

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3

4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) April 24, 2015
Joseph M. Arpaio, et al.,) 8:41 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE G. MURRAY SNOW
17 (Evidentiary Hearing Day 4, pages 818-1030)
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19
20
21

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25 Proceedings taken by stenographic court reporter
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I N D E X

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P R O C E E D I N G S

THE CLERK: All rise. Court is now in session, the Honorable G. Murray Snow presiding.

THE COURT: Thank you. Please be seated.

08:41:33

THE CLERK: This is civil case number 07-2513, Melendres v. Arpaio, on for continued evidentiary hearing.

THE COURT: We ready, Ms. Wang?

MS. WANG: Yes, Your Honor. Good morning.

THE COURT: Good morning.

08:41:46

MS. WANG: Plaintiffs call Gerard Sheridan.

THE CLERK: Step right up here, sir.

Please state your first and last name for the record.

THE WITNESS: Gerard Sheridan. G-e-r-a-r-d, S-h-e-r-i-d-a-n.

08:42:11

THE CLERK: Thank you. Please raise your right hand.

(Gerard Sheridan was duly sworn as a witness.)

THE CLERK: Thank you. Please take our witness stand.

THE COURT: Please proceed, Ms. Wang.

MS. WANG: Thank you, Your Honor.

08:42:48

GERARD SHERIDAN,
called as a witness herein, having been duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MS. WANG:

08:42:50

1 Q. Good morning, Chief Sheridan.

2 A. Good morning.

3 Q. Chief, you're currently employed with the Maricopa County
4 Sheriff's Office, correct?

5 A. Yes.

08:42:58

6 Q. How long have you been with the MCSO?

7 A. A little over 36 years.

8 Q. And your current position is chief deputy, correct?

9 A. That's correct.

10 Q. That is the second in command of the entire agency?

08:43:05

11 A. Yes, it is.

12 Q. Before you were the chief deputy, what position did you
13 hold?

14 A. I held the position of the director of detention.

15 Q. You ran the entire MCSO jail system?

08:43:21

16 A. Yes, ma'am.

17 Q. And before that you held various positions in the
18 Patrol Division, is that right?

19 A. Correct.

20 Q. And you served as a patrol deputy earlier on in your
21 career, correct?

08:43:32

22 A. I did.

23 Q. Now, as chief deputy, is it true that you're responsible
24 for all of the operations of the MCSO?

25 A. That's correct.

08:43:42

1 Q. But you answer to the sheriff, correct?

2 A. I do.

3 Q. And you report directly to the sheriff, correct?

4 A. Yes.

5 Q. You're the commander over all of the enforcement bureau, is 08:43:50
6 that right?

7 A. Yes.

8 Q. As well as the detention side of the MCSO, correct?

9 A. Yes, ma'am.

10 Q. As well as the administrative side of the MCSO, correct? 08:44:01

11 A. Yes.

12 Q. The only part of MCSO that is not under your direct command
13 is the public information office, is that correct?

14 A. That's correct.

15 Q. They report directly to the sheriff, correct? 08:44:14

16 A. Yes.

17 Q. Sir, about how many people are under your command as chief
18 deputy?

19 A. Approximately 3500 paid employees and about 1100
20 volunteers, so a total of about 4600. 08:44:31

21 Q. And of the 3500 paid employees, how many are sworn
22 deputies?

23 A. Approximately 700 at this point.

24 Q. So the MCSO's one of the largest law enforcement agencies
25 in the United States. Is that fair to say? 08:44:46

1 A. We're probably the third- or fourth-largest sheriff's
2 office in the nation, yes.

3 Q. And among all law enforcement agencies, MCSO is also among
4 the largest, correct?

5 A. Yes.

08:45:00

6 Q. Sir, on May 14th, 2014, you were right here in this
7 courtroom with a status -- during a status conference before
8 the Court, correct?

9 A. I was.

10 Q. And Judge Snow was presiding?

08:45:14

11 A. He was.

12 Q. And during that status conference there was discussion
13 about how to gather video recordings of traffic stops that had
14 been made by MCSO deputies, is that right?

15 A. Correct.

08:45:26

16 Q. And there was discussion among the parties and the Court
17 about how best to accomplish the gathering of those video
18 recordings, correct?

19 A. Correct.

20 Q. And the Court expressed a concern that those -- as many
21 video recordings as possible be gathered, correct?

08:45:36

22 A. Yes, ma'am.

23 Q. And the Court also noted that these recordings had not been
24 disclosed pretrial in this litigation, correct?

25 A. I don't recall that.

08:45:53

1 Q. All right. Now, you do recall, don't you, that Judge Snow
2 directed the MCSO to implement a plan to gather the video
3 recordings, correct?

4 A. Yes.

5 Q. And there was discussion about whether to gather the 08:46:12
6 recordings quietly, or to do it through more coercive measures
7 such as subpoenas issued by the Court.

8 You remember that, right?

9 A. I recall a discussion that contained many different
10 options. 08:46:34

11 Q. Well, you advocated for not issuing subpoenas, correct?

12 A. Correct.

13 Q. You preferred to gather the video recordings quietly, isn't
14 that right?

15 A. Right. I think we called that a softer approach. 08:46:45

16 Q. And you did that in court, correct?

17 A. Yes, ma'am.

18 Q. Now, Judge Snow addressed you directly, isn't that right?

19 A. Yes, he did.

20 Q. All right. And he asked you to come up with a, quote, 08:46:57
21 thought-through plan in which you can quietly gather the
22 videotapes, is that right?

23 A. That's correct.

24 Q. And Judge Snow also directed you to cooperate completely
25 with his monitor, Chief Warshaw, and directed that no 08:47:13

1 information will be withheld from him, isn't that right?

2 A. That's correct.

3 Q. And Judge Snow also directed that you should come up with a
4 plan that the monitor can approve that's your best thinking
5 about how you can, without resulting in any destruction of
6 evidence, gather all the recordings.

08:47:31

7 Isn't that what the judge ordered you to do?

8 A. As I sit here today, yes, I know that to be correct.

9 Q. Well, it was correct at the time the judge said it, is it
10 not?

08:47:50

11 A. Yes.

12 Q. And you were in the courtroom at the time, correct?

13 A. Yes, I was.

14 Q. Now, the judge also directed you, if there were any
15 disagreement with the monitor about the plan to gather video
16 recordings, to bring that disagreement to the Court.

08:47:59

17 Do you recall that?

18 A. Yes.

19 Q. And you agreed to do everything the Court directed you to
20 do, correct?

08:48:13

21 A. Yes, ma'am.

22 Q. And the sheriff was present as well, correct?

23 A. Yes.

24 Q. And he also agreed to do what the Court directed, correct?

25 A. Yes, he did.

08:48:23

1 Q. And he delegated to you the responsibility to carry the
2 Court's orders out, correct?

3 A. Yes.

4 Q. Now, court ended that day at about 12:05 p.m., correct? At
5 about noon?

08:48:39

6 A. I -- that's what you say. Yeah, I don't remember exactly.
7 It was a lengthy morning in court.

8 Q. Okay. Let's take a look at --

9 MS. WANG: If the Court could please hand the witness
10 Exhibit 37, which is the transcript of the status conference on
11 May 14, 2014.

08:48:57

12 THE CLERK: (Handing exhibit to witness.)

13 THE WITNESS: Thank you.

14 THE CLERK: You're welcome.

15 BY MS. WANG:

08:49:12

16 Q. Just turn to the last page, page 103, sir.

17 Do you see the notation by the court reporter,
18 "Proceedings concluded at 12:05 p.m."?

19 A. Yes, I do.

20 Q. Do you have any reason to doubt that that's accurate?

08:49:28

21 A. None whatsoever.

22 Q. Thank you.

23 Now, immediately after court proceedings ended on May
24 14, 2014, you left the courthouse and went to a meeting in
25 Sheriff Arpaio's office, is that right?

08:49:45

1 A. Yes, I did.

2 Q. And at that time the office was in the current MCSO
3 headquarters building, is that right?

4 A. That's correct.

5 Q. And that's less than a 10-minute walk from here?

08:49:55

6 A. Right.

7 Q. You walked there with the sheriff?

8 A. I know I walked over. I don't recall if the sheriff walked
9 with me or not.

10 Q. All right. Well, if -- if he took a vehicle to get to the
11 office, it would have been even faster than walking, correct?

08:50:09

12 A. Sometimes I beat him back.

13 Q. All right. Fair enough.

14 Is it fair to say that the meeting in the sheriff's
15 office following court proceedings on May 14, 2014, probably
16 started by about 12:30 in the afternoon?

08:50:28

17 A. Yes.

18 Q. Now, who else was present at that meeting in the sheriff's
19 office?

20 A. There was our counsel, Tim Casey; Tom Liddy, and Christine
21 Stutz.

08:50:44

22 Q. Who's Christine Stutz?

23 A. Christine Stutz is a deputy county attorney that represents
24 the sheriff's office in personnel matters.

25 Q. All right. And the sheriff was there as well, correct?

08:51:00

1 A. Oh, yes. Sorry, yes.

2 Q. Now, at that meeting there was discussion about how to
3 gather those video recordings, correct?

4 A. Yes, ma'am.

5 Q. And at one point Chief Trombi was summoned to that meeting, 08:51:10
6 is that right?

7 A. Yes, he was.

8 Q. And during that meeting you directed him to send an e-mail
9 out to various MCSO commanders directing them to gather the
10 video recordings, is that right? 08:51:29

11 A. Yes.

12 Q. And before directing Chief Trombi to do that, you did not
13 consult with the court-appointed monitor, Chief Warshaw, or any
14 member of his team, is that right?

15 A. That's correct. 08:51:46

16 Q. That was a violation of Judge Snow's order, was it not?

17 A. As I know it today, yes, that was a violation of the
18 Court's order, yes.

19 Q. Is it your contention that at the time you directed
20 Chief Trombi to send the e-mail to gather the video recordings 08:51:58
21 to a wide distribution list, that you did not understand that
22 to be a violation of the Court's order?

23 A. That's correct.

24 Q. You had gone directly from court to the sheriff's office
25 where this meeting occurred, correct? 08:52:13

1 A. Correct.

2 Q. And he had just given you all the directions that we just
3 went through, correct?

4 A. Correct.

5 Q. And you contend that when you directed Chief Trombi to send
6 out that e-mail, you were not aware that you were violating the
7 Court's order?

08:52:22

8 A. That's exactly what I'm saying.

9 Q. All right. Let's go on and find out what happened later.

10 Now, very soon after the meeting in Sheriff Arpaio's
11 office you then went to meet with the monitor, correct?

08:52:36

12 A. Yes, ma'am.

13 Q. You went very soon after the end of the first meeting in
14 the sheriff's office, correct?

15 A. Yes, I did.

08:52:49

16 Q. You had a quick bite to eat in between, right?

17 A. Yes.

18 Q. That was just in the office, maybe at your desk?

19 A. Yes.

20 Q. Now, do you agree that the meeting with the monitor team
21 started at about 2:30 in the afternoon?

08:53:02

22 A. I don't recall what time the meeting started, but it sounds
23 like about that time.

24 Q. So the meeting -- the first meeting, the one in the
25 sheriff's office, at which the monitor was not present, took

08:53:21

1 perhaps two hours, a little more than two hours?

2 A. Approximately, yes.

3 Q. All right. And you went very quickly to the meeting with
4 the monitor after that, correct?

5 A. Yes, ma'am.

08:53:31

6 Q. Who was at the meeting with the monitor?

7 A. Chief Warshaw, Chief Martinez.

8 Q. He's the deputy monitor?

9 A. Yes, ma'am.

10 Q. Who else?

08:53:46

11 A. Myself, Christine Stutz, I believe --

12 Q. Was Captain Holmes there?

13 A. Captain Holmes.

14 Q. At that time who was Captain Holmes, or what was his
15 assignment?

08:54:10

16 A. Captain Holmes was the commander over the Internal Affairs
17 division.

18 Q. And was there another member of the monitor team,
19 Ms. Ramirez, there?

20 A. I don't recall.

08:54:20

21 Q. Okay. Do you recall anyone else being there?

22 A. I seem to remember there was some other people in the room,
23 but I don't remember who they were.

24 Q. All right. Is it that you don't remember who they were
25 now, or you did not recognize them at the time and they were

08:54:35

1 not introduced to you?

2 A. I just don't remember today.

3 Q. All right. Now, Sheriff Arpaio was present for part of
4 that meeting with the monitor team, correct?

5 A. Yes, ma'am.

08:54:45

6 Q. During the meeting there was discussion about how best to
7 gather the video recordings, correct?

8 A. Yes.

9 Q. Fair to say that you disagreed with the monitor about how
10 best to gather the video recordings?

08:55:01

11 A. Yes, I did.

12 Q. In fact, you argued with the monitor team about how best to
13 gather the video recordings?

14 A. Argued's a strong word. I think we just disagreed on the
15 process.

08:55:16

16 Q. All right. I deposed you on March 20th of 2015, correct?

17 A. Yes.

18 Q. Well, let me ask you this: Is it fair to say that you
19 strongly disagreed with the monitor about the best way to
20 gather the video recordings?

08:55:59

21 A. Yes.

22 Q. The monitor wanted to take a coercive approach involving
23 the Internal Affairs division, correct?

24 A. Yes.

25 Q. And you preferred a softer approach, is how you put it?

08:56:14

1 A. Yes, ma'am.

2 Q. Why did you prefer that approach?

3 A. It was my belief that's the conclusion that we reached with
4 the Court.

5 Q. You believed that the Court had agreed to a softer
6 approach?

08:56:33

7 A. Yes, ma'am.

8 Q. All right. Well, you understood that the discussion during
9 court early in the morning had involved the question of whether
10 the Court should issue subpoenas, correct?

08:56:48

11 A. Correct. There were many discussions that morning, we went
12 back and forth, and it was my recollection that day that the
13 final decision was the Court wanted us to take a softer, quick,
14 efficient approach to get the videos, and that's what we were
15 doing.

08:57:22

16 Q. Well, the Court directed you to come up with a
17 thought-through plan that you would seek the monitor's approval
18 to implement, correct?

19 A. The way I remember that piece of it was he offered the
20 Court -- excuse me, sir -- the Court offered the monitor's
21 assistance in doing that. I don't recall that morning the
22 Court saying that I needed his permission or his authorization
23 with the plan.

08:57:35

24 Q. Okay. Sir, do you have Exhibit 71 in front of you?

25 Exhibit 71 is the transcript of proceedings before

08:58:03

1 this Court on --

2 A. Yes.

3 Q. -- May 14, 2014?

4 A. Yes, I do.

5 MS. WANG: I believe this is in evidence. Your Honor, 08:58:16
6 could I request that we publish page 75 of the transcript?

7 THE COURT: You may.

8 MS. WANG: I'm sorry. This is not Exhibit 71.

9 I beg your pardon, Your Honor. Can I consult with
10 co-counsel -- 08:59:03

11 THE COURT: You may.

12 MS. WANG: -- to determine which is the correct
13 exhibit?

14 (Pause in proceedings.)

15 MS. WANG: I beg your pardon. It's Exhibit 37. I 09:00:16
16 apologize.

17 BY MS. WANG:

18 Q. Can we go to page 61. And let's highlight lines 6
19 through 9.

20 A. I'm sorry, was that Exhibit 37? 09:00:51

21 Q. That's correct.

22 THE COURT: It's up on your screen, Chief.

23 THE WITNESS: Oh.

24 BY MS. WANG:

25 Q. Oh. Actually, let's look at page 75, I'm so sorry, at 09:01:04

1 lines 18 through 24.

2 All right, Chief. Are you with us? It's on the
3 screen now. This is a transcript of the status conference on
4 May 14th, 2014, and the Court said: Well, I'm going to direct
5 the monitor to work with you on a plan that he can approve
6 that's your best thinking about how you can, without resulting
7 in any destruction of evidence, gather all the recordings, and
8 then based on what you find, and/or maybe beginning before you
9 can assess what you find, depending on your thoughts, you
10 result in an appropriate and thorough investigation.

09:01:31

09:01:48

11 Do you see that?

12 A. I do.

13 Q. So the Court clearly directed you to work on a plan with
14 the monitor, correct?

15 A. That's correct.

09:01:58

16 Q. And that the monitor was going to approve that plan,
17 correct?

18 A. Yes, he did.

19 Q. Now, going back to the meeting that you had with the
20 monitor team later in the day, you began by taking the view
21 that a soft approach would be most appropriate, correct?

09:02:12

22 A. Yes.

23 Q. And that was because it's your view that intimidation is
24 not the best way to elicit information from law enforcement
25 officers. Is that your view?

09:02:36

1 A. Yes, ma'am.

2 Q. And the monitor team believed that using Internal Affairs
3 to go and try to gather the evidence in a more coercive way
4 would be more appropriate, correct?

5 A. That's correct.

09:02:52

6 Q. And was the view that there was a concern expressed by the
7 Court that if word got out that this effort was underway, any
8 deputies who had recordings that were incriminating might try
9 to destroy those recordings, correct?

10 A. Correct.

09:03:09

11 Q. And was that the view that was conveyed during that meeting
12 by members of the monitor team?

13 A. I don't recall that, but I also know that was my concern
14 also.

15 Q. But you were not worried about sending out an e-mail to
16 numerous people in the MCSO to do that?

09:03:26

17 A. To this day, after having many, many hours to think about
18 the issue on how best to gather videos that are in the hands of
19 700 individuals spread over 9,226 square miles, once we asked
20 one deputy sheriff for the videos, how we could prevent anyone,
21 if they had the thought, desire, to destroy a video, how we
22 could ever prevent that.

09:04:04

23 The only way I could come up with that is if we served
24 700 search warrants all at once, and I don't think that would
25 even work. So in my mind, there was going to be no perfect

09:04:37

1 way, if I had a corrupt deputy sheriff that was going to
2 destroy video, to collect that video.

3 Q. Sir, so you're saying that you're sticking to your guns to
4 this day, that the e-mail sent out by Chief Trombi was the best
5 way of gathering the video recordings? That's your view
6 sitting here today? Yes or no.

09:05:03

7 A. That's not a yes or no --

8 Q. All right.

9 A. -- answer.

10 Q. Go ahead and answer it.

09:05:14

11 A. The answer is no, it wasn't, because it was in violation of
12 the Court's order.

13 Q. Okay. But setting aside the issue of whether it violated
14 the Court's order, as a law enforcement evidence gathering
15 matter alone, setting aside whether it was the right way to
16 carry out the Court's order, do you believe, from an evidence
17 gathering point of view sitting here today, that Chief Trombi's
18 e-mail was the best way to do it?

09:05:31

19 A. Yes, considering the fact that there was no policy in
20 effect concerning the preservation of those videos, and the
21 fact that we have collected approximately 8,900 videos from
22 deputy sheriffs, yes, I do believe that was the best, most
23 efficient way to do it, albeit I violated the Court's order, as
24 I know it as I'm sitting here today, during that process.

09:05:52

25 Q. So in short, yes, to this day, you believe it was the best

09:06:25

1 way to do that from an evidence gathering point of view?

2 A. With that caveat, yes.

3 Q. All right. Sir, you were aware that this effort to gather
4 video recordings arose because it was discovered after Deputy
5 Armendariz was arrested and his home searched that he had a
6 very large volume of video recordings, correct?

09:06:46

7 A. Correct.

8 Q. And you were familiar with his history with the Human
9 Smuggling Unit, correct?

10 A. I need a time period to be able to answer that question.

09:07:00

11 Q. On May 14th, 2014, you were aware of Deputy Armendariz's
12 history with the HSU, correct?

13 A. Not really.

14 Q. Well, you were aware that he was with the HSU as of May 14,
15 2014, correct?

09:07:20

16 A. Yes, I did.

17 Q. At that point you were the primary representative of MCSO
18 for purposes of this litigation, correct?

19 A. Correct.

20 Q. You were the main contact for -- for the lawyers in this
21 case?

09:07:28

22 A. At that point I was, yes.

23 Q. On May 14, 2014, right?

24 A. Yes, ma'am.

25 Q. You are aware that Deputy Armendariz testified at the trial

09:07:36

1 in this matter back in the summer of 2012, right?

2 A. Yes.

3 Q. Now, you knew that -- did it occur to you that maybe you
4 would want to try to first gather video recordings from members
5 of HSU through a coercive approach, and focus on the people who
6 were most likely to have video recordings for this litigation?

09:07:54

7 A. No.

8 Q. That did not occur to you?

9 A. No.

10 Q. All right. Going back to the meeting with the monitor
11 team, there was this disagreement between you and members of
12 the monitor team about the best way to gather the video
13 recordings, is that right?

09:08:08

14 A. Correct.

15 Q. At the end of the meeting was it agreed upon that a more
16 coercive approach would be taken?

09:08:19

17 A. I believe so, yes.

18 Q. Sir, that was at odds with your direction to Chief Trombi
19 sending out an e-mail to multiple commanders in MCSO, correct?

20 A. That's correct.

09:08:42

21 Q. During the meeting with the monitor team, you did not
22 mention that you had already directed Chief Trombi to send out
23 the e-mail, did you?

24 A. That's correct, I did not.

25 Q. So you had over a two-hour meeting with members of the

09:08:54

1 monitor team where you disagreed about the right approach to
2 gather the video recordings, correct?

3 A. Correct.

4 Q. You argued back and forth about how best to do it, fair to
5 say?

09:09:10

6 A. Correct.

7 Q. At the end of the day a consensus was reached, is that
8 right?

9 A. Yes.

10 Q. And during that entire time you did not mention that you
11 had already set in motion your earlier plan that was developed
12 in a meeting without the monitor, isn't that right?

09:09:16

13 A. That's right.

14 Q. And that violated the Court's order, correct?

15 A. Yes, it did.

09:09:31

16 Q. Now, sir, I'm going to have you take a look at Exhibit 38.
17 That is in evidence already.

18 And let's turn to the -- it's just one page. Let's
19 enlarge that. Thank you.

20 Sir, take a look at that. Is that Chief Trombi's
21 e-mail that he sent out in response to your order?

09:09:50

22 A. Yes, ma'am.

23 Q. And he sent that at 3:41 p.m., correct?

24 A. Correct.

25 Q. That was while you were in the meeting with the monitor

09:10:07

1 team, correct?

2 A. I believe so.

3 Q. It was after you started the meeting with the monitor team,
4 correct?

5 A. Correct.

09:10:15

6 Q. Now, I counted up 27 recipients of this e-mail.

7 Does that look about right to you?

8 A. Yes.

9 Q. And you've been present at the defense table watching this
10 hearing this week, correct?

09:10:31

11 A. I have.

12 Q. And you heard Chief Trombi testify that the 27 recipients
13 of this e-mail are all of the division commanders, and each
14 division commander's second in command, correct?

15 A. Correct.

09:10:46

16 Q. Now, when I deposed you on March 20th of 2015, you did not
17 know who all those people were. Is that fair to say?

18 A. I believe there's one or two on there that I -- I didn't
19 recall.

20 Q. Well, is it fair to say you also, in addition to that, you
21 didn't know where some of these people were assigned as of May
22 14, 2014?

09:11:10

23 A. That's correct.

24 Q. And so when I tried to get a sense from you during your
25 deposition of what rhyme or reason Chief Trombi used to develop

09:11:26

1 the list of recipients, you were not aware of that, correct?

2 A. Correct.

3 Q. Sir, would you agree that sending out an e-mail to this
4 list of 27 people was not a way of quietly gathering video
5 recordings?

09:11:45

6 A. Again, I'll go back to my answer from earlier. There
7 really is no quiet way to ask 700 people stretched over the
8 size -- a county the size of Maricopa, to ask them for their
9 videos without enlisting the commanders of those divisions and
10 units that they work in. There is no other way to do it.

09:12:32

11 Q. Well, sir, I'd like you to answer my question, which is:
12 Do you believe that Chief Trombi's e-mail was a way of quietly
13 gathering video recordings?

14 A. Yes.

15 Q. Sir, wouldn't you agree that e-mail is not a secure form of
16 communication?

09:12:54

17 A. Yes.

18 Q. E-mails can be forwarded, right?

19 A. Yes.

20 Q. Chief Trombi, in his May 14, 2014, e-mail, did not direct
21 the recipients not to forward this e-mail, isn't that right?

09:13:04

22 A. That's right.

23 Q. It could have been forwarded to anyone, correct?

24 A. Possible.

25 Q. In fact, it likely was, right?

09:13:17

1 A. It's possible.

2 Q. Since these commanders were told to gather the
3 video recordings, but weren't told that this was an effort to
4 do so quietly, correct?

5 A. Yes.

09:13:28

6 Q. Is that "yes"?

7 A. Yes.

8 Q. Thank you.

9 Now, after you left the meeting with the monitor -- so
10 that would have been quite late in the afternoon by that point,
11 maybe 4:30, is that right? 09:13:41

12 A. Might have even been a little bit later, closer to 5:00.

13 Q. All right. After you left the meeting with the monitor you
14 met separately with Christine Stutz and Chief Trombi, is that
15 right? 09:14:01

16 A. That's correct.

17 Q. What did you discuss during that meeting?

18 MS. IAFRATE: Objection, Your Honor, attorney-client
19 privilege.

20 MS. WANG: Your Honor, Ms. Iafrate elicited testimony 09:14:06
21 from Chief Trombi on the subject of this very conversation, and
22 the privilege was waived.

23 THE COURT: Do you have any response to that,
24 Ms. Iafrate?

25 MS. IAFRATE: I did not discuss the content of the 09:14:20

1 communication.

2 MS. WANG: I believe she did, Your Honor.

3 THE COURT: Do you have a copy of the transcript?

4 MS. WANG: I think I do. I'll try to find the page
5 and line reference. 09:14:34

6 THE COURT: All right.

7 MS. WANG: It's on page 115 of the April 21st
8 transcript, Your Honor.

9 THE COURT: Can you bring it up, Gary?

10 MS. WANG: Your Honor, I can give you a copy of the
11 relevant page. 09:15:35

12 (Pause in proceedings.)

13 THE COURT: I'm going to sustain the objection.

14 And the reason I'm going to do so, Ms. Wang, is in the
15 transcript you provided me, the questioning was about the
16 conversation between Chief Trombi and deputy -- or Chief Deputy
17 Sheridan, and so I don't believe the attorney-client privilege
18 was implicated by anything they discussed, because there was no
19 indication that anybody was asking for legal advice. 09:16:27

20 So if you want to -- if you want to ask chief -- or if
21 you want to ask Chief Deputy Sheridan about what he said to
22 Chief Trombi that doesn't relate to the request of legal
23 advice, I'm going to -- I'll let you do that, but -- and
24 maybe -- I didn't look at your precise question. Maybe your
25 precise question doesn't implicate the attorney-client 09:16:50
09:17:17

1 privilege. But clearly, any communication with Ms. Stutz, or
2 any request to Ms. Stutz about legal advice or legal counsel,
3 is not waived by what you've just shown me.

4 The other part of my ruling, though, is what you've
5 just shown me doesn't implicate the attorney-client privilege
6 at all. I don't know if that's clear for you.

09:17:35

7 Do you understand my ruling?

8 MS. WANG: I think I understand, Your Honor, but my --
9 well, perhaps I should ask the witness a few more questions
10 and --

09:17:46

11 THE COURT: Yes, please do.

12 MS. WANG: Okay.

13 THE COURT: Because as I understand it, the
14 attorney-client privilege does not relate to all communications
15 in which an attorney is present. It only relates to
16 communications where legal advice is sought or received. And
17 it does not seem to me that the testimony that was elicited
18 from Chief Trombi discussed any -- even though Ms. Stutz was
19 present, does not implicate the attorney-client privilege.

09:17:53

20 MS. WANG: All right. Thank you, Your Honor.

09:18:10

21 BY MS. WANG:

22 Q. Chief Sheridan, when you left the monitor's office you met
23 with two people, correct?

24 A. Yes, ma'am.

25 Q. Christine Stutz and Dave Trombi, correct?

09:18:17

1 A. Yes.

2 Q. The three of you met together, is that right?

3 A. Yes.

4 Q. Were you seeking Ms. Stutz's legal advice during that
5 meeting?

09:18:27

6 A. No.

7 MS. WANG: Your Honor, I believe that it was not a
8 privileged communication at all and that --

9 THE COURT: It doesn't sound like it was.

10 MS. WANG: All right. Thank you.

09:18:36

11 BY MS. WANG:

12 Q. So, Chief, what happened during that meeting with Stutz and
13 Trombi?

14 A. I called Dave Trombi in and told him that I needed him to
15 implement this decision that we had made during the meeting
16 with the monitors, and he looked at me and he said, You told me
17 to send out an e-mail earlier, and I already did it.

09:18:53

18 Q. Okay. Did Ms. Stutz say anything during that conversation?

19 A. Yes, she did.

20 Q. What did she say?

09:19:20

21 A. She told me that I didn't tell the monitor that I had told
22 Trombi to do something different during the meeting.

23 Q. Did she suggest that you tell the monitor what had
24 happened? Or was that your idea?

25 A. Well, I think it was a combination of both our ideas right

09:19:50

1 away, because I knew that Chief Warshaw, because he just told
2 us that he was walking over to talk to the Court, to tell
3 them -- to tell the Court what we had just decided to do to
4 collect the videos. And that was different than what I had
5 instructed Chief Trombi to do.

09:20:17

6 Q. Was anything else said during this meeting that you had
7 with Christine Stutz and Dave Trombi?

8 A. Just a couple of expletives on my part that I had forgotten
9 to tell the monitor that I had given Chief Trombi direction.

10 Q. All right. Ms. Stutz was present during the meeting with
11 the monitor, you testified, correct?

09:20:43

12 A. Correct.

13 Q. I believe she was also in court that morning of May 14,
14 2015, isn't that right?

15 A. Yes, ma'am.

09:20:57

16 Q. Now, you called Chief Warshaw after you finished your
17 meeting with Christine Stutz and Dave Trombi, correct?

18 A. Yes.

19 Q. It was about 5:15 p.m.?

20 A. Approximately.

09:21:12

21 Q. And you revealed that you had directed Chief Trombi to send
22 out the e-mail, correct?

23 A. Correct.

24 Q. When you spoke with the monitor, you told him that
25 Chief Trombi had sent the e-mail without your knowledge, isn't

09:21:30

1 that right?

2 A. Correct.

3 Q. That was a lie, right?

4 A. No.

5 Q. Well, you had just talked to Dave Trombi and he had just
6 told you, remember, you directed me to send the e-mail.

09:21:40

7 You had just had that conversation with Chief Trombi
8 before you called Chief Warshaw, correct?

9 A. Yes.

10 Q. But you told Chief Warshaw immediately after that that
11 Trombi sent the e-mail without your knowledge.

09:21:58

12 A. Well, first of all, be careful about calling me a liar.
13 Chief Trombi sent that e-mail, like you pointed out to me a few
14 minutes ago, at 3:41 p.m. when I was in the meeting with
15 Chief Warshaw. I wasn't aware that he sent that e-mail out.

09:22:21

16 Q. Chief, you were aware at the point you spoke with
17 Chief Warshaw that you were the one who directed Chief Trombi
18 to send the e-mail, is that right?

19 A. That's correct.

20 Q. When you went to the meeting with the monitor at about 2:30
21 in the afternoon, you knew you had given that direction,
22 correct?

09:22:41

23 A. That's correct.

24 Q. But when you spoke to Chief Warshaw, you said that
25 Chief Trombi had sent the e-mail without your knowledge, when

09:22:57

1 in fact you had directed him, is that right?

2 A. You're mixing apples and oranges.

3 Q. What are the apples, sir?

4 A. Apples and oranges, just because I told him to send an
5 e-mail doesn't mean that I knew he had already sent it.

09:23:16

6 Q. Sir, you told Chief Warshaw that Chief Trombi sent the
7 e-mail without your knowledge, isn't that right?

8 A. Yes.

9 Q. And you knew at the point you told Chief Warshaw that that
10 you were the one who directed him to do it, isn't that right?

09:23:35

11 A. Yes.

12 Q. You didn't tell Chief Warshaw during that telephone
13 conversation that you had directed Chief Trombi, did you?

14 A. It wasn't a very lengthy conversation with Chief Warshaw.

15 Q. Sir, do you agree with me that it was a fair implication
16 from your statement that Trombi sent the e-mail without your
17 knowledge, that someone hearing that would infer that you were
18 certainly not the one who directed him to do it?

09:23:53

19 MS. IAFRATE: Objection, Your Honor, speculation;
20 argumentative.

09:24:17

21 THE COURT: I'm going to allow it.

22 THE WITNESS: No.

23 BY MS. WANG:

24 Q. You don't think that's a fair inference?

25 A. No.

09:24:32

1 Q. You don't think someone who hears, someone sent an e-mail
2 without my knowledge, implies that you certainly did not direct
3 the person to do it?

4 A. Of course I directed him to do it, but I didn't know that
5 he accomplished it.

09:24:47

6 Q. Well, you did not tell Chief Warshaw that you had directed
7 Chief Trombi, but you were unaware that he had already sent it,
8 right?

9 A. That's correct. I didn't tell him all the details of the
10 incident. I said it was a very short conversation. I was very
11 embarrassed, because I had forgotten to tell Chief Warshaw
12 about telling Chief Trombi to start gathering the information,
13 and Chief Warshaw appeared -- or sounded very angry and excited
14 about that, and he says, well, I'm going to have to tell the
15 Court about this, and don't go anywhere. I'll be back.

09:25:02

09:25:29

16 And that was a very quick conversation I had, or that
17 I recall having with Chief Warshaw.

18 Q. So you left out the fact that you were the one who directed
19 Chief Trombi to send the e-mail out, right?

20 A. Again, it wasn't a lengthy discussion about all the
21 incidents that led up to that.

09:25:48

22 Q. My only question, Chief, is you left out the fact that you
23 were the one who directed Dave Trombi to send out the e-mail
24 when you spoke to Chief Warshaw, right?

25 A. Agreed.

09:26:09

1 Q. Now, at about 6 o'clock, maybe 45 minutes later, you spoke
2 with Chief Martinez from the monitor team by phone, is that
3 right?

4 A. I believe so, yes.

5 Q. And is it true that during that phone call with Chief
6 Martinez it was the first time that you revealed to the monitor
7 team that there had been this earlier meeting in the sheriff's
8 office before the meeting with the monitor team?

09:26:37

9 A. I don't recall the contents of that conversation.

10 Q. You don't recall that you revealed that you had had the
11 meeting with the sheriff earlier in the day before meeting with
12 the monitor team?

09:26:58

13 A. Well, I know at some point later on in the evening that we
14 sat down and we had a full discussion about all the issues that
15 occurred that day. I don't recall whether it was during that
16 phone conversation or when Chief Warshaw and Chief Martinez
17 came over and we talked in person or it was on the phone, but
18 we had a full discussion describing exactly what had occurred.

09:27:19

19 Q. Okay. But I'm sticking to this phone call you had with
20 Chief Martinez for now.

09:27:45

21 Are you saying you don't recall having that phone
22 conversation, or you don't recall what happened during that
23 conversation?

24 A. I remember having a conversation with him; I just don't
25 recall the contents of it.

09:27:55

1 Q. All right. So you had a meeting later in the evening with
2 members of the monitor team, is that right?

3 A. Yes, ma'am.

4 Q. And Chief Warshaw was present?

5 A. Yes.

09:28:06

6 Q. Chief Martinez was present?

7 A. Yes.

8 Q. During that meeting you told them that you had no
9 recollection of Dave Trombi being directed to send his e-mail,
10 is that right?

09:28:20

11 A. Can you say that again?

12 Q. Did you tell them that you had no recollection of Dave
13 Trombi being directed to send the e-mail?

14 A. During the meeting that I had with them?

15 Q. Yes, correct.

09:28:41

16 A. Correct.

17 Q. And you told them that this was due to fatigue, stress, and
18 distractions on your part?

19 A. That's correct.

20 Q. Now, that night, May 14, 2014, you wrote a letter to
21 Chief Warshaw on the subject of how all this came to be,
22 correct?

09:28:51

23 A. Yes, ma'am.

24 Q. I'd like to have you take a look at Exhibit 39. This is in
25 evidence.

09:29:17

1 Is that the letter that you sent to Chief Warshaw on
2 May 14, 2014?

3 A. Yes, it is.

4 Q. Okay. The first paragraph you wrote: This letter is in
5 response to your request to account for the circumstances
6 surrounding a meeting that occurred on Wednesday, May 14, 2014,
7 at approximately 1200 hours.

09:29:37

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. Let's skip to the third paragraph on this page.

09:29:48

11 And again, you're describing what happened during your
12 meeting in the sheriff's office in this letter, correct?

13 A. That's correct.

14 Q. Okay. You wrote: After a somewhat lengthy discussion a
15 decision was made to have chief -- excuse me -- Deputy
16 Chief David Trombi come into the meeting so action could be
17 taken to move forward on securing the required video
18 information, as almost all enforcement deputies are in his
19 chain of command.

09:30:05

20 I want you to focus on the next sentence, sir. You
21 wrote: He was directed, by whom he does not recall and quite
22 frankly, neither do I, to contact his commanders and have them
23 secure all video recordings and then have them forwarded to
24 Internal Affairs.

09:30:19

25 And then in parentheses you wrote: In preparation for

09:30:36

1 this letter I specifically asked David -- Deputy Chief Trombi
2 who told him to do this, and his response was it was a
3 collective decision of all the parties.

4 Do you see that?

5 A. Yes, I do.

09:30:49

6 Q. In your letter to Chief Warshaw on the evening of May 14,
7 2014, you wrote that you did not recall who directed him to
8 send the e-mail, is that right?

9 A. That's correct.

10 Q. But you already knew by that point that you were the one
11 who directed him to do it, isn't that right?

09:31:04

12 A. I -- this is a very difficult question to answer, okay, so
13 it might take me a second.

14 I wrote this that night. Okay? And in writing this
15 that night, this was my best recollection at the time. But as
16 you start to think about issues later and machinate them over a
17 period of time, I realized that I was probably the one that
18 told him to do that.

09:31:31

19 But I wanted to try and be as accurate as possible,
20 because I knew Judge Snow wanted to see this letter first thing
21 the next morning, I wanted to be as accurate as possible, and I
22 did contact Chief Trombi and asked him. And this -- the day I
23 wrote that, the night I wrote that, I believe it was probably
24 11 o'clock at night, was my best recollection of what happened
25 that evening.

09:32:01

09:32:32

1 Q. Chief, I'm going to name some facts and I'd ask you to let
2 me know if they're correct.

3 Number one, you did direct Chief Trombi to send the
4 e-mail during your meeting in the sheriff's office that began a
5 little after 12 o'clock that day, correct?

09:32:47

6 A. I'm sure I did.

7 Q. Number two, after leaving the meeting with the monitor
8 team, you met with David Trombi and Christine Stutz, correct?

9 A. Yes.

10 Q. Number three, during the meeting with David Trombi and
11 Christine Stutz, David Trombi reminded you that you were the
12 one who directed him to send the e-mail, is that correct?

09:33:00

13 A. Yes.

14 Q. And now you're telling me that at 11 o'clock at night,
15 after you, I think the word you used was "machinate," after you
16 machinated on the subject, you decided to write to
17 Chief Warshaw that Dave Trombi did not recall who directed him
18 to send the e-mail, and quite frankly, you did not recall,
19 either, is that correct?

09:33:21

20 A. That's correct.

09:33:38

21 Q. That was not true at the time you wrote it, was it?

22 A. Yes, it was.

23 Q. You knew quite well who directed Dave Trombi to send the
24 e-mail at the time you wrote that letter, didn't you?

25 A. You know, even -- even to this day it's difficult to

09:33:48

1 determine exactly who told Trombi. I was in a meeting with
2 four other people -- three lawyers, the sheriff, myself -- and
3 I know it's going to be hard for you to believe, but in that
4 room I'm the lowest man on the totem pole.

5 And when we called Chief Trombi in -- and I assume I 09:34:23
6 did, because he's a direct report to me -- I assume I'm the one
7 that told him what to do, but I also believe that other people
8 were not just mute and silent during that time period and we
9 all probably had something to tell Chief Trombi.

10 So that's why I was thinking about this issue and 09:34:51
11 trying to be as accurate as possible. Because let's not
12 forget, I had been in front of this Court, the last time I'd
13 been in front of the this Court before this day it was not a
14 very pleasant experience for me, and so I did not want to make
15 a mistake again. So -- 09:35:23

16 Q. So --

17 A. -- my answer to your question is this was as accurate as I
18 could put down on paper.

19 Q. Even though Dave Trombi had reminded you that you were the
20 one who told him to send the e-mail? 09:35:45

21 A. I'm sure I had something to do with that, yes. Again, I --

22 Q. Are you backing away from that now?

23 A. No.

24 Q. Are you questioning whether you were the one to direct him?

25 A. No. Please don't put words in my mouth. No, I'm not 09:36:02

1 backing away from that. I'm sure I did. He directly reports
2 to me.

3 Q. And so you would likely have been the one to order him to
4 send the e-mail, correct?

5 A. Absolutely.

09:36:15

6 Q. The only people in the meeting in the sheriff's office who
7 are MCSO commanders were you and the sheriff, correct?

8 A. Correct.

9 Q. No one else in that room could give Dave Trombi an order,
10 is that right?

09:36:31

11 A. We take direction and advice from our counsel all the time.

12 Q. But you would have been the one to direct Dave Trombi to
13 send the e-mail, right?

14 A. But believe me, if one of the counsel that was present told
15 Dave Trombi to do something, I'm sure I would not override that
16 direction.

09:36:51

17 Q. Well, you would have the power to override it, correct?

18 A. Of course I would.

19 Q. If you were in a meeting with counsel and a subordinate and
20 the counsel told the subordinate to do something you did not
21 agree with, you would not let that happen, right?

09:37:05

22 A. Well, not if it's legal advice. I'm not a lawyer.

23 Q. Was this legal advice?

24 A. No.

25 Q. So in that room there were only two people who had the

09:37:17

1 power to order Dave Trombi to do something, you or the sheriff,
2 correct?

3 A. Correct.

4 Q. So, sir, do you agree sitting here now that you were the
5 one who directed Dave Trombi to send the e-mail?

09:37:30

6 A. I believe I was, and I believe I've said that like five
7 times.

8 Q. Thank you, sir.

9 I want to stay with this letter, though, because you
10 not only wrote to Chief Warshaw that you did not recall who
11 directed Chief Trombi to send the e-mail, you wrote that Dave
12 Trombi did not recall who directed him to send the e-mail,
13 isn't that right?

09:37:41

14 A. That's correct.

15 Q. But you knew when you sent this letter that Dave Trombi
16 recalled that you were the one who directed him to send the
17 e-mail, right?

09:37:54

18 A. I don't know.

19 Q. I guess we'll leave it at that, sir.

20 Now, at the time you wrote this letter to Chief
21 Warshaw, these events had just happened over the course of that
22 same day, correct?

09:38:13

23 A. Correct.

24 Q. And you explained to Chief Warshaw that this all happened
25 because you had a lapse of memory, correct?

09:38:36

1 A. Correct.

2 Q. And you said that you were suffering from fatigue and
3 confusion, is that right?

4 A. That's correct.

5 Q. Is there any other reason why you felt that this happened
6 that you didn't mention in the letter to Chief Warshaw?

09:38:47

7 A. Yes.

8 Q. What's that?

9 A. I suffer from migraine headaches. I take medication every
10 night to prevent -- help prevent those headaches from
11 occurring. That medication has some side-effects that I don't
12 really wish to talk about, and I had a slight migraine that
13 day.

09:39:02

14 Q. You did not mention that among your excuses for what
15 happened in your letter to Chief Warshaw on May 14, 2014, did
16 you?

09:39:28

17 A. It's not an excuse, ma'am. I suffer from migraine
18 headaches, and I've been suffering from them for approximately
19 40 years. And I deal with them on a fairly frequent basis, and
20 it's not something that I use as an excuse.

09:39:50

21 Q. Well, I'm sorry to hear that, sir, but my question is: In
22 your letter of May 14, 2014, you told Chief Warshaw that the
23 explanation for what had happened was that you were suffering
24 from fatigue and confusion, right?

25 A. That could be a symptom of a migraine headache.

09:40:10

1 Q. You did not mention that you had been suffering from a
2 migraine headache that day, did you?

3 A. I did not.

4 Q. Now, Chief, you finally admitted in court, in this
5 courtroom, on November 20th, 2014, that you were the one who
6 told Dave Trombi to send the e-mail, correct?

09:40:26

7 A. I'm sorry, can you repeat that?

8 Q. The first time you admitted that you were the one who
9 directed Dave Trombi to send his e-mail was on November 20th,
10 2014, here in this courtroom, correct?

09:40:47

11 A. Yes.

12 Q. And that was through your counsel that -- your
13 then-counsel, Tim Casey, correct?

14 A. Correct.

15 Q. You were here with him, correct?

09:40:58

16 A. I was.

17 Q. And he sought your permission to make that admission in
18 court, correct?

19 A. Correct.

20 Q. And he got it, right?

09:41:04

21 A. Yes.

22 Q. Now, sir, you're aware that the monitor, Chief Warshaw, has
23 written a report that covers the events of May 14, 2014,
24 correct?

25 A. I don't believe so. I know you referenced that during my

09:41:24

1 deposition.

2 Q. All right. Well, are you aware that the monitor found
3 your claims about the events of May 14, 2014, not credible?

4 A. Yes, you told me that.

5 Q. What's your reaction to that?

09:41:45

6 A. Chief Warshaw doesn't know who Jerry Sheridan is.

7 Q. You've spent quite a lot of time with him over the course
8 of your involvement in this litigation, correct?

9 A. Well, at this point. In May I think he'd only been the
10 monitor for a short period of time.

09:42:10

11 Q. Do you know when he was appointed the monitor?

12 A. He was appointed, I believe, in January. We had a first
13 meeting maybe in February, March, sometime there. I'd only met
14 him a few times before this.

15 Q. You'd had meetings with him, though, correct, before May
16 14, 2014?

09:42:32

17 A. Yes.

18 Q. And you'd had meetings with him after that, correct?

19 A. Yes.

20 Q. Many meetings, in fact, correct?

09:42:41

21 A. Yes.

22 Q. Sir, the judge's order related to a very serious
23 investigation, right?

24 A. Yes.

25 Q. The investigation arose from a situation with Deputy

09:42:51

1 Armendariz, an MCSO deputy, correct?

2 A. Correct.

3 Q. And you were aware that the investigation could lead to
4 evidence of wrongdoing by Deputy Armendariz, correct?

5 A. That's correct.

09:43:08

6 Q. Possibly many other MCSO deputies, correct?

7 A. Correct.

8 Q. And there could be very broad implications arising from
9 this video evidence, correct?

10 A. Yes, ma'am.

09:43:22

11 Q. Implications affecting the Maricopa County Sheriff's
12 Office?

13 A. Yes.

14 Q. And you knew that a federal judge was watching this
15 investigation closely, right?

09:43:35

16 A. Yes, ma'am.

17 Q. And you heard the federal judge express concerns that this
18 investigation should be carried out carefully and quietly,
19 correct?

20 A. Yes, ma'am.

09:43:50

21 Q. And that was to minimize the risk that deputies would
22 destroy video recordings. You understood that, right?

23 A. I did.

24 Q. The sheriff delegated that responsibility to you, right?

25 A. He did.

09:44:04

1 Q. And you have over 36 years of experience in law
2 enforcement, right?

3 A. I do.

4 Q. You've been at the chief level at MCSO for over 20 years,
5 correct?

09:44:16

6 A. Yes.

7 Q. And you've been the second in command, the chief deputy,
8 for five years, correct?

9 A. Yes.

10 Q. Sir, I believe I've heard you say that you consider
11 yourself to be an expert on law enforcement ethics, is that
12 right?

09:44:24

13 A. Yes, ma'am.

14 Q. You've taught law enforcement ethics at colleges?

15 A. I do.

09:44:37

16 Q. Sir, is it fair to say that a law enforcement officer needs
17 to have a sharp memory and recall for details?

18 A. They do.

19 Q. You have to be able to recall events clearly in order to
20 write reports, right?

09:44:53

21 A. Yes.

22 Q. Possibly to testify in court, correct?

23 A. Yes.

24 Q. A law enforcement officer's memory can make or break life
25 or death matters, is that right?

09:45:04

1 A. I don't know about that.

2 Q. You don't think that a law enforcement officer's memory
3 might relate to life or death matters?

4 A. Maybe I don't understand your question. Could you restate
5 it?

09:45:31

6 Q. Law enforcement officers sometimes have to deal with life
7 or death situations, right?

8 A. Absolutely.

9 Q. They bring a lot of skills to bear in that kind of
10 situation, correct?

09:45:40

11 A. Yes.

12 Q. And their memory might be one of those things, correct?

13 A. Well, usually life and death matters happen in the blink of
14 an eye, so I don't think there's much memory involved.

15 Q. Those life or death matters could extend to courtroom
16 proceedings, isn't that right?

09:45:54

17 A. Yes, it's possible.

18 Q. All right. Now, sir, you're the executive of one of the
19 largest law enforcement agencies in the United States, right?

20 A. Yes, ma'am.

09:46:08

21 Q. You have thousands of people under your command, correct?

22 A. I do.

23 Q. You supervise a very wide variety of functions, right?

24 A. Yes.

25 Q. You're asked to hold a lot of information in your head at

09:46:24

1 one time, correct?

2 A. I do.

3 Q. And you do hold a lot of information in your head at any
4 given time, correct?

5 A. I try.

09:46:33

6 Q. The chief deputy of the Maricopa County Sheriff's Office
7 should be an intelligent and capable person.

8 Do you agree with that?

9 A. Yes.

10 Q. And don't worry about being modest here, because, I mean,
11 this is a serious question. You are an intelligent and capable
12 person, are you not?

09:46:49

13 A. I don't know about the intelligent part, but capable, yes.

14 Q. Do you mean that seriously, Chief Deputy? Because I mean
15 it as a serious question.

09:47:09

16 A. I believe that I am a conscientious, humble, competent,
17 educated law enforcement officer.

18 Q. And do you believe that you are intelligent enough to serve
19 as the second in command of your agency?

20 A. Yes.

09:47:38

21 Q. Yet you claim you forgot about Judge Snow's orders later of
22 the day -- later in the day on May 14, 2014?

23 A. No. What I claim is that I recall them differently than
24 the written record reflects.

25 Q. Do you challenge the accuracy of the transcript?

09:48:15

1 A. Absolutely not.

2 Q. You were paying attention in court that day, were you not?

3 A. Yes, ma'am.

4 Q. Now, you've referred in your testimony to the fact that you
5 previously had had an uncomfortable appearance before Judge
6 Snow in the case, correct?

09:48:32

7 A. Yes, I did.

8 Q. You were called into court to account for some
9 misstatements you had made about the judge's orders, previous
10 orders in the case, correct?

09:48:47

11 A. Yes, I did.

12 Q. You remembered that when you walked into court on May 14,
13 2014, correct?

14 A. Oh, yes.

15 Q. So you understood it was very important to pay close
16 attention to a Court's orders, right?

09:48:56

17 A. Yes, ma'am.

18 Q. Make sure you follow them, right?

19 A. Absolutely.

20 Q. Now, sir, I know you listened to Chief Trombi's testimony
21 on Tuesday of this week. He testified that in February of 2014
22 you directed them to gather some information about
23 video cameras being used at MCSO.

09:49:05

24 Do you recall that testimony?

25 A. Yes, I do.

09:49:34

1 Q. Back in February of 2014 you had ordered Chief Trombi to
2 find out information about who at MCSO was using video cameras,
3 correct?

4 A. Correct.

5 Q. And the reason you did that is because you were looking
6 into whether MCSO could get some state grant money to purchase
7 additional video cameras, is that right? Or to report on a
8 grant that you were given for video cameras?

09:49:46

9 A. I believe that either we had been accepted for the grant or
10 the cameras had been delivered.

09:50:16

11 Q. And you were required to provide some information about
12 existing camera usage for purposes of grant reporting?

13 A. There was something to that effect.

14 Q. All right. But in any event, you do know that you directed
15 Chief Trombi, in February of 2014, to gather information about
16 who was using video cameras at MCSO, and for what purposes,
17 correct?

09:50:31

18 A. Correct.

19 Q. Now, on May 14, 2014, the subject of video recordings was
20 central, correct?

09:50:48

21 A. Correct.

22 Q. You did not mention in your meeting with the monitor team
23 that just three months earlier you had already been engaged in
24 an effort to gather information about video cameras, correct?

25 A. Correct.

09:51:02

1 Q. That would have been very useful information to have if
2 your job on May 14, 2014, was to gather video recordings,
3 correct?

4 A. Correct.

5 Q. But you didn't bring it up.

09:51:14

6 A. I did not.

7 Q. So we saw Exhibit 38, which was the May 14, 2014, e-mail
8 that Dave Trombi sent out, right?

9 I'm going to ask you now to turn to Exhibit 36,
10 please.

09:51:42

11 Do you have it in front of you, sir?

12 A. Yes, ma'am.

13 Q. Okay. This is an e-mail -- well, it looks like it was sent
14 out by Larry Farnsworth on May 17, 2014, but in the text of the
15 e-mail it says from Deputy Chief Trombi. Do you see that?

09:52:06

16 A. Yes, I do.

17 Q. Who's Larry Farnsworth?

18 A. Larry Farnsworth was the commander of the court compliance
19 implementation division at the time.

20 Q. And he was sending -- well, first, were you aware of this
21 e-mail at the time that it went out?

09:52:20

22 A. I'm not sure.

23 Q. Do you understand the e-mail, based on your review of it
24 now, to be from Chief Trombi?

25 A. Yes.

09:52:41

1 MS. WANG: Can we publish this, please.

2 BY MS. WANG:

3 Q. In the text of it, Chief Trombi writes: As a follow-up to
4 my previous directive regarding collection of video captured
5 through the use of personally owned and county-issued body or
6 vehicle cameras.

09:52:59

7 Do you see that?

8 A. Yes.

9 Q. Do you understand this to be a follow-up to Dave Trombi's
10 May 14, 2014, e-mail?

09:53:08

11 A. Yes.

12 Q. All right. And this e-mail, the May 17 e-mail, went to a
13 broader distribution group than the May 14 e-mail, correct?

14 A. That's correct.

15 Q. And it was requesting that all MCSO personnel respond to a
16 survey about their video recording practices and video
17 recordings, correct?

09:53:21

18 A. Correct.

19 Q. Now, in this e-mail Chief Trombi gave a direction that each
20 of the recipients should provide a memo with information about
21 the recordings by May 21st, 2014, by 1700 hours.

09:53:48

22 Do you see that?

23 A. Yes, I do.

24 MS. WANG: It's actually, for -- for Mr. Klein, it's
25 the earlier reference to that date. Thank you.

09:54:03

1 BY MS. WANG:

2 Q. By May 21, 2014, Chief Trombi had not received 100 percent
3 compliance with this order, correct?

4 A. Correct.

5 Q. Indeed --

09:54:21

6 MS. WANG: Your Honor, may I consult with Ms. Iafrate?
7 There is an exhibit in evidence that is marked attorneys' eyes
8 only, and I just want to ask her about that.

9 THE COURT: You may.

10 MS. WANG: Okay.

09:54:42

11 (Pause in proceedings.)

12 BY MS. WANG:

13 Q. Okay, sir. Let's turn to Exhibit 42. Ms. Iafrate advises
14 me there's no issue with publishing that.

15 Let's look at the first page.

09:55:11

16 Highlighting the top, you see that this is a
17 memorandum from Lieutenant Dave Munley, who was deputy
18 commander of Internal Affairs, to Captain Steve Bailey, who was
19 the commander of Internal Affairs, correct?

20 A. Yes, ma'am.

09:55:24

21 Q. And it's dated June 13, 2014, correct?

22 A. Yes.

23 Q. It's about a month after Dave Trombi's initial e-mail
24 seeking video recordings, right? May 14 to June 13, about a
25 month?

09:55:40

1 A. Yes.

2 Q. Okay. I'm going to call your attention to the
3 second-to-last paragraph that begins: "As of June 12th, 2014,"
4 all right?

5 Lieutenant Munley wrote to his commander,
6 Captain Bailey: "As of June 12, 2014 there are 644 current
7 sworn employees. As of June 12, 2014 at 0900 hours, 468
8 persons, sworn and volunteers, had reported on whether they had
9 used or had access to audio/video recordings devices during
10 traffic stops from 2007 to present," as stated in the Court's
11 May 15 order.

12 Do you see that?

13 A. Yes, ma'am.

14 Q. He then writes: "Of those 468 persons reporting, 384
15 reported having county-issued devices, and 127 reported having
16 personal devices."

17 Do you see that?

18 A. Yes, I do.

19 Q. And he wrote: "157 memos were pending and put into the
20 system database."

21 Do you see that?

22 A. Yes.

23 Q. All right. And in the next paragraph, beginning on June
24 5th, Lieutenant Munley writes that there is an attachment to
25 this memo that's a spreadsheet listing employees who had not

1 submitted memos, and that was in response to Chief Trombi's
2 order, correct?

3 A. Correct.

4 Q. Now, sir, did there come a time in June where you had to
5 send out an e-mail to order MCSO personnel to respond to
6 Chief Trombi's order of May 14?

09:57:13

7 A. I vaguely remember something like that.

8 Q. Okay. Let's turn to the second page of this exhibit up on
9 the screen, Exhibit 42. Let's highlight the second paragraph.

10 Lieutenant Munley wrote to Captain Bailey: "On June
11 10, 2014, at 1802 hours, an e-mail message with attached
12 documents was sent out by Chief Deputy Jerry Sheridan to all
13 those employees who had not responded to the directive to
14 submit memos regarding the audio/video device surveys. Chief
15 Deputy Sheridan again directed sworn employees to submit their
16 memos using the attached format no later than Thursday, June
17 12, 2014, by 1500 hours."

09:57:39

09:58:00

18 Do you see that?

19 A. Yes.

20 Q. And you in that e-mail threatened that noncompliance would
21 result in immediate disciplinary action.

09:58:11

22 Do you see that?

23 A. I do.

24 Q. So do you recall now sending out that e-mail on June 10,
25 2014?

09:58:25

1 A. Vaguely, ma'am.

2 Q. Is it fair to say that you had left it to Chief Trombi to
3 send out the orders regarding the collection of video
4 recordings between May 14 and June 10, 2014?

5 A. Yes.

09:58:37

6 Q. But on June 10, 2014, you apparently had to step in
7 personally to send out an e-mail, is that right?

8 A. Yes.

9 Q. Is it fair to say that is because as the chief deputy, the
10 second in command, you expected people would -- who had so far
11 not complied, would take your directive more seriously since
12 you're a more senior commander?

09:58:50

13 A. I recall being very angry that we weren't getting the
14 responses quickly enough, and how important this issue was, and
15 that I remember telling Chief Trombi that not only were the
16 deputies who did not respond going to receive discipline, but
17 also their commanders.

09:59:20

18 Q. Sir, is it true that at the time I deposed you on March
19 20th, 2015, you still had not received responses from all
20 people who were directed to send in a response?

09:59:50

21 A. I believe so.

22 Q. To this day, have you received 100 percent responses from
23 those ordered to turn in a memo?

24 A. I believe there are a few outstanding.

25 Q. So the answer is no, you have not received 100 percent

10:00:10

1 response rate?

2 A. That would be correct.

3 Q. Has anyone been disciplined for noncompliance with the
4 directive to send in video recordings?

5 A. I don't know.

10:00:23

6 THE COURT: Ms. Wang, are you at a breaking point?

7 MS. WANG: I can, yes, Your Honor.

8 THE COURT: All right. I think that we need to get
9 Mr. McDonald to his funeral.

10 And so, Mr. McDonald, if you need to leave, we will
11 let you go. I promise you there will be no more testimony, but
12 I do have an item of business.

10:00:37

13 As I indicated yesterday, I was going to require
14 Ms. Iafrate, Mr. Walker, to give a point of contact so we could
15 have attorney review and production of documents today that I
16 required to be delivered yesterday.

10:00:54

17 I've just been informed that the document
18 representative that Mr. -- that's been provided, I assume they
19 were attorneys you both provided, advised that he's been
20 directed by deputy chief -- or Chief Deputy Sheridan to not
21 release anything until all items are Bates stamped and
22 Ms. Iafrate has seen all items and she approves the release.

10:01:07

23 For reasons I stated yesterday -- and I understand
24 your desire for document control, but for reasons I stated
25 yesterday, it's incredibly important, I think, first that we

10:01:26

1 get our hands around the documents. I mean, we're talking
2 about some of the issues that we have.

3 And so I'm going to require that those documents be
4 released immediately. I mean, not without your review.

5 Whoever your designated attorney is, get over there and review 10:01:43
6 them. We'll make some sort of a list of the documents that
7 have been provided, and then we can -- we can match them up
8 when you Bates stamp them. But I want those documents
9 provided.

10 Do you have an issue with that, Chief, that we need -- 10:01:58
11 that we need to discuss or concerns that you wanted to raise
12 that I should consider?

13 THE WITNESS: No, sir.

14 THE COURT: Okay. Is that okay with you?

15 THE WITNESS: Yes, sir. 10:02:11

16 THE COURT: All right. Do you have any issues,
17 Ms. Iafrate?

18 MS. IAFRATE: Your Honor, it does not take long to
19 Bates stamp documents, and I think that because of the control
20 issues that I have been having regarding releasing documents, 10:02:23
21 that's the safest way to document what's in there.

22 THE COURT: Well, I appreciate that. But nothing that
23 you've tried so far has worked very well, and we don't have
24 documents that we should have had prior to this proceeding. So
25 what I propose is, again, you turn them over. You identify the 10:02:39

1 documents. We'll give you the receipt. We'll list the
2 number of pages. And then we can match them up and Bates stamp
3 them all once we have a control set.

4 Are you okay with that?

5 MS. IAFRATE: I am, except that I would like to
6 clarify that I believe that what I have been doing has been
7 working since I've started on this case.

10:02:52

8 THE COURT: Well, and again, I didn't mean by my
9 comment to impugn you in any way, but we certainly don't have
10 all the documents that I ordered to be delivered in February,
11 and here we are at the end of March. That's my concern.

10:03:06

12 And there has been nothing throughout this case, only
13 a small part of which you've been privy to, that makes me
14 believe that we still have all the documents that are relevant
15 to this case, and I'm not going to put up with it any more, and
16 so we're going to proceed in that way.

10:03:22

17 I appreciate your desire for document control, and I
18 don't mean for my frustration to be reflected upon you
19 personally. I have no reason to think that you haven't used
20 your best efforts, and I appreciate your belief and your view
21 about Bates stamping documents.

10:03:37

22 We will proceed in the way I've suggested so that we
23 can match up documents and Bates stamp them and get a good
24 control. But I want those documents delivered immediately
25 while my monitor team is here.

10:03:52

1 THE WITNESS: Excuse me, Your Honor. Can I confer
2 with my counsel for one second? Because I think there's a
3 little confusion.

4 THE COURT: Yeah, absolutely. Absolutely.

5 (Pause in proceedings.)

10:04:05

6 (Off-the-record discussion between the clerk and the
7 Court.)

8 THE COURT: For the record, my deputy clerk informs me
9 that I said we're at the end of March. I do realize we're at
10 the end of April. I'm not a very good detective, either.

10:04:31

11 MS. IAFRATE: We have nothing to add, Your Honor.

12 THE COURT: All right. Thank you.

13 Then I think we agreed we'll be back at 1:30. Is that
14 a -- we'll see you back at 1:30.

15 THE CLERK: All rise.

10:05:01

16 (Recess taken.)

17 THE CLERK: All rise. Court is now in session.

18 THE COURT: Please be seated.

19 Mr. McDonald, thank you for being back timely.

20 MR. McDONALD: That you think very much, Your Honor,
21 for accommodating me.

13:37:12

22 THE COURT: Before we begin, apparently there's been a
23 miscommunication. Chief, I know you were over trying to
24 facilitate or getting those documents over the noon hour, and
25 as soon as you left, folks indicated they wouldn't give the

13:37:24

1 documents until Ms. Iafrate had a chance to review them and
2 they were Bates stamped, which I think we had already resolved
3 prior to lunch.

4 Is there anything you can do to facilitate that
5 production right away, Chief? Who is the captain that said he
6 wouldn't give them? 13:37:39

7 CHIEF MARTINEZ: Chief Knight.

8 THE COURT: Chief Knight.

9 MS. IAFRATE: Your Honor --

10 THE COURT: Yes, Ms. Iafrate. 13:37:50

11 MS. IAFRATE: -- may I make a call?

12 THE COURT: Sure.

13 MS. IAFRATE: May I make a call?

14 THE COURT: Sure, if you don't mind.

15 I'm really trying -- the thought occurred to me over
16 lunch, Chief. I'm not trying to use these today. There's
17 going to be too much other stuff. But I really do think it's
18 important to secure the documents. So I'm still going to hold
19 to that order, unless you have some reason, Chief, why I
20 shouldn't. I think it's very important, in light of the
21 history of the case, that we get the documents in a set today. 13:38:19

22 MS. IAFRATE: From what I understand, Your Honor, at
23 one point there were three requests, and now I think that there
24 are way more requests --

25 THE COURT: Yeah, it -- 13:38:35

1 MS. IAFRATE: -- so it's a moving target.

2 THE COURT: Yeah, it wouldn't surprise me if the
3 requests are coming in fast and furious, because my folks want
4 to get their arms around everything today. So that may be part
5 of the confusion. But I'm sure I was clear, and I suspect that 13:38:50
6 the chief deputy went over to try the facilitate that, and
7 there must be some confusion, so if you'll call Chief Knight
8 and we'll wait for you.

9 MS. IAFRATE: Okay. And just for your edification,
10 there are three attorneys over there facilitating it also, 13:39:07
11 so --

12 THE COURT: I appreciate that very much.

13 THE WITNESS: That might be the confusion, Your Honor,
14 the three attorneys.

15 THE COURT: They probably need five, right? 13:39:17

16 I'll be back as soon as you return, Ms. Iafrate.

17 (Recess taken.)

18 THE COURT: Ms. Iafrate. Thank you. I understand
19 that the problem's been resolved.

20 MS. IAFRATE: Thank you. 13:48:48

21 THE COURT: Appreciate that.

22 Ms. Wang.

23 MS. WANG: Thank you, Your Honor.

24 BY MS. WANG:

25 Q. Good afternoon, Chief Sheridan. 13:49:00

1 A. Good afternoon.

2 Q. Chief, would you agree with me that the effort that started
3 on May 14, 2014, to gather video recordings has not
4 successfully gathered all video recordings at MCSO?

5 A. No.

13:49:11

6 Q. You would not agree with me?

7 A. No.

8 Q. So you contend that the effort that started on May 14th of
9 last year has successfully gathered all video recordings at
10 MCSO?

13:49:26

11 A. "All" is a very difficult word to define, so when you use a
12 word that is -- and I'm searching for the proper word to
13 describe it -- something that's inclusive of everything, I -- I
14 would not agree with that.

15 I would say that those that were available, those that
16 are available, I would agree with that. I would agree that
17 there are videos, 8,900 of them. I would say it's probably
18 pretty close to all.

13:49:54

19 Q. So you do agree with me that the effort that started May
20 14, 2014, has not successfully gathered all video recordings of
21 traffic stops at MCSO, right?

13:50:23

22 A. I don't know if we can ever use the word "all," ever.

23 Q. Does that mean that you do agree with that statement?

24 A. Under the context of the question you just asked me, yes.

25 Q. Now, sir, are you aware that HSU in particular has had

13:50:42

1 problems gathering its video recordings?

2 A. Yes.

3 Q. I'd like to have you take a look at Exhibit 43, which is in
4 evidence.

5 MS. WANG: And if we can publish that, Your Honor.

13:51:06

6 Let's enlarge the top of the memo.

7 BY MS. WANG:

8 Q. Sir, is this a memo from Glenn Powe of the Special
9 Investigations Division to Brian Jakowinicz, also of the
10 Special Investigations Division?

13:51:17

11 A. Yes, it is.

12 Q. Dated June 6th of 2014, correct?

13 A. Correct.

14 Q. And if we look at the first paragraph that's visible there
15 on the screen, Sergeant Powe writes -- first he says that he's
16 been -- the HSU has been tasked with researching how many
17 traffic stop videos they have in their possession and getting
18 the videos to IA.

13:51:28

19 Do you see that?

20 A. Yes, ma'am.

13:51:44

21 Q. And then Sergeant Powe wrote: "This has been a monumental
22 task because members of HSU were issued several methods for
23 recording their contacts."

24 Do you agree that that was true?

25 A. Yes.

13:51:56

1 Q. And turning to the next paragraph, Sergeant Powe wrote:
2 "Complicating this search is the fact that the HSU squad was
3 developed in 2006, and many of those assigned during the early
4 years have either transferred, resigned, or been terminated
5 since that time."

13:52:14

6 Do you agree with that?

7 A. Yes.

8 Q. And later in that paragraph, after he lists the current
9 makeup, or the then-current makeup as of June 6th, 2014: "I
10 have no knowledge of what system, if any, was in place during
11 those years to track, collect, review, or store these videos."

13:52:27

12 Do you see that and do you agree with it?

13 A. Yes, ma'am.

14 Q. And he goes on to say in the last sentence of that
15 paragraph: "This lack of continuity makes it difficult to
16 ascertain what tracking system was in place over the past eight
17 years."

13:52:38

18 Do you see that?

19 A. Yes, I do.

20 Q. And in the next paragraph he also comments on the fact that
21 HSU had previously been housed in the Enforcement Support
22 building and then moved, leaving workstations behind.

13:52:48

23 Do you see that?

24 A. Yes.

25 Q. And do you agree with Sergeant Powe's conclusion that that

13:53:00

1 complicated the search for videos?

2 A. Yes.

3 Q. Thank you.

4 Chief Deputy Sheridan, if a commander who is
5 subordinate to you did what you did on May 14th, 2014, what
6 would you do?

13:53:14

7 A. What is it you're accusing me of doing?

8 Q. I'm just asking you what you would do if one of your
9 subordinates, a commander, had been in court, taken direction
10 from a federal judge, and then left the courthouse, took action
11 contrary to the direction, and then made statements in a letter
12 to the court-appointed monitor that were not true.

13:53:42

13 What would you do if one of your subordinate
14 commanders did that?

15 A. I believe we discussed this issue during my deposition, and
16 I would do the same thing that we discussed that day.

13:54:01

17 Q. And what would that be, sir?

18 A. I would take a look at the totality of the circumstances,
19 what that individual knew at the time. I would take the
20 individual's mindset, and in my case -- this isn't a

13:54:23

21 hypothetical situation. We're talking about me and what my
22 mindset was. And I know that I believed that I was following
23 the Court's order, and I was doing it as quickly as possible.

24 And there were some other mitigating issues that complicated
25 the situation -- for example, forgetting to advise the monitor

13:54:52

1 about what I told Chief Trombi to do -- and I would take no
2 action.

3 Q. All right. You said that you would take some intermediate
4 steps between taking no action.

5 I'm sorry. You said that you would take some steps 13:55:20
6 before concluding that you should take no action, is that
7 right?

8 Why don't we do this? Can we please play the video of
9 your deposition on March 20th, page 58, lines 2 to 9. This is
10 clip Sheridan 1. 13:55:41

11 (Video clip played as follows:)

12 "Question: Okay. What would you -- tell me exactly
13 what steps you would take if someone -- let's say you were the
14 sheriff, and your second in command did what you did on May
15 14th and you found out about it. What steps would you take? 13:56:08

16 "Answer: Well, the short answer is probably nothing."

17 (Video clip concluded.)

18 BY MS. WANG:

19 Q. Sir, do you stand by that testimony?

20 A. Yes, ma'am. 13:56:26

21 Q. And if you were the sheriff and your chief deputy did what
22 you did on May 14th, you would take his word for it that what
23 he did was a matter of fatigue, confusion?

24 A. Yes. Because if in this hypothetical situation I was the
25 sheriff for 22 years and I worked very closely with this 13:56:54

1 individual who was the chief deputy for 20 of those 22 years
2 and he's never given me one reason to ever doubt his integrity,
3 his credibility, his work ethic, or any other reason
4 whatsoever, yes, I would take his word.

5 Q. Do you believe that undivided loyalty should be rewarded in 13:57:22
6 that situation?

7 A. I don't believe that's what we're talking about here is
8 loyalty. What we're talking about is knowing an individual's
9 integrity level.

10 Q. And based on someone's past record, you would take their 13:57:40
11 word for when they give you a version of events --

12 A. Yes.

13 Q. -- is that right?

14 A. Yes, ma'am.

15 Q. You would not investigate? 13:57:50

16 A. No, I would not.

17 Q. Sir, I'm going to turn to the subject of the Court's
18 preliminary injunction order now.

19 On December 23rd, 2011, you were the chief deputy,
20 correct? 13:58:07

21 A. Yes, ma'am.

22 Q. And are you aware sitting here now that Judge Snow issued a
23 preliminary injunction order on that date?

24 A. Yes, I am.

25 Q. When did you become aware of that preliminary injunction 13:58:18

1 order for the first time?

2 A. The first time I recall being aware of that was during a
3 deposition that I gave in March of 2014 with the Department of
4 Justice.

5 Q. And that was a deposition you gave in the United States
6 versus Maricopa County case?

13:58:40

7 A. That's correct.

8 Q. So your testimony is that the judge issued his order on
9 December 23rd of 2011, and you did not find about it -- find
10 out about it in 2012, or 2013, or in 2014 until your deposition
11 in March?

13:58:59

12 A. I'm saying that's the first time I recall hearing about it
13 and actually seeing the document itself.

14 Q. Sir, I'm going to have you --

15 Do you have Exhibit 187 in front of you?

13:59:17

16 MS. WANG: This is in evidence, so, Your Honor, I'd
17 ask that this be published.

18 THE COURT: It may be published.

19 MS. WANG: Thank you.

20 Let's enlarge the first half of this.

13:59:39

21 BY MS. WANG:

22 Q. Sir, do you see that this is an e-mail that Tim Casey wrote
23 to you and others on Friday, December 23rd, 2011, at 5:22 p.m.?

24 A. Yes, ma'am.

25 Q. And do you also see that this e-mail indicates that the

13:59:53

1 order, the judge's order, was attached?

2 A. Yes.

3 Q. And do you also see that Tim Casey marked this e-mail as
4 being of high importance?

5 A. Yes.

14:00:11

6 Q. Do you contend that you never saw this e-mail at the time
7 it was sent?

8 A. That's correct.

9 Q. Now, I note that in the first sentence Mr. Casey wrote --
10 he indicates that this is a follow-up to his recent telephone
11 call.

14:00:26

12 Do you see that?

13 A. Yes.

14 Q. Do you recall having a telephone conversation with
15 Mr. Casey on the subject of this litigation?

14:00:39

16 A. No, ma'am.

17 Q. Or the motions that led up to the Court's order on December
18 23rd, 2011?

19 A. No, ma'am, I don't.

20 Q. Well, as of that date you knew who Mr. Casey was, correct?

14:00:48

21 A. Yes.

22 Q. You knew that he was the lawyer representing the MCSO and
23 Sheriff Arpaio, correct?

24 A. I did.

25 Q. And as of December 23rd, 2011, you were aware of this

14:01:00

1 lawsuit, right?

2 A. Yes.

3 Q. And you were aware that it is a proposed class action
4 alleging MCSO was engaged in a pattern and practice of racial
5 profiling, correct?

14:01:19

6 A. No.

7 Q. Did you know the case was about racial profiling?

8 A. No.

9 Q. Did you consider this lawsuit to be a serious matter as of
10 December 23rd, 2011?

14:01:38

11 A. Well, any lawsuit is serious, but my understanding of the
12 lawsuit was different than what I know it to be today.

13 Q. Well, what did you think it was about on December 23rd of
14 2011?

15 A. It's a little bit of a long story, because when I first
16 heard about the lawsuit I was the chief of custody running the
17 jails, and there was some discussion about Mr. Melendres being
18 stopped during a traffic stop, and he was detained because he
19 was here on a visitation visa. Our 287(g) deputies noticed
20 that he was attempting to gain work, and that they called ICE,
21 and ICE asked them to bring Mr. Ortega down to their
22 headquarters, which was downtown Phoenix, and I believe they
23 were in Cave Creek --

14:02:00

14:02:45

24 Q. And you believed the lawsuit was limited to the facts of
25 that particular stop?

14:03:05

1 A. Yes. Can I finish?

2 Q. Of course.

3 A. Okay. And that when Mr. Ortega was brought down to ICE
4 headquarters in Phoenix, they let him -- they released him.
5 And that's what my understanding was what this lawsuit was
6 about.

14:03:19

7 Q. All right. So you understood the lawsuit did relate to
8 HSU's immigration enforcement activities?

9 A. Yes, ma'am.

10 Q. And were you aware at the time that Tim Casey represented
11 the sheriff and MCSO in a number of other lawsuits, is that
12 right?

14:03:31

13 A. I'm not sure about that. I don't believe so.

14 Q. Well, you understood that Tim Casey was an attorney who
15 represented MCSO and the sheriff, correct?

14:03:51

16 A. I knew he did in this case.

17 Q. And so you knew that this litigation existed as of the date
18 of the judge's order, correct?

19 A. That's correct.

20 Q. And you, I believe, just testified that every lawsuit
21 against MCSO is a serious matter, correct?

14:04:05

22 A. Yes.

23 Q. But your testimony is that when you got an e-mail from an
24 attorney representing MCSO in a lawsuit, you did not look at
25 it?

14:04:22

1 A. That's correct.

2 Q. Sir, this was not the only e-mail that you received from
3 Mr. Casey about this lawsuit at around the December 2011 to
4 January 2012 time frame, is it?

5 A. I don't know.

14:04:40

6 Q. Let me show you -- if you have in front of you Exhibit 34.
7 This is a privilege log that your attorneys produced to the
8 plaintiffs in this case. And I believe -- let me just
9 double-check that this is in evidence.

10 MS. WANG: It is in evidence, Your Honor, and I'd ask
11 that it be published.

14:05:10

12 THE COURT: It is published.

13 MS. WANG: Thank you.

14 BY MS. WANG:

15 Q. Let's turn to the second page. Sir, do you see that in the
16 second-to-last line of this privilege log it indicates that Tim
17 Casey sent you an e-mail on January 30th, 2012?

14:05:16

18 Do you see that?

19 A. Yes, ma'am.

20 Q. And the subject matter of the e-mail was settlement
21 discussions with plaintiffs --

14:05:32

22 THE COURT: Ms. Wang, I have an objection.

23 MS. WANG: Oh.

24 MS. IAFRATE: May we have a discussion sidebar
25 regarding a potential serious matter that I have overlooked?

14:05:41

1 THE COURT: Yes.

2 Do you need to bring a document with you or something?

3 MS. IAFRATE: I do not.

4 (Bench conference on the record.)

5 THE COURT: What's up?

14:05:59

6 MS. IAFRATE: Your Honor, Tim Casey is in the
7 courtroom.

8 THE COURT: Yeah.

9 MS. IAFRATE: At one time he was on plaintiffs'
10 witness list. Now, with the recent assertion regarding
11 attorney-client privilege --

14:06:08

12 THE COURT: I think that's a legitimate point.

13 MS. WANG: Should I exclude him?

14 THE COURT: Yes.

15 MS. WANG: We don't have any objection, Your Honor.

14:06:16

16 MS. IAFRATE: I'm sorry to interrupt, but --

17 THE COURT: No, I think it's timely raised.

18 (Bench conference concluded.)

19 THE COURT: Mr. Casey, you, as a member of the public,
20 would normally have every right to be here. However, there is
21 a dispute about whether or not you will be a witness in this
22 matter as to the extent of any waiver of the attorney-client
23 privilege and other matters that may -- that have been alleged
24 and asserted about which I have not yet decided.

14:06:41

25 Because you are a potential witness in this matter and 14:07:00

1 the rule of exclusion has been invoked, while we appreciate
2 your attendance, we're going to excuse you.

3 Do you understand that?

4 MR. CASEY: I do, sir.

5 THE COURT: Thank you very much.

14:07:18

6 MS. CLARK: Does that include me, Judge?

7 THE COURT: No, it does not include you.

8 MR. CASEY: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Ms. Wang.

14:07:25

11 MS. WANG: Thank you, Your Honor.

12 BY MS. WANG:

13 Q. So, Chief, we were looking at the second page of
14 defendants' privilege log and I was asking whether you
15 recognize that it indicates that on January 30th, 2012, you
16 received an e-mail from Tim Casey regarding settlement
17 discussions with plaintiffs referencing relief previously
18 granted by the Court.

14:07:38

19 Do you see that?

20 A. Yes, ma'am.

14:07:51

21 Q. Do you contend that you did not look at that e-mail from
22 Tim Casey?

23 A. I -- I don't recall getting an e-mail.

24 Q. Sir, at that time you were the chief deputy, correct?

25 A. Yes.

14:08:06

1 Q. Could this litigation have been settled without your
2 approval?

3 A. Certainly.

4 Q. Does the sheriff have to approve settlements of lawsuits
5 against MCSO and him?

14:08:28

6 A. That would normally be who would decide the ultimate
7 decision.

8 Q. And your testimony is that you would not have been involved
9 in that decision as of January of 2012?

10 A. I could or could not be. Sometimes the insurance carrier
11 makes decisions on settlement of lawsuits and doesn't consult
12 the sheriff or myself.

14:08:40

13 Q. Well, was there any -- let me ask you this: You've
14 testified, I believe, during depositions, that the sheriff does
15 not handle operational matters of the MCSO, correct?

14:09:06

16 A. Correct.

17 Q. He delegates that to you, correct?

18 A. Yes, ma'am.

19 Q. This lawsuit concern -- even on your understanding as of
20 January of 2012, this lawsuit concerned operations of MCSO,
21 correct?

14:09:18

22 A. Yes.

23 Q. All right. Sir, you sat through the testimony throughout
24 this hearing, correct?

25 A. I did.

14:09:39

1 Q. Did you hear Sergeant Mike Trowbridge testify that --

2 (Pause in proceedings.)

3 MS. WANG: Your Honor, I apologize for interrupting
4 the testimony. I do believe that because of the privilege
5 issues that are in dispute and about to be teed up in briefing 14:10:09
6 that Mr. Liddy probably should be excluded from the courtroom
7 as well.

8 THE COURT: Objections?

9 MS. IAFRATE: No, Your Honor.

10 MR. COMO: I have no objection, Your Honor. 14:10:24

11 MR. WALKER: No objection, Your Honor.

12 THE COURT: Well, let me ask: I haven't yet granted
13 Mr. Liddy's motion to withdraw, and so is there going to be any
14 objection to his motion to withdraw? If he -- if I granted the
15 motion to withdraw I can hardly exclude him. 14:10:42

16 (Pause in proceedings.)

17 MS. WANG: Your Honor --

18 THE COURT: I suppose that doesn't preclude his
19 testimony if I in fact determine he's waived the privilege, but
20 it does preclude my excusing him from the courtroom at this 14:11:13
21 point.

22 MS. WANG: Your Honor, we would withdraw our request
23 to exclude him, based on the reasons that Your Honor just laid
24 out. And if he does end up testifying as a witness, then Your
25 Honor can take into account the fact he has been here for -- up 14:11:27

1 until now, largely.

2 THE COURT: All right. Mr. Liddy, did you want to be
3 heard, since you're still an attorney in this matter?

4 MR. LIDDY: Your Honor, I've been waiting all week to
5 hear this. 14:11:47

6 THE COURT REPORTER: I didn't hear that very well,
7 Judge.

8 THE COURT: Mr. Liddy said that he has been waiting
9 all week to hear this.

10 You may proceed. 14:11:58

11 MS. WANG: Thank you, Your Honor.

12 THE COURT: Did you want to be heard, Mr. McDonald, on
13 something?

14 MR. McDONALD: Yes. I didn't want Mr. Liddy to be
15 excluded. I hate to rain on his parade, but the potential down 14:12:07
16 the road, I think Mr. Liddy needs to be here.

17 THE COURT: Well, I --

18 MR. McDONALD: I'm not sure whether you told him to
19 leave or not.

20 THE COURT: I said he could stay. 14:12:19

21 MR. McDONALD: Oh. Okay.

22 MR. LIDDY: Your Honor, does that mean I'm prohibited
23 from leaving?

24 THE COURT: Although I appreciate the break in the
25 serious nature of this suit, I'll remind everybody that it's 14:12:27

1 not a stand-up routine.

2 MR. LIDDY: No, Your Honor, I'm quite serious.

3 THE COURT: Are you? You are not prohibited from
4 leaving, Mr. Liddy. As I said, we -- we've got you in sort of
5 a strange capacity. I excused you from counsel table based on 14:12:44
6 your assertion that you had ethical problems, and as far as I
7 know you haven't been participating in the defense actively
8 other than to assist the parties with respect to documents,
9 information, preparation, and other matters. And I assume that
10 you'll continue to do that in good faith as you indicated to 14:13:03
11 the Court you would. But that doesn't mean --

12 MR. LIDDY: I have an ethical obligation to do so,
13 Your Honor.

14 THE COURT: But that does not mean that I'm
15 prohibiting you from leaving, as long as you can come or go 14:13:15
16 consistent with your ethical obligations.

17 MR. LIDDY: Thank you, Your Honor.

18 THE COURT: Ms. Wang.

19 MS. WANG: Thank you, Your Honor.

20 BY MS. WANG: 14:13:22

21 Q. Sir, you heard Sergeant Trowbridge testify earlier this
22 week that he attended a meeting in Sheriff Arpaio's office
23 where the preliminary injunction was discussed and that you
24 were present.

25 Do you recall that testimony? 14:13:34

1 A. Yes, ma'am.

2 Q. Do you disagree with Sergeant Trowbridge's testimony?

3 A. I don't recall being at that meeting.

4 Q. Do you generally know Sergeant Trowbridge to be truthful?

5 A. Yes.

14:13:51

6 Q. Sir, you also heard Chief Sands testify that he had a
7 meeting with you and Sheriff Arpaio to discuss the preliminary
8 injunction order.

9 Do you recall that testimony?

10 A. I do.

14:14:05

11 Q. And do you recall being in such a meeting with Sheriff
12 Arpaio and Chief Sands discussing the preliminary injunction
13 order?

14 A. I do not.

15 Q. Do you generally know Chief Sands to be honest and
16 truthful?

14:14:18

17 A. I guess so.

18 MS. CLARK: Excuse me. I'm asking for a sidebar with
19 Your Honor and counsel.

20 THE COURT: This is an exciting afternoon. Sidebar,
21 please.

14:14:43

22 (Pause in proceedings.)

23 THE COURT: It will be my inclination, Mr. McDonald,
24 to let you join, but first -- and any other limited-purpose
25 counsel who wants to, I'm going to check to see if there's any

14:15:30

1 objection to that request.

2 (Bench conference on the record.)

3 THE COURT: Any objection to having limited purpose
4 counsel join?

5 MS. IAFRATE: None.

6 THE COURT: Anybody else?

7 MS. WANG: No.

8 (End bench conference.)

9 THE COURT: All limited purpose counsel who'd care to
10 join may do so.

14:15:43

11 Let me tell you, Ms. Clark, as they're coming up, this
12 microphone is not terrifically sensitive, so you're going to
13 need -- there's white noise in the courtroom --

14 MS. CLARK: Oh, okay.

15 THE COURT: -- but I'm going to need to have you come
16 up close --

14:16:00

17 MS. CLARK: Okay.

18 THE COURT: -- and speak low enough that not everybody
19 can hear, but loud enough that this assemblage can hear.

20 All right?

14:16:08

21 MS. CLARK: Thanks for the tip. Judge, it's really
22 just some guidance that I'm seeking for you. Just a few
23 minutes ago Mr. Casey was excluded from the courtroom --

24 THE COURT: Yes.

25 MS. CLARK: -- because he may be a potential

14:16:18

1 witness --

2 THE COURT: That's correct.

3 MS. CLARK: -- in a future proceeding. And I'm his
4 counsel, and as far as I know, an attorney can't keep secrets
5 from their client. So if I'm staying and listening to the
6 proceedings, I think I have a problem, because I can't keep
7 what I hear from my client.

14:16:25

8 So I guess if the Court orders me to keep it secret
9 from my client, then I'm under a court order to do so, but in
10 the absence of that, I don't want Mr. Casey to lose his chosen
11 counsel.

14:16:42

12 On the other hand, I'm here to attend the proceedings
13 to represent Mr. Casey and his interests, and I've notified
14 counsel that I may be asking to address the Court today on
15 Mr. Casey's behalf.

14:16:55

16 THE COURT: Is there any objection -- I mean, the rule
17 of exclusion has been invoked, and I think properly so,
18 Ms. Iafrate. Do you have an objection to Ms. Clark staying in
19 the room, even though she feels like she might have to give
20 summaries of what she hears to her client?

14:17:13

21 MS. IAFRATE: I do not have an objection.

22 THE COURT: Does anyone else have such an objection?

23 MR. WALKER: No objection.

24 MS. WANG: No, your Honor.

25 THE COURT: Well, first off, would you please identify

14:17:24

1 yourself, Mr. Walker, for the record? Otherwise, Gary has no
2 idea who you are.

3 MR. WALKER: Richard Walker on behalf of the County.
4 We have no objection.

5 MS. WANG: Cecillia Wang on behalf of plaintiffs. No
6 objection. 14:17:34

7 MR. STEIN: Lee Stein on behalf of Chief Sheridan. No
8 objection.

9 MR. McDONALD: Mel McDonald on behalf of Sheriff Joe
10 Arpaio. No objection. 14:17:47

11 MR. EISENBERG: David Eisenberg on behalf of
12 Lieutenant Sousa. No objection.

13 MR. COMO: Greg Como, no objection.

14 THE COURT: All right.

15 MS. CLARK: Okay. Thank you very much. 14:18:02

16 (Bench conference concluded.)

17 THE COURT: Before we try to resume again examination,
18 is there anybody else who wants to be heard on anything?

19 Ms. Wang.

20 MS. WANG: Thank you, Your Honor. 14:18:17

21 BY MS. WANG:

22 Q. Sir, do you believe that it is important for you to stay
23 current on local news in the Phoenix and Arizona areas?

24 A. Yes.

25 Q. It could be important for your work as a law enforcement 14:18:35

1 executive, correct?

2 A. Yes.

3 Q. And as of December 23rd, 2011, you subscribed to The
4 Arizona Republic newspaper, correct?

5 A. I did.

14:18:50

6 Q. You had it delivered to your home?

7 A. Yes.

8 Q. Sir, I'm going to have you take a look at Exhibits 120,
9 122, and 124. These are not in evidence, and I actually don't
10 intend to move them into evidence.

14:19:07

11 Do you see that -- well, first let me ask you: Are
12 you aware sitting here today that the hearing on the motions
13 that led to the preliminary injunction order took place on
14 December 22nd of 2011?

15 A. No.

14:19:31

16 Q. You are not aware of that sitting here right now?

17 A. No.

18 Q. Okay. You should see in front of you that on December 22nd
19 of 2011, The Arizona Republic ran an article on the front page
20 of the Valley and State section.

14:19:49

21 A. I'm sorry, which --

22 Q. Exhibit 120, sir.

23 A. Can you repeat your question, please?

24 Q. Yes, sir. Do you see there that based on Exhibit 120, you
25 can see that on December 22nd of 2011 The Arizona Republic ran

14:20:10

1 a story on the front page of the Valley and State section that
2 concerned this litigation.

3 Do you see that?

4 A. Yes, ma'am.

5 Q. Do you also see on the second page of Exhibit 120 that the 14:20:21
6 article mentions that the hearing in this case was happening
7 just one week after the U.S. Department of Justice released its
8 finding that MCSO had engaged in a wide-ranging pattern of
9 discrimination against Latinos?

10 Do you see that? 14:20:40

11 MS. IAFRATE: Objection, Your Honor, hearsay.

12 MS. WANG: I'm asking him if he sees that on
13 Exhibit 120.

14 THE COURT: I'll overrule the objection. I don't
15 think it's asking for the truth of the matter asserted. 14:20:49

16 MS. WANG: Thank you, Your Honor.

17 THE WITNESS: Yes, I do.

18 BY MS. WANG:

19 Q. Now, sir, you were very much engaged in MCSO's response to
20 that Justice Department investigation, correct? 14:20:59

21 A. Yes, I was.

22 Q. And is it your testimony you did not see this page B1
23 article in The Arizona Republic on December 22nd, 2011?

24 A. I don't recall seeing it.

25 Q. Take a look at Exhibit 122. 14:21:15

1 Exhibit 122 indicates that on December 23rd, 2011, The
2 Arizona Republic ran another page B1 -- excuse me -- article
3 that also discussed this litigation.

4 Do you see that?

5 A. Yes.

14:21:43

6 Q. And do you contend that you didn't see this article either?

7 A. I don't recall seeing it, no.

8 Q. All right. Take a look now at Exhibit 124.

9 Sir, Exhibit 124 indicates that on December 24th,
10 2011, The Arizona Republic ran a front-page story, page A1
11 story, that had a headline: Judge curbs MCSO tactics.

14:22:12

12 A. I'm sorry, you said 120- --

13 Q. 124, I believe it is.

14 A. Maybe 121?

15 Q. Let's see. I beg your pardon, it's 123.

14:22:30

16 Thank you, Mr. Young.

17 Exhibit 123, sir.

18 A. I have 121 and 124. I don't see 123.

19 MS. WANG: Oh, I beg your pardon. Could I ask the
20 clerk to hand over Exhibit 123? Apologies.

14:23:10

21 THE CLERK: (Handing exhibit to witness.)

22 THE WITNESS: Thank you.

23 THE CLERK: You're welcome.

24 THE WITNESS: Okay.

25 BY MS. WANG:

14:23:35

1 Q. Do you see it now, sir?

2 A. Yes.

3 Q. So you see that this Exhibit 123 indicates that on December
4 24th, 2011, The Arizona Republic ran a front-page story titled:
5 Judge curbs MCSO tactics?

14:23:47

6 A. I do.

7 Q. And it reflects on Judge Snow's preliminary injunction
8 order that issued the previous day, the 23rd?

9 A. Yes.

10 Q. And did you see this when the article ran in The Republic
11 on the front page?

14:23:58

12 A. I'm sorry, I don't recall.

13 Q. Is it possible you saw these articles at the time they were
14 published?

15 A. I could have.

14:24:12

16 Q. Now, are you aware sitting here now that the sheriff filed
17 an appeal of the preliminary injunction order in January 2012?

18 A. I'm sorry. Can you state that again?

19 Q. Are you aware sitting here now that the sheriff filed an
20 appeal to the U.S. Court of Appeals for the Ninth Circuit of
21 Judge Snow's preliminary injunction order --

14:24:30

22 A. Yes.

23 Q. -- and that -- and that appeal was filed in January 2012?

24 A. Yes, I'm aware of that.

25 Q. Do you contend you did not know about the filing of that

14:24:41

1 appeal at the time?

2 A. I -- I don't recall anything about that.

3 Q. And are you aware sitting here now that the U.S. Court of
4 Appeals affirmed Judge Snow's order in September of 2012?

5 A. Yes, I'm --

14:24:55

6 Q. In other words, MCSO lost its appeal. Do you understand
7 that?

8 A. Yes, ma'am.

9 Q. Do you contend you were not aware that MCSO lost a case in
10 the U.S. Court of Appeals on the preliminary injunction order
11 in September of 2012?

14:25:04

12 A. That's what I'm saying.

13 Q. And -- well, you were aware, I believe, that Judge Snow
14 heard the trial in this case in the summer of 2012.

15 Do you know that?

14:25:22

16 A. I knew there was a trial, yes.

17 Q. You were aware that the trial was happening?

18 A. Yes, ma'am.

19 Q. And are you also aware that in May of 2013, Judge Snow
20 issued his trial ruling?

14:25:34

21 A. Yes.

22 Q. And you read that order, correct?

23 A. I did.

24 Q. You read the whole thing?

25 A. Yes, ma'am.

14:25:44

1 Q. And after reading it you still were not aware that there
2 was an earlier preliminary injunction order?

3 A. That's correct.

4 Q. Sir, you have -- in January of 2014 you printed an op-ed
5 piece in The Arizona Republic, correct?

14:26:09

6 A. I did.

7 Q. Can you please take a look at Exhibit 147. And let me know
8 if that is your op-ed piece in The Arizona Republic dated
9 January 12th, 2014.

10 A. Yes, it is.

14:26:44

11 MS. WANG: Your Honor, I'd move the admission of
12 Exhibit 147 into evidence.

13 MS. IAFRATE: No objection, Your Honor.

14 MR. WALKER: No objection.

15 MR. COMO: No objection.

14:26:56

16 THE COURT: Exhibit 147 is admitted.

17 (Exhibit No. 147 is admitted into evidence.)

18 BY MS. WANG:

19 Q. Sir, in this article -- excuse me, this op-ed you
20 mischaracterized or misstated the Court's findings of fact,
21 correct?

14:27:06

22 A. I did.

23 BY MS. WANG:

24 Q. And you also said that MCSO was appealing the trial ruling,
25 correct?

14:27:16

1 A. I did.

2 Q. You criticized the U.S. District Court, correct?

3 A. Unfortunately, I did.

4 Q. And you criticized the U.S. Court of Appeals for the Ninth
5 Circuit, correct?

14:27:26

6 A. Yes, ma'am.

7 Q. All right. Now, a few months earlier, October 18th and
8 19th, 2013, MCSO conducted a saturation patrol.

9 Do you recall that?

10 A. I do.

14:27:42

11 Q. You spoke at a briefing before that operation?

12 A. Yes.

13 Q. And you got in trouble with the Court for some statements
14 you made during that, correct?

15 A. That would be an understatement, yes.

14:27:54

16 Q. Okay. I would like to ask you some very specific questions
17 about what you said at that briefing, sir, and I will try to be
18 as brief as I can.

19 Now, the -- the briefing was for MCSO deputies who
20 were participating in that saturation patrol, correct?

14:28:13

21 A. Correct.

22 Q. They were going to be making traffic stops during that
23 patrol, correct?

24 A. Yes, ma'am.

25 Q. And this patrol happened just a few days after the Court

14:28:20

1 issued its supplemental injunction, the October 2013 order,
2 correct?

3 A. That's right.

4 Q. And during this briefing for deputies you -- again you
5 mischaracterized the findings in of fact in the Court's order
6 correct?

14:28:41

7 A. I did.

8 Q. You called the Court's order ludicrous and crap, is that
9 right?

10 A. I did.

14:28:49

11 Q. And you said that it was Judge Snow who violated the
12 Constitution, is that right?

13 A. I did.

14 Q. Now, here's where I get to the specific questions. I'm
15 going to play some of the statements you made.

14:29:01

16 MS. WANG: Can we please play clip 240C?

17 MR. COMO: What's the number, Judge? I don't think
18 that's been admitted into evidence, and I don't even have it on
19 my list.

20 MS. WANG: I believe -- oh, it's 204. I'm so sorry.
21 I'm having problems with exhibits today. I apologize to the
22 Court and to everyone. 204C.

14:29:21

23 THE COURT: Maybe you wouldn't make much of a
24 detective, either.

25 MS. WANG: That might be right. Maybe on a better

14:29:32

1 day.

2 THE COURT: Still don't have 204 admitted.

3 MS. WANG: Oh, that's right. It's not admitted.

4 Your Honor, I would ask that as we did with the
5 sheriff, that we could play a short segment of it and ask the
6 chief deputy if he recognizes himself.

14:29:48

7 THE COURT: Okay.

8 MS. WANG: 204C, please.

9 (Video clip played as follows:)

10 CHIEF DEPUTY SHERIDAN: One thing I wanted to point
11 out when Captain Lopez was talking --

14:30:31

12 (Video clip stopped.)

13 BY MS. WANG:

14 Q. Chief, do you recognize yourself on this video?

15 A. Yes, ma'am.

14:30:39

16 Q. And does this appear to be the briefing that we've been
17 talking about?

18 A. Yes, it does.

19 MS. WANG: Okay. Your Honor, I'd ask that we play
20 the -- the clip and then I can ask him questions about it.

14:30:49

21 THE COURT: Any objection?

22 MS. IAFRATE: Just the rule of inclusion, Your Honor.

23 THE COURT: Again, as with previous clips, if you want
24 to show more of it, I'm happy to have you do more on your
25 cross-examination. And I'll request that plaintiffs make it

14:31:00

1 available to Ms. Iafrate if she desires to do that.

2 MS. WANG: I believe we did exchange with the
3 defendants all of the exhibits, including the entire video.

4 THE COURT: Thank you.

5 MS. WANG: Okay. Could we start from the very
6 beginning.

7 THE COURT: Yes.

8 (Video clip played as follows:)

9 CHIEF DEPUTY SHERIDAN: One thing I wanted to point
10 out when Captain Lopez was talking about filling out the
11 ethnicity on the contact form, there's two areas where we're
12 concerned about ethnicity on people. Now, the Court doesn't
13 want us to ask. I think it's absurd that we're supposed to
14 guess. They wanted us -- originally the ACLU wanted us to use
15 the last name. Well, I don't know about you, but if you're a
16 female and you're a, let's say, a black female and you marry a
17 Hispanic male, you're going to have the last name of a
18 Hispanic -- you know, you don't know. So the bottom line was
19 the compromise with the judge was guess. So it's perceived
20 ethnicity.

21 The reason we're asking you to do it twice, the first
22 time is prior to the traffic stop.

23 Matter of fact, is anybody outside
24 that (indiscernible). I don't want the media to hear.

25 (Video clip concluded.)

14:31:14

14:31:27

14:31:54

14:32:24

14:32:50

1 BY MS. WANG:

2 Q. All right. At the very end of this clip, sir, it's a
3 little bit hard to hear it, but I heard you move toward the
4 door and say: Is anybody out there? And then: I don't want
5 the media to hear this.

14:32:59

6 Did you say that?

7 A. Yes.

8 Q. Is it true that -- well, you did not want the media to hear
9 what you were about to say next?

10 A. That's correct.

14:33:12

11 MS. WANG: Your Honor, I'd move the admission of
12 Exhibit 204C.

13 THE COURT: Any objection?

14 MS. IAFRATE: I thought it already was and I objected
15 to the rule of inclusion on this --

14:33:23

16 THE COURT: You know, I think what Ms. Wang has done
17 is broken it up into parts, and she's moving them in by parts.

18 MS. IAFRATE: Oh, okay. Well, same objection.

19 THE COURT: All right.

20 MR. COMO: None, Your Honor.

14:33:36

21 MR. WALKER: No objection.

22 THE COURT: 204C is admitted.

23 (Exhibit No. 204C is admitted into evidence.)

24 BY MS. WANG:

25 Q. And before you said that you didn't want the media to hear,

14:33:43

1 you were about to start talking about recording the race and
2 ethnicity of motorists at two points during a traffic stop, is
3 that right?

4 A. That's correct.

5 Q. All right. And this was all to implement Judge Snow's
6 supplemental injunction, correct?

14:33:56

7 A. Yes, ma'am.

8 Q. Which had just recently issued, correct?

9 A. That's correct.

10 Q. All right. That order Judge Snow gave did not require race
11 or ethnicity to be recorded twice, correct?

14:34:04

12 A. That's correct.

13 Q. That was MCSO's own decision.

14 A. Yes, ma'am.

15 MS. WANG: All right. I would ask that we now play a
16 short clip from 204D, and we'll just stop it again to make sure
17 that Chief Deputy Sheridan recognizes the video.

14:34:19

18 (Off-the-record discussion between the Court and the
19 clerk.)

20 (Video clip played as follows:)

14:34:42

21 CHIEF DEPUTY SHERIDAN: We want you to do it twice.
22 Before you make a traffic stop. I've made a few traffic stops
23 in my career. It's hard to tell who's in that car. Right?
24 It's hard to tell until you pull them over. So if you don't
25 know, write down what?

14:35:14

1 A VOICE: "Don't know."

2 CHIEF DEPUTY SHERIDAN: A no. Thank you.

3 You walk up to the car. You talk to Wayne. Well, I'm
4 not guessing what this guy is, let's say I don't know.

5 My perceived ethnicity of this guy, I'm not sure. 14:35:33

6 Oh, there's no -- there's no (laughter). Right? So
7 if you don't know, it's unknown.

8 (Video clip concluded.)

9 BY MS. WANG:

10 Q. Sir, in this video -- 14:35:48

11 MS. WANG: Oh, I'd move the admission of 204D, please.

12 MS. IAFRATE: Same objection.

13 MR. WALKER: No objection, Your Honor.

14 MR. COMO: No objection.

15 THE COURT: 204D is admitted. 14:35:58

16 (Exhibit No. 204D is admitted into evidence.)

17 MS. WANG: Thank you, Your Honor.

18 BY MS. WANG:

19 Q. Chief, you were giving the deputies in the room an
20 instruction, correct? 14:36:06

21 A. I assume so. Yeah, I could see where they could say that
22 it was instruction, sure.

23 Q. You were briefing the deputies in preparation for a
24 saturation patrol, correct?

25 A. That, among other things, yes. 14:36:22

1 MS. WANG: All right. I'd now like to play
2 Exhibit 204E.

3 (Video clip played as follows:)

4 CHIEF DEPUTY SHERIDAN: That's why we're asking you to
5 do it twice. Once prior to the traffic stop, and two, after 14:36:38
6 the stop is over. That way, we'll be able to defend ourselves.

7 (Video clip concluded.)

8 MS. WANG: Your Honor, I'd move for the admission of
9 204E.

10 MS. IAFRATE: May I just have a standing objection? 14:36:55

11 THE COURT: You certainly may.

12 MS. IAFRATE: Thank you.

13 MR. WALKER: No objection.

14 MR. COMO: None.

15 THE COURT: 204E is admitted. 14:37:01

16 (Exhibit No. 204E is admitted into evidence.)

17 MS. WANG: Thank you, Your Honor.

18 BY MS. WANG:

19 Q. Sir, you were directing deputies to record race or
20 ethnicity twice so that MCSO could defend itself, is that 14:37:14
21 correct?

22 A. Yes, ma'am.

23 Q. And you stated in this briefing that it's difficult to tell
24 what race or ethnicity a motorist is until you get up close to
25 them after you've pulled them over, is that right? 14:37:31

1 A. Yes, ma'am.

2 Q. And do you believe that's true?

3 A. I do.

4 Q. You're aware that MCSO argued in court in this case that
5 deputies can't see the race of people in cars before they
6 actually walk up to the car, is that right?

14:37:43

7 A. Yes, ma'am. Over the many years that I was a deputy
8 sheriff in a patrol car, or even driving home today, you know,
9 I play a little game with myself: Do I know who's in that car?
10 It's very difficult to tell who's in that vehicle until you
11 actually walk up to that car.

14:38:02

12 Q. So is it fair to say that you expected that if deputies
13 followed your direction, they would generally record "unknown"
14 at the took outset of the stop for the race or ethnicity of the
15 driver?

14:38:19

16 A. I could expect them to be accurate and honest with their
17 description.

18 Q. But you believe that in general it's difficult to see the
19 race or ethnicity of a motorist at the point the deputy decides
20 to initiate the stop?

14:38:34

21 A. Yes.

22 Q. So isn't it true you could expect that, for the most part,
23 deputies might write "unknown" unless they happen to be able to
24 see the race or ethnicity?

25 A. Yes.

14:38:47

1 MS. WANG: And I have one last clip. Could we play
2 Exhibit 204G.

3 (Video clip played as follows:)

4 CHIEF DEPUTY SHERIDAN: So i'm sorry you have to do
5 this, I wish we didn't have to waste our time doing this, but
6 it's a necessary evil to fix this.

14:38:57

7 So the other thing and the last thing I'll say is I do
8 not want you to be distracted from what you're doing, from your
9 safety, from watching the hands of the individuals in that
10 vehicle, by all this other outside crap. I want you to be
11 safe. The sheriff has already said that once, I'm repeating it
12 again.

14:39:21

13 (Video clip concluded.)

14 BY MS. WANG:

15 Q. All right, sir. In that --

14:39:38

16 MS. WANG: Oh, I'd move the admission of Exhibit 204G.

17 THE COURT: Admitted subject to continuing objection.

18 (Exhibit No. 204G is admitted into evidence.)

19 MS. WANG: Thank you, Your Honor.

20 BY MS. WANG:

14:39:50

21 Q. Chief, in that video you said to the deputies "I'm sorry
22 you have to do this." By the word "this" you meant record race
23 and ethnicity data as required under the Court's order,
24 correct?

25 A. No.

14:40:00

1 Q. What did you mean by "this"?

2 A. All the documentation, the distractions of the new order,
3 the confusion, the disharmony among the troops. I was very
4 concerned with their safety. That's the reason maybe I was
5 overboard and emotional. It's not my proudest hour during my
6 career. As a matter of fact, I have very few regrets during my
7 entire life on this planet, but this is probably the number one
8 regret. Okay? It was not my finest hour. And to quote, I
9 think it was Albert Einstein, we learn more from our mistakes
10 than we do from our successes.

14:40:31

14:40:56

11 But what I was attempting to do was get their morale
12 back up because we had been given a huge blow in how we were
13 now going to conduct business. A lot of demands were going to
14 be placed and then, a lot of distractions, and I'm very
15 concerned -- I was very concerned about their personal safety
16 during one of the most dangerous things that a deputy does on a
17 daily basis: a routine traffic stop.

14:41:18

18 Q. So, sir, when you said, "I'm sorry you have to do this," by
19 the word "this" you meant comply with the judge's supplemental
20 injunction, more broadly, not just the race data requirement?

14:41:39

21 A. Well, if you want to interpret what I just said to that,
22 yes.

23 Q. Well, I'm asking you for your interpretation.

24 A. My interpretation was the amount of confusion, the amount
25 of lack of morale that was permeated through the office caused

14:41:57

1 by the injunction, yes.

2 Q. All right. Thank you.

3 Now, at the -- towards the end of the clip you said
4 that you did not want the deputies to be distracted by all this
5 outside crap. By the words "this outside crap," you were
6 referring to the same issue with, generally, compliance with
7 the judge's supplemental injunction?

14:42:23

8 A. Yes, ma'am.

9 MS. WANG: Your Honor, I have more for Chief Deputy
10 Sheridan, but I recognize I've gone over my estimated time. I
11 know that others have questions. Some of the matters I want to
12 question him about have to do with matters that are currently
13 confidential, so I would request that I be able to question
14 Chief Deputy Sheridan about those in June, and I can bring my
15 examination to a close now.

14:42:40

14:42:57

16 THE COURT: All right. Any objection?

17 MS. IAFRATE: The procedure, I believe, will be that
18 plaintiffs will not close today? Is that my understanding?

19 THE COURT: That seems to be what Ms. Wang is
20 indicating.

14:43:17

21 MS. IAFRATE: And then in June they will continue with
22 their case in chief and close, and then I can proceed with
23 my --

24 THE COURT: Yes, with the assumption that, as far as I
25 know, Ms. Iaftrate, every witness that has been called has been

14:43:27

1 called by both parties, which is why I've allowed the unusual
2 double row procedure. So I don't view you as having a
3 case in chief or the plaintiffs as having a case in chief.
4 You're both in your case in chief.

5 MS. IAFRATE: Right. However, I do have other
6 witnesses that --

14:43:49

7 THE COURT: And I'm certainly not precluding you from
8 calling them when we convene in June.

9 MS. IAFRATE: I just wanted to make certain that the
10 procedure was that if they had further in their proving the
11 burden, that they would continue on in June first and then
12 close so that then I would start mine.

14:43:54

13 THE COURT: Yeah, I presume that's the case. If
14 you're thinking about, for instance, making motions, you can't
15 make them yet because you haven't produced the documents, and
16 as we've discussed before, that's the deal.

14:44:12

17 And apparently we've got Ms. Wang, who wants to sit
18 down, has other questions that pertain to matters that she
19 wants to be cautious about still being under seal. I think
20 that's actually to the department's benefit at this point, but
21 I don't make those calls, you do. I want to give you the
22 opportunity to object.

14:44:34

23 MS. IAFRATE: Ms. Wang and I have already discussed
24 it, and I agreed.

25 THE COURT: All right.

14:44:47

1 Mr. Walker?

2 MR. WALKER: No objection, Your Honor.

3 MR. COMO: I have no objection, Your Honor.

4 THE COURT: All right.

5 MS. WANG: All right. I have nothing further right
6 now.

14:44:53

7 THE COURT: Ms. Iafrate.

8 MS. IAFRATE: Your Honor, I have one housekeeping
9 matter before I start.

10 THE COURT: Yes.

14:45:00

11 MS. IAFRATE: Your Honor, yesterday you asked some
12 questions of Sheriff Arpaio and handed -- I don't know if you
13 handed him an article, but we received it at counsel table.

14 THE COURT: Yeah. Yeah, I -- I gave the sheriff a
15 copy, too, just to refresh his recollection. Because I used it
16 to refresh his recollection and it did refresh his
17 recollection, I didn't introduce it into evidence. I have no
18 problem if you want to do that to indicate what it was.

14:45:24

19 MS. IAFRATE: Well, I --

20 THE COURT: I think I did say it was a Stephen Lemons
21 New Times article. I think I gave the date of the article, and
22 I've got a copy right here if you need me to identify it again.

14:45:37

23 MS. IAFRATE: I would prefer to have it entered into
24 evidence, Your Honor, at least marked as an exhibit, not
25 entered into evidence. But my question to you is this.

14:45:52

1 THE COURT: Um-hum.

2 MS. IAFRATE: You had some very specific questions for
3 Sheriff Arpaio as it related to certain matters.

4 THE COURT: Yes.

5 MS. IAFRATE: I do not know if you have those same
6 questions for Chief Sheridan, or if I should go into those or
7 wait until you have your opportunity and then to follow up.

14:46:05

8 THE COURT: Well, you know, I think it's most
9 appropriate, Ms. Iafate, and the only time I ask questions is
10 if I -- about matters that haven't been raised, is if counsel
11 haven't raised them. I think it's most appropriate for you to
12 raise them if you have issues that you'd like to put on the
13 record.

14:46:19

14 Sheriff Arpaio's testimony is not a mystery to anybody
15 here. I certainly would expect you would want to address -- or
16 if -- and if you wanted to address them, that is certainly fine
17 with me.

14:46:33

18 MS. IAFRATE: Okay. So let -- may I find the article
19 before I start?

20 THE COURT: Sure. Do you want -- I have a copy.

14:46:46

21 MS. IAFRATE: Okay. That would be great.

22 THE COURT: But do you know what, though? My copy
23 does have a highlighted date on it.

24 THE CLERK: I've got a copy, Judge.

25 THE COURT: You've got a copy?

14:46:55

1 MS. IAFRATE: Just so that we can refer to it by
2 exhibit number. Thank you, Your Honor.

3 THE COURT: Would you then please give it an exhibit
4 number.

5 We'll enter it as a defendants' exhibit, Ms. Iafrate.

14:47:04

6 MS. IAFRATE: That's fine.

7 THE COURT: Okay.

8 It's just marked. If anybody wants to admit it they
9 can try later, but right now it's just marked.

10 (Pause in proceedings.)

14:47:57

11 CROSS-EXAMINATION

12 BY MS. IAFRATE:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. I'm having a hard time hearing you, Chief Deputy. Do you
16 think that you could move that microphone a little bit closer
17 to you?

14:48:02

18 A. Certainly.

19 Q. Thank you.

20 Chief, we went through the morning, the entirety of
21 your deposition in the morning talking about May 14, 2014,
22 correct?

14:48:28

23 A. Yes, ma'am.

24 Q. You were shown exhibits regarding May 14, 2014, correct?

25 A. Correct.

14:48:47

1 Q. And you were shown transcripts regarding the Court and you
2 on May 14, 2014, correct?

3 A. Yes.

4 Q. I want to start with -- well, let me just go on.

5 And then this afternoon we watched some video clips of 14:49:06
6 you giving a briefing, correct?

7 A. Yes, we did.

8 Q. Now, those video clips that talk about statements that you
9 made regarding Judge Snow and the order, Judge Snow already
10 heard about that, correct? 14:49:25

11 A. Oh, yes, he did.

12 Q. You know that how?

13 A. Because I already stood in front of the judge concerning
14 those statements in that video.

15 Q. You owned up to those statements in that video, correct? 14:49:41

16 A. Yes, ma'am.

17 Q. And the judge reprimanded you, correct?

18 A. Yes, ma'am.

19 Q. Did you apologize for your misstatements?

20 A. Yes, ma'am. 14:49:53

21 Q. So the judge was already aware of that evidence, correct?

22 A. Yes, he is.

23 Q. I want to show you what's in evidence as Exhibit 71.

24 Do you recognize this document?

25 A. Yes, ma'am, I do. 14:50:17

1 Q. Was this a document that you reviewed?

2 A. Yes, I did.

3 Q. Did you agree with it?

4 A. Yes.

5 Q. Did you know that it was being filed?

14:50:31

6 A. I did.

7 Q. Okay. Could you turn to page 2. Just at the top,
8 Chief Sheridan, do you see the date that it was filed?

9 A. Yes.

10 Q. What is it?

14:50:45

11 A. March 17th, 2015.

12 Q. So over a month ago this was filed with the Court, correct?

13 A. That's correct.

14 Q. And if you'd look at the first complete sentence it says:

15 "Defendants acknowledge and appreciate that they have violated
16 the Court's orders and that there are consequences for these
17 violations."

14:51:01

18 Do you see that?

19 A. I do.

20 Q. Do you agree with that?

14:51:09

21 A. Yes, ma'am.

22 Q. You agree that you acknowledge and appreciate that you have
23 violated the Court's orders, correct?

24 A. That's correct.

25 Q. So the testimony this morning regarding May 14, 2014,

14:51:17

1 you've -- excuse me, May 14 -- you've already admitted to that,
2 correct?

3 A. I have.

4 Q. If you go to page 3 of Exhibit A of this same document --

5 Keep going.

14:52:07

6 Down at the bottom of page 3 talks about the May 14,
7 2014, hearing, correct?

8 A. Yes, ma'am.

9 Q. And it lays out your admissions violating the Court order
10 as to May 14, 2014, correct?

14:52:22

11 A. It does.

12 Q. This was filed with the Court?

13 A. Yes, it was.

14 Q. Even before all of the exhibits and transcripts shown to
15 you this morning, correct?

14:52:33

16 A. Correct.

17 Q. If you look page 2 of Exhibit A of the same exhibit, it
18 talks about the pretrial discovery violations, talking about
19 the gathering of evidence. You admitted that pretrial
20 discovery --

14:52:57

21 THE COURT: Ms. Iafrate?

22 MS. IAFRATE: Yes.

23 THE COURT: I may be wrong about this, but I don't
24 think I noticed --

25 MS. IAFRATE: You did not. You did not.

14:53:03

1 THE COURT: So I don't want him to admit to something
2 that he's not even up for.

3 MS. IAFRATE: He's admitting regarding MCSO, Your
4 Honor.

5 THE COURT: Ah, thank you. 14:53:11

6 MS. IAFRATE: So maybe I'll make my question a little
7 bit clearer, just so everyone is more comfortable.

8 BY MS. IAFRATE:

9 Q. You are aware that documents were requested of MCSO,
10 correct? 14:53:23

11 A. Yes, ma'am.

12 Q. And documents, certain documents that should be provided
13 were not provided.

14 Are you aware of that now?

15 A. I am. 14:53:32

16 Q. And that's in this document as well as it relates to the
17 admissions, correct?

18 A. That's correct.

19 Q. That was done in March of this year, correct?

20 A. Yes. 14:53:41

21 Q. Okay. Let's go to page 1 of the same document.

22 And on page 1 of the same document that was filed with
23 the Court you admit that you violated the Court's orders by

24 failing to disseminate and make certain that the members of

25 MCSO were knowledgeable and were complying with the preliminary 14:54:11

1 injunction, correct?

2 A. That's correct.

3 MS. IAFRATE: I want to go back to page 2 of the body
4 of the exhibit, so go up.

5 BY MS. IAFRATE:

14:54:26

6 Q. So we were talking about before, it goes on to say "There's
7 nothing defendants can do to change what has already been
8 done."

9 Do you agree with that statement?

10 A. I do.

14:54:59

11 Q. "But through the entry of an order finding them in civil
12 contempt and by implementing remedies discussed herein,
13 defendants can express sincere remorse to the Court and to the
14 plaintiff."

15 Do you agree with that?

14:55:14

16 A. Very much so.

17 Q. When you say "very much so," are you talking about the
18 sincere remorse?

19 A. Yes, ma'am.

20 Q. "Begin to make amends to those who have been injured and
21 take affirmative steps to ensure nothing like this occurs in
22 the future."

14:55:18

23 Do you agree with that statement?

24 A. Wholeheartedly.

25 Q. Then this paragraph finally ends with "Defendants respect

14:55:31

1 the Court and the Court's orders."

2 Do you, Chief Sheridan, respect this Court?

3 A. I never meant no disrespect, ma'am.

4 Q. And how about the Court's orders?

5 A. Never.

14:55:45

6 Q. And how about do you respect the Court monitors and their
7 instruction via the judge?

8 A. Absolutely. I consider them an extension of the Court.

9 Q. So all of this testimony that we heard elicited by
10 plaintiffs you'd already admitted to that, correct?

14:56:09

11 A. That's correct.

12 Q. When Ms. Wang was talking to you about the May 14, 2014,
13 order, you believed that she was saying that you lied, right?

14 A. I did.

15 Q. Do you believe that you lied?

14:56:37

16 A. No, ma'am.

17 Q. How do you feel about being accused of lying?

18 A. It's a very emotional issue for me. I've been a law
19 enforcement officer for 36 years and never been accused of
20 being dishonest, never been accused of using excessive force,
21 never been accused of unlawfully arresting anyone, unethical
22 behavior, never been under an internal investigation.

14:57:10

23 The only thing that I thought -- excuse me -- I would
24 walk away from this career with was my integrity, and that was
25 questioned today in this court.

14:57:40

1 Q. When you make a mistake, do you own up to it?

2 A. Yes, ma'am.

3 Q. Did you intentionally or willfully violate the Court's
4 orders?

5 A. No, ma'am.

14:57:55

6 Q. Let's just talk specifically about the May 14, 2014, court
7 hearing. Okay? You attended the May 14, 2014, hearing,
8 correct?

9 A. I did.

10 Q. It was a status conference?

14:58:15

11 A. I did.

12 Q. And in fact you spoke at it, correct?

13 A. Yes.

14 Q. When you walked away from the May 2014 status conference,
15 what did you understand the directive of the Court was?

14:58:26

16 A. I believed that the direction the Court gave us was to get
17 the videos that were out there the most efficient way possible,
18 the quickest way possible, in the most unobtrusive way, so we
19 could collect the videos with the minimum of destruction of
20 evidence, so people wouldn't destroy evidence, so we could get
21 a true, honest representation of what was out there.

14:59:10

22 Q. What did you believe the monitor's role would be when you
23 left that May 14, 2014, status conference?

24 A. I believed his role was to help us in any way they could
25 and to meet with them.

14:59:37

1 MS. IAFRATE: May I have the projector on?

2 Thank you.

3 BY MS. IAFRATE:

4 Q. I'm going to show you -- this is the transcript that you
5 and Ms. Wang looked at earlier today. It's the May 14, 2014,
6 status conference.

14:59:54

7 Do you see that?

8 A. Yes. What exhibit number is that, ma'am?

9 Q. 37.

10 THE CLERK: Counsel, did you want this published?

15:00:09

11 MS. IAFRATE: Yes.

12 BY MS. IAFRATE:

13 Q. Sir, you were read certain portions of this transcript this
14 morning, correct?

15 A. Correct. What page are we on?

15:00:26

16 Q. I'm on page 59.

17 Now, one of the things that you discussed was you
18 wanted to make certain that it was done quietly, correct?

19 A. Correct.

20 Q. And this is the Court, starting at line 20, it says: "And
21 so it might be better, to the extent that you and the sheriff
22 can feel comfortable doing so, quietly collecting the data.

15:00:43

23 But I would also want to know if it can be quietly collected,
24 to not make a big fuss. I would also want to know where it

25 came from, where they are storing that data, and if they claim

15:01:09

1 to have deleted any such data, when they claim to have deleted
2 it."

3 Did I read that accurately?

4 A. Yes, ma'am.

5 Q. Then as you go down on page 60, you see where you are
6 addressing the Court, correct?

15:01:22

7 A. Yes, ma'am.

8 Q. And you say: "Yes, sir. I would ask the Court to allow us
9 to do it in a softer manner than subpoenas. I think we'll be
10 more productive. I understand your concerns, and I think we
11 share the same concerns about the documentation of
12 where/when/how this information has been stored, because I
13 would -- I'm guessing that not all those videos have been
14 stored properly in the evidence and property room."

15:01:45

15 Did I read that accurately?

15:02:06

16 A. Yes.

17 Q. And that was what you believed you should do is gather it
18 quietly and quickly?

19 A. Yes, ma'am.

20 Q. Then one more section I want to address with you, and it's
21 the Court responding to what you just said.

15:02:12

22 It says: "That would seem to be an assumption that I
23 would share. And so I will tell you that I will have my
24 monitor work with you to develop a pro -- if you want his
25 assistance."

15:02:31

1 Did I read that accurately?

2 A. Yes, ma'am.

3 Q. Did you believe that it was mandatory that you get the
4 blessing of the monitor on what procedure to use when you left
5 that status hearing on May 14, 2014?

15:02:46

6 A. I did not.

7 Q. When you left the status hearing on May 14, did you believe
8 that you were following the orders, the verbal orders of the
9 judge?

10 A. Not only did I feel that I had a good understanding of what 15:03:07
11 the Court wanted us to do, I also felt that because of the
12 interaction that I had with the judge, it was a lot different
13 than the last time I was before him. I felt that we had -- I
14 know this might sound silly, but I felt that we had kind of
15 bonded a little bit, had an understanding. We had a great 15:03:53
16 conversation about this issue, and I thought that I was
17 following his direction.

18 And I remember the word he wanted it done right away
19 also, he wanted it done quickly, so I wanted to make sure we
20 got this done quickly. I did not want to ever repeat having to 15:04:20
21 be in front of him again under the circumstances I was
22 concerning that video.

23 Q. Now, let's be fair. I'm showing you a transcript from May
24 2014, correct?

25 A. Correct.

15:04:38

1 Q. When you left the courtroom on May 2014, you didn't have a
2 copy of this transcript, correct?

3 A. I did not.

4 Q. Did you have written orders from the judge?

5 A. No, ma'am.

15:04:49

6 Q. But you took the verbal order seriously, didn't you?

7 A. Yes, and I didn't have notes, either. I didn't take notes.

8 Q. Now, there was a meeting with the monitors following your
9 meeting where you instructed Chief Trombi to send out an

10 e-mail, correct?

15:05:30

11 A. Correct.

12 Q. I want to talk about that meeting with the monitors, and
13 we're going out of chronology just a little bit.

14 When you met with the monitors, what was their
15 suggested approach to gather videos?

15:05:44

16 A. The discussion the way I recall it, it was very similar to
17 the discussion we had with the Court, very similar to the
18 discussion we had in the sheriff's office, and it was almost
19 the same type of brainstorming what the best way was. He had a
20 different viewpoint, and I brought -- we talked about that this
21 morning about, you know, having Internal Affairs go out and
22 meet deputies and do those kind of things --

15:06:25

23 Q. Okay, let me stop you there, because that wasn't discussed
24 this morning. So let's go back and tell me what -- what was
25 the monitor's suggested approach?

15:06:42

1 A. It was a more intrusive approach to have Internal Affairs
2 go out and obtain the videos.

3 Q. How?

4 A. To meet deputies in the parking lot as they show up for
5 work.

15:07:00

6 Q. For what purpose?

7 A. And talk to them and get the videos from them at the time
8 they showed up for work.

9 Q. Why -- I don't understand this process. And we haven't --
10 we haven't heard about this, so what I'm trying to understand
11 is why would I go out to the parking lot of a district to
12 gather videos? They wouldn't be in the -- the videos wouldn't
13 be in the parking lot, right?

15:07:13

14 A. No, ma'am.

15 Q. Okay. So what was the purpose of going to the parking lot
16 of the districts?

15:07:27

17 A. Because of the inherent coercive nature of Internal
18 Affairs, they would be more likely to succeed in obtaining
19 videos.

20 Q. How many videos, ultimately, has MCSO collected?

15:07:48

21 A. Approximately 8,900.

22 Q. How many different districts are there for Maricopa County
23 Sheriff's Office?

24 A. Seven.

25 Q. What's the mile span of the territory that that

15:08:04

1 encompasses?

2 A. Maricopa County is 9,226 square miles.

3 Q. So how many people in PSB?

4 A. Guessing around 15, maybe.

5 Q. So if PSB went out to the parking lot of a district to
6 gather videos, would that be the best process to quietly,
7 without a fuss, as the judge mentioned, quietly and quickly and
8 efficiently collect the videos?

15:08:27

9 A. Not in my opinion, no.

10 Q. Why not?

15:08:50

11 A. Because it wouldn't be very quiet when Internal Affairs'
12 investigator shows up in the parking lot. That would be --
13 spread like wildfire among the deputies.

14 Q. Why did you want a softer approach than this?

15 A. It would be much more effective to have their commanders,
16 who they're normally used to seeing and working with every day,
17 that they would trust, to get the videos from them.

15:09:08

18 Q. Was it to allow people to destroy videos?

19 A. Absolutely not.

20 Q. Now, we've seen Exhibit 38 several times and you saw it
21 this morning, so can we look at it one more time.

15:09:32

22 MS. IAFRATE: May I please switch back?

23 Thank you.

24 BY MS. IAFRATE:

25 Q. You had a day of meetings on May 14, 2014, didn't you?

15:10:18

1 A. I'm sorry. Can you repeat that?

2 Q. You had a day full of meetings on May 14, 2014, didn't you?

3 A. Yes, ma'am.

4 Q. First you met with the Court, correct?

5 A. Correct.

15:10:39

6 Q. Then you had a meeting at MCSO with counsel, correct?

7 A. Yes.

8 Q. Then you had a meeting with the monitors, correct?

9 A. Yes.

10 Q. Then you had another meeting with counsel, correct? With
11 Christine Stutz?

15:10:48

12 A. Yes.

13 Q. Then you called the monitor, and he came back and you had
14 yet another extensive meeting, correct?

15 A. That's correct.

15:11:02

16 Q. So showing you what is Exhibit 38 -- and you've been shown
17 this several times now -- do you recognize this e-mail?

18 A. I do.

19 Q. Did you dictate the language that was in this e-mail?

20 A. No.

15:11:16

21 Q. Why did you direct Chief Trombi to send this e-mail?

22 A. For all the reasons I stated a few minutes ago. I thought
23 that having Chief Trombi organize the collection of the videos
24 would be the best route. I believe it was a collaborative
25 effort of the five of us in the room with the meeting in the

15:11:49

1 sheriff's office to do it that way. And I still think to this
2 day it was the best way to go about collecting the videos.

3 Q. However, knowing -- knowing now the specifics in the
4 judge's transcript and also his ultimate order, would you have
5 done this the same way?

15:12:16

6 A. Oh, no.

7 Q. There was some discussion regarding Ms. Wang accusing you
8 of lying to the monitors.

9 Do you recall that?

10 A. Yes, ma'am.

15:12:38

11 Q. There was some discussion regarding that Trombi sent the
12 e-mail without your knowledge.

13 Do you recall that?

14 A. Yes, ma'am.

15 Q. As you sit here now, you know that Chief Trombi was ordered
16 to send out that e-mail, correct?

15:12:46

17 A. Correct.

18 Q. What were you referring to when you were saying that it was
19 out -- without your knowledge?

20 A. Well, that he'd already done it already.

15:13:02

21 Q. You thought maybe you could get to Chief Trombi and say,
22 Hold on, I'd forgotten, and I just agreed with the monitors to
23 handle it a different way"?

24 A. I was surprised that he had done it that quick when I found
25 out that he'd done it.

15:13:22

1 Q. Why?

2 A. Because knowing Dave, he doesn't do anything that fast,
3 usually.

4 Q. So there was a letter that you sent to Chief Warshaw, and
5 it's Exhibit 39, which is in evidence. Following the meetings
6 of the day you drafted this letter, correct?

15:13:45

7 A. I did.

8 Q. Did anyone review it before you sent it?

9 A. No, ma'am.

10 Q. Did you seek counsel's advice before you sent it?

15:14:19

11 A. I tried to.

12 Q. How did you try?

13 A. I tried to contact Mr. Casey by phone, Mr. Liddy by phone,
14 and Christine Stutz by phone, and no one answered.

15 Q. Without getting counsel's review of this, why did you send
16 this letter on May 14, 2014?

15:14:40

17 A. I felt very intimidated by Chief Warshaw in the manner he
18 told me to complete this letter to him, and he wanted it
19 immediately because Judge Snow wanted to see it that next
20 morning as soon as his eyes opened.

15:15:16

21 Q. That was the directive from the monitor?

22 A. Yes, ma'am.

23 Q. And, therefore, you complied?

24 A. Yes, ma'am.

25 Q. Let's go down to the third paragraph, if we could.

15:15:27

1 THE COURT: Do you know, Ms. Iafrate -- well, if
2 you're still on the letter, that's fine. I'll just tell you
3 I'm looking for a stopping point for an afternoon break when it
4 doesn't otherwise interrupt your questioning.

5 MS. IAFRATE: Let me just do one more question.

15:15:43

6 THE COURT: Sure.

7 BY MS. IAFRATE:

8 Q. If you look at the third paragraph in the parenthetical,
9 second-to-last sentence, it talks about a collective decision
10 of the parties.

15:16:00

11 Do you see that?

12 A. I'm sorry. Which paragraph?

13 Q. It's the third paragraph. Starts out with "after a
14 somewhat lengthy discussion."

15 Do you see that paragraph?

15:16:11

16 A. Yes. I'm sorry.

17 Q. That's okay. And then in the parenthetical it talks about
18 a collective decision of all the parties.

19 Do you see that?

20 A. Yes, ma'am.

15:16:22

21 Q. Was it a collective decision on how to proceed?

22 A. Yes, ma'am.

23 Q. And the collection of parties were three attorneys, you,
24 and the sheriff?

25 A. It was.

15:16:32

1 Q. The person that stated to send out an e-mail was you,
2 right?

3 A. I believe it was, yes.

4 Q. After a conversation with the collected parties, correct?

5 A. Yes.

15:16:52

6 MS. IAFRATE: I'm good to take a break.

7 THE COURT: All right. Let's reassemble at 3:30,
8 please. Thank you.

9 (Recess taken.)

10 THE CLERK: All rise. Court is now in session.

15:37:23

11 THE COURT: Everybody ready? Please be seated.

12 MR. STEIN: Your Honor.

13 THE COURT: Yes.

14 MR. STEIN: Sorry for interrupting. I wonder if,

15 before Ms. Iafrate starts, I could be heard briefly at sidebar.

15:37:40

16 THE COURT: Yes.

17 (Bench conference on the record.)

18 THE COURT: You don't oppose if everybody else comes
19 before?

20 MR. STEIN: No.

15:38:00

21 THE COURT: Okay.

22 MR. STEIN: This is Lee Stein, counsel for Chief
23 Deputy Sheridan. My understanding is that Ms. Iafrate is about
24 to begin examining the chief deputy on issues that the Court
25 raised with the sheriff yesterday.

15:38:22

1 THE COURT: Right.

2 MR. STEIN: I have no problem with that examination.
3 My concern is that I think it should be done under seal. And
4 the reason why I think it should be done under seal is the
5 evidence is developing in front of us, its credibility has not 15:38:32
6 been tested, and frankly, I think the testimony could end up
7 being somewhat salacious, embarrassing, gossipy, and we should
8 avoid that if at all possible.

9 THE COURT: You think that the chief will have
10 salacious, gossipy testimony? 15:38:46

11 MR. STEIN: I think that his reporting of the facts
12 could be embarrassing, unnecessarily so.

13 THE COURT: To parties, or to me, or to my wife, or
14 what?

15 MR. STEIN: To Your Honor. And I don't want to feed 15:39:03
16 any unnecessary theatrics in a case that's already getting a
17 lot of attention.

18 THE COURT: I appreciate --

19 MR. STEIN: I don't have any problems with the
20 examination. 15:39:18

21 THE COURT: I appreciate it. It seems to me that I
22 don't have -- I mean, you know, you never know what somebody
23 might find out about you and --

24 MR. STEIN: Right.

25 THE COURT: -- it's always embarrassing, but I -- I've 15:39:27

1 opened that can of worms. So I appreciate your courtesy,
2 Mr. Stein.

3 MR. STEIN: Okay. I wanted to raise it with the
4 Court.

5 THE COURT: Thank you.

15:39:50

6 (Bench conference concluded.)

7 THE COURT: Mr. Stein has indicated and requested that
8 this hearing go under seal. And he's done it out of courtesy
9 to the Court because he says that Chief Deputy Sheridan has
10 some information that he believes may be embarrassing to the
11 Court. I appreciate Mr. Stein's courtesy in that respect.

15:40:10

12 I, of course, have no idea what the information may or
13 may not be or the allegations may or may not be, but I believe
14 that I don't have a basis to put the hearing under seal, and if
15 one develops, it develops. But I -- I think my self-protection
16 is not a basis to do that.

15:40:25

17 So proceed, Ms. Iafrate.

18 MS. IAFRATE: Could I have one more housekeeping
19 matter?

20 THE COURT: Yes.

15:40:36

21 MS. IAFRATE: During the break I was approached by
22 plaintiffs' counsel. They indicated that the information that
23 Mr. Liddy provided at sidebar where plaintiffs were not invited
24 to attend is part of the transcript that they received. They
25 have not read it, but we were wondering how best to protect

15:40:54

1 that area that was said at sidebar regarding information that
2 we were keeping from plaintiffs' counsel.

3 THE COURT: I'm not sure I understand what you said.

4 MS. IAFRATE: Mr. Liddy had a sidebar with you in
5 which I was invited to attend, but plaintiffs were not. At the 15:41:14
6 sidebar he put on the record the information of why he
7 perceived a conflict.

8 THE COURT: Yes.

9 MS. IAFRATE: That information is in the transcript
10 that was provided to plaintiffs. They have not read it, out of 15:41:29
11 courtesy, but they are saying that that information is in the
12 transcript.

13 THE COURT: All right.

14 MS. IAFRATE: So I would ask that that portion be
15 sealed as it relates to the information that was addressed by 15:41:44
16 Tom Liddy at the sidebar.

17 THE COURT: All right. It can be sealed.

18 Without objection?

19 MR. WALKER: No objection, Your Honor.

20 MR. COMO: No objection, Your Honor. We've received 15:41:57
21 the transcript, but I don't -- I haven't looked at it yet, so I
22 don't know whether we have it, but if we do, I will not read
23 it.

24 THE COURT: All right. Thank you.

25 MS. IAFRATE: So Your Honor, should I file something 15:42:07

1 in writing regarding the portion that should be sealed?

2 THE COURT: Yes, please.

3 MS. IAFRATE: Okay.

4 THE COURT: The transcript can go to Ms. Iafrate and
5 to Mr. Casey, but no one else can receive it.

15:42:22

6 MS. IAFRATE: Thank you, Your Honor.

7 BY MS. IAFRATE:

8 Q. Chief Sheridan, before we broke for afternoon break we were
9 talking about the collection of videos based on the May 14,
10 2014 status conference.

15:42:43

11 Do you recall that?

12 A. Yes, ma'am.

13 Q. The chronology of events that we've discussed regarding the
14 meetings, and the e-mail, and the further meetings, made it to
15 the monitor's quarterly report.

15:43:01

16 That's what Ms. Wang told you, correct?

17 A. I don't remember that.

18 Q. Okay. Let me go back, then. There was -- there was some
19 indication that Chief Warshaw said that he did not believe your
20 chronology of events.

15:43:25

21 Are you aware of that?

22 A. Oh, yes. I'm sorry, yes, I do.

23 Q. And again imputing your integrity, correct?

24 A. Correct.

25 Q. What you said in response to that was Chief Warshaw doesn't

15:43:36

1 know Sheridan.

2 What did you mean by that?

3 A. Well, what I took that from, I tried to take where
4 Chief Warshaw was coming from. And some of the law enforcement
5 agencies in his experience as a monitor, he brings a vast pool 15:43:55
6 of knowledge with him, and he's been the monitor for some law
7 enforcement agencies that have had major issues and problems
8 and are known for corruption, violent acts of their officers
9 and those kinds of things.

10 And then he came here to the Maricopa County Sheriff's 15:44:25
11 Office, and I assume that he was bringing those experiences to
12 this organization with him. And now he was dealing with Jerry
13 Sheridan, who he doesn't know, he doesn't know who I am as an
14 individual, as a law enforcement officer. And because I had
15 that lapse of memory, I feel he jumped to the conclusion that I 15:44:50
16 was trying to allow my deputies to destroy videos and that I
17 was not being truthful with him.

18 Q. And that was not accurate, correct?

19 A. Absolutely not.

20 Q. Before we leave the idea of videos, I want to talk to you 15:45:18
21 about a February 2014 e-mail that was discussed with you on
22 direct examination with Ms. Wang.

23 Do you recall that?

24 A. Yes, ma'am.

25 Q. That was an e-mail from Chief Trombi to a variety of 15:45:36

1 people?

2 A. Yes.

3 Q. Explain to me and the Court why Chief Trombi generated that
4 e-mail, if you know.

5 A. As I recall, we had a little gathering in the hallway. We 15:45:51
6 were talking with Chief Freeman, who was the administrative
7 chief, concerning some grants, some -- you know, that may have
8 concerned some videos. And as the conversation progressed, I
9 asked the question: Do we already have these videos,

10 video recording devices? Where are they? Who has them? Is 15:46:27
11 there a policy in place for their usage? And the -- I don't
12 recall the answer to if we had them or not, but I definitely
13 recall the answer that there was no policy in place for their
14 usage.

15 So I told Chief Trombi, I gave him a direct order that 15:46:55
16 no one is to use a video recording device for any reason other
17 than in an interrogation room where we have policies covering
18 those things -- for example, in patrol -- until we have a
19 policy in place.

20 Q. That was once you identified an issue, you implemented a 15:47:20
21 process to start gathering information and then generating a
22 policy?

23 A. Correct.

24 Q. I want to jump backward in time a little bit.

25 How long have you been with the Maricopa County 15:47:58

1 Sheriff's Office?

2 A. As a paid employee, over 36 years.

3 Q. There was a time where you became interim deputy -- or
4 chief deputy, excuse me, correct?

5 A. Correct.

15:48:14

6 Q. Were your job descriptions the same where you were interim
7 chief deputy as when you were promoted to chief deputy?

8 A. Yes, ma'am.

9 Q. So explain just basically -- I don't want to hear every
10 duty that you have, but just generally what is your job
11 description.

15:48:29

12 A. I oversee the daily operations of the entire sheriff's
13 office, three-quarters of which is the jail system. So
14 75 percent of my duties cover the jail system; the other
15 25 percent is the enforcement side.

15:48:57

16 Q. So when you say 75 percent jail, 25 percent enforcement
17 side, is that how you divide your time?

18 A. Not lately.

19 Q. When you became interim chief, that was in September of
20 2010, correct?

15:49:21

21 A. That's correct.

22 Q. And then you became chief deputy in May 2011, correct?

23 A. Yes, ma'am.

24 Q. Describe for me what you spent your time on, the majority
25 of your time on back when you first started at chief deputy.

15:49:33

1 Did you understand that question?

2 A. Yes. The reason I shook my head is because it was a
3 Wednesday evening, sheriff called me in his office, told me he
4 was putting Chief Hendershott on leave, and he looked at me and
5 he said, "Jerry, I need you to help me fix this." 15:50:01

6 And what he meant by that was we had an issue where we
7 had a very broken relationship with the Maricopa County Board
8 of Supervisors, we had little to no communications with them
9 for approximately three years. There were many problems in
10 dealing with that. We need to work hand in hand for the good 15:50:27
11 of the public.

12 And so I spent -- I guess I was naive. I thought
13 well, we could get this done in a couple months, but it took a
14 few years' worth of every day spending vast majority of my time
15 and Chief Freeman with people from the county, county 15:50:53
16 administrators, the board members themselves, where we would
17 work to repair those relationships.

18 And there were pending lawsuits. One of the very
19 first things that I did after I became the interim chief deputy
20 was attend a meeting, I think it was in November of 2010, with, 15:51:25
21 I think, six to eight lawyers from the Department of Justice,
22 and to try and hammer out some of those issues. So I became
23 very involved in that litigation.

24 There were audits that the county ordered. There were
25 audits by the state auditor general. I was very involved in 15:51:58

1 all those issues. And this is on top of the daily operations
2 of the third largest sheriff's office in the country, which
3 includes all personnel issues that come to my level, internal
4 investigations that come to my level, and budget matters,
5 budget issues, decisions. I don't know where to stop. But I
6 hope that gives you an idea of the magnitude of the things that
7 I was dealing with on a daily basis.

15:52:23

8 Q. Were you dealing with the Melendres litigation on a daily
9 basis?

10 A. No, ma'am, not at all.

15:52:41

11 Q. Did you have meetings with the attorneys regarding the
12 Melendres litigation prior to trial?

13 A. No. In fact, I did not even talk to Tim Casey until the
14 end of the trial in August of 2012. I knew who he was, but I
15 don't ever recall having a conversation with him even once.

15:53:14

16 Q. I want to show you what's in evidence as Exhibit 187.

17 Let me stop there.

18 So there was a lot of discussion on direct examination
19 regarding this e-mail from Tim Casey to a variety of
20 individuals, including you, correct?

15:54:00

21 A. Correct.

22 Q. Can you explain why it is that you testified that you did
23 not become aware of the preliminary injunction until March 14
24 when you were being deposed for the DOJ case?

25 A. Well, there's several reasons.

15:54:19

1 Q. Okay.

2 A. First of all, because of what I just explained to you, my
3 workload, Chief Sands was in charge of the enforcement side.
4 Chief Sands was the next in the chain of command. Chief Sands
5 had this case, as far as I knew, from the very beginning, when 15:54:45
6 Chief Deputy Hendershott was in charge. He was, as far as I
7 knew, involved in the litigation from the very beginning, and
8 that he was in contact with Mr. Casey, and so I left that
9 delegation with him. That's the primary reason.

10 The secondary reason is I get a hundred e-mails every 15:55:20
11 day, and so I triage them. This was not one of the issues that
12 was something that I was dealing with, and I knew that --
13 again, Chief Sands and Mr. Casey were dealing with this, so...

14 It also came out on December 23rd after 5 o'clock. I
15 don't even know if I was in the office. A week later after 15:55:56
16 this e-mail came out there was an inmate death, a high profile
17 inmate death, Marty Atencio in intake, that I was dealing with.

18 A week after that, January 8th, 2012, we had a deputy
19 sheriff, Bill Coleman, shot and killed in a very violent gun
20 battle. There was a funeral a week after that. And so I am 15:56:29
21 not aware of ever opening, remembering, that e-mail, for those
22 reasons.

23 Q. Now, Chief, in response to my answer, you were talking
24 about the priorities that you were dealing with, correct?

25 A. Yes, ma'am. 15:56:56

1 Q. You're not excusing the fact that MCSO did not properly
2 disseminate the preliminary injunction, are you?

3 A. Not at all. And I believe a little earlier I even took
4 responsibility for that.

5 Q. On this Exhibit 187 from Tim Casey the first sentence
6 starts out with: "In follow-up to my recent telephone call."

15:57:17

7 You were here when Chief Sands testified, correct?

8 A. Yes, ma'am.

9 Q. And Chief Sands testified that he had a telephone call with
10 Tim Casey shortly after the preliminary injunction was issued?

15:57:39

11 A. Yes.

12 Q. He said no one else was on that telephone call, correct?

13 A. I believe so.

14 Q. Were you on that telephone call between Tim Casey and Brian
15 Sands?

15:57:56

16 A. No.

17 Q. Let me ask you this: How is it that you normally get
18 information regarding lawsuits?

19 A. Usually an e-mail and a follow-up phone call from counsel.

20 Q. When you were involved, you had mentioned in response to
21 one of my answers the DOJ case, right?

15:58:43

22 A. Yes.

23 Q. What were you actively involved in that case?

24 A. Yes, ma'am.

25 Q. Were you deposed?

15:58:55

1 A. Yes, ma'am.

2 Q. Did you talk to attorneys frequently?

3 A. Yes.

4 Q. Did you know the process that that case was going through?

5 A. Yes. And we talk to this day on a frequent basis.

15:59:11

6 Q. In the Melendres case, did you talk to the attorneys in
7 preparation for trial?

8 A. No, ma'am. As I stated a minute ago, I'd never talked to
9 either Tim Casey or Tom Liddy about the Melendres case until
10 after it was concluded.

15:59:39

11 Q. In the Melendres case were you deposed?

12 A. No, ma'am.

13 Q. Did you testify?

14 A. No, ma'am.

15 Q. Did you make the determination of whether or not to appeal
16 or not --

15:59:47

17 A. No, ma'am.

18 Q. -- the preliminary injunction?

19 A. No, ma'am.

20 Q. Now, we already talked about the videos of the briefing,
21 and the fact that you already stood before the Court and you
22 were reprimanded for the things that you said, correct?

15:59:55

23 A. Yes, ma'am.

24 Q. And in fact, you said you had few regrets in your life, not
25 just your career but your life, and that was number one regret.

16:00:20

1 You take it that seriously?

2 A. Out of the two regrets I have in my life, that's
3 number one, yes.

4 Q. I couldn't help but notice that during that briefing you
5 were somewhat demonstrative. 16:00:53

6 Would you agree or disagree with that?

7 A. I would agree.

8 Q. And why -- why were you briefing the troops in that way?

9 A. I don't know if you noticed or not, but I'm a very
10 emotional person. It's hard for me to hide those emotions. I 16:01:14
11 was angry. I was excited. I was worried about their safety.
12 And I was trying to show them that they had the support of
13 their chief deputy. And not to worry about anything other than
14 going out there and being safe.

15 Q. That was a briefing for what purpose? 16:01:58

16 A. It was a briefing after the briefing. Captain Lopez -- if
17 you watch that whole video, Captain Lopez, I believe
18 Lieutenant Sousa, laid out the directions, the new paperwork,
19 all the other issues that were necessary to comply with the
20 order, and they impromptly asked me to speak to the group, and 16:02:25
21 so that's what I did.

22 Q. So that was a briefing that dealt with portions of the
23 preliminary injunction?

24 A. Yes, ma'am. That's primarily what it was, the new
25 procedures for collecting data and some other issues 16:02:47

1 surrounding it about racial profiling, to remind them about
2 the -- the order itself, about the detaining individuals, so
3 on, so forth.

4 Q. Do you know who Chief MacIntyre is?

5 A. Yes, ma'am.

16:03:18

6 Q. He's not a sworn officer, correct?

7 A. Correct.

8 Q. Has he ever been in charge of a sworn division?

9 A. No, ma'am.

10 Q. You were deposed on March 20th, 2015, correct?

16:03:38

11 A. Yes.

12 Q. And you were deposed by Ms. Wang?

13 A. Yes.

14 Q. She asked you what Chief MacIntyre's role was, correct?

15 A. Correct.

16:03:56

16 Q. I want to show you --

17 MS. IAFRATE: Could we switch back to this? Thank
18 you.

19 MS. WANG: Your Honor, objection, hearsay.

20 THE COURT: Are you asking what Ms. Wang asked the
21 chief at deposition?

16:04:33

22 MS. IAFRATE: Yes.

23 THE COURT: Are you asking for the truth of the matter
24 asserted?

25 MS. IAFRATE: I'm asking did she ask this question and

16:04:48

1 he provided her with that information, yes.

2 THE COURT: I think the objection's sustained. You
3 can just ask him now.

4 BY MS. IAFRATE:

5 Q. Chief Sheridan, you know who Chief MacIntyre is?

16:05:01

6 A. I do.

7 Q. And he's sitting in the courtroom, correct?

8 A. Yes.

9 Q. What is Chief MacIntyre's role in the Ortega Melendres
10 litigation?

16:05:17

11 A. None.

12 Q. There were some questions by the judge yesterday regarding
13 certain issues that -- that may or may not be encompassed in
14 the order to show cause, but were relevant to his
15 decision-making.

16:05:49

16 You heard that exchange between the judge and Sheriff
17 Arpaio, correct?

18 A. Yes, ma'am.

19 Q. I want to start out by asking you: Who chose to transfer
20 Captain Bailey to PSB?

16:06:06

21 A. Me.

22 Q. Why did you do that?

23 A. I don't remember if it was a conversation with the monitor
24 team, or if it was just I got the feeling from them that

25 Captain Holmes wasn't moving fast enough. A lot was going on.

16:06:32

1 When we discovered the issue surrounding
2 Deputy Armendariz it created a firestorm, a frenzy of activity.
3 Chief Holmes -- excuse me, Captain Holmes is more methodical
4 and slow. I knew Captain Bailey very well. He is a
5 high-energy, competent, experienced detective and leader, and
6 that he would be the best choice under those circumstances to
7 lead that investigation.

16:07:03

8 Q. Did you know what division Captain Bailey was being
9 transferred from?

10 A. Yes, ma'am.

16:07:29

11 Q. Where was that?

12 A. That would be Special Investigations.

13 Q. Was Captain Bailey in charge of HSU?

14 A. He was at the time, but it was for a very short period of
15 time. Just a matter of maybe a couple of months at the most.

16:07:45

16 And I left something out, too. One of the other main
17 concerns I had was Captain Bailey, then Lieutenant Bailey, was
18 in charge of the HIDTA team, that's the high intensity drug
19 trafficking. And during that time he had a former HSU deputy
20 that worked for him, Deputy Navarrette, who he obtained
21 information that deputy Navarrette was dealing drugs with a
22 drug cartel.

16:08:14

23 He came to me, Lieutenant Bailey came to me when I was
24 the chief deputy, told me this information, and I sent him to
25 investigate the matter using a wiretap. He did a very lengthy

16:08:38

1 wiretap over many months. Deputy Navarrette is now in prison.

2 There was another deputy that was caught up in that,
3 again another former HSU deputy, that was implicated in the
4 wiretap that he was selling guns to several of these cartel
5 members. Unfortunately, we didn't have enough evidence to file 16:09:12
6 criminal charges against him, but we were able to terminate him
7 for truthfulness.

8 So with that kind of background I -- I'm -- I didn't
9 think -- I know that's an impeccable background for somebody to
10 be the leader of our Internal Affairs division. 16:09:37

11 Q. Even though he was briefly in charge of HSU?

12 A. Yeah, to me that inconsequential --

13 Q. Why?

14 A. -- compared to everything I just told you about him.

15 Q. How about the fact that as head of PSB, and HSU was in the 16:09:56
16 hot seat, that he would have to investigate -- or his unit
17 would have to investigate individuals that he was most recently
18 the supervisor of?

19 A. Well, now I'm remembering another piece. There was another
20 piece, too. Captain Bailey also came to me, and I don't 16:10:18

21 remember if he was a lieutenant or not, but HSU was in that
22 division but didn't work for Lieutenant Bailey. It must have
23 been when he got promoted to captain, because we did discuss
24 the duties of HSU. And we made the decision that they were no
25 longer going to do any kind of human smuggling, those kinds of 16:10:48

1 things. We pretty much sidelined them from doing that kind of
2 activity. That was Captain Bailey's idea.

3 So he understood, he understood the Court's order. He
4 understood how HSU was to operate and not to operate. He took
5 a look at the grant that funded a lot of the HSU operations. 16:11:17
6 We tailored HSU operations to only do drug interdictions, and
7 so HSU, in its prior form, didn't exist under Captain Bailey's
8 command like it had prior.

9 Q. I want to show you an exhibit that the Court showed Sheriff
10 Arpaio yesterday. It's Exhibit 522. 16:11:51

11 THE CLERK: Correct.

12 MS. IAFRATE: Would you mind, please, giving that to
13 the witness? Thank you.

14 THE CLERK: (Handing exhibit to witness.)

15 THE WITNESS: Thank you. 16:12:07

16 BY MS. IAFRATE:

17 Q. Chief, have you seen that article before?

18 A. Yes, ma'am.

19 Q. Is it accurate?

20 A. Is what accurate? 16:12:28

21 Q. The article.

22 A. Absolutely not.

23 Q. I want to talk to you about some of the items that were
24 discussed yesterday with Sheriff Arpaio. Okay?

25 A. Do I have a choice? 16:12:47

1 Q. No, you do not.

2 A. Okay.

3 Q. It's either me or the judge, so I'll go first.

4 There was an investigation that was discussed, someone
5 called it the Seattle investigation.

16:13:01

6 Do you know what I'm referring to?

7 A. Yes, ma'am.

8 Q. What is it?

9 A. In a nutshell, the Seattle investigation was where we had a
10 confidential informant that had information about computer
11 tampering crimes, where he had information that the CIA hacked
12 into individual bank accounts, I think there were approximately
13 50,000 of them, Maricopa County residents. He had their names,
14 their bank account numbers, and their dollar amounts.

16:13:20

15 Q. Who made the determination to investigate these issues?

16:14:01

16 A. Sheriff and I.

17 Q. When you made that determination, did you seek anyone
18 else's advice on how to proceed with this investigation?

19 A. Yes, ma'am.

20 Q. Who?

16:14:19

21 A. We went to the Arizona Attorney General with this
22 information.

23 Q. And following your conversation did you ensue an
24 investigation?

25 A. Yes.

16:14:33

1 Q. What became of that investigation?

2 A. Eventually, nothing.

3 Q. Why is that?

4 A. Because we found it difficult to determine the credibility
5 of the informant.

16:14:53

6 Q. The credibility of an informant in attempting to make a
7 criminal case is vital, correct?

8 A. Yes, ma'am.

9 Q. So if you were doubting the credibility of the confidential
10 informant, the investigation went nowhere?

16:15:11

11 A. That's correct.

12 Q. There was some discussion regarding how you pay
13 confidential informants. Do you know the source of the money
14 for that confidential informant?

15 A. I do.

16:15:30

16 Q. Where? What was the source?

17 A. RICO funds.

18 Q. And who is responsible for determining what fund is used?

19 A. It's normal standing operating procedure that we pay
20 informants using those RICO funds.

16:15:44

21 Q. There was another investigation that the judge queried
22 Sheriff Arpaio about. Do you recall that?

23 A. Yes, ma'am.

24 Q. The question that I think -- and I don't mean to put words
25 in his mouth, but what the judge asked was: Do you know of

16:16:04

1 anyone that investigated Judge Snow or a family member?

2 Do you recall that question?

3 A. Yes, ma'am.

4 Q. Do you know of anyone that investigated Judge Snow or a
5 family member of Judge Snow?

16:16:20

6 A. The reason I'm hesitating in answer -- answering the
7 question is because I've been around lawyers for the last five
8 years and I know words mean certain things. We did not
9 investigate Judge Snow's wife.

10 Q. Who was investigated?

16:16:48

11 A. We contacted an individual that talked to Judge Snow's
12 wife.

13 Q. How did you find out about this conversation with an
14 individual and Judge Snow's wife?

15 A. An individual sent a private Facebook page message to
16 Sheriff Arpaio in August of 2013.

16:17:04

17 Q. And what was the content of that Facebook message?

18 A. I'd rather not say.

19 Q. Well, I'm asking you what it said. If I sit down and the
20 judge chooses to ask that very same question, are you going to
21 answer it?

16:17:40

22 A. I will answer the question if the Court orders me to answer
23 that question.

24 THE COURT: Well, let me ask you, was it about me?

25 THE WITNESS: Yes, sir.

16:17:56

1 THE COURT: And did it make allegations that I was
2 doing something illegal?

3 THE WITNESS: No, sir.

4 THE COURT: Did it make allegations that I was biased
5 in this litigation?

16:18:08

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. You may go ahead and answer.

8 BY MS. IAFRATE:

9 Q. Do you remember the question?

10 A. Could you please repeat it?

16:18:17

11 Q. Sure. You were talking about this Facebook message that
12 went to the sheriff's office, and I asked you what was the
13 content of the message.

14 A. Yes. I can't quote it verbatim, but it was -- I know
15 Judge Snow's wife. She told me he hates you and he wants to
16 see you out of office.

16:18:40

17 Q. Did you identify who that message was from?

18 A. Yes. The header from the individual that it came from was
19 Karen Grissom.

20 Q. Did you learn -- subsequently learn more about how
21 Ms. Grissom came to get this information that Judge Snow's wife
22 said that Judge Snow hates the sheriff and wants to get him out
23 of office?

16:19:11

24 A. Yes, ma'am.

25 Q. What did you -- what did you learn subsequently?

16:19:30

1 A. I learned that Ms. Grissom was at a restaurant in the
2 East Valley with her husband and her adult son. They were met
3 by Judge Snow's wife and his daughter near the counter to pay
4 the cashier. Apparently, they knew each other from when they
5 were children growing up in Yuma, I believe, and that
6 Judge Snow's wife recognized her as childhood friends, but
7 actually she mistook her for her other -- for Ms. Grissom's
8 sister, and they had a conversation about life, they hadn't
9 seen each other for years, and then this conversation occurred.

16:20:06

10 Q. So why -- why was Ms. Grissom being investigated?

16:20:38

11 A. I'm sorry, what was that question?

12 Q. Why was Ms. Grissom being investigated?

13 THE COURT: If I understood correctly, Ms. Iafrate,
14 Ms. Grissom was not being investigated. She was the person who
15 wrote the e-mail to the sheriff.

16:20:58

16 MS. IAFRATE: She was the person who wrote the e-mail
17 to the sheriff and then subsequently was investigated.

18 THE COURT: Oh, I didn't know that.

19 THE WITNESS: Well, no one was investigated.

20 BY MS. IAFRATE:

16:21:10

21 Q. Okay. The investigator spoke to her?

22 A. She was interviewed, her husband was interviewed, her son
23 was interviewed, for the veracity of Ms. Grissom's Facebook
24 message to the sheriff.

25 Q. And were the husband and the son present when -- supposedly

16:21:26

1 present when this statement by Ms. -- by Judge Snow's wife was
2 made?

3 A. Yes, as well as His Honor's daughter, also.

4 Q. Ultimately, following the interviews of these individuals
5 was the statement deemed credible?

16:21:54

6 A. Yes.

7 THE COURT: Maybe we ought to go back. I missed the
8 whole investigation.

9 MS. IAFRATE: Okay.

10 THE COURT: It probably makes sense to only go through
11 this once.

16:22:07

12 MS. IAFRATE: Yes.

13 THE COURT: So I got that Karen Grissom, who is an
14 acquaintance or a friend of my -- childhood friend of my wife
15 from Yuma, met my wife and daughter in a restaurant, said
16 something about what I supposedly feel about Sheriff Arpaio. I
17 didn't hear -- and then you said there was an investigation.

16:22:21

18 Who did the investigation?

19 MS. IAFRATE: Okay, so let me back up. I used the
20 wrong verb, Your Honor.

16:22:39

21 THE COURT: Okay.

22 BY MS. IAFRATE:

23 Q. You said an investigator interviewed Ms. Grissom.

24 THE COURT: Can we go back? Can we jointly ask these
25 questions?

16:22:49

1 MS. IAFRATE: Sure.

2 THE COURT: Who hired the investigator?

3 THE WITNESS: Mr. Casey.

4 THE COURT: All right. And so do you mind if I ask a
5 question? You can interrupt me.

16:23:04

6 MS. IAFRATE: I will not interrupt you.

7 THE COURT: Please do.

8 MS. IAFRATE: I will not.

9 THE COURT: In all seriousness, Ms. Iafrate, I think
10 that if you have objections or if anybody else does, they ought
11 to make them, even though I -- I'm asking questions.

16:23:13

12 EXAMINATION

13 BY THE COURT:

14 Q. I take it, then, that the sheriff discussed this e-mail
15 with his counsel?

16:23:25

16 A. That's correct, Your Honor.

17 Q. All right. And I take it, then, that the decision was
18 made, by whom I don't know, that there should be an
19 investigator that would contact Ms. Grissom.

20 A. That's correct.

16:23:38

21 Q. All right. And it's your understanding -- or do you know
22 that Mr. Casey hired that investigator?

23 A. I do know that, yes, he did.

24 Q. All right. Are you aware that Mr. Casey has filed a press
25 release which, while acknowledging -- I read the press release

16:23:50

1 because he sent it to my office. You're aware that Mr. Casey,
2 while acknowledging that he has duties to you and not
3 commenting on it, denies that he was involved in any way, or he
4 says -- he doesn't deny anything, but he says something to the
5 effect that he's confident that when the materials are
6 evaluated he was not involved in any way in the investigation
7 of me or a member of my family.

16:24:09

8 And is it your view that you were at a conversation in
9 which that just simply isn't true? That if I read it that way,
10 my understanding is wrong?

16:24:25

11 A. Your Honor, that -- that's where I started out saying it
12 depends on how you define "investigated your wife," because
13 no one, no one ever went any further than just verifying that
14 conversation --

15 Q. All right.

16:24:49

16 A. -- occurred.

17 Q. Mr. Casey hired, if not an investigator, somebody?

18 A. That's correct.

19 Q. And that somebody went and talked to Ms. Grissom?

20 A. Correct.

16:24:58

21 THE COURT: Okay.

22 CROSS-EXAMINATION CONTINUED

23 BY MS. IAFRATE:

24 Q. And also spoke to her husband and her grown son?

25 A. Correct.

16:25:07

1 Q. Who also heard the statements?

2 A. Who verified her statement, yes.

3 THE COURT: Okay. I'm with you. Go ahead.

4 BY MS. IAFRATE:

5 Q. Okay. So based on this investigation, what was done with
6 this information? I don't want you to reveal attorney-client
7 privilege, but ultimately, what was the end game of these
8 interviews with these individuals?

16:25:18

9 A. Nothing.

10 MS. IAFRATE: I believe I'll stop there, Your Honor.

16:25:39

11 THE COURT: Okay. Thank you.

12 Do you have any more? You're through with your
13 examination?

14 MS. IAFRATE: Yes.

15 THE COURT: All right.

16:25:48

16 Mr. Walker?

17 MR. WALKER: Your Honor, I would like to defer on this
18 witness also, particularly since he's going to be coming back
19 in June in any event.

20 THE COURT: All right.

16:26:00

21 Mr. Como.

22 MR. COMO: I don't have any questions at this time,
23 Your Honor.

24 FURTHER EXAMINATION

25 BY THE COURT:

16:26:31

1 Q. You know, I've got some questions that may be helpful for
2 both of us in terms of where we're going. You and I have had
3 some unpleasant interactions; I think you indicated that early
4 on.

5 A. Yes, sir.

16:26:43

6 Q. I think you've done some wrong things and I told you so,
7 did I not?

8 A. Yes, sir, you have.

9 Q. I also have mentioned when I thought you did things that
10 were praiseworthy, have I not?

16:26:51

11 A. I've also noted that, too, thank you.

12 Q. All right. You talked about people needing to know who
13 Jerry Sheridan is. And I do need to know who Jerry Sheridan is
14 to some extent, as I'm required to make the decisions that I'm
15 required to make.

16:27:07

16 You understand that?

17 A. I do, Your Honor.

18 Q. It strikes me that you're a person who values loyalty.

19 Is that a fair statement?

20 A. Yes, sir.

16:27:20

21 Q. Let me tell you that in your testimony this morning you
22 said something that I want to talk to you a little bit about
23 before we go on with other questions, because I don't want to
24 give you the impression that I want you to dump on anybody, but
25 I also don't want to give you the impression that I want you to

16:27:39

1 take responsibility for the actions of other people.

2 And this morning, in testimony when you were
3 discussing the conversation which is the third article of
4 contempt that I've talked about, which is the conversation that
5 you had with Chief Trombi in directing him to send out e-mail?

16:28:00

6 You know what I'm talking about?

7 A. Yes, sir.

8 Q. And you have accepted responsibility for giving that
9 direction, but this morning I think you said something like:
10 Well, I accept responsibility for giving the direction, but I
11 think we were all discussing it.

16:28:14

12 Do you remember that, when you said something like
13 that?

14 A. Yes, sir.

15 Q. All right. I'm not sure that I'll ask you all my questions
16 today, but I think it would be profitable for us to at least
17 start.

16:28:22

18 When I ask you questions, I understand that you have
19 a -- or I believe that you value loyalty. If it is true that
20 you were alone responsible for decisions or things that I'm
21 asking you about, I want you to tell me that. But if it is
22 true that you, in addition to others, participated in
23 decisions, I want you to tell me that, too. In other words, I
24 want you to tell me the truth and the whole truth. Okay?

16:28:41

25 A. Yes, sir.

16:29:01

1 Q. And the whole truth sometimes means that if you did it,
2 and -- or if you did something and you did it alone, you say
3 so. But I don't want you to, for example, assume
4 responsibility alone if that's not your responsibility.

5 Can we agree to that?

16:29:19

6 A. Yes, sir.

7 Q. And by that I'm not trying to suggest that you dump on
8 Sheriff Arpaio, either. I just -- I just want the truth.

9 As I did with him, I just want to be sure that you're
10 conceding the civil contempt on the preliminary injunction
11 order. You're conceding that you are in civil contempt for
12 violating that order, is that correct?

16:29:37

13 A. That's correct, Your Honor.

14 Q. And if I understand correctly, you're also conceding that
15 you're in contempt for the communication you had with Sheriff
16 Trombi that resulted in the large dissemination, not
17 necessarily because it was a bad way of doing things in your
18 mind, but because it violated my order, is that correct?

16:29:52

19 A. That's correct, Your Honor.

20 Q. You've already talked about, and I don't know that we have
21 to spend a lot of time talking about, the fact that SID was
22 where -- well, I'm now on the May 14th time frame, right?

16:30:11

23 You and I had the discussion on May 14th -- this
24 wasn't the bad discussion where I held your feet to the fire,
25 but this is where you came forward, you showed me all the stuff

16:30:38

1 that was in the Armendariz house, I told you -- and we had the
2 discussion about quietly gathering stuff.

3 You're there with me?

4 A. Yes.

5 Q. All right. I did express to you in this discussion, do you 16:30:50
6 remember this, that I had concern about you conducting the
7 investigation because there were so many potential conflicts of
8 interest.

9 A. Correct.

10 Q. Do you remember that? 16:31:01

11 A. Yes, sir.

12 Q. And you knew that a lot of the de -- a lot of the
13 investigation would have to be done by your internal
14 investigation folks, which I think you call the PSB?

15 A. We do now, yes. 16:31:18

16 Q. Was it then still Internal Affairs?

17 A. Yes, sir.

18 Q. All right. And as we've said, Bailey came from Special
19 Investigations.

20 A. Yes. 16:31:30

21 Q. And that's the person that you put in charge of Internal
22 Affairs shortly after you -- shortly after our May 14
23 conversation, within a month or so.

24 A. That's correct.

25 Q. All right. And in his role as the -- at Special 16:31:44

1 Investigations, he had supervisory responsibility for
2 Deputy Armendariz for a short period of time, right?

3 A. Yes.

4 Q. And I think it was, like, three months. That sound about
5 right?

16:32:03

6 A. It may not have even been that long, Your Honor, because
7 I -- I know he was the one that actually got Charley
8 transferred out of HSU.

9 Q. Well, you understood, and we'll go through this in a
10 minute, but you understood that we're concerned about the
11 supervision of Deputy Armendariz, and that that was one of the
12 things that was eventually investigated and that is still being
13 investigated, correct?

16:32:22

14 A. Correct.

15 Q. And you also understood that we had all this array of
16 material in the Armendariz home that apparently came from what
17 looked to be like his HSU responsibilities, correct?

16:32:33

18 A. Correct.

19 Q. And that among those things there were a bunch of
20 identifications. There were Mexican identifications, there
21 were other identifications from other areas of the country,
22 there were all kinds of identifications and other things.

16:32:50

23 You understood that, correct?

24 A. Yes, sir.

25 Q. In addition to those identifications, there was Mexican

16:33:05

1 money in various denominations in the Armendariz home, was
2 there not?

3 A. I believe there was.

4 Q. There was a bunch of drugs?

5 A. Yes.

16:33:25

6 Q. There were credit cards?

7 A. Yes.

8 Q. And there were bank cards and debit cards and gift cards?

9 A. Yes, sir.

10 Q. And there were passports, license plates, all kinds of
11 things.

16:33:31

12 A. Yes, sir.

13 Q. All right. Now, when he came to PSB he brought with him
14 Sergeant Tennyson, right? Or do you know?

15 A. I don't know. I -- I don't know, sir.

16:33:46

16 Q. Is Sergeant Tennyson a homicide investigator? I will tell
17 you, I may be wrong, but I'm under the impression that he
18 brought Sergeant Tennyson with him from the homicide
19 department.

20 A. I don't recall, sir, sorry.

16:34:04

21 Q. There are divisions within the PSB as you've now set it up,
22 right?

23 A. Yes. There's the criminal division, and then there's the
24 administrative division, and that's been that way for a long,
25 long time.

16:34:17

1 Q. All right. And unlike other police departments, if a
2 police officer commits a crime, let's say, for example,
3 aggravated assault, it's not -- pardon me -- it's not
4 investigated by the normal investigators, it's investigated by
5 the PSB. In other words, it's not investigated by somebody who
6 would investigate me for aggravated assault.

16:34:39

7 A. That's correct, Your Honor. It would be investigated by
8 the criminal section of our Professional Standards Bureau.

9 Q. All right. So you have a criminal section and you have
10 what you call the administrative section, right?

16:34:55

11 A. Yes, sir.

12 Q. So the criminal section investigates officers who are
13 actually under suspicion for crimes. And it does the -- it
14 does those investigations as opposed to the assault and battery
15 unit. I know that's not a unit, but you know what I'm saying?

16:35:09

16 A. Yes, sir.

17 Q. And then you have the administrative unit. What does the
18 administrative unit investigate?

19 A. They would investigate citizens' complaints, policy
20 violations, those types of things, personnel issues.

16:35:22

21 Q. And they would investigate to see things for violations of
22 MCSO policy?

23 A. Yes, sir.

24 Q. And MCSO policy violations can result in internal
25 discipline, but not criminal prosecution.

16:35:37

1 A. Correct.

2 Q. When a complaint comes in, who determines which will be
3 assigned to what? I mean, who determines whether the complaint
4 is assigned to criminal or to administrative?

5 A. Captain Bailey and myself would make that decision, sir. 16:35:57

6 Q. All right. So you're pretty involved in the operation of
7 PSB?

8 A. Yes. Captain Bailey reports directly to me.

9 Q. And so when a matter comes in, Captain Bailey brings it to
10 you. You and he decide whether it's going to be assigned to 16:36:14
11 the criminal or to the administrative.

12 A. Yes, sir.

13 Q. Who assigns an officer to investigate?

14 A. That would be Captain Bailey's decision.

15 Q. Ultimately, in the criminal division who decides whether a 16:36:32
16 criminal matter should be taken to the county attorney?

17 A. I'm not sure I understand your question, Your Honor.

18 Are you talking now about just a normal somebody from
19 General Investigations Division, or normal --

20 Q. No, no, no, no, no. If you in the PSB criminal division 16:36:57
21 decide that there ought to be a criminal prosecution for
22 something that an officer has done, you have to take that to
23 the county attorney for a decision, right?

24 A. Yes, sir.

25 Q. Who makes that decision? 16:37:15

1 A. That would be, again, made with discussion between the
2 detective that's investigating the crime, the captain, and
3 myself, usually.

4 Q. And then you'd take it to the county attorney?

5 A. Yes, sir.

16:37:30

6 Q. Or I'm not saying you, but somebody in that group would
7 take it to the county attorney for a charging decision.

8 A. Yes. The detective that investigated the incident.

9 Q. Now, do you make the final decision on administrative
10 discipline as well?

16:37:44

11 A. No, sir.

12 Q. Who does?

13 A. That's delegated to -- for the deputies, Deputy Chief
14 Lopez, or for the detention side it would be Deputy Chief John
15 Marshon.

16:38:02

16 Q. Okay. Now we -- I think I heard testimony, I know I heard
17 testimony that suggested that if you delay too long in
18 completing an administrative investigation, that limits the
19 dis -- pardon me -- the disciplinary options that can be
20 imposed on an officer, even if they have violated a Maricopa
21 County -- or MCSO policy.

16:38:26

22 A. Yes and no, Your Honor. There -- it's -- there is a
23 timeline that is set by state statute that we could still
24 discipline someone. However, upon appeal by that individual,
25 most likely it would be overturned if they appealed their

16:38:59

1 discipline.

2 Q. So if an administrative investigation goes too long, you
3 just don't impose discipline. Or you don't impose -- impose
4 serious discipline.

5 A. For the most part, no. We -- we haven't really run into
6 that too much.

7 Q. But a delay in conducting an administrative investigation
8 would be important and unfortunate?

16:39:14

9 A. That's correct. I know I had to sign some letters for
10 Mr. Vogel because the investigation was going beyond the time
11 period. That extends that time period. That doesn't absolve
12 us of exceeding that time period, but it would be arguable
13 during the personnel hearing that we followed some due process,
14 and it would be up to the -- the board, the merit commission,
15 to decide whether that discipline would stand if it was major
16 discipline or not.

16:39:37

16:40:04

17 But we have never had that challenged as yet.

18 Q. In any case, Sergeant Tennyson, whether he was a homicide
19 detective or what, was assigned to do a criminal investigation
20 for the materials found in the Armendariz home.

16:40:21

21 A. That's correct.

22 Q. And he was subject to the oversight of my monitor staff,
23 correct?

24 A. Correct.

25 Q. And my monitor staff didn't think he did a very good job,

16:40:30

1 did they?

2 A. No, sir.

3 Q. And in fact, they issued a report to me about which I held
4 a hearing, and you were present at that hearing, and it was in
5 late October, right? Do you remember it?

16:40:47

6 A. I remember the hearing, sir.

7 Q. That was part of the one -- that was part of the same
8 hearing where I was --

9 A. I try and forget those kinds of things, but yes, I
10 remember.

16:40:58

11 Q. All right. And do you remember that at the beginning of
12 that hearing I had my monitor, and I'm not going to read it all
13 to you, but I had him outline some of the concerns he had with
14 the criminal investigation that had been performed by Captain
15 Tennyson. You remember that?

16:41:14

16 A. Yes, sir.

17 Q. I'm just going to read you one paragraph. I'd like at this
18 time to emphasize -- this is Mr. Warshaw -- in our collective
19 judgment as a monitoring team, and we have hundreds of years of
20 experience, we have never seen, having seen a good number of
21 the interviews that occurred as part and parcel of that
22 criminal inquiry, we had never seen a more deficient,
23 unprofessional set of aimless interviews, interviews replete
24 with extraordinary familiarities, informalities, and apologetic
25 treatment towards those who are being interviewed. This, in

16:41:28

16:41:45

1 our view, Your Honor, called into question the seriousness in
2 which the MCSO had taken the order of this Court.

3 He said that, right? Or you remember him saying
4 something like that?

5 A. I remember something like that, yes, sir. 16:41:58

6 Q. And do you remember that I indicated in that hearing that
7 I'd actually watched a videotape of one of Sergeant Tennyson's
8 interviews and I was very unimpressed?

9 A. I do remember that, yes, sir.

10 Q. And do you remember that there were a number of other 16:42:13
11 problems that we discussed relating to the investigation as I
12 perceived it, and we moved forward? Or we -- we had a long
13 hearing then.

14 Do you remember some of those things? And I've lost
15 my notes. You remember that? 16:42:30

16 A. Yes, sir.

17 Q. Do you remember that one of the things we raised in that
18 hearing is it became clear to us at that time that Detective
19 Bailey had, in fact, directly supervised Sergeant Armendariz.

20 You remember that? 16:42:58

21 A. Yes, sir.

22 Q. We raised it with him?

23 A. Yes, sir.

24 Q. And then do you remember that Chief Warshaw called you the
25 next day and said: You can't have Bailey interviewing 16:43:07

1 Armendariz about -- or Armendariz was dead by that time, but
2 you can't have Bailey conducting his own interview of himself
3 for his supervision of Armendariz and for all that may have
4 happened in his home. And he suggested -- or I don't know
5 whether he suggested or directed that you get an outside
6 investigator to handle that investigation.

16:43:25

7 Do you remember that?

8 A. Yes, sir.

9 Q. And within a day or two you wrote him back and said that
10 you'd hired Detective Vogel to do the -- to be an independent
11 investigator.

16:43:38

12 A. Yes, sir.

13 Q. Do you also recall that in the course of that --
14 approximately that time -- and I don't know if you've seen
15 this, Chief, but I'm going to give it to you anyway.

16:44:04

16 THE COURT: And I'm going to have my clerk mark it.
17 It's materials -- mark it as an exhibit, please.

18 I'm not going to introduce it because I'm not sure the
19 chief has the foundation, but I'm going to show it to you.

20 We were -- my monitor was provided this incident
21 report. I've got copies for all counsel. It's MELC028130 --
22 these are the Bates numbers -- through MELC028159.

16:44:24

23 If you'd just distribute that to counsel, Ms. Iafrate,
24 I'd appreciate it.

25 I need one, Kathleen. I just gave away all mine. If

16:44:45

1 you can pull one back.

2 BY THE COURT:

3 Q. And have you seen this before?

4 A. No, I have not.

5 Q. Are you capable of recognizing Sergeant Whelan's signature? 16:45:03

6 Do you know it or not?

7 A. I -- I don't know it, but it looks like probably
8 Sergeant Dimitri Whelan.

9 Q. And this -- what is this?

10 MS. IAFRATE: Your Honor, could I just clarify? This 16:45:18
11 is not Sergeant Dimitri Whelan.

12 THE COURT: Oh, okay. I don't know who it is.

13 MS. IAFRATE: Okay. I just wanted to clarify so that
14 that wasn't on the record.

15 BY THE COURT: 16:45:34

16 Q. And what is this? What does it look like it is?

17 A. This is an incident report for found property.

18 Q. And it looks like the found property was dropped off at
19 property and evidence for destruction, correct?

20 A. That's correct. 16:45:49

21 Q. And it is Sergeant Frei who says --

22 A. Oh, reviewed by, okay.

23 Q. Is it "Fray" or "Fry"? Am I mispronouncing it?

24 A. I'm not familiar with him.

25 MS. IAFRATE: Your Honor -- 16:46:04

1 THE COURT: Neither one of us know --

2 MS. IAFRATE: -- Sergeant "Fry."

3 BY THE COURT:

4 Q. Okay, Sergeant "Fry." And he has been holding on to all of

5 these identifications for five years, and he's being -- and 16:46:13

6 he's dropping them off for destruction, and he says the

7 identifications were used for training purposes only, as most

8 of the criminal employment unit was certified in document

9 examination and had some training in forged fraudulent

10 questioned documents. 16:46:30

11 Do you see where he's saying that?

12 A. Yes, sir.

13 Q. And he says he's attaching the identifications, and they

14 have been attached.

15 And do you see those? 16:46:40

16 A. I do.

17 Q. But the very first page is not identifications, is it?

18 A. No, sir.

19 Q. It's a memo from Sergeant Frei to Captain Bailey written in

20 May when Captain Bailey was still the Special Investigations 16:47:01

21 division, right? Or that's what it looks like?

22 A. That -- yes, sir.

23 Q. And it says, gosh, I've got all these identifications. And

24 see the attached photocopies. And so it looks like Sergeant

25 Frei has written this memorandum to Captain Bailey, right? 16:47:23

1 A. Yes, sir.

2 Q. And then there's a bunch of identifications that are
3 attached.

4 You see that?

5 A. I do.

16:47:35

6 Q. And again, Sergeant Frei says that these identifications
7 were used for training purposes only, as most of the Criminal
8 Employment Unit is certified in documentation -- document
9 examination or has had some training in
10 forged/fraudulent/questioned documents.

16:47:46

11 You see that?

12 A. I do.

13 Q. Did you know that my monitor asked for any training that
14 your folks had had in document examination and training for
15 forged/fraudulent/questioned documents, and they received only
16 one person who had ever done such training in response?

16:48:05

17 Did the monitor team ever tell you that?

18 A. I'm not aware of that, no, sir.

19 Q. All right. Now, if you'll look at all these documents --
20 just look at the first page, but I think it's fairly
21 representative -- most of these documents are, like, Mexican
22 consular identifications, driver's license from individual
23 states in Mexico, various other Mexican identifications.
24 There's a social security card and a couple of Arizona driver's
25 licenses. Do you see that?

16:48:19

16:48:39

1 A. I do.

2 Q. Do you have any idea why people would assume that
3 identifications were fraudulent if they'd taken them from
4 people they'd arrested as illegal aliens and all they did was
5 show that they were Mexican?

16:48:52

6 A. I don't, Your Honor.

7 Q. In fact, all of -- a great number of these documents, as
8 you look through them, are Mexican identifications, aren't
9 they? And it wouldn't make any -- any sense for somebody to
10 fabricate Mexican identification documents if they wanted to
11 pass themselves off as an American citizen, would it?

16:49:11

12 A. Correct, it would not.

13 Q. So it looks like the -- well, the date that was -- they
14 were transmitted to be destroyed was November 6th, correct?

15 A. Yes, sir.

16:49:37

16 Q. And my monitor team, when it received a copy of these
17 documents, I think, called and stopped the destruction so that
18 they were not destroyed. I'm not sure about that, maybe some
19 other reason. But the documents do seem to indicate that they
20 were provided to Captain Bailey when Captain Bailey was SID
21 captain, and that -- it just would be problematic to have him
22 investigating seized documents when he received such a document
23 earlier. Wouldn't you agree?

16:50:01

24 A. I would agree.

25 Q. All right. Then you knew that I -- you knew that I had

16:50:23

1 questions with Sergeant Tennyson's investigative techniques and
2 determinations?

3 A. Yes, sir.

4 Q. And we had another hearing on November 20th.

5 Do you remember that one?

16:50:37

6 A. Not specifically, Your Honor.

7 Q. It's the one where Mr. Casey withdrew.

8 Oh, he's not in the courtroom any more.

9 A. Yes.

10 Q. It's the one where Mr. Casey withdrew.

16:50:48

11 A. I remember that.

12 Q. All right. I'm going to give you another document and I'm
13 going to have my courtroom deputy mark that one, too.

14 This one I think you might remember.

15 THE CLERK: You need a copy?

16:51:09

16 THE COURT: Yes, let's give chief the marked exhibit.

17 MS. IAFRATE: Your Honor?

18 THE COURT: Yes.

19 MS. IAFRATE: While this is being marked, could I just
20 raise one objection regarding --

16:51:22

21 THE COURT: Yes, surely.

22 MS. IAFRATE: To my knowledge, Chief Sheridan has
23 never seen that document that you provided to me, or the
24 attachments.

25 THE COURT: I didn't purport to say that he had, and I

16:51:32

1 haven't moved it in evidence.

2 This hearing for me is serving multiple purposes, and
3 part of them is to demonstrate part of my frustration with
4 what -- what appear to be deficiencies in the ongoing
5 operations of MCSO. And I, like Ms. Wang, am not going to get 16:51:53
6 into matters that are under seal, but I'm going to start with
7 matters that are out of seal so that --

8 MS. IAFRATE: My --

9 THE COURT: -- everyone can be informed of what my
10 concerns are during the break, including Chief Sheridan. Then 16:52:07
11 I'll have a few final questions on some other matters, and then
12 we can end for the weekend and discuss scheduling.

13 MS. IAFRATE: My only objection is that there were
14 some statements that Chief Sheridan made in order to agree with
15 you regarding certain things and they weren't accurate. The 16:52:22
16 rationale for that is he has never seen that set of documents
17 before.

18 THE COURT: Fair enough, and you've preserved any such
19 objections.

20 BY THE COURT: 16:52:33

21 Q. Did you have the marked exhibit, Chief? Have you been
22 given that yet?

23 A. Yes, sir, I have.

24 Q. What's the number on it?

25 A. Number 1001. 16:52:41

1 Q. All right. If you turn to the back page of number 1001 it
2 has a handwritten notation in what looks to me to be your
3 signature.

4 A. That's correct.

5 Q. Is that your signature?

16:52:53

6 A. Yes, sir.

7 Q. And is that your handwritten notation?

8 A. It is, sir.

9 Q. And do you remember receiving this report from

10 Sergeant Tennyson?

16:53:06

11 A. I do.

12 Q. Now, part of the reason that we had the October hearing is
13 that Sergeant Tennyson had closed the criminal investigation,
14 and my monitor folks didn't like that, right?

15 A. That's correct.

16:53:20

16 Q. And we had the October hearing, and then this is a new
17 memorandum closing the October -- or still closing the
18 Armendariz criminal investigation, right?

19 A. Yes, sir.

20 Q. And you have signed off on that closure.

16:53:29

21 A. Yes, I did.

22 Q. All right. If you would be so kind as to turn to the
23 second page and -- skip the first paragraph, but do you see
24 where it says Most recently the Professional Standards Bureau
25 Criminal Division investigated a claim made by Cisco -- a

16:53:48

1 former deputy who was Cisco Perez.

2 Do you remember that?

3 A. Yes, sir.

4 Q. And it says we interviewed 45 officers and -- and there was
5 just a bunch of identifications involved, and so we wrote a
6 memorandum to Keith Manning of the Maricopa County Attorney's
7 Office for review and possible prosecutorial consideration of
8 the Cisco Perez matter.

16:54:00

9 A. I see that, yes, sir.

10 Q. And is that what you recall reading?

16:54:15

11 A. Yes, sir.

12 Q. And then if you turn to the next page, he quotes, actually,
13 what Mr. Manning, who's the law enforcement liaison, told him.
14 And I'm going to summarize it. If you don't like what I say,
15 correct me; I'm trying to move along, okay?

16:54:31

16 A. Okay.

17 Q. Mr. Manning said: Look, this isn't good that they've got
18 this stuff, that the deputies have this stuff, but we can't
19 identify victims for these identifications, and they're not
20 worth anything, so there's no criminal action to be had here,
21 is that correct?

16:54:45

22 A. It's correct.

23 Q. And so he said then, in the next paragraph, which is part
24 of his memo to you, Sergeant Tennyson said, well, one of the --
25 he seems to suggest that one of the reasons Armendariz might

16:55:00

1 have had all this stuff in his home is because he's a packrat,
2 right?

3 A. Yes, sir.

4 Q. And then he says in the next paragraph we had a female
5 detention coworker who says he took stuff, and he accused her 16:55:10
6 of bringing stuff to his home, but she denies it, basically, is
7 what he says, right?

8 A. Correct.

9 Q. And then the third paragraph, you remember when
10 Chief Warshaw talked about the overfamiliarity and lack of 16:55:25
11 critical judgment that seemed to take place in these
12 investigations is one of his concerns?

13 A. Sergeant Tennyson's investigations, correct?

14 Q. Yeah.

15 A. Yes, sir. 16:55:46

16 Q. You see this third paragraph? "It is with great respect
17 for those Deputies associated with the MCSO Human Smuggling
18 Unit the following be noted. Based on this inquiry as well as
19 the aforementioned criminal investigation HSU Detectives
20 invested much effort carrying out duties as they related to 16:55:59
21 Human Smuggling Operations. With every effort not to
22 overshadow the tremendous work of the Detectives and
23 Supervisors in the unit..."

24 Then he says it looks like they've done some wrong
25 things, right. 16:56:12

1 A. Yes, sir.

2 Q. Doesn't that seem to be strange language for somebody who's
3 just supposed to be investigating whether or not they engaged
4 in criminal conduct?

5 A. It would be, Your Honor, if that was placed in their -- in 16:56:22
6 a criminal report. This is a -- a memorandum that
7 Sergeant Tennyson wrote to me concerning the overall findings
8 of his investigation and the County Attorney's turndown.

9 There was a lot of thought and discussion that went
10 into me signing off on this on that day. 16:57:02

11 Q. Was there a lot of thought?

12 A. Yes, sir.

13 Q. I'm going to tell you a couple of problems I have with it,
14 so you'll know. And you'll see these and some of my
15 criticisms, and I'll have others that express my real concerns 16:57:16
16 about how MCSO's doing some things. These are fairly minor,
17 but I thought they would be illustrative.

18 You see the next paragraph when it says we've made all
19 investigative efforts to determine why some of the
20 identification documents ended up in Deputy Armendariz's home 16:57:29
21 and we just can't come to any conclusion. So it's not clear
22 why the items did not remain with the arrestee or why the items
23 were not placed into property and evidence.

24 Do you see that?

25 A. Yes, sir. 16:57:47

1 Q. Do you agree with that conclusion?

2 A. Well, from a --

3 Q. Let me ask it this way, Chief, and I'm sorry, I know I'm
4 interrupting you. You're aware that I subsequently authorized
5 my monitors to do an independent investigation of the number of
6 investigations that were within the MCSO.

16:58:02

7 You're aware of that?

8 A. Yes, sir.

9 Q. And you're aware that even though this was characterized by
10 the MCSO deputies as we were just holding a few of these for
11 training for fraudulent -- training purposes to dem -- show
12 people fraudulent identification, that they couldn't identify a
13 single training where they had used them to show fraudulent
14 identification. And as I said, most of these identifications
15 people would rightfully own, since they were Mexican consular
16 identifications, and my monitor subsequently determined that it
17 was a widespread practice, and I'm not saying everybody or even
18 the majority of people did it, but it was a widespread practice
19 to seize -- seize these sorts of identifications --

16:58:16

16:58:36

20 A. Um-hum.

16:58:51

21 Q. -- without turning them in to property and evidence, and
22 throwing them into bins in all the districts. It wasn't just
23 HSU, it was widespread throughout the department, wasn't it?

24 A. Yes, sir.

25 Q. And so Deputy Perez's allegations and why Sergeant

16:59:02

1 Armendariz would have a bunch, and we found Powe and Gandar and
2 Frei had a bunch, that's just not that uncommon at the time in
3 the MCSO, was it?

4 A. That's correct.

5 Q. Now, the last paragraph. "Based on the criteria provided
6 by the Maricopa County Attorney's Office regarding elements
7 needed for the criminal offense of theft as defined by Arizona
8 State Law has not been met."

16:59:20

9 And so he's referring, at least I understand him to be
10 referring to Keith Manning's conclusion that we don't have a
11 crime or we don't have an identifiable victim, and the
12 property's not worth anything, right.

16:59:36

13 A. Correct.

14 Q. And you agree with that conclusion as it pertains to the
15 Armendariz investigation, right?

16:59:49

16 A. I do, Your Honor.

17 Q. And so you closed the criminal investigation.

18 A. Yes.

19 Q. But the Armendariz investigation is different from the
20 Perez investigation, wasn't it?

16:59:57

21 A. Yes, it was.

22 Q. Because it wasn't just identifications we were dealing
23 with. There was money, and there were credit cards, and there
24 were gift cards, and there were debit cards.

25 Those things have value, don't they?

17:00:11

1 A. Yes, sir.

2 Q. And they can -- the victims of those things can be
3 identified because their name's right on the credit card.

4 A. Correct.

5 Q. And so Attorney Manning's conclusions that there wasn't an
6 identifiable victim and the thing wasn't worth value, although
7 in fairness it applies to, perhaps, many of the identifications
8 in the Armendariz investigation, doesn't apply to them all,
9 does it?

17:00:21

10 A. No, sir. Can I -- can I be heard?

17:00:38

11 Q. You certainly may.

12 A. Okay. The thought process --

13 Q. Let me ask you first: Did you have a thought process or
14 did you just assume that the investigation was the same?

15 A. I had a thought process.

17:00:51

16 Q. All right. Let's hear it.

17 A. Okay. I'm the one that ordered an -- criminal
18 investigation into this issue of the ID cards for all the
19 members from the Human Smuggling Unit. It was fairly close to
20 the beginning of the administrative investigation after Charley
21 Armendariz, all those items were found in his garage that
22 had -- basically was in its infancy at that point.

17:01:14

23 When we discovered comment from former Deputy Perez,
24 who, again, I just want to emphasize, was terminated by us for
25 truthfulness, and only because we couldn't prove the fact that

17:01:44

1 he was actually running guns, even though he had made
2 statements to that on the wiretap. We had some good statements
3 from him, but it wasn't good enough to charge him criminally
4 working with the drug cartels.

5 So with that information from former Deputy Perez, I 17:02:03
6 ordered a criminal investigation for all the deputies that were
7 in HSU, because he had made the comment that we took things
8 from crime scenes and that kind of thing.

9 And when we did so, I was told by Captain Bailey that
10 he was questioned by one of the monitor teams: Why are you 17:02:33
11 doing that? And basically questioning the wisdom of doing a
12 criminal investigation on these issues. And my assumption was
13 that it was, Why are you wasting your time with that when we
14 have this huge Armendariz investigation going on, because this
15 was going to be very time-consuming. We had to stop the 17:03:05
16 administrative investigation for HSU and the spin-off for
17 Charley Armendariz because we cannot commingle the criminal
18 investigation while there's an administrative investigation.
19 We have to complete the criminal investigation first.

20 Q. I get that. And the criminal investigation tolls the 17:03:28
21 administrative one from running, tolls the time limit on the
22 administrative investigation?

23 A. Well, it certainly doesn't help when you have that.

24 Q. Let me ask you another question, if I can.

25 A. Your Honor, can I -- 17:03:42

1 Q. Yeah.

2 A. Can I finish?

3 Q. Sure.

4 A. Okay.

5 Q. You know what, though? There is one area I wanted to get
6 to. We're after 5 o'clock, I told you we might run a little
7 over, and I'll dispense with all my other questions, but I do
8 have one area I still want to cover with you.

17:03:46

9 A. Okay.

10 Q. Okay?

17:03:58

11 A. My wife came in, so I think she'll give me permission to
12 stay late.

13 Q. Hope so.

14 A. Okay. So with that in mind, we -- and I know there was a
15 lot of discussion with how the questions were to be asked by
16 the monitor team, and there was tension between Sergeant
17 Tennyson, who, contrary to some -- the opinion of the Court,
18 has a very good reputation as a criminal investigator, did run
19 this by the County Attorney's Office, who felt that there was
20 no value, there was no intent to deprive anyone of anything of
21 value, and the fact was we could not interview Charley
22 Armendariz because he was dead.

17:04:12

17:04:43

23 So the Armendariz part of this criminal investigation
24 was what we would call exceptionally cleared because we can't
25 interview the suspect. And so therefore, it would be --

17:05:16

1 Q. Can I interrupt? I think I understand what your answer is.
2 But the truth was that the property found at Armendariz's house
3 was often not seized by Armendariz, was it? It was seized by
4 other deputies.

5 Did you not know that?

17:05:41

6 A. I know there was some -- there was an allegation to that
7 effect. I'm not sure --

8 Q. I'll tell you that it's since been confirmed by your own --

9 A. Okay.

10 Q. -- investigation.

17:05:56

11 So terminating the criminal investigation just because
12 Armendariz is dead terminates the investigation as to all the
13 other deputies who did the seizure of the property that was in
14 Armendariz's house. And would you acknowledge, and I don't --
15 you know, I don't -- you can object if you want, Ms. Iafrate --
16 your memo doesn't say -- doesn't take into account that the
17 property seized in the Armendariz investigation is -- isn't
18 just identifications, it's valuable items, even if you view
19 identifications as not valuable, with identifiable victims that
20 distinguishes this investigation from the investigation you
21 were relying on with Keith Manning, doesn't it?

17:06:13

17:06:35

22 A. I guess I'm a little bit confused --

23 Q. Well, we'll leave this --

24 A. Okay.

25 Q. -- because I want to go to something else.

17:06:48

1 A. Okay.

2 Q. We can take it up again another time.

3 Let's talk about the Montgomery investigation.

4 A. Yes, sir.

5 Q. Chief -- or Sheriff Arpaio yesterday said that you were in 17:06:55
6 charge of that investigation. Is that true?

7 MR. WALKER: Your Honor --

8 THE COURT: Sure.

9 MR. WALKER: Just so the record is clear, when we use
10 the word -- the name Montgomery, can we make it clear it's 17:07:18
11 Dennis Montgomery?

12 THE COURT: Yes. I'm sorry, that's correct. It's
13 Dennis Montgomery, who is the confidential informant.

14 THE WITNESS: Yes, sir.

15 BY THE COURT: 17:07:29

16 Q. And I have some questions on this. Sheriff Arpaio said
17 you -- folks reported to you.

18 A. Yes, sir.

19 Q. You seemed hesitant about that.

20 A. Well, I'm only hesitant because when you said that I'm in 17:07:41
21 charge of, the detective, Brian Mackiewicz, I would consider
22 him to be in charge of an investigation.

23 Q. All right. And so he is in charge of the investigation?

24 A. Correct.

25 Q. He's a sergeant? 17:08:05

1 A. Yes, sir.

2 Q. There is -- is it Sergeant Anglin as well?

3 A. Yes, sir. For a short time he was involved in the case.

4 Q. And somebody from your posse?

5 A. Yes, sir.

17:08:18

6 Q. And they spent a lot of time in Seattle?

7 A. Yes, sir.

8 Q. Did you report to Sheriff Arpaio about what they were
9 doing?

10 A. Yes, sir.

17:08:26

11 Q. How often did you report to Sheriff Arpaio about what they
12 were doing?

13 A. We got weekly updates, sometimes twice a week.

14 Q. Think he understood what they were doing?

15 A. I would think so, yes.

17:08:41

16 Q. You heard him yesterday say that the DOJ was wiretapping me
17 and other judges, and that that was part of that investigation.

18 You heard that testimony, didn't you?

19 A. Yes, sir.

20 Q. I didn't hear you say anything about that. Was that part
21 of the investigation?

17:08:58

22 A. I -- it's my recollection that I don't believe you were.

23 There were wiretaps. I know that there were wiretap numbers

24 that were from my phone and the sheriff's phone in about 2008.

25 I certainly don't recall yours.

17:09:30

1 What maybe the sheriff was confusing that with, there
2 were -- there was information that Dennis Montgomery gave us
3 that certain law offices, Jones, Skelton & Hochuli, Ogletree
4 Deakins, two law firms that represented us in the DOJ case,
5 were breached. One in particular with Mr. Popolizio, who was
6 representing us.

17:10:06

7 Q. Well, let's go back to my question.

8 A. I'm getting there, Your Honor.

9 Q. Okay.

10 A. Because you're next.

17:10:19

11 Q. Okay.

12 A. And also there was some information that your e-mail from
13 the court was possibly there -- there might have been an e-mail
14 from the -- the DOJ to you.

15 But understand, Dennis Montgomery gave us no evidence
16 that showed the contents of any of those e-mails except one
17 sentence from Mr. Popolizio's e-mail that talked about
18 something about his daughter and a soccer game.

17:10:45

19 It's a very long story. I don't think you have
20 time -- I can tell it in --

17:11:14

21 Q. I don't want to hear it, but I will let you tell it later
22 because we'll decide if we're going to take this up later.

23 But in your description of the investigation I didn't
24 hear anything about the DOJ at all. So why would

25 Mr. Montgomery have been looking at my computer to see if the

17:11:28

1 DOJ was sending me e-mails?

2 A. Okay. Here's where the plot thickens a little bit with
3 Mr. Montgomery. Mr. Montgomery worked for the CIA. And I
4 don't remember the years, but it was '07 to '10 for a few
5 years, and he took --

17:11:58

6 Q. When you say '7 to '10 for a few years, I don't -- I didn't
7 understand that.

8 A. 2007 to 2010, sometime -- I may have the dates wrong,
9 because this has been a few years, and I've had other things on
10 my mind since this thing kind of got cold.

17:12:15

11 He would -- when he worked for the CIA, he pulled data
12 from American citizens for the CIA. I mean, we heard a lot
13 about this a few years ago; it was very much in the media. And
14 he said he was one of the individuals that was tasked with
15 doing that, and he knew that was incorrect, it was wrong, and
16 so he made backup copies that he took and he kept. And he was
17 mining that data to find these e-mail breaches, to find the
18 bank information that he originally came to us with.

17:12:38

19 Q. Well, so he found information that the DOJ had sent a
20 communication to my computer?

17:13:05

21 A. Something to that effect, yes.

22 Q. And he brought that to you, and did he have the actual
23 content of the communication?

24 A. No, sir.

25 Q. How did he know -- how did he arrive at the conclusion that

17:13:17

1 the DOJ had accessed my computer?

2 A. Again, we were always very skeptical of what he was giving
3 us. However, he was giving us information on occasion that was
4 credible.

5 We had a seated justice in Washington -- I can't 17:13:42
6 recall his name; I have it written down on my pad, Your
7 Honor -- that is a member of the FISA court in Washington, D.C.
8 We had Mr. Mon -- because the sheriff and I were concerned
9 about the CIA wiretapping our phones. This justice actually
10 confirmed that these were typical wiretap numbers, and so it 17:14:16
11 did give Mr. Montgomery a little more credibility with us.

12 And we continued to work with him, we continued to
13 keep him on our informant payroll, so to speak, as he was
14 producing information. But it became very slow, it became very
15 stale, and we finally realized that he was stringing us along. 17:14:49

16 Q. You know, with all due respect, we did hear the sheriff say
17 yesterday that he -- some pretty critical comments about the
18 Department of Justice. Do you remember those?

19 Maybe I misremember. I'll scratch that.

20 Let me ask you this: If in fact the sheriff thought 17:15:19
21 there might have been some improper collusion between me and
22 the Department of Justice, can you blame him if he wanted to
23 investigate that further?

24 A. Could I blame the sheriff?

25 Q. Yeah. 17:15:33

1 A. Well, there was -- there was really nothing to think that
2 there was any collusion.

3 Q. Well, I certainly agree with that, but Mr. Montgomery was
4 an expensive proposition for the MCSO, was he not?

5 A. He was.

17:15:48

6 Q. Did you ever hear the sheriff describe his work as an
7 investigation of a conspiracy, or something of that nature,
8 between the Department of Justice and me?

9 A. No, sir.

10 Q. Did you ever hear him describe it as an investigation of me
11 to anyone at the MCSO?

17:16:04

12 A. No, sir. As a matter of fact, I made quite sure, and I
13 believe in the presence of the sheriff, with detective --
14 Sergeant Anglin and Detective Mackiewicz when this information
15 came forward that they were not, it was -- and I don't normally
16 do this because it's not my style, but I told them: This is a
17 direct order from me. You are not to investigate any
18 information involving Judge Snow. If any further information
19 comes up, I want to know immediately. Nothing ever did
20 materialize.

17:16:29

17:16:52

21 Q. So Montgomery brought you some information?

22 A. Initial. And when we say "information," what Montgomery
23 would do, because -- I'll try and give you the two-second
24 version. When you send an e-mail, it goes out in bits and
25 pieces and it could go all over the world. It could go to

17:17:13

1 Indonesia and back within seconds. And it comes back in your
2 computer, the system puts it back together.

3 Montgomery has that data, or he says he does, in
4 those -- in that format. He needs -- or he says he needed
5 supercomputers to put that information together. He doesn't
6 have one. He's got this huge one in his garage, and it takes
7 forever to run programs. And so he would come back with
8 information.

17:17:36

9 Our primary focus, Your Honor, was the fraud, the bank
10 fraud, the -- excuse me, the computer fraud of him hacking into
11 person -- people's personal bank accounts.

17:17:57

12 Q. Are you uncomfortable telling me who the target of this
13 investigation was?

14 A. No, because there were about 50,000 people. Some of them
15 very prominent people.

17:18:14

16 Q. Well, the sheriff told me that the target was the
17 Department of Justice. Do you remember that?

18 A. I -- I'm sorry, I don't.

19 Q. Oh. Who would have had to sign off on these
20 investigations?

17:18:30

21 A. I don't --

22 Q. When I say the target of the investigation, in other words,
23 he thought the Department of Justice was doing the bugging. Do
24 you remember that? And the investigation was trying to find
25 out the Department of Justice's bugging of judges and your

17:18:42

1 defense attorney and your offices.

2 Do you remember him saying that?

3 A. I -- I don't remember.

4 Q. He didn't mention anything about banks, that I recall.

5 A. Well, when I think it's Dennis Montgomery and what we were 17:19:01
6 doing with him, it was really the bank fraud, it was the DOJ
7 wiretapping our phones going into the e-mail accounts of our
8 counsel, and there was something in there about your e-mail
9 also.

10 So, you know, the DOJ was on our radar screen because, 17:19:26
11 you know, personally if they did do an illegal wiretap on my
12 phone, I would have liked to -- I would like to know that.

13 Q. I would, too. You didn't call me.

14 A. Probably good thing.

15 And so that's how -- that's how that happened. So 17:19:52
16 when you say sign off on it, now, we were working with the
17 Arizona Attorney General's Office, as they were going to
18 prosecute this case if we were ever able to bring it to a
19 conclusion.

20 And it was also our intent and it is also our intent 17:20:16
21 to gather -- to complete gathering this information, because
22 Montgomery has promised us -- we're no longer paying him, we
23 haven't been paying him for a while -- some further
24 information, and to package this up and forward it to the
25 Federal Bureau of Investigation. That was going to be our -- 17:20:41

1 our final conclusion to tie up this case.

2 Q. Let me ask you, Montgomery's simply a computer consultant,
3 isn't he?

4 A. Well, that's what he is now. He did work for, and this had
5 been verified, and you can google his name and find all kinds
6 of crazy stuff about him, but there were some pieces of
7 information that were verified and credible also. So like many
8 informants that we deal with, there's a very shady side of them
9 and then there's also a very credible side for them.

17:21:01

10 Q. Well, why in the world did you have to designate him as a
11 confidential informant if there isn't anything he was doing
12 that was confidential was there?

17:21:24

13 A. Well, he was working with us confidentially.

14 Q. Well, why can't you just hire him as a consultant?

15 A. Because he was -- well, I don't know. This is the way we
16 handled him.

17:21:41

17 Q. Well, you don't have -- there's certain protections from
18 disclosure if you designate somebody as a confidential
19 informant, aren't there?

20 A. Yes, sir.

17:21:54

21 Q. That don't apply to just consultants?

22 A. That's correct.

23 Q. So I can do a public information request, you gotta give me
24 your consultants, but you don't have to give me your
25 confidential informants, do you?

17:22:06

1 A. No, but when the -- somebody leaks to members of the media
2 who he is, he's no longer confidential.

3 Q. Well, but what was he doing that he needed to be
4 confidential for?

5 A. Well, it could have shown --

17:22:26

6 Q. He hadn't infiltrated organized crime, had he?

7 A. Could have shown that either the Department of Justice or
8 the CIA was breaching American citizens' personal information,
9 and he had at least 50,000, that I remember, of citizens that
10 lived here in Maricopa County.

17:22:52

11 Q. But I still don't understand. Do you have a definition of
12 what a confidential informant is anywhere in your operations
13 manual?

14 A. Yes, sir, we do.

15 Q. And is it written so broadly that Dennis Montgomery
16 qualifies?

17:23:02

17 A. I believe so.

18 Q. Who all has to sign off -- you purchased a bunch of
19 equipment for him.

20 A. We did, but we never gave it to him.

17:23:17

21 Q. You authorized travel and overtime and pay for your
22 detectives to go to Seattle?

23 A. Yes, sir.

24 Q. Why were you doing this out of Seattle?

25 A. That's where he lives.

17:23:35

1 Q. Why did your detectives have to go to Seattle?

2 A. That's where his massive computer system is.

3 Q. Who -- did they have to be there with him?

4 A. Well, that was always the discussion, because we wanted to
5 be there when he found the information. And he worked a lot
6 harder when our detectives were there than when they weren't.

17:23:48

7 Q. Was it worth paying their overtime and travel and all those
8 expenses?

9 A. Well, now that we look back, and hindsight's 20/20,
10 probably not.

17:24:07

11 Q. Let me ask this: Did you ever get any referrals that you
12 handled within PSB related to this investigation?

13 A. I don't believe so, no, sir.

14 THE COURT: Well, I thank you for your patience. We
15 will probably be resuming this matter in June, but I think it's
16 time to let you go. Thank you.

17:24:27

17 THE WITNESS: Thank you, Your Honor.

18 MS. WANG: Your Honor, I did have redirect. Do you
19 want me just to defer that till June?

20 THE COURT: I had assumed you were going to redirect.
21 How long is it? I assumed you were going to defer. I'm sorry.

17:24:40

22 MS. WANG: I'm happy to defer the redirect, Your
23 Honor.

24 THE COURT: I think it makes sense. We've gone pretty
25 late in the day.

17:24:48

1 MS. WANG: Happy to do that.

2 THE COURT: Thank you.

3 MS. WANG: Thank you.

4 THE COURT: So you can step down.

5 Do you know, do we want to set a status conference on 17:24:53

6 what we're going to do and how we're going to handle things

7 for, say, how about May 8th? I'll --

8 MS. WANG: Your Honor --

9 THE COURT: Go ahead.

10 MS. WANG: I'm sorry, Your Honor. May we do that 17:25:11

11 telephonically, for those of us who are out of town?

12 THE COURT: Yes.

13 MS. WANG: Thank you.

14 THE COURT: Ms. Clark, did you need to be heard?

15 MS. CLARK: There's a record I need to make with the 17:25:18

16 Court.

17 THE COURT: Come forward.

18 (Pause in proceedings.)

19 THE COURT: Ms. Clark would like to make a record with

20 the courtroom cleared, so I'm going to do our scheduling first 17:25:48

21 and then we'll hear from Ms. Clark.

22 How about May 8th? That's Friday, May 8th.

23 MR. McDONALD: I leave for Iowa --

24 THE COURT: Can you get a microphone?

25 MR. McDONALD: Yes. 17:26:06

1 I leave for Iowa on May 8th, will be back May 13th. I
2 leave -- my flight leaves at 3 o'clock. Perhaps if we --

3 THE COURT: At 3:00 in the morning or 3:00 in the
4 afternoon?

5 MR. McDONALD: Not 3:00 in the morning.

17:26:21

6 THE COURT: How about 10 o'clock in the morning?

7 MR. McDONALD: 10 o'clock would work.

8 THE COURT: Well, let's do it at 10 o'clock.

9 MR. EISENBERG: Your Honor, if I may.

10 THE COURT: Yes.

17:26:31

11 MR. EISENBERG: I have to appear telephonically
12 because I'll be at a CLE somewhere else.

13 THE COURT: Well, are you willing to do that?

14 MR. EISENBERG: I am, Your Honor.

15 THE COURT: I don't think you'll have a lot to do, but
16 you may. So we're always glad --

17:26:40

17 MR. EISENBERG: No, but I --

18 THE COURT: -- to have you, Mr. Eisenberg.

19 MR. EISENBERG: -- I'd like to be part of it.

20 MR. COMO: No problem, Your Honor.

17:26:42

21 MS. WANG: Your Honor, one other scheduling matter.
22 Could we ask the Court for the briefing schedule on the
23 privilege --

24 THE COURT: Yes, when will you -- when will you have
25 your brief available?

17:26:53

1 MS. WANG: Could we have till next Friday, Your Honor?

2 THE COURT: And next Friday is the 1st? May 1st, I
3 think? Anybody who wants to respond to Ms. Wang's motion, I
4 guess, re the attorney-client privilege, how long are you going
5 to need? 17:27:16

6 MS. IAFRATE: Ms. Wang and I discussed that if she got
7 hers in by Friday I would be able to get mine in the following
8 Friday.

9 THE COURT: Okay. So the 8th.

10 MS. WANG: I have one amendment, Your Honor, given 17:27:25
11 that you've now set a status conference for the 13th. How
12 about if we --

13 MR. YOUNG: The 8th.

14 THE COURT: It's for the 8th.

15 MS. WANG: How about if we move those back a day 17:27:36
16 earlier so that if we need to meet and confer about anything
17 before the status conference we have a chance to do that?

18 THE COURT: Acceptable to you?

19 MS. IAFRATE: Well, is the status conference going to
20 address the attorney-client privilege argument? I mean, I 17:27:45
21 don't know -- I don't know why those two interact that way. I
22 would just like to stick with the schedule that Ms. Wang and I
23 discussed.

24 THE COURT: Well, you can do that, but I think that it
25 might make some sense, because if I grant the motion, then 17:28:02

1 you're going to have to schedule the deposition of Mr. Casey
2 and/or possibly Mr. Liddy. And that might be something that
3 needs some scheduling. So it might make sense if we have
4 Ms. Wang file hers on the 30th, yours on the 6th --

5 Or is it the 7th?

17:28:23

6 MS. IAFRATE: 7th.

7 THE COURT: 7th. And then I don't promise to, but
8 I'll try to have a ruling for you by the 8th.

9 MS. IAFRATE: Okay.

10 THE COURT: Will that work?

17:28:35

11 MS. IAFRATE: I will make it work.

12 THE COURT: All right. Thank you.

13 Now, one other thing that I think is pretty important,
14 and that is we need to know when your administrative -- when
15 your PSB internal investigations are going to be done.

17:28:48

16 MS. IAFRATE: I know, Your Honor. I've reached out to
17 get a date certain, and I have not heard back with a date
18 certain. I know that Mr. Vogel is done with two of his four
19 and they are over at MCSO. I am trying to get confirmation
20 from MCSO when they'll be done with those.

17:29:08

21 And I also know that there are many, many, spin-off
22 investigations that you are inquiring about. Originally, the
23 date was given to me that was unacceptably too far away.

24 THE COURT: Well, how about we do this? If you can
25 get an idea and let us know, there may be some that are minor

17:29:25

1 enough that they won't prevent us from going forward. I don't
2 know that, but it seems to me to be possible, because some of
3 them are quite narrowly defined.

4 MS. IAFRATE: Yes. Yes.

5 THE COURT: And so if you could have an idea and
6 communicate that to the other parties prior to the status
7 conference, I think it would be helpful.

17:29:39

8 MS. IAFRATE: Okay, I will.

9 THE COURT: Because that -- I mean, frankly, what it
10 will be involve, just so everybody -- this is how I envision it
11 going forward. When the internal administra- -- when the IA or
12 the PSB investigations are completed, I'm going to have my
13 monitor -- I've already had him try to start in this visit --
14 do the evaluations of the adequacy, and you've seen some of --

17:29:49

15 MS. IAFRATE: I have.

17:30:08

16 THE COURT: -- what you're likely to see.

17 I would like to have a chance for you to have a full
18 opportunity to review his conclusions before the hearing. And
19 to do that, we're going to need to give him some time and give
20 you some time. And so again, take whatever time you need, but
21 realize that one of the things that he's going to be evaluating
22 you on is your expediency.

17:30:22

23 MS. IAFRATE: Um-hum.

24 THE COURT: For a lot of the reasons I've just
25 reviewed with Chief Deputy Sheridan.

17:30:37

1 MS. IAFRATE: Understood.

2 MS. WANG: Your Honor, to clarify, I assume
3 plaintiffs' team will also have access to both the findings --

4 THE COURT: Absolutely.

5 MS. WANG: -- and the monitor's report?

17:30:47

6 Thank you.

7 THE COURT: All right. I appreciate Ms. Iafrate for
8 raising the issue that I did speak to her and Mr. Liddy at
9 sidebar under seal, and I didn't invite you all to come up
10 here. The court reporter's just informed me that everybody
11 who's ordered transcripts, and it's apparently quite a number,
12 have access to that sidebar. Please don't look at it.

17:31:13

13 But I will tell you, if it gives you any comfort, that
14 there isn't anything that took place at the sidebar that I
15 didn't fully describe in what I said in open court.

17:31:31

16 And I see Mr. Liddy and Ms. Iafrate both nodding.

17 I gave a complete, I think, substantive description of
18 the positions that were communicated to me at sidebar.

19 So I don't want to make you feel like you're not
20 seeing anything, but just for purposes of clarity, I think
21 Ms. Iafrate raises a good point.

17:31:50

22 Anything else?

23 MR. COMO: Nothing from me, Your Honor.

24 MR. WALKER: Nothing from the County, Your Honor.

25 MS. IAFRATE: No, Your Honor.

17:32:01

1 MR. LIDDY: Excuse me, Your Honor --

2 THE COURT: Do you know, Mr. Liddy, gotta have you
3 come to a microphone.

4 MR. LIDDY: Your Honor, only to note that I have filed
5 a supplemental motion for withdrawal for myself and the other
6 two attorneys who have appeared in this litigation that are
7 employed at the Maricopa County Attorney's Office with this
8 Court today.

17:32:18

9 THE COURT: All right. So do you want an expedite --
10 anybody who wants to oppose that motion, get the opposition on
11 file by the 6th of May.

17:32:32

12 MR. WALKER: When did you say, Judge?

13 THE COURT: 6th of May.

14 MR. WALKER: Thank you.

15 THE COURT: Gary has just reminded me that if somebody
16 else orders that transcript, the sidebar portion will be
17 deleted, or be redacted.

17:32:59

18 MR. WALKER: Your Honor, I don't remember what the
19 date of the sidebar conference was.

20 THE COURT: You know, I don't either, Mr. Walker.
21 Good luck.

17:33:13

22 MR. WALKER: But I do note that I've seen docket
23 entries indicating that copies of some of the portions of the
24 transcript have been ordered by members of the press.

25 THE COURT: They don't have them, but thanks for

17:33:29

1 letting -- thanks for raising that.

2 MS. IAFRATE: Your Honor, the sidebar was the first
3 day of the hearing.

4 THE COURT: Thank you. First day.

5 MR. SEGURA: Second day.

17:33:43

6 MS. IAFRATE: Second day?

7 THE COURT: It was the second day. Perhaps the third
8 day.

9 MS. IAFRATE: No, you want to know what? They are
10 correct, because the motion to withdraw was made orally the
11 first day, and then that night something was filed, and then
12 Mr. Liddy came in and we had that sidebar the second day, so I
13 stand corrected.

17:33:49

14 THE COURT: All right.

15 Anything else anybody needs to raise?

17:34:03

16 MS. CLARK: Your Honor?

17 THE COURT: Yes, Ms. Clark. You wanted to make a
18 record under seal?

19 MS. CLARK: Correct.

20 THE COURT: I will allow you to do that. We'll clear
21 the courtroom and the parties may remain behind.

17:34:09

22 (Courtroom cleared.)

23 THE COURT: I'm sorry, I don't know who you folks are
24 there on the first row.

25 MS. WANG: I was just about to announce them, Your

17:36:18

1 Honor. In the first row is Julie Romanow, who's a paralegal at
2 Covington & Burling. And she's with our plaintiffs' counsel
3 team. Emily Doan you know. She is a witness in the case but
4 also is on our plaintiffs' counsel team. And Brooke Bischoff
5 and Amanda Bradley are legal interns with the ACLU of Arizona
6 who who have been working on our team as well.

17:36:30

7 THE COURT: All right. Do we have anybody else that
8 anybody's concerned about?

9 MR. ADAMS: Your Honor, if I may, I've not previously
10 announced. My name is Ralph Adams. I'm a partner of Karen
11 Clark.

17:36:47

12 THE COURT: All right. Thank you.

13 Ms. Clark.

14 MS. CLARK: Thank you, Judge.

15 Has the courtroom been cleared?

17:36:57

16 THE COURT: I'm sorry?

17 MS. CLARK: Has the courtroom been cleared?

18 THE COURT: Well, I will tell you --

19 Sir, who are you?

20 UNIDENTIFIED SPEAKER: I'm with Mr. Walker's office.

17:37:07

21 THE COURT: All right. Thank you.

22 Does anybody, looking around, see anybody who is not a
23 party? Or an attorney for a party?

24 All right. Do we have the door locked? Thanks.

25 Go ahead, Ms. Clark.

17:37:22

(Sealed proceedings omitted.)

C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 25th day of April, 2015.

s/Gary Moll