the subject matter of this Complaint and any other internal affairs, Special Investigation Unit, or Office of Police oversight investigations involving any of the following:

a. Gregory Cherne, AP8196
b. John Kornbacher, AP8065
c. Zakary Fisher, AP9165
d. Benjamin Lynch, AP6802
e. Nicholas LaBarbera, AP8923
f. Johnny Martinez, AP8414
g. Michael Attridge, AP4516
h. Rheannon Cunningham, AP7247
i. Yader Zelaya, AP8289
j. Michael Harris, AP8542
k. Jonathan Dranguet, AP8895
l. James Morgan, AP8215
m. Taber White, AP6311
n. Darrell Cantu-Harkless, AP8516
o. Andy Yu, AP6841
p. Joseph Gordon, AP8061
q. Edward Ruff, AP6488
r. Chad Roberts, AP8950
s. Brandon Swindell, AP8960
t. Benjamin Hart, AP7544
u. Joseph Spees, AP7796
v. Scott Gunter, AP8062
w. Kevin Arnold, AP6960
x. Kyu An, AP8190
y. Joseph Hethershaw, AP9073
z. Tony Luong, AP8668
aa. Andrew Blissit, AP8501
bb. Gadiel Alas, AP7835
cc. Jonathon Kreisner, AP8555

dd. Timothy Cobaugh, AP8383
ee. Rudy Cadena, AP8510
ff. Ashley Uniszkiewicz, AP6837
gg. Justin Wright, AP8976
hh. James Bronson, AP8881

ANSWER:

REQUEST NO. 25: Please produce any documents reflecting any corrective or disciplinary measures APD issued or enacted as a consequence of conduct from May 30, 2020 or May 31, 2020.

ANSWER:

REQUEST NO. 26: Please produce any documents concerning the expiration or hardening of munitions used by APD during the May 30, 2020 and May 31, 2020 protests.

ANSWER:

REQUEST NO. 27: Please produce all documents concerning the dangers of kinetic projectiles in your custody or control.

ANSWER:

REQUEST NO. 28: Please produce the Austin Police Department policy manual (whether known by this or any other name) that you contend was in effect on May 30, 2020 and May 31, 2020.

ANSWER:

REQUEST NO. 29: Please produce all correspondence between the City of Austin and any member of the news media concerning the use of "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) by Austin police officers on May 30, 2020 and May 31, 2020. The period of this request is May 30, 2020 to the present.

ANSWER:

REQUEST NO. 30: Please produce all communications, including, but not limited to, recordings of radio traffic, shift turnout meetings, or other orders, which authorized any Austin police officers to fire kinetic projectiles at individuals on May 30, 2020 or May 31, 2020.

ANSWER:

REQUEST NO. 31: Please produce a copy of each lawsuit alleging that on May 30 or 31, 2020, an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.)

ANSWER:

REQUEST NO. 32: Please produce a copy of each jury verdict against the City of Austin or any of its current or former employees arising from an allegation that an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) on May 30 or 31, 2020.

ANSWER:

REQUEST NO. 33: Please produce a copy of all documents concerning any written complaints or lawsuits that the City of Austin, the Austin Police Department, or any Austin Police Department employee settled which alleged that an Austin police officer used excessive force or otherwise improperly caused injury with a "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) on May 30 or 31, 2020.

ANSWER:

REQUEST NO. 34: Please produce all documents concerning the revision or decision not to revise any of the City of Austin's policies, procedures, instructions, or practices governing any aspect of the use of "less lethal" weapons, including the use of kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.), during the period from January 1, 2015 to present.

ANSWER:

REQUEST NO. 35: Please produce all documents relating to the City of Austin's inventory of "less lethal" munitions, including ammunition and weapons capable of firing kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) during the period January 1, 2019 to present.

ANSWER:

REQUEST NO. 36: Please produce all reports showing the number of people injured by APD employees' use of "less lethal" weapons, including kinetic projectiles (e.g. bean bag rounds, rubber bullets, etc.) For the following periods:

a. 5/30/2020;
b. 5/31/2020; and
c. 6/1/2020 to the present.

ANSWER:

REQUEST NO. 37: Please produce the attendance rosters, deployment reports, time sheets, and any other documents identifying each and every police officer who had access to "less lethal" munitions and who was stationed or responded to the protest outside the Austin police department headquarters on May 30, 2020.

ANSWER:

REQUEST NO. 38: Please produce any documents relied upon by the City to respond to Plaintiff's interrogatories.

ANSWER:

REQUEST NO. 39: Please produce all communications to or from the Office of Police Oversight concerning:

a. Incidents on May 30, 2020;
b. Incidents on May 31, 2020; or
c. Incidents involving weapons dubbed "less lethal" by APD that resulted in any alleged injury for the period January 1, 2015 to the present.

ANSWER:

REQUEST NO. 40: All internal and external communications concerning violations of APD policies by APD officers on May 30, 2020, May 31, 2020 (the date of the protests).

ANSWER:

REQUEST NO. 41: For the period January 1, 2017 to the present unless otherwise specified: please produce all email, text messages, and other communications sent by or received by any secretarial staff, assistants, support staff, or other staff who work in, or report directly to, the Austin Police Department's Office of the Chief of Police concerning:

a. The dangers of using kinetic projectiles;
b. The use of kinetic projectiles;
c. The shooting of any individual who alleges he or she was harmed by a kinetic projectile fired by an APD officer;
d. Training concerning the use of kinetic projectiles;
e. Complaints or allegations that an APD officer improperly failed to intervene to stop or mitigate another peace officer's use of force;
f. Brian Manley's removal or potential removal as APD Chief of Police after May 31, 2020; or
g. Authorizing or permitting APD officers to fire kinetic projectiles at individuals;
    i. On May 30, 2020;
    ii. On May 31, 2020; and
    iii. After May 31, 2020 to the present.

Respectfully submitted,

HENDLER FLORES LAW, PLLC

/s/ Leigh A. Joseph
Scott M. Hendler - Texas Bar No. 9445500

EXHIBIT H

shendler@hendlerlaw.com
Leigh A. Joseph - Texas Bar No. 24060051
ljoseph@hendlerlaw.com
901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
Telephone: (512) 439-3200
Facsimile: (512) 439-3201

-And-

WEBBER LAW
Rebecca R. Webber - TX Bar No. 24060805
rwebber@rebweblaw.com
4228 Threadgill Street
Austin, Texas 78723
Tel: (512) 669-9506

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on all counsel on June 26, 2023.

/s/ Leigh A. Joseph
Leigh A. Joseph

EXHIBIT H

From:	Leigh Joseph
To:	Chavez, Priscilla; Alexis Lopez; Laird, Gray; Barton, Monte
Cc:	Smith, Carol
Subject:	RE: Rodriguez: D COA"s Supp Emails Production
Date:	Thursday, October 12, 2023 9:40:00 AM
Attachments:	image001.png

Priscilla,

Thank you for responding yesterday. We are going back to our vendor with this information. Can you also tell me – is the production already gathered in native format and would you all be opposed to producing that way?

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Wednesday, October 11, 2023 4:48 PM
To: Alexis Lopez <alopez@hendlerlaw.com>; Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello,

We have double checked and it does not look like any of the files are corrupted. We have gone back to the Box links and all contents are viewable and accessible as required by FRCP. I do not have any expirations set on the links and have not intended to set any. When I click on the emails, they are able to be accessed and are viewable and can be read.

If you would like to send an external hard drive to City Hall for the 8 accounts you listed below, you can certainly do so. You can have someone drop it off to the Receptionist desk on the 4th floor attention to my name. As soon as we can reasonably get to copying the emails then we will let you know once the eight accounts have been loaded and when the external is ready for you to pick up.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department

EXHIBIT I

512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Alexis Lopez <alopez@hendlerlaw.com>
Sent: Tuesday, October 10, 2023 11:35 AM
To: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Subject: RE: Rodriguez: D COA's Supp Emails Production

External Email - Exercise Caution

Attention Counsel –

As a follow up to Leigh's email last week requesting native files – we have recently discovered that some of the produced email files we received are corrupted. There are eight (8) folders in Box cloud storage that will not download. Our office and/or our vendor has attempted download on several servers and by several methods, but there is something within the data in these folders that is causing issues in downloading properly. The eight folders represent the following:

1. Mayor (Steve) Adler
2. Kathie Tovo
3. Alison Alter
4. Troy Gay
5. Rey Arellano
6. Spencer Cronk
7. Jennifer Stephenson
8. Brian Manley

At this time, I ask that you please either (1) zip the 8 identified folders and then retry producing to our office, or (2) please consider re-producing the entire email production (24 folders) in native format.

In hopes of completing our review of these files in a timely manner and in preparation of the February trial date, I would appreciate establishing a plan to get complete data by close of business tomorrow. I look forward to hearing back.

Thank you for your attention.

Alexis M. Lopez
Sr. Trial Paralegal | Direct: 512-439-3214

EXHIBIT I

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Thursday, October 5, 2023 11:20 AM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production
Importance: High

Monte/Gray,

I need to explore the possibility of getting these emails in native format. I assume they were gathered that way before they were pdfed? I am happy to deliver a hard drive to your office for copying. Could you please let me know asap where you stand on being able to work with us on this? I am working with our review vendor on uploading the data and need to be able to confirm what we are working with.

Thank you.

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Monday, September 11, 2023 4:35 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; Stephen Demik <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

All,
The email production has all been uploaded to the link:

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

EXHIBIT I

Troy Gay
Rey Arellano
Spencer Cronk
Jennifer Stephenson
Robin Henderson
Ann Kitchen
Brian Manley
Natasha Harper- Madison
Sabino Renteria
Paige Ellis
Steve Adler
Farah Muscadin
Mark Spangler
Jimmy Flannigan
Kathie Tovo
Richard Guajardo
Leslie Pool
Delia Garza
Joseph Chacon
Alison Alter
Gregorio Casar
Brent Dupree
Jason Staniszewski
Kenneth Casaday

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla

Sent: Thursday, August 31, 2023 3:53 PM
To: 'Leigh Joseph' <ljoseph@hendlerlaw.com>; 'Scott Hendler' <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; 'Alexis Lopez' <alopez@hendlerlaw.com>; 'sdemik@hendlerlaw.com' <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello,

Update, the emails for the following persons have been uploaded:
Ann Kitchen
Brian Manley
Natasha Harper- Madison
Sabino Renteria
Paige Ellis
Robin Henderson (should be done loading by end of today)

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Thursday, August 10, 2023 4:23 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>

Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello all,

Defendant City of Austin is serving it's fourth supplemental Responses to P's 1st RFPs. The production bates labeled COA 41198-43390 has been uploaded to the same link as below.

Update, the emails for the following persons have been uploaded:
Steve Adler
Farah Muscadin
Mark Spangler

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Friday, August 4, 2023 11:28 AM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>;

sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello all,

Update, the emails for the following persons have been uploaded:
Jimmy Flannigan
Kathie Tovo
Richard Guajardo
Leslie Pool

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Tuesday, August 1, 2023 4:10 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Rsps to P's ROGs

Hello all,
Attached are the Defendant City of Austin's Responses to Plaintiffs ROGs with the signed

verification attached.

Also to update that emails for the following persons have been uploaded:
Delia Garza
Joseph Chacon
Alison Alter
Gregorio Casar

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Wednesday, July 26, 2023 7:03 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: Rodriguez: D COA's Rsps to P's 3rd RFPs, RFAs, ROGs and Supp Rsps to RFPs 1-16

All,

Attached are the Defendant City of Austin's Responses to Plaintiff's Third Request for Production (RFP 17-141). Defendant City of Austin is also attaching supplemental responses to Plaintiff's RFPs 1-15, and RFP 16.

Please Note:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.
The emails for Brent Dupree, Jason Staniszewski, and Kenneth Casaday are completely uploaded. The rest will be supplemented.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

CAUTION: This is an EXTERNAL email. Please use caution when clicking links or opening attachments. If you believe this to be a malicious or phishing email, please report it using the "Report Message" button in Outlook or forward to cybersecurity@austintexas.gov.

From:	Leigh Joseph
To:	Alexis Lopez; Chavez, Priscilla; Barton, Monte
Cc:	Laird, Gray; nmarrero@lexbe.com; support@lexbe.zohodesk.com; Smith, Carol
Subject:	RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link
Date:	Wednesday, October 25, 2023 11:20:00 AM
Attachments:	image001.png image002.png
Importance:	High

All,

We still do not see that the tracking number has been activated. Please let us know the status right away.

Again, every day of delay is costing us and our clients money. Because you did not respond to our request for native files, we cannot begin our review of the emails until we go through a long "near de-duplication" process. It is imperative that we get the files as soon as possible.

Thank you,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

Hendler Flores Law

From: Alexis Lopez <alopez@hendlerlaw.com>
Sent: Tuesday, October 24, 2023 2:54 PM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; support@lexbe.zohodesk.com; Smith, Carol <Carol.Smith@austintexas.gov>
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Is that the same as a designated Fedex pickup box? Or what is the process after placing something in the "COA outgoing mail"? I ask because I just tracked the label, and it has not yet been activated. We sent a label for overnight delivery in hopes of receiving it today… please advise.

Alexis M. Lopez
Sr. Trial Paralegal | Direct: 512-439-3214

Hendler Flores Law

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Tuesday, October 24, 2023 2:45 PM
To: Alexis Lopez <alopez@hendlerlaw.com>; Barton, Monte <Monte.Barton@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; support@lexbe.zohodesk.com; Smith, Carol <Carol.Smith@austintexas.gov>
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Yes. It was placed in the COA outgoing mail before I left the building.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Alexis Lopez <alopez@hendlerlaw.com>
Sent: Tuesday, October 24, 2023 2:35 PM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; support@lexbe.zohodesk.com; Smith, Carol <Carol.Smith@austintexas.gov>
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

External Email - Exercise Caution

Priscilla, just checking in. Did you end up using the pre-paid FedEx label I sent you previously?

Alexis M. Lopez
Sr. Trial Paralegal | Direct: 512-439-3214

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Monday, October 23, 2023 8:29 AM

EXHIBIT J

To: Barton, Monte <Monte.Barton@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>; Alexis Lopez <alopez@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; support@lexbe.zohodesk.com; Smith, Carol <Carol.Smith@austintexas.gov>
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Leigh,
The flash drive will be placed in the mail today. I'm almost done copying everything over.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Barton, Monte <Monte.Barton@austintexas.gov>
Sent: Friday, October 20, 2023 4:17 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Alexis Lopez <alopez@hendlerlaw.com>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; support@lexbe.zohodesk.com; Smith, Carol <Carol.Smith@austintexas.gov>
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Hello Leigh,
No. I don't know what the status is.
I do know that we are very short handed, since all of the litigation assistants have either retired or are out of the office.
I am hopeful that things will flow better soon.
Sincerely yours,
-mlb

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Friday, October 20, 2023 4:05 PM
To: Alexis Lopez <alopez@hendlerlaw.com>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; Barton, Monte <Monte.Barton@austintexas.gov>; support@lexbe.zohodesk.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

External Email - Exercise Caution

Gray/Monte,

Since we haven't heard back from Priscilla today, can either of you confirm that the drive will be placed in the mail today?

Thank you,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Leigh Joseph
Sent: Friday, October 20, 2023 11:49 AM
To: Alexis Lopez <ALopez@hendlerlaw.com>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; Barton, Monte <Monte.Barton@austintexas.gov>; support@lexbe.zohodesk.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Priscilla,

Will the drive be placed in the mail today?

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Alexis Lopez <alopez@hendlerlaw.com>
Sent: Wednesday, October 18, 2023 4:33 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; nmarrero@lexbe.com; Barton, Monte <Monte.Barton@austintexas.gov>; support@lexbe.zohodesk.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Priscilla –

Attached please find a pre-paid FexEx label for shipment. Thank you.

Alexis M. Lopez
Sr. Trial Paralegal | Direct: 512-439-3214

EXHIBIT J

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Wednesday, October 18, 2023 2:47 PM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; nmarrero@lexbe.com; Barton, Monte <Monte.Barton@austintexas.gov>; support@lexbe.zohodesk.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

All,

I dropped off the thumb drive for Priscilla at City Hall today. Alexis will be in touch about getting it to Lexbe once the Manley files are on it. Priscilla, please let us know when you expect to have it ready. I am hoping this can be done by tomorrow or at least before the weekend.

Thank you,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Leigh Joseph
Sent: Wednesday, October 18, 2023 10:52 AM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Alexis Lopez <ALopez@hendlerlaw.com>; nmarrero@lexbe.com; Barton, Monte <Monte.Barton@austintexas.gov>; support@lexbe.zohodesk.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link
Importance: High

Priscilla,

Based on your email below about the files being accessible via Box, I asked Lexbe to do everything they could to get the data. They were able to get all but Manley. That one we are going to need either on a thumb drive or through the SFTP server. I am headed downtown today around lunchtime and will bring you a thumb drive if that is what is needed.

EXHIBIT J

Could you possibly let me know in the next 1-1.5 hours if you will be able to use the SFTP method or if I need to bring the thumb drive?

Again, thank you for understanding our time pressure and working with us.

Leigh A. Joseph
Attorney| Direct: 512-439-3207

Hendler Flores Law

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Tuesday, October 17, 2023 5:29 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; support@lexbe.zohodesk.com
Cc: Laird, Gray <gray.laird@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; nmarrero@lexbe.com; Barton, Monte <Monte.Barton@austintexas.gov>
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Leigh,
I didn't realize I would need to download any software to my computer in order to get this link. I have submitted this to our IT people to review it and see if I have the requisite permissions to even download it to my computer. The City's Technology department owns my computer and controls admin privileges.
I will notify you if this method is approved to move forward and when I can reasonably accommodate uploading the files for you. The files are accessible from the Box link and can be read from the BOX link previously provided.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Tuesday, October 17, 2023 2:50 PM
To: support@lexbe.zohodesk.com; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; nmarrero@lexbe.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

External Email - Exercise Caution

Hi Priscilla,

Checking in as I hadn't heard back from you on an ETA.

Thank you for staying in contact about this. Due to third party vendor costs, it's important to us that we get this issue corrected as soon as possible.

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Leigh Joseph
Sent: Tuesday, October 17, 2023 10:06 AM
To: support@lexbe.zohodesk.com; chavez, priscilla <priscilla.chavez@austintexas.gov>
Cc: laird, gray <gray.laird@austintexas.gov>; Alexis Lopez <ALopez@hendlerlaw.com>; nmarrero@lexbe.com
Subject: RE: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Good morning Priscilla,

Have you had an opportunity to review the below? Would you please give us an ETA for the upload as soon as you are able to?

Thank you,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Lexbe <support@lexbe.zohodesk.com>
Sent: Monday, October 16, 2023 1:44 PM
To: chavez, priscilla <priscilla.chavez@austintexas.gov>
Cc: support@lexbe.zohodesk.com; Leigh Joseph <ljoseph@hendlerlaw.com>; Michelle Yamada <myamada@hendlerlaw.com>; laird, gray <gray.laird@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; nmarrero@lexbe.com
Subject: Re:[## 22500 ##] Lexbe/Hendler: COA Email Production - FTP link

Ms. Chavez:

We have completed set up of the SFTP account on our end. I am attaching two things here for you:

1. The PDF document with the SFTP Setup instructions for you (or your IT) to follow to set it up on your end.

2. A .ppk file. You will need the .ppk file (Key File) for Step 9 in the instructions. The Key File Password will be sent to you via separate email.

Your username (firm name) is **HendlerFloresLaw**. You will need this for Step 4 of the instructions (Page 1) and for Step 8 of the instructions (Page 2).

Please be on the lookout for a 2nd follow up email from me (phearn@lexbe.com) containing your Key File Password needed for Step 12 in the instructions (Page 3).

Please confirm with me by response to this email once you have successfully uploaded the files to the FTP site.

If you have any questions or issues with setting up the FTP, please let me know.

Otherwise, please confirm once you have successfully connected and have uploaded your data.

Best,
Phillip
How would you rate our customer service?

Good Okay Bad

--
Phillip Hearn, CEDS
Senior eDiscovery Specialist

8303 North MoPac Expressway
Suite B-225
Austin, TX 78759
800-401-7809 (toll free)
www.lexbe.com

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EXHIBIT J

---- on Mon, 16 Oct 2023 13:12:33 -0500 **Lexbe<support@lexbe.zohodesk.com>** wrote ----

Alexis, thank you!

Ms. Chavez:

Good afternoon and nice to meet you! I will get the FTP set up and will email you all of the details for accessing the FTP and starting the upload. If possible, it would make the upload go faster if the folder for Adler and Manley to each be zipped up before uploading. That will help to compress the overall size and make it easier to transfer.

I will email everyone with the FTP details and instructions as soon as I have it ready.

Thanks again!

Phillip

How would you rate our customer service?

Good Okay Bad

--

Phillip Hearn, CEDS
Senior eDiscovery Specialist

8303 North MoPac Expressway
Suite B-225
Austin, TX 78759
800-401-7809 (toll free)
www.lexbe.com

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---- on Mon, 16 Oct 2023 13:06:33 -0500 **"Alexis Lopez"<alopez@hendlerlaw.com>** wrote ----

EXHIBIT J

Phillip and Lexbe Team –

Please meet @Chavez, Priscilla, paralegal extraordinaire for the City of Austin. Ms. Chavez has agreed to upload the Adler and Manley folders via FTP link. How can I help facilitate that process?

Thank you both in advance for working with me on this!

Alexis M. Lopez

Senior Trial Paralegal

901 S. MoPac Expressway

Bldg. 1, Suite #300

Austin, Texas 78746
Tel: 512-439-3214 | Fax: 512-439-3201
alopez@hendlerlaw.com

www.hendlerlaw.com

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Leigh Joseph

From: Lexbe <support@lexbe.zohodesk.com>
Sent: Tuesday, October 31, 2023 12:07 PM
To: Leigh Joseph
Cc: Alexis Lopez; Nick Marrero; support@lexbe.zohodesk.com
Subject: Re:[## 22500 ##] Lexbe eDiscovery Platform - Hendler Flores Law - New Account Setup - Save for Future Reference

Follow Up Flag: Flag for follow up
Flag Status: Completed

Hi, Leigh:

Professional Services has now received the Manley data for upload in the Talley/Rodriguez case, and I have started the data processing. I will let you know once the processing is complete, and the data is ready for review.

Best,

Bryan

How would you rate our customer service?

Good Okay Bad

Bryan Doyle, J.D., CEDS
Senior Certified eDiscovery Specialist

8303 North MoPac Expressway
Suite B-225
Austin, TX 78759
800-401-7809 (toll free)
www.lexbe.com

Courtesy Lexbe Training Available every Thursday from 12:00 – 12:30 PM CT.
We invite our clients to join us for free weekly training sessions where we cover client-requested topics. Click HERE to register for one of our upcoming training sessions.

---- on Tue, 31 Oct 2023 09:42:53 -0500 **Lexbe<support@lexbe.zohodesk.com>** wrote ----

Hi Leigh,

The drive just arrived. We are working on getting the data transferred from it now. We'll keep you updated on the progress.

EXHIBIT K

Leigh Joseph

From: Barton, Monte <Monte.Barton@austintexas.gov>
Sent: Thursday, November 16, 2023 2:34 PM
To: Leigh Joseph; Laird, Gray
Cc: Smith, Carol; Chavez, Priscilla; Alexis Lopez; Stephen Demik
Subject: Update re ||||||| Rodriguez: D COA's Supp Emails Production

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hello Leigh,

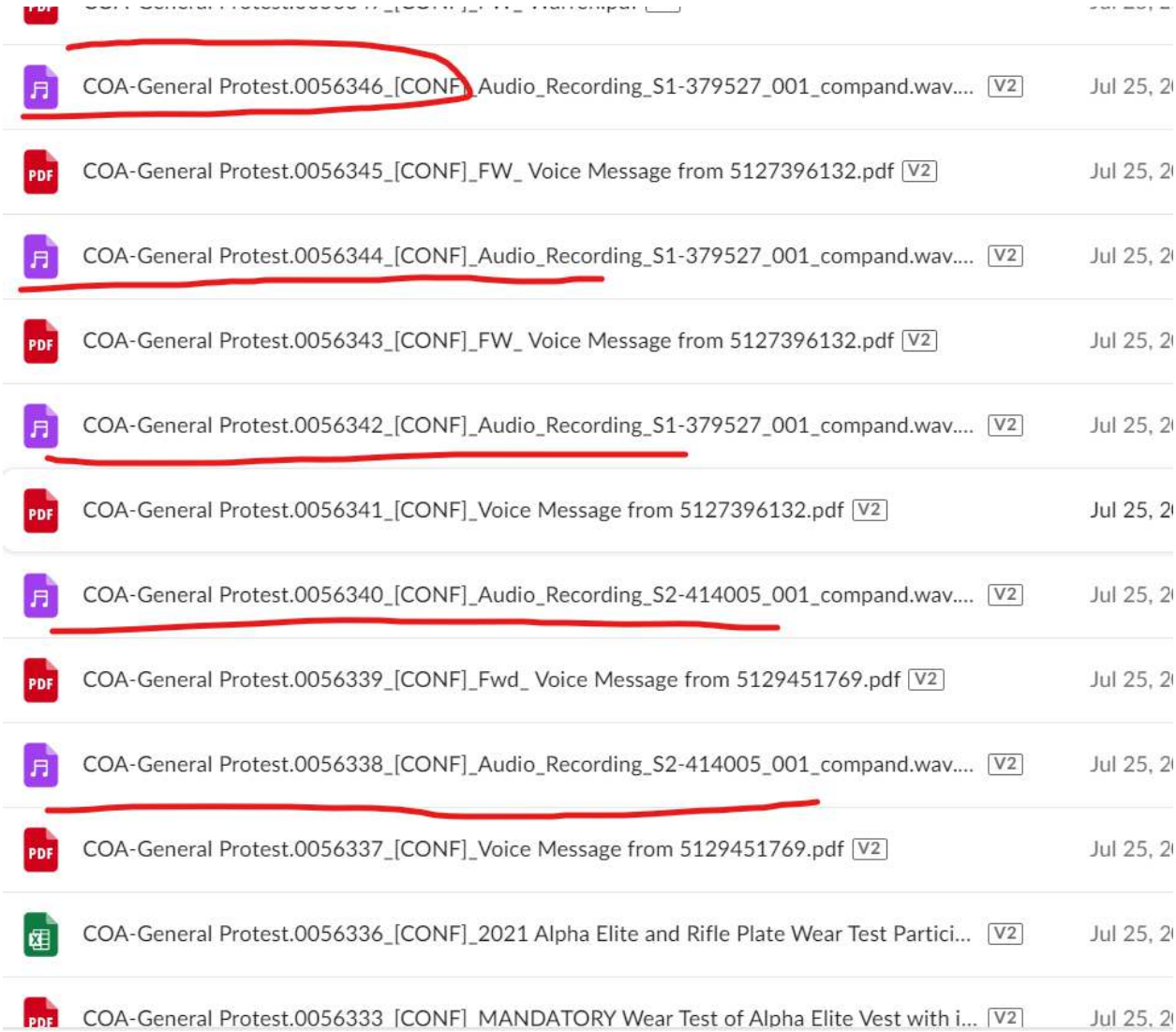
Please see below – answers to your questions:

– – –

--gaps in the Bates numbered documents?
The length of the file name only has the beginning of the bates number. The file itself should end where the next bates number starts on the next file. If the file had beginning and ending bates numbers in the name then they would be too long. If there are questions about a particular gap then please ask us for that gap number. We can look at it and see if its something that didn't get loaded. We loaded up to 10k emails per account.

--whether the voicemails referenced in the spreadsheet available to be produced?
They have them. They are in the box link. As to what they are? We don't know. They were not listened to before production. When the email boxes were searched by CTM they may have grabbed all voicemails. Maybe the service Leigh used couldn't convert an audio file to their excel sheet because the audios are there in the box link. We didn't withhold any of them.

EXHIBIT L



COA-General Protest.0056322_[CONF]_Voice Message from 4098773111	Jason Staniszewksi
COA-General Protest.0056324_[CONF]_Voice Message from 4097712007	Jason Staniszewksi
COA-General Protest.0056329_[CONF]_Voice Message from 5123187466	Jason Staniszewksi
COA-General Protest.0056331_[CONF]_Fwd_ Voice Message from 5123187466	Jason Staniszewksi
COA-General Protest.0056337_[CONF]_Voice Message from 5129451769	Jason Staniszewksi
COA-General Protest.0056339_[CONF]_Fwd_ Voice Message from 5129451769	Jason Staniszewksi
COA-General Protest.0056341_[CONF]_Voice Message from 5127396132	Jason Staniszewksi
COA-General Protest.0056343_[CONF]_FW_ Voice Message from 5127396132	Jason Staniszewksi

--As for larger set of 2,395 documents that contain unknown attachments, with a page "*offering that a native file is available without any description*".

EXHIBIT L

We don't know. Maybe this is from an excel sheet the service Plaintiffs used to convert a log or something. Without any more specific info we cannot answer.

As you can see in that other screenshot above, there is an excel sheet there. So if an excel sheet was sent as an attachment it was included behind that email.
For a particular bates number, then go to the box link to see if there is an attachment there.

– – –

--As for – determining whether the original .msg files still exist.
We don't have an answer yet. Carol is getting close and should have an answer next week.

Sincerely yours,

-Monte Barton

From: Leigh Joseph ljoseph@hendlerlaw.com
Sent: Friday, November 10, 2023 11:13 AM
To: Barton, Monte Monte.Barton@austintexas.gov; Laird, Gray gray.laird@austintexas.gov
Cc: Smith, Carol Carol.Smith@austintexas.gov; Chavez, Priscilla Priscilla.Chavez@austintexas.gov; Alexis Lopez alopez@hendlerlaw.com; Stephen Demik sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Supp Emails Production

External Email - Exercise Caution

Monte,

Thank you for your time this morning. The below list is an example where I have the documents arranged by title and it appears some Bates numbers are missing. Just wondering if those documents were sorted out as nonresponsive or what.

Based on our conversation about the files with the page inserted that says "this file is available in native format" I understand that you all will not attempt to introduce any of those files at trial without first producing them to us. I will likely also have a list of some of the native files to ask for after we have furthered our review.

Finally, I understand that you all stand by your method of production, but please let me know what Priscilla is able to determine about whether the original .msg files still exist.

EXHIBIT L

	Select	Title
185	☐	COA-General Protest.0031810_[CONF]__UPDATE_ SATURDAY 30 MAY 2020 - AUSTIN DEMONSTRATIONS_...
186	☐	COA-General Protest.0031815_[CONF]_RE_ Mike Ramos_George Floyd Protest
187	☐	COA-General Protest.0031821_[CONF]_UPDATES - 30 MAY and 31 MAY PROTESTS - APD HQS and AUSTIN...
188	☐	COA-General Protest.0031825_[CONF]_FYSA
189	☐	COA-General Protest.0031830_[CONF]_RE_ Person of Interest_ Matthew Barron 1_16_96
190	☐	COA-General Protest.0031839_[CONF]_FW_ ATC HSEM EOC - COVID-19 Morning Briefing - 5_31_20 0830
191	☐	COA-General Protest.0031848_[CONF]_RE_ pager returns update
192	☐	COA-General Protest.0031850_[CONF]_pagers 060120.xlsx
193	☐	COA-General Protest.0031851_[CONF]_RE_ PRF - Less Lethal Rounds
194	☐	COA-General Protest.0031853_[CONF]_FW_ ATC HSEM EOC - COVID-19 Morning Briefing - 6-1-2020_0830
195	☐	COA-General Protest.0031855_[CONF]_FW_ Resolution 66 Video Review Panel
196	☐	COA-General Protest.0031887_[CONF]_Debrief Language After Less Lethal Volley
197	☐	COA-General Protest.0031888_[CONF]_RE_ Debrief Language After Less Lethal Volley
198	☐	COA-General Protest.0031889_[CONF]_FW_ ATC EOC Situation Report 6_1_20
199	☐	COA-General Protest.0031898_[CONF]_RE_ FBI call Synopsis
200	☐	COA-General Protest.0031900_[CONF]_FBI call Synopsis_Intell from ARIC

Leigh A. Joseph
Attorney| Direct: 512-439-3207

Hendler Flores Law

From: Leigh Joseph
Sent: Wednesday, November 8, 2023 11:36 AM
To: Barton, Monte <Monte.Barton@austintexas.gov>; Laird, Gray <gray.laird@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Alexis Lopez <ALopez@hendlerlaw.com>; Stephen Demik <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Sounds good, Monte. Thanks for the reply. I'm free Friday before 10:00 or between 11:00 and 1:30. Let me know what works for you in that time frame and the best number to reach you Friday.

Thank you,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Barton, Monte <Monte.Barton@austintexas.gov>
Sent: Wednesday, November 8, 2023 11:25 AM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Laird, Gray <gray.laird@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; Stephen Demik <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello Leigh,
I have been struggling with a 5th Cir. brief and just now realize I did not reply to you. Sorry. How about if we talk on Friday morning? I am still fretting over this brief, but the deadline is tomorrow so I'll be available on Friday – I hope, anyway.
Please let me know.
Thx,
-mlb

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Monday, November 6, 2023 4:22 PM
To: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; Stephen Demik <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

External Email - Exercise Caution

Good afternoon Gentlemen,

I have reached out multiple times to discuss the method by which the city produced the emails and specifically the fact that native files were not produced. I have not received any sort of response to these inquiries from your office. Not only does the PDF format increase the review burden, but more importantly, it breaks the link between messages and their attachments and removes our ability to validate the same. I can't imagine that the City maintains emails in PDF form in the ordinary course of business and see no reason why they should have been produced this way, especially without conference. I have attached another copy of our requests so that you may refresh on what our instructions were for how to produce ESI.

Further, we are seeing quite a few emails in the production set that have us questioning what type of review was done on your end to confirm responsiveness before production. For example, it looks like 531 of the emails produced relate to South by Southwest. Could you please identify what RFP you believe these are responsive to?

I'd like to further discuss these issues with one or both of you in hopes that we can reach a resolution without the necessity of Court intervention. However, if we are unable to confer this week, I will be forced to add this issue to my motion to compel. Please let me know a good time this week for a phone call.

Thank you,

Leigh A. Joseph
Attorney| Direct: 512-439-3207

EXHIBIT L

From: Leigh Joseph
Sent: Thursday, October 12, 2023 9:40 AM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>; Alexis Lopez <ALopez@hendlerlaw.com>; Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Priscilla,

Thank you for responding yesterday. We are going back to our vendor with this information. Can you also tell me – is the production already gathered in native format and would you all be opposed to producing that way?

Leigh A. Joseph
Attorney| Direct: 512-439-3207

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Wednesday, October 11, 2023 4:48 PM
To: Alexis Lopez <alopez@hendlerlaw.com>; Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello,

We have double checked and it does not look like any of the files are corrupted. We have gone back to the Box links and all contents are viewable and accessible as required by FRCP. I do not have any expirations set on the links and have not intended to set any. When I click on the emails, they are able to be accessed and are viewable and can be read.

If you would like to send an external hard drive to City Hall for the 8 accounts you listed below, you can certainly do so. You can have someone drop it off to the Receptionist desk on the 4th floor attention to my name. As soon as we can reasonably get to copying the emails then we will let you know once the eight accounts have been loaded and when the external is ready for you to pick up.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

EXHIBIT L

From: Alexis Lopez <alopez@hendlerlaw.com>
Sent: Tuesday, October 10, 2023 11:35 AM
To: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>
Cc: Smith, Carol <Carol.Smith@austintexas.gov>; Leigh Joseph <ljoseph@hendlerlaw.com>; Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Subject: RE: Rodriguez: D COA's Supp Emails Production

External Email - Exercise Caution

Attention Counsel –

As a follow up to Leigh's email last week requesting native files – we have recently discovered that some of the produced email files we received are corrupted. There are eight (8) folders in Box cloud storage that will not download. Our office and/or our vendor has attempted download on several servers and by several methods, but there is something within the data in these folders that is causing issues in downloading properly. The eight folders represent the following:

1. Mayor (Steve) Adler
2. Kathie Tovo
3. Alison Alter
4. Troy Gay
5. Rey Arellano
6. Spencer Cronk
7. Jennifer Stephenson
8. Brian Manley

At this time, I ask that you please either (1) zip the 8 identified folders and then retry producing to our office, or (2) please consider re-producing the entire email production (24 folders) in native format.

In hopes of completing our review of these files in a timely manner and in preparation of the February trial date, I would appreciate establishing a plan to get complete data by close of business tomorrow. I look forward to hearing back.

Thank you for your attention.

Alexis M. Lopez
Sr. Trial Paralegal | Direct: 512-439-3214

Hendler Flores Law

From: Leigh Joseph <ljoseph@hendlerlaw.com>
Sent: Thursday, October 5, 2023 11:20 AM
To: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol

EXHIBIT L

<Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production
Importance: High

Monte/Gray,

I need to explore the possibility of getting these emails in native format. I assume they were gathered that way before they were pdfed? I am happy to deliver a hard drive to your office for copying. Could you please let me know asap where you stand on being able to work with us on this? I am working with our review vendor on uploading the data and need to be able to confirm what we are working with.

Thank you.

Leigh A. Joseph
Attorney| Direct: 512-439-3207

Hendler Flores Law

From: Chavez, Priscilla <Priscilla.Chavez@austintexas.gov>
Sent: Monday, September 11, 2023 4:35 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; Stephen Demik <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

All,
The email production has all been uploaded to the link:

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Troy Gay
Rey Arellano
Spencer Cronk
Jennifer Stephenson
Robin Henderson
Ann Kitchen
Brian Manley
Natasha Harper- Madison
Sabino Renteria
Paige Ellis
Steve Adler
Farah Muscadin
Mark Spangler
Jimmy Flannigan
Kathie Tovo
Richard Guajardo
Leslie Pool
Delia Garza
Joseph Chacon

Alison Alter
Gregorio Casar
Brent Dupree
Jason Staniszewski
Kenneth Casaday

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Thursday, August 31, 2023 3:53 PM
To: 'Leigh Joseph' <ljoseph@hendlerlaw.com>; 'Scott Hendler' <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; 'Alexis Lopez' <alopez@hendlerlaw.com>; 'sdemik@hendlerlaw.com' <sdemik@hendlerlaw.com>
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello,

Update, the emails for the following persons have been uploaded:
Ann Kitchen
Brian Manley
Natasha Harper- Madison
Sabino Renteria
Paige Ellis
Robin Henderson (should be done loading by end of today)

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Thursday, August 10, 2023 4:23 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello all,

Defendant City of Austin is serving it's fourth supplemental Responses to P's 1st RFPs. The production bates labeled COA 41198-43390 has been uploaded to the same link as below.

Update, the emails for the following persons have been uploaded:
Steve Adler
Farah Muscadin
Mark Spangler

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453

Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Friday, August 4, 2023 11:28 AM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Supp Emails Production

Hello all,

Update, the emails for the following persons have been uploaded:
Jimmy Flannigan
Kathie Tovo
Richard Guajardo
Leslie Pool

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Tuesday, August 1, 2023 4:10 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: RE: Rodriguez: D COA's Rsps to P's ROGs

Hello all,
Attached are the Defendant City of Austin's Responses to Plaintiffs ROGs with the signed verification attached.

Also to update that emails for the following persons have been uploaded:
Delia Garza
Joseph Chacon
Alison Alter
Gregorio Casar

Reminder:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

From: Chavez, Priscilla
Sent: Wednesday, July 26, 2023 7:03 PM
To: Leigh Joseph <ljoseph@hendlerlaw.com>; Scott Hendler <shendler@hendlerlaw.com>
Cc: Laird, Gray <gray.laird@austintexas.gov>; Barton, Monte <Monte.Barton@austintexas.gov>; Smith, Carol <Carol.Smith@austintexas.gov>; Alexis Lopez <alopez@hendlerlaw.com>; sdemik@hendlerlaw.com
Subject: Rodriguez: D COA's Rsps to P's 3rd RFPs, RFAs, ROGs and Supp Rsps to RFPs 1-16

All,

Attached are the Defendant City of Austin's Responses to Plaintiff's Third Request for Production (RFP 17-141). Defendant City of Austin is also attaching supplemental responses to Plaintiff's RFPs 1-15, and RFP 16.

Please Note:
In reference to the emails bates labeled COA General Protest Production, due to the time constraints in producing the large volume of requested emails and text messages, Defendant reserves the right to recall any produced document containing emails or text messages which contain material protected by the attorney-client privilege or attorney-work product.

The production can be downloaded from the following Box link. The emails will be continuously uploaded, and we will notify you once they're completely loaded.

The emails for Brent Dupree, Jason Staniszewski, and Kenneth Casaday are completely uploaded. The rest will be supplemented.

https://austintexas.box.com/s/7ko9yhinmbsdzz0fpyrwyduvhkrsuerj

Please consider this email as proof of service.

Respectfully,

Priscilla Chavez
Paralegal to Gray Laird
City of Austin – Law Department
512-974-2453
Priscilla.chavez@austintexas.gov
Hours: Mon-Fri 7:30a – 4:30p

CAUTION: This is an EXTERNAL email. Please use caution when clicking links or opening attachments. If you believe this to be a malicious or phishing email, please report it using the "Report Message" button in Outlook or forward to cybersecurity@austintexas.gov.

Title	Size (MB)
COA-General Protest.0307719_[CONF]_Voice Message from 9103540058	1.9
COA-General Protest.0192796_[CONF]_Voice Message from 5123662675	0.3
COA-General Protest.0192823_[CONF]_Voice Message from 9198420449	0.3
COA-General Protest.0192825_[CONF]_Voice Message from 9198420449	0.3
COA-General Protest.0192827_[CONF]_Voice Message from 5126564262	0.3
COA-General Protest.0192829_[CONF]_Voice Message from 5129742000 _ CIC Training Ro____	0.3
COA-General Protest.0192831_[CONF]_Voice Message from 5125086052	0.3
COA-General Protest.0194011_[CONF]_Voice Message from 5129781510	0.3
COA-General Protest.0194020_[CONF]_Voice Message from 5128648205	0.3
COA-General Protest.0194022_[CONF]_RE_ Voice Message from 5129742000 _ CIC Training Ro____	0.7
COA-General Protest.0194026_[CONF]_Fwd_ Voice Message from 5122936106	0.4
COA-General Protest.0194028_[CONF]_FW_ Voice Message from 5122936106	0.5
COA-General Protest.0194035_[CONF]_Voice Message from 2028703035	0.3
COA-General Protest.0194058_[CONF]_Voice Message from 5127291576	0.3
COA-General Protest.0194199_[CONF]_Voice Message from 5129781510	0.3
COA-General Protest.0194201_[CONF]_Voice Message from 5124260728	0.3
COA-General Protest.0194210_[CONF]_Voice Message from 5124260728	0.3
COA-General Protest.0194223_[CONF]_Voice Message from 5125762439	0.3
COA-General Protest.0194225_[CONF]_Voice Message from 2197767315	0.3
COA-General Protest.0194227_[CONF]_FW_ Voice Message from 5123172980	0.4
COA-General Protest.0194245_[CONF]_Voice Message from JJ Schmidt (48643)	1.9

EXHIBIT M

COA-General Protest.0194814_[CONF]_Voice Message from 5127291576	1.9
COA-General Protest.0194816_[CONF]_Voice Message from 5127291576	1.9
COA-General Protest.0194818_[CONF]_Voice Message from 5129740845	1.9
COA-General Protest.0194820_[CONF]_Voice Message from 5129781510	0.3
COA-General Protest.0194822_[CONF]_Voice Message from 5129781510	0.3
COA-General Protest.0195244_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0195246_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0195914_[CONF]_Voice Message from 5127291576	1.9
COA-General Protest.0197707_[CONF]_Voice Message from Ciaran Crozier (45498)	0.3
COA-General Protest.0198286_[CONF]_Voice Message from Creola Burns (45202)	0.3
COA-General Protest.0198512_[CONF]_Voice Mail (10 seconds)	1.8
COA-General Protest.0504054_[CONF]_Voice Message from Lynn Carter (42171)	0.3
COA-General Protest.0504254_[CONF]_FW_ Return call	0.9
COA-General Protest.0504968_[CONF]_Voice Message from 5124925302	0.3
COA-General Protest.0723634_[CONF]_FW_ Voice Message from 5127391448	0.4
COA-General Protest.0723665_[CONF]_FW_ Voice Message from 5125741274	0.4
COA-General Protest.0723667_[CONF]_FW_ Voice Message from 5125741274	0.4
COA-General Protest.0741040_[CONF]_Voice Message from 5127894055	0.3
COA-General Protest.0741042_[CONF]_Voice Message from 5127516415	0.3
COA-General Protest.0741046_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.3
COA-General Protest.0741055_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.3
COA-General Protest.0741048_[CONF]_Voice Message from 5129742000	0.3

COA-General Protest.0741057_[CONF]_Voice Message from 5122880754	0.3
COA-General Protest.0741063_[CONF]_Voice Message from 5125920824	0.3
COA-General Protest.0741059_[CONF]_Voice Message from 5122880754	0.3
COA-General Protest.0741067_[CONF]_Voice Message from Lynn Carter (42171)	0.3
COA-General Protest.0741065_[CONF]_Voice Message from 5125920824	0.3
COA-General Protest.0741061_[CONF]_Voice Message from 5122880754	0.3
COA-General Protest.0741069_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0741462_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0741577_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.4
COA-General Protest.0741579_[CONF]_Voice Message from 5125894913	0.3
COA-General Protest.0741604_[CONF]_Voice Message from 5128920269	0.3
COA-General Protest.0551013_[CONF]_Voice Message from Lynn Carter (42171)	0.3
COA-General Protest.0551218_[CONF]_FW_ Voice Message from 2146366448	0.4
COA-General Protest.0551322_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0603529_[CONF]_Voice Message from 5125638766	0.3
COA-General Protest.0164128_[CONF]_Fwd_ Voice Message from 5123752154	0.4
COA-General Protest.0164130_[CONF]_Fwd_ Voice Message from 5123752154	0.4
COA-General Protest.0164142_[CONF]_FW_ Voice Message from 5127742607	0.4
COA-General Protest.0164144_[CONF]_FW_ Voice Message from 5127742607	0.4
COA-General Protest.0164241_[CONF]_Voice Message from 7372287201	0.3
COA-General Protest.0164714_[CONF]_Voice Message from 5127967920	0.3
COA-General Protest.0541051_[CONF]_Voice Message from Lynn Carter (42171)	0.3

COA-General Protest.0541101_[CONF]_Voice Message from Bianca Bentzin (41157)	0.3
COA-General Protest.0541120_[CONF]_[FYI] FW_ Voice Message from 5127320321	0.9
COA-General Protest.0541129_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0541196_[CONF]_[FYI] FW_ Voice Message from 4846364851	0.4
COA-General Protest.0541227_[CONF]_FW_ Voice Message from 5126987429	0.4
COA-General Protest.0519302_[CONF]_Voice Message from Lynn Carter (42171)	0.3
COA-General Protest.0056026_[CONF]_Voice Message from 5125700040	0.8
COA-General Protest.0056028_[CONF]_Voice Message from Eric Wilson (43745)	0.8
COA-General Protest.0056084_[CONF]_Voice Message from 9366625246	0.8
COA-General Protest.0056086_[CONF]_Voice Message from 9366625246	0.8
COA-General Protest.0056106_[CONF]_Voice Message from 4043999494	0.8
COA-General Protest.0056110_[CONF]_Fwd_ Voice Message from (Caller Unknown)	2.6
COA-General Protest.0056114_[CONF]_Voice Message from 7372352527	0.8
COA-General Protest.0056119_[CONF]_Voice Message from Eric Wilson (43745)	0.8
COA-General Protest.0056125_[CONF]_Voice Message from Matt Wright (44282)	0.8
COA-General Protest.0056127_[CONF]_Voice Message from JJ Schmidt (48643)	0.8
COA-General Protest.0056161_[CONF]_FW_ Voice Message from 4156021806	0.8
COA-General Protest.0056159_[CONF]_Voice Message from 4156021806	0.8
COA-General Protest.0056181_[CONF]_Voice Message from 4693238743	0.8
COA-General Protest.0056183_[CONF]_FW_ Voice Message from 4693238743	0.8
COA-General Protest.0056246_[CONF]_Voice Message from 5123892250	0.8
COA-General Protest.0056248_[CONF]_FW_ Voice Message from 5123892250	0.8

COA-General Protest.0056264_[CONF]_Voice Message from 5129248474	0.8
COA-General Protest.0056266_[CONF]_FW_ Voice Message from 5129248474	0.8
COA-General Protest.0056268_[CONF]_Voice Message from 5129248474	0.8
COA-General Protest.0056270_[CONF]_Fwd_ Voice Message from 5129248474	2.2
COA-General Protest.0056272_[CONF]_Voice Message from 5129248474	0.8
COA-General Protest.0056274_[CONF]_FW_ Voice Message from 5129248474	0.8
COA-General Protest.0056276_[CONF]_Voice Message from 7136880647	0.8
COA-General Protest.0056278_[CONF]_FW_ Voice Message from 7136880647	0.8
COA-General Protest.0056284_[CONF]_Voice Message from 5127620371	0.8
COA-General Protest.0056288_[CONF]_Voice Message from 2134476706	0.8
COA-General Protest.0056286_[CONF]_FW_ Voice Message from 5127620371	0.8
COA-General Protest.0056290_[CONF]_FW_ Voice Message from 2134476706	0.8
COA-General Protest.0056292_[CONF]_Voice Message from 2108876256	0.8
COA-General Protest.0056310_[CONF]_Voice Message from George Silvio (48697)	0.8
COA-General Protest.0056312_[CONF]_Voice Message from 5124527347	0.8
COA-General Protest.0056314_[CONF]_FW_ Voice Message from 5124527347	0.8
COA-General Protest.0056316_[CONF]_Voice Message from 5126333963	0.8
COA-General Protest.0056322_[CONF]_Voice Message from 4098773111	0.8
COA-General Protest.0056324_[CONF]_Voice Message from 4097712007	0.8
COA-General Protest.0056329_[CONF]_Voice Message from 5123187466	0.8
COA-General Protest.0056331_[CONF]_Fwd_ Voice Message from 5123187466	2.2
COA-General Protest.0056337_[CONF]_Voice Message from 5129451769	0.8

COA-General Protest.0056339_[CONF]_Fwd_ Voice Message from 5129451769	2.2
COA-General Protest.0056341_[CONF]_Voice Message from 5127396132	0.8
COA-General Protest.0056343_[CONF]_FW_ Voice Message from 5127396132	0.8
COA-General Protest.0092764_[CONF]_Voice Message from 5128867782	0.8
COA-General Protest.0092772_[CONF]_Voice Message from 9035584429	0.8
COA-General Protest.0092790_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0092788_[CONF]_Voice Message from 2109422464	0.8
COA-General Protest.0092828_[CONF]_FW_ Voice Message from 5122936106	2.6
COA-General Protest.0092839_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0092837_[CONF]_Voice Message from 5124714439	0.8
COA-General Protest.0092841_[CONF]_Voice Message from Cyrenthia Ellis (41709)	0.8
COA-General Protest.0092851_[CONF]_FW_ Voice Message from 6292352320	0.8
COA-General Protest.0093084_[CONF]_FW_ Voice Message from 5123172980	0.8
COA-General Protest.0093090_[CONF]_Fwd_ Voicemail for APD_Chief	1.6
COA-General Protest.0093094_[CONF]_FW_ Voicemail for APD_Chief	6.7
COA-General Protest.0093181_[CONF]_Voice Message from 5712605968	0.8
COA-General Protest.0093240_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0093269_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0093267_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0093374_[CONF]_Voice Message from 5125941100	0.8
COA-General Protest.0093380_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0093395_[CONF]_Voice Message from 5125940098	0.8

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COA-General Protest.0093408_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0093410_[CONF]_Voice Message from 5125940098	0.8
COA-General Protest.0093771_[CONF]_Voice Message from 5125941100	0.8
COA-General Protest.0094486_[CONF]_Voice Message from 5129472367	0.8
COA-General Protest.0149770_[CONF]_Fwd_ Voice Message from 9059488266	0.5
COA-General Protest.0149773_[CONF]_Voice Message from 7327784886	0.3
COA-General Protest.0149775_[CONF]_Voice Message from 9178864939	0.3
COA-General Protest.0149777_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0149779_[CONF]_Voice Message from David Duran (45421)	0.3
COA-General Protest.0149781_[CONF]_Voice Message from Chief Manley (45216)	0.3
COA-General Protest.0149801_[CONF]_Voice Message from 9149602348	0.3
COA-General Protest.0149805_[CONF]_Voice Message from 2146703530	0.3
COA-General Protest.0149803_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0149807_[CONF]_Voice Message from 2146703530	0.3
COA-General Protest.0149809_[CONF]_Voice Message from 5128254884	0.3
COA-General Protest.0149841_[CONF]_Voice Message from 5127973399	0.3
COA-General Protest.0149843_[CONF]_Voice Message from 5124754820	0.3
COA-General Protest.0149849_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.3
COA-General Protest.0149851_[CONF]_Voice Message from 2023040422	0.3
COA-General Protest.0149853_[CONF]_Voice Message from Janet DeLaRosa (45035)	0.3
COA-General Protest.0149865_[CONF]_Voice Message from 5125852117	0.3
COA-General Protest.0149879_[CONF]_Voice Message from 5126367223	0.3

COA-General Protest.0149881_[CONF]_Voice Message from 5126367223	0.3
COA-General Protest.0149892_[CONF]_Voice Message from 5126367223	0.3
COA-General Protest.0150663_[CONF]_Voice Message from Desirae Fletcher (49001)	0.3
COA-General Protest.0152103_[CONF]_Voice Message from 5124949400	0.3
COA-General Protest.0152105_[CONF]_Voice Message from 5122472731	0.3
COA-General Protest.0752904_[CONF]_Re_ Voice Message from 5129742000	0.2
COA-General Protest.0752905_[CONF]_RE_ Voice Message from 5129742000	0.4
COA-General Protest.0761357_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0761355_[CONF]_Voice Message from 8305079375	0.3
COA-General Protest.0761359_[CONF]_FW_ Voice Message from 5129742000	0.4
COA-General Protest.0761369_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0761371_[CONF]_FW_ Voice Message from 5129742000 _ CWIC Remote Age____	0.4
COA-General Protest.0761463_[CONF]_Voice Message from 8179655555	0.3
COA-General Protest.0761465_[CONF]_FW_ Voice Message from 8179655555	0.4
COA-General Protest.0761467_[CONF]_Voice Message from 5124925773	0.3
COA-General Protest.0761494_[CONF]_Voice Message from 7707695766	0.3
COA-General Protest.0761498_[CONF]_FW_ Voice Message from 5129742000	0.4
COA-General Protest.0761496_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0761810_[CONF]_Voice Message from 4807933141	0.3
COA-General Protest.0761812_[CONF]_Voice Message from 3042612647	0.3
COA-General Protest.0761814_[CONF]_FW_ Voice Message from 3042612647	0.4
COA-General Protest.0761816_[CONF]_Voice Message from 5127095806	0.3

COA-General Protest.0761818_[CONF]_FW_ Voice Message from 5127095806	0.4
COA-General Protest.0761822_[CONF]_Voice Message from 9712704411	0.3
COA-General Protest.0762196_[CONF]_Voice Message from 5129937305	0.3
COA-General Protest.0762198_[CONF]_FW_ Voice Message from 5129937305	0.4
COA-General Protest.0762267_[CONF]_Voice Message from 5596217773	0.3
COA-General Protest.0237744_[CONF]_Voice Message from 8152387130	1.9
COA-General Protest.0237752_[CONF]_Voice Message from Eliza Adcox (45010)	0.3
COA-General Protest.0237786_[CONF]_Voice Message from Dana Kadavy (45118)	0.3
COA-General Protest.0237794_[CONF]_Voice Message from 6512368462	0.3
COA-General Protest.0237796_[CONF]_Voice Message from 2104012207	0.3
COA-General Protest.0237827_[CONF]_Voice Message from 2023040422	0.3
COA-General Protest.0237976_[CONF]_Voice Message from 4153163776	0.3
COA-General Protest.0238127_[CONF]_FW_ Voice Message from 5122936106	0.5
COA-General Protest.0238132_[CONF]_Voice Message from 2023040422	1.9
COA-General Protest.0238130_[CONF]_Voice Message from 2023040422	0.3
COA-General Protest.0238160_[CONF]_Voice Message from 5127915827	0.3
COA-General Protest.0238162_[CONF]_Voice Message from 5127915827	1.9
COA-General Protest.0238192_[CONF]_Voice Message from 6123848615	0.3
COA-General Protest.0238203_[CONF]_Voice Message from 7372282420	0.3
COA-General Protest.0238205_[CONF]_Voice Message from 6512368462	0.3
COA-General Protest.0238212_[CONF]_Voice Message from 5129742268	0.3
COA-General Protest.0238544_[CONF]_Fwd_ Voicemail for APD_Chief	5.6

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COA-General Protest.0238548_[CONF]_Fwd_ Voicemail for APD_Chief	5.6
COA-General Protest.0238590_[CONF]_Voice Message from 5126099505	1.9
COA-General Protest.0591694_[CONF]_FW_ Voice Message from 8325794683	0.4
COA-General Protest.0591696_[CONF]_FW_ Voice Message from 8325794683	0.4
COA-General Protest.0592559_[CONF]_FW_ Voice Message from 7738709900 _ AAM_ ____	0.4
COA-General Protest.0592638_[CONF]_Fw_ Voice Message from 5123892250	1
COA-General Protest.0855018_[CONF]_Voice Message from Lynn Carter (42171)	0.3
COA-General Protest.0855041_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0855043_[CONF]_Voice Message from 4848241814	0.3
COA-General Protest.0855045_[CONF]_Voice Message from 5126690809	0.3
COA-General Protest.0855063_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0855179_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0855181_[CONF]_Voice Message from 9548022416	0.3
COA-General Protest.0855183_[CONF]_Voice Message from 2067905069	0.3
COA-General Protest.0855185_[CONF]_Voice Message from 7034892073	0.3
COA-General Protest.0855187_[CONF]_Voice Message from 2102408150	0.3
COA-General Protest.0855189_[CONF]_Voice Message from 5129210966	0.3
COA-General Protest.0855191_[CONF]_Voice Message from 3363828765	0.3
COA-General Protest.0855198_[CONF]_Voice Message from 5126808206	0.3
COA-General Protest.0855200_[CONF]_Voice Message from 5125872904	0.3
COA-General Protest.0855208_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0855210_[CONF]_Voice Message from 5126596469	0.3

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COA-General Protest.0855212_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.3
COA-General Protest.0855214_[CONF]_Voice Message from 5125546796	0.3
COA-General Protest.0855216_[CONF]_Voice Message from 5124420073	0.3
COA-General Protest.0855218_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0855220_[CONF]_Voice Message from 5127124496	0.3
COA-General Protest.0855222_[CONF]_Voice Message from 5124949400	0.3
COA-General Protest.0855229_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0855231_[CONF]_Voice Message from 5124949400	0.3
COA-General Protest.0855233_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.3
COA-General Protest.0855235_[CONF]_Voice Message from 5125274243	0.3
COA-General Protest.0855237_[CONF]_Voice Message from 5126737273	0.3
COA-General Protest.0855239_[CONF]_Voice Message from 9568216522	0.3
COA-General Protest.0855241_[CONF]_Voice Message from 5126361883	0.3
COA-General Protest.0855243_[CONF]_Voice Message from 4083073376	0.3
COA-General Protest.0855245_[CONF]_Voice Message from 8477143047	0.3
COA-General Protest.0855247_[CONF]_Voice Message from 6179215137	0.3
COA-General Protest.0855249_[CONF]_Voice Message from 9415240316	0.3
COA-General Protest.0855271_[CONF]_Voice Message from 5129881064	0.3
COA-General Protest.0855273_[CONF]_Voice Message from 5125635533	0.3
COA-General Protest.0855298_[CONF]_Voice Message from 5129232012	0.3
COA-General Protest.0855300_[CONF]_Voice Message from 3109131719	0.3
COA-General Protest.0855302_[CONF]_Voice Message from 5124949400	0.3

COA-General Protest.0855321_[CONF]_Voice Message from 5124420073	0.3
COA-General Protest.0855323_[CONF]_Voice Message from 5128450368	0.3
COA-General Protest.0855368_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.3
COA-General Protest.0855376_[CONF]_FW_ Voice Message from 5129742000 _ CWIC Agent Bld ____	0.4
COA-General Protest.0855396_[CONF]_Voice Message from 5124426784	0.3
COA-General Protest.0855433_[CONF]_Voice Message from 6072232912	0.3
COA-General Protest.0855435_[CONF]_Voice Message from 5122939930	0.3
COA-General Protest.0855459_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0855494_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.4
COA-General Protest.0855534_[CONF]_Voice Message from 5126799705	0.3
COA-General Protest.0855623_[CONF]_Voice Message from 7139538480	0.3
COA-General Protest.0855635_[CONF]_Voice Message from 5125513595	0.3
COA-General Protest.0855637_[CONF]_Voice Message from 5122939930	0.3
COA-General Protest.0855639_[CONF]_Voice Message from 5126594683	0.3
COA-General Protest.0855643_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0855655_[CONF]_Voice Message from 5129742000 _ CWIC Remote Age____	0.3
COA-General Protest.0855653_[CONF]_Voice Message from 5125765889	0.3
COA-General Protest.0855680_[CONF]_Voice Message from 7377032795	0.3
COA-General Protest.0855945_[CONF]_Voice Message from 5129742000	0.3
COA-General Protest.0855957_[CONF]_Voice Message from 5124444351	0.3
COA-General Protest.0473528_[CONF]_Voice Message from 5129528770	0.3
COA-General Protest.0473530_[CONF]_Fw_ Voice Message from 5129528770	1

COA-General Protest.0298684_[CONF]_FW_ Voice Message from 5209822596	0.8
COA-General Protest.0298686_[CONF]_Fwd_ Voice Message from 5209822596	3
COA-General Protest.0298694_[CONF]_FW_ Voice Message from 5128390143	0.8
COA-General Protest.0298696_[CONF]_Fw_ Voice Message from 4699398002	0.8
COA-General Protest.0298726_[CONF]_Voice Message from 9105780120	0.8
COA-General Protest.0298737_[CONF]_Voice Message from 5125608885	0.8
COA-General Protest.0298783_[CONF]_Voice Message from 5122892928	0.8
COA-General Protest.0298785_[CONF]_FW_ Voice Message from 5122892928	0.8
COA-General Protest.0298814_[CONF]_Voice Message from 5122892928	0.8
COA-General Protest.0298816_[CONF]_FW_ Voice Message from 5122892928	0.8
COA-General Protest.0298888_[CONF]_Voice Message from 6073303200	0.8
COA-General Protest.0298947_[CONF]_Voice Message from 5127860937	0.8
COA-General Protest.0298949_[CONF]_FW_ Voice Message from 5127860937	0.8
COA-General Protest.0298951_[CONF]_Voice Message from 7372288272	0.8
COA-General Protest.0298957_[CONF]_FW_ Voice Message from 5127679778	0.8
COA-General Protest.0298959_[CONF]_FW_ Voice Message from 5127679778	0.8
COA-General Protest.0298966_[CONF]_Voice Message from 8178459623	0.8
COA-General Protest.0298976_[CONF]_Voice Message from 5127860937	0.8
COA-General Protest.0298980_[CONF]_Fwd_ Voice Message from 5127860937	2.4
COA-General Protest.0298982_[CONF]_Voice Message from 5127860937	0.8
COA-General Protest.0299010_[CONF]_Voice Message from 5129742000 _ CWIC Agent Bld ____	0.8
COA-General Protest.0299012_[CONF]_Voice Message from 5129954823	0.8

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COA-General Protest.0299014_[CONF]_Voice Message from 5125922088	0.8
COA-General Protest.0299020_[CONF]_FW_ Voice Message from 9159795845	0.8
COA-General Protest.0299085_[CONF]_Voice Message from 5124949400 _ CWIC____	0.8
COA-General Protest.0299093_[CONF]_Voice Message from 7372288272	0.8
COA-General Protest.0299095_[CONF]_Voice Message from Catherine Van Arnam (82176)	0.8
COA-General Protest.0299867_[CONF]_Voice Message from Christopher Davis (44199)	0.8
COA-General Protest.0300095_[CONF]_Voice Message from Jaclyn Gerban (46481)	0.8
COA-General Protest.0300097_[CONF]_FW_ Voice Message from Jaclyn Gerban (46481)	0.8
COA-General Protest.0415477_[CONF]_Voice Message from 5125633898	1.9
COA-General Protest.0415510_[CONF]_Voice Message from 5128267751	1.9
COA-General Protest.0415537_[CONF]_Voice Message from (Caller Unknown)	1.9
COA-General Protest.0415551_[CONF]_Voice Message from 2142938550	1.9
COA-General Protest.0415555_[CONF]_Voice Message from Rob Spiller (42488)	1.9
COA-General Protest.0415557_[CONF]_Voice Message from 5128540000	1.9
COA-General Protest.0415581_[CONF]_Voice Message from 5123934725	1.9
COA-General Protest.0415597_[CONF]_Voice Message from 8776918482	1.9
COA-General Protest.0415635_[CONF]_Voice Message from 5123452170	1.9
	204.5

EXHIBIT M

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From: Martinez, Jacob
Sent: Thursday, June 4, 2020 8:49 AM
To: Muscadin, Farah
Subject: FW: Voice Message from 5209822596
Attachments: Audio_Recording_S1-890684_001_compand.wav

Hi Farah,

This is Jacob Martinez in WPD, I still occasionally receive OPO calls to my desk phone. In the past we determined that this is due to my phone number being so similar (974-2676) to your office number.

-Jacob

-----Original Message-----
From: ctmavayaalerts@austintexas.gov <ctmavayaalerts@austintexas.gov>
Sent: Wednesday, June 3, 2020 4:40 PM
To: Martinez, Jacob <Jacob.Martinez@austintexas.gov>
Subject: Voice Message from 5209822596

Voice message copy

Caller: 5209822596
Duration: 01:30

To hear the voice message, play the attached recording or call your Messaging mailbox.

Messaging access number: (512)974-9410

CONFIDENTIAL

EXHIBIT N

This File Available in Native Format

Filename: Audio_Recording_S1-890684_001_compand.wav

CONFIDENTIAL

EXHIBIT N

Title	Size (MB)
CO8843~1	12.7
COA-General Protest.0033255_[CONF]_Fwd_ State and Federal Legislative Updates	104.8
COA-General Protest.0035113_[CONF]_RE_ 20-2131658	15.4
COA-General Protest.0051592_[CONF]_FW_ Rivenbark's application for C100s	16.9
COA-General Protest.0051609_[CONF]_FW_ Rivenbark's application for C100s	19.8
COA-General Protest.0051993_[CONF]_FW_ Sworn Application Form-Risk Management	18.5
COA-General Protest.0052019_[CONF]_FW_ Sworn Application Form-Risk Management	20.8
COA-General Protest.0052366_[CONF]_FW_ Sworn App for Baker 200s	19.4
COA-General Protest.0052384_[CONF]_Fw_ Lakes Sworn Application	19
COA-General Protest.0052435_[CONF]_FW_ Lakes Sworn Application	22
COA-General Protest.0052540_[CONF]_FW_ Sworn application for CVE	19.4
COA-General Protest.0052558_[CONF]_FW_ Sworn application for CVE	22.4
COA-General Protest.0052738_[CONF]_Fw_ E200s E_Sworn Application Form PD0289.docx	19.1
COA-General Protest.0052793_[CONF]_FW_ E200s E_Sworn Application Form PD0289.docx	22.2
COA-General Protest.0056203_[CONF]_RE_ OPS PLAN for St Johns_35	24.4
COA-General Protest.0066494_[CONF]_Federal Legislative Update	34.4
COA-General Protest.0066531_[CONF]_FW_ Federal Legislative Update	34.8
COA-General Protest.0066556_[CONF]_FW_ Federal Legislative Update	34.9
COA-General Protest.0066646_[CONF]_State and Federal Legislative Updates	104.3
COA-General Protest.0066720_[CONF]_Fwd_ State and Federal Legislative Updates	104.8
COA-General Protest.0071293_[CONF]_RE_ 20-2131658	15.5

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COA-General Protest.0071313_[CONF]_RE_ 20-2131658	16
COA-General Protest.0071345_[CONF]_RE_ 20-2131658	16.6
COA-General Protest.0071359_[CONF]_RE_ 20-2131658	16.4
COA-General Protest.0127712_[CONF]_FW_ Transfer Packet	33.4
COA-General Protest.0127727_[CONF]_FW_ Transfer Packet	43.5
COA-General Protest.0129534_[CONF]_FW_ Transfer Packet for Aggravated Assault Unit	45.6
COA-General Protest.0129550_[CONF]_FW_ Transfer Packet for Aggravated Assault Unit	45.6
COA-General Protest.0129868_[CONF]_FW_ Adam 700 (Cpl vacancy)	45.5
COA-General Protest.0129884_[CONF]_Cpl. Brandon Moxley Adam 700 (Cpl vacancy)	52.1
COA-General Protest.0129939_[CONF]_FW_ Adam 800 Packet	45.5
COA-General Protest.0129955_[CONF]_FW_ Adam 800 Packet	45.5
COA-General Protest.0129971_[CONF]_Cpl. Brandon Moxley Adam 800 Application	35.5
COA-General Protest.0130575_[CONF]_FW_ VCNSD Position	45.4
COA-General Protest.0130591_[CONF]_Det. Brandon Moxley's VCNSD Application	52.5
COA-General Protest.0154549_[CONF]_RE_ 20-2131658	1.1
COA-General Protest.0154554_[CONF]_RE_ 20-2131658	1.2
COA-General Protest.0165214_[CONF]_North Patrol _ HEC	17.3
COA-General Protest.0168687_[CONF]_North Bureau_HEC Meeting (Teams) Agenda Items	71.5
COA-General Protest.0169311_[CONF]_FW_ 2020 Fatality Summary 050520	1.3
COA-General Protest.0169398_[CONF]_HEC _ North Patrol Meeting Items 05_13_20	51.4
COA-General Protest.0170607_[CONF]_FW_ Vehicle Dynamics request	5.2
COA-General Protest.0175647_[CONF]_North Patrol _ HEC Team Meeting	22.9

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COA-General Protest.0175741_[CONF]_RE_ 20-2131658	1
COA-General Protest.0175777_[CONF]_RE_ 20-2131658	1.1
COA-General Protest.0175799_[CONF]_RE_ 20-2131658	1.2
COA-General Protest.0175812_[CONF]_RE_ 20-2131658	1.2
COA-General Protest.0176836_[CONF]_FW_ Vehicle Dynamics request	7.4
COA-General Protest.0176886_[CONF]_FW_ Virtual ALERRT Conference Training Memo	20.3
COA-General Protest.0178506_[CONF]_RE_	40.5
COA-General Protest.0187552_[CONF]_RE_ IA case 2020-1665 Duran 2748	53.7
COA-General Protest.0190227_[CONF]_SIU Referrals - IAD	111.3
COA-General Protest.0192445_[CONF]_Black History Month ID	0.3
COA-General Protest.0192472_[CONF]_AYERS - Issa kill'n it	0.8
COA-General Protest.0192779_[CONF]_RE_ Officer Rooney Medical Waiver	0.7
COA-General Protest.0194251_[CONF]_203440799 CTN Request at 9201 Brown Ln	9.9
COA-General Protest.0222191_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	8.4
COA-General Protest.0222194_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	14.9
COA-General Protest.0222197_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	15.8
COA-General Protest.0222200_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	14.8
COA-General Protest.0222203_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	17.7
COA-General Protest.0222207_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	15.5
COA-General Protest.0222210_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	12
COA-General Protest.0223989_[CONF]_FW_ City Council Notes	6
COA-General Protest.0225202_[CONF]_Mayor's new order (general)	7.3

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COA-General Protest.0277239_[CONF]_Protest Complaints 12.1.20.xlsx	2.8
COA-General Protest.0307729_[CONF]_Video Attached FYI from NTOA	4
COA-General Protest.0307734_[CONF]_Fwd_ County Attorney and criminal trespass cases	6.8
COA-General Protest.0354566_[CONF]_Command Staff Meeting	3.7
COA-General Protest.0354568_[CONF]_Command Staff Meeting	3.7
COA-General Protest.0354570_[CONF]_Command Staff Meeting	3.6
COA-General Protest.0354572_[CONF]_Command Staff Meeting	3.5
COA-General Protest.0354574_[CONF]_Command Staff Meeting	2.2
COA-General Protest.0354577_[CONF]_Command Staff Meeting	3.6
COA-General Protest.0354579_[CONF]_Command Staff Meeting	2.2
COA-General Protest.0354580_[CONF]_Command Staff Meeting	3.6
COA-General Protest.0354582_[CONF]_Command Staff Meeting	3.6
COA-General Protest.0354584_[CONF]_Command Staff Meeting	3.6
COA-General Protest.0416982_[CONF]_Fw_ Voice Message from 5127969510	2.7
COA-General Protest.0424917_[CONF]_Today's meeting	53.1
COA-General Protest.0435556_[CONF]_Pollution Is Killing Black Americans.	28.6
COA-General Protest.0445076_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0445164_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0451289_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0468297_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0468450_[CONF]_MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	1
COA-General Protest.0468454_[CONF]_FW_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	4.4

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COA-General Protest.0468459_[CONF]_RE_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	1.2
COA-General Protest.0468473_[CONF]_Re_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	4.7
COA-General Protest.0468478_[CONF]_RE_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	1.4
COA-General Protest.0474638_[CONF]_COH	7.2
COA-General Protest.0482036_[CONF]_Pollution Is Killing Black Americans.	28.4
COA-General Protest.0482047_[CONF]_Pollution Is Killing Black Americans.	28.5
COA-General Protest.0484903_[CONF]_Today's meeting	52.5
COA-General Protest.0484960_[CONF]_Fwd_ Today's meeting	53.6
COA-General Protest.0485024_[CONF]_Fwd_ Today's meeting	53.6
COA-General Protest.0485225_[CONF]_Over 1,000 supporters for a Healthy Streets program	1.6
COA-General Protest.0490961_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0491144_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0491432_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0493318_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0502349_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0502869_[CONF]_ Health & Human Services Committee (interviews)	178.7
COA-General Protest.0503249_[CONF]_Fwd_ Email and approval from TxDOT	253
COA-General Protest.0504027_[CONF]_Re_ D5 Constituent Needs Help With CapMetro STS_MetroAccess	2.5
COA-General Protest.0504656_[CONF]_IMG_6195.MOV	1
COA-General Protest.0507229_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0510496_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0511363_[CONF]_Today's meeting	53.1

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COA-General Protest.0513388_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0513908_[CONF]_Pollution Is Killing Black Americans.	28.4
COA-General Protest.0513919_[CONF]_Pollution Is Killing Black Americans.	28.5
COA-General Protest.0516471_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0516602_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0518966_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0524759_[CONF]_Pollution Is Killing Black Americans.	28.5
COA-General Protest.0526301_[CONF]_Today's meeting	53.1
COA-General Protest.0532793_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0534716_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0534849_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0534976_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0534982_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0536592_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	1
COA-General Protest.0537140_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0542282_[CONF]_Today's meeting	53.1
COA-General Protest.0550717_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0569620_[CONF]_Pollution Is Killing Black Americans.	28.5
COA-General Protest.0574702_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0579735_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0579856_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0580059_[CONF]_This week at SXSW Sessions Online	5

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COA-General Protest.0589633_[CONF]_Feedback To Austin City Council On Thursday's Agenda Item #25	0.8
COA-General Protest.0589657_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0598820_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	1
COA-General Protest.0598824_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	6.2
COA-General Protest.0598827_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	1.2
COA-General Protest.0598832_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0599832_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0606566_[CONF]_Today's meeting	53.1
COA-General Protest.0609715_[CONF]_Fwd_ COVID- Draft Order 081520	28.9
COA-General Protest.0609745_[CONF]_Fwd_ COVID- Draft Order 081520	28.9
COA-General Protest.0612175_[CONF]_Fwd_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	1.1
COA-General Protest.0616842_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0617086_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0621821_[CONF]_I-35 update and how to help	37
COA-General Protest.0622668_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0622721_[CONF]_Fwd_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	4.1
COA-General Protest.0637550_[CONF]_FW_ COVID- Draft Order 081520	28.3
COA-General Protest.0640598_[CONF]_Re_ For Signature and Posting_ Updated Mayor Order	20.7
COA-General Protest.0640752_[CONF]_For Signature_ Mayor Supplemental Order	27.4
COA-General Protest.0643264_[CONF]_RE_ Expiring general COVID Order (No. 20201215-021)	20.4
COA-General Protest.0643290_[CONF]_Fwd_ Expiring general COVID Order (No. 20201215-021)	21
COA-General Protest.0704030_[CONF]_Pollution Is Killing Black Americans.	3.3

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COA-General Protest.0707797_[CONF]_Today's meeting	53.1
COA-General Protest.0709213_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0710538_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0717972_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0720272_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0720486_[CONF]_Re_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	4.3
COA-General Protest.0723819_[CONF]_FW_ Video Address	3.8
COA-General Protest.0725567_[CONF]_Today's meeting	53.1
COA-General Protest.0731067_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0731245_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0731397_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0733572_[CONF]_Pollution Is Killing Black Americans.	28.5
COA-General Protest.0736929_[CONF]_Feedback To Austin City Council On Thursday's Agenda Item #25	0.8
COA-General Protest.0737033_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0737802_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0747921_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0748071_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0748197_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0753976_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	2.9
COA-General Protest.0753979_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	1
COA-General Protest.0753983_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	5.8
COA-General Protest.0753986_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	6.1

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COA-General Protest.0753989_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	5.6
COA-General Protest.0753992_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	1.2
COA-General Protest.0753997_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	1.2
COA-General Protest.0754002_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	4.6
COA-General Protest.0754013_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	4.5
COA-General Protest.0754017_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	1.4
COA-General Protest.0754023_[CONF]_FW_ Feedback To Austin City Council On Thursday's Agenda Item #25	6.9
COA-General Protest.0754027_[CONF]_RE_ Feedback To Austin City Council On Thursday's Agenda Item #25	7.9
COA-General Protest.0754032_[CONF]_Re_ Feedback To Austin City Council On Thursday's Agenda Item #25	1.6
COA-General Protest.0755609_[CONF]_FW_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	4.4
COA-General Protest.0755614_[CONF]_Re_ MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	4.7
COA-General Protest.0770897_[CONF]_Today's meeting	53.1
COA-General Protest.0782225_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0787662_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0787772_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0790335_[CONF]_Scoping Feedback on I-35 Capital Express Central Project	48.8
COA-General Protest.0790499_[CONF]_MASKLESS event planned this Saturday with HUNDREDS - Please help!!!	1
COA-General Protest.0796117_[CONF]_Pollution Is Killing Black Americans.	3.3
COA-General Protest.0799505_[CONF]_Feedback To Austin City Council On Thursday's Agenda Item #25	0.8
COA-General Protest.0799656_[CONF]_I-35 Update and Action one can take to help!	37.2
COA-General Protest.0805210_[CONF]_Official Rezoning Protest	2.8
COA-General Protest.0805212_[CONF]_Official Rezoning Protest	0.5

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COA-General Protest.0805216_[CONF]_Official Rezoning Protest	2.5
COA-General Protest.0805218_[CONF]_Official Rezoning Protest	0.4
COA-General Protest.0805220_[CONF]_Official Rezoning Protest	2.5
COA-General Protest.0805222_[CONF]_Official Rezoning Protest	0.5
COA-General Protest.0805225_[CONF]_Official Rezoning Protest	2.5
COA-General Protest.0805227_[CONF]_Official Rezoning Protest	0.4
COA-General Protest.0805230_[CONF]_Official Rezoning Protest	2.5
COA-General Protest.0805251_[CONF]_Official Rezoning Protest	2.5
COA-General Protest.0819923_[CONF]_Pollution Is Killing Black Americans.	28.6
COA-General Protest.0833969_[CONF]_Federal Legislative Update	31.2
COA-General Protest.0834579_[CONF]_RE_ For Signature and Posting_ Updated Mayor Order	27.3
COA-General Protest.0838220_[CONF]_State and Federal Legislative Updates	94
COA-General Protest.0838378_[CONF]_This week at SXSW Sessions Online	5
COA-General Protest.0839031_[CONF]_I-35 update and how you can help	37.1
COA-General Protest.0840643_[CONF]_FW_ Expiring general COVID Order (No. 20201215-021)	21.1
COA-General Protest.0840682_[CONF]_RE_ Expiring general COVID Order (No. 20201215-021)	23.1
COA-General Protest.0840711_[CONF]_RE_ Expiring general COVID Order (No. 20201215-021)	20.4
	5849.4

EXHIBIT O

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TYREE TALLEY, *Plaintiff,* v. CITY OF AUSTIN, BENJAMIN LYNCH, GADIEL ALAS, TIMOTHY COBAUGH, DARRELL CANTU-HARKLESS, JOSEPH HETHERSHAW, GREGORY CHERNE, AND JUSTIN WRIGHT, *Defendants*.	§ § § § § § § § § § § § § §	Case No. 1:21-cv-00249-RP **Lead Case**
MODESTO RODRIGUEZ, *Plaintiff,* v. CITY OF AUSTIN AND JUSTIN WRIGHT, *Defendants.*	§ § § § § § § § § § § § § §	Case No. 1:21-cv-01087-RP

ORDER GRANTING MOTION TO COMPEL

BEFORE THE COURT is Plaintiffs Tyree Talley and Modesto Rodriguez's *Motion to Compel Complete and Proper Discovery Responses and Production from Defendant City of Austin.* The Court, having read and considered the Motion, any response, and the arguments of the parties, rules as follows:

Rulings on Defendant City of Austin's Responses to Plaintiffs' First Set of Interrogatories (Talley):

Interrogatory	**Objection Overruled**	**Objection Sustained**	**Other**
5			
6			
7			
17			
18			

Rulings on Defendant City of Austin's Responses to Plaintiffs' First Set of Interrogatories (Rodriguez):

Interrogatory	**Objection Overruled**	**Objection Sustained**	**Other**
5			
6			
7			
17			
18			

Rulings on Defendant City of Austin's Responses to Plaintiffs' Third Request for Production (Talley):

Request	**Objection Overruled**	**Objection Sustained**	**Other**
17			
18			
23			
24			
25			
36			

Rulings on Defendant City of Austin's Responses to Plaintiffs' Third Request for Production (Rodriguez):

Request	**Objection Overruled**	**Objection Sustained**	**Other**
17			
18			
23			
24			
25			
36			

IT IS ORDERED that the City of Austin shall supplement answers and responses and remove overruled objections within 10 business days. It is further ordered that the City of Austin:

- identify to which requests for production the specific emails produced are responsive
- cull the production set to identify materials responsive to Plaintiffs' requests
- produce emails in their native .msg format
- produce the document metadata for the emails including Email Author, Email Recipient, Email CC, Email BCC, Email Received Date, Email Sent Date, Email Received Time, Email Sent Time, Email Received Date and Time, Email Sent Date and Time, and Email Importance.

_____

_____

_____

_____.

SO ORDERED

SIGNED AND ENTERED this ____ day of _____ 20__.

_____

HONORABLE JUDGE PRESIDING