

# EXHIBIT

# A

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STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
Case Type: Other Civil

MINNESOTA COALITION ON  
GOVERNMENT INFORMATION,

Plaintiff,

vs.

Case No.  
27-CV-21-7237

CITY OF MINNEAPOLIS; CASEY J.  
CARL, in his official capacity  
as Clerk for the City of  
Minneapolis; NIKKI ODOM, in her  
official capacity as Chief  
Human Resources Officer for the  
City of Minneapolis;  
MINNEAPOLIS POLICE DEPARTMENT;  
and BRIAN O'HARA, in his  
official capacity as Chief of  
Police for the Minneapolis  
Police Department,  
Defendants.

DEPOSITION OF

KATHERINE KNUDSEN

Tuesday, September 19, 2023  
8:34 a.m. to 12:49 p.m.  
Pages 1 to 147

Ballard Spahr LLP  
80 South Eighth Street  
2000 IDS Center  
Minneapolis, Minnesota 55402

JOB NO.: MW 6089496  
REPORTED BY: Merilee Johnson, RDR, CRR, CRC, RSA

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<p style="text-align: right;">Page 6</p> <p>1 EXHIBITS (Continued): PAGE  2 Exhibit 26 Letter to Officer [REDACTED] 125  from Janee Harteau,  3 dated March 10, 2016  CONFIDENTIAL - CITY002991  4  5  6 REPORTER'S NOTE: All quotations from exhibits are  reflected in the manner in which they were read  into the record and do not necessarily indicate an  7 exact quote from the document.  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Okay.  2 Q. If I refer to "MNCOGI," I mean the  3 plaintiff, Minnesota Coalition on Government  4 Information. Okay?  5 A. Okay.  6 Q. And you're aware that the defendants in  7 this case are the City, Ms. Odom, Mr. Carl, and  8 Mr. O'Hara?  9 A. Yes.  10 Q. Okay. So if I refer to "the City  11 defendants," you know that's who I'm speaking about  12 today. Does that make sense?  13 A. Yes, ma'am.  14 Q. If I refer to "the MPD," you understand I'm  15 talking about the Minneapolis Police Department?  16 A. Yes.  17 Q. And if I refer to "the Federation," I mean  18 the Police Officers Federation of Minneapolis.  19 Does that make sense?  20 A. The union?  21 Q. Yes.  22 A. Okay. Yes.  23 Q. And if I refer to "the MGDPA," I mean the  24 Minnesota Government Data Practices Act. Does that  25 make sense?</p>
<p style="text-align: right;">Page 7</p> <p>1 (PROCEEDINGS, 09/19/2023, 8:34 a.m.)  2 KATHERINE KNUDSEN,  3 duly affirmed, was examined and testified as follows:  4 EXAMINATION  5 BY MS. NASCIMENTO:  6 Q. Good morning, Ms. Knudsen. My name is  7 Isabella Nascimento. I'm with the law firm Ballard  8 Spahr, which is where we are today, and I represent  9 the plaintiff, Minnesota Coalition on Government  10 Information, or MNCOGI, in the lawsuit in which  11 you're being deposed today. And with me is Leita  12 Walker, also with Ballard Spahr, on behalf of the  13 plaintiff.  14 Let me just quick ask you: Have you ever  15 been deposed before?  16 A. No.  17 Q. Okay. So I'm going to go over just a  18 couple ground rules before we get started. You  19 understand that the testimony you're giving today  20 is for the lawsuit MNCOGI versus the City of  21 Minneapolis, Casey Carl, Nikki Odom, and Brian  22 O'Hara, right?  23 A. Yes, ma'am.  24 Q. So if I refer to "the lawsuit" today,  25 that's the one I'm talking about.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. It does.  2 Q. So obviously we have a court reporter here  3 today. She's taking down everything we say, so I'm  4 going to ask you to give verbal answers, no  5 mumbling. It's typical in conversation to use  6 "uh-huhs" or "uh-uhs."  7 (Court reporter requested  8 clarification.)  9 Q. Or going slowly, to make her life a bit  10 easier.  11 But she can't capture the "uh-huhs" or  12 "uh-uhs" or nods of the head or shakes of the head,  13 so I'm going to need verbal answers. Okay?  14 A. I can do that.  15 Q. If I follow up with "is that a yes" or "is  16 that a no," it's just to make sure that we're  17 getting the verbal answers on the record and not  18 intended to be rude.  19 A. All right.  20 Q. It's also normal in conversation that we  21 tend to talk over one another, and things can get  22 lost in the transcript that way. So I'm going to  23 do my best to wait until you give a complete answer  24 before following up. And if you can do the same,  25 to wait until I finish my question before</p>

<p style="text-align: right;">Page 10</p> <p>1 answering.</p> <p>2 If you don't understand a question, please</p> <p>3 tell me. Otherwise, I'm going to understand that</p> <p>4 you -- or I'm going to assume that you understood</p> <p>5 it. Okay?</p> <p>6 A. Okay.</p> <p>7 Q. We can take breaks. The one exception to</p> <p>8 that is I would ask that you first provide an</p> <p>9 answer to my question before we take a break. So</p> <p>10 we're not going to break before a question is</p> <p>11 answered. Does that make sense?</p> <p>12 A. It does.</p> <p>13 Q. Attorneys can object to questions, but</p> <p>14 that's typically just for the record. And once the</p> <p>15 attorneys are done making their objections, then</p> <p>16 you can answer. Does that make sense?</p> <p>17 A. It does.</p> <p>18 Q. And if you need a question repeated, either</p> <p>19 because you didn't hear it or you have forgotten</p> <p>20 the question -- sometimes objections can go long --</p> <p>21 I can repeat it. Or if even I've forgotten it, we</p> <p>22 can ask the court reporter to read it back for us.</p> <p>23 Okay?</p> <p>24 A. Okay.</p> <p>25 Q. So before we got started, you were just put</p>	<p style="text-align: right;">Page 12</p> <p>1 BY MS. NASCIMENTO:</p> <p>2 Q. You can answer.</p> <p>3 A. I don't have any injuries, like head</p> <p>4 injuries, if that's what you're asking.</p> <p>5 Q. Just generally. Anything that would</p> <p>6 prevent you from being able to recall events that</p> <p>7 you would otherwise have personal knowledge of?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Okay.</p> <p>10 (Exhibit 1 was marked for</p> <p>11 identification.)</p> <p>12 Q. So the court reporter's going to hand you</p> <p>13 what has been premarked as Plaintiff's Exhibit 1.</p> <p>14 You're here today pursuant to a notice of</p> <p>15 deposition, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And do you recognize this as the Amended</p> <p>18 Notice of Deposition?</p> <p>19 A. No. I've never seen this before.</p> <p>20 Q. Fair enough. Your deposition was</p> <p>21 originally scheduled for September 5th, right?</p> <p>22 But --</p> <p>23 A. Yeah, I -- I didn't know that.</p> <p>24 Q. Okay. What did you do to prepare for</p> <p>25 today's deposition?</p>
<p style="text-align: right;">Page 11</p> <p>1 under oath, right?</p> <p>2 A. Yes.</p> <p>3 Q. And you understand that testifying under</p> <p>4 oath means that you're legally obligated to tell</p> <p>5 the truth here today?</p> <p>6 A. Yes.</p> <p>7 Q. You understand that testifying today has</p> <p>8 the same force and effect as if you were testifying</p> <p>9 in court, yes?</p> <p>10 A. Yes.</p> <p>11 Q. And you're aware that answers you give in</p> <p>12 your deposition today could at some point be read</p> <p>13 to a judge or a jury?</p> <p>14 A. I am aware.</p> <p>15 Q. Are you on any medication today that would</p> <p>16 prevent you from testifying truthfully?</p> <p>17 A. No.</p> <p>18 Q. Is there any other reason you can't answer</p> <p>19 truthfully today?</p> <p>20 A. No.</p> <p>21 Q. Is there anything at all that is preventing</p> <p>22 you from being able to recall events that you have</p> <p>23 personal knowledge of as it relates to this</p> <p>24 litigation?</p> <p>25 MR. ENSLIN: Object to the form.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I had conversations with the city attorney.</p> <p>2 Q. Okay. I don't want to know what you</p> <p>3 discussed, but which city attorneys did you meet</p> <p>4 with?</p> <p>5 A. Sarah Riskin and Mark Enslin.</p> <p>6 Q. How many times did you meet with them?</p> <p>7 A. We had three meetings.</p> <p>8 Q. About how long was each meeting?</p> <p>9 A. 30 to 60 minutes. Two of them were. One</p> <p>10 of them was about 10 minutes.</p> <p>11 Q. Was anyone else present during these</p> <p>12 meetings?</p> <p>13 A. No.</p> <p>14 Q. Besides counsel, did you meet with anyone</p> <p>15 to prepare for today?</p> <p>16 A. No.</p> <p>17 Q. Did you review any documents in preparation</p> <p>18 for your testimony today?</p> <p>19 A. I did take a look at the complaint.</p> <p>20 Q. How did you determine which documents, or</p> <p>21 the complaint, to review in preparation for today?</p> <p>22 A. I read the whole thing.</p> <p>23 Q. How did you decide that you were going to</p> <p>24 review the complaint in preparation for today?</p> <p>25 A. I was interested in reading the complaint.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. Did you take any notes in preparation for 2 your deposition today?</p> <p>3 A. No.</p> <p>4 Q. Did you have any involvement in collecting 5 documents in -- to be produced in this litigation?</p> <p>6 A. No.</p> <p>7 Q. Did you speak with anyone about the fact 8 that you were going to be deposed today?</p> <p>9 A. I notified my bosses. So Mary Zenzen and 10 Christian Rummelhoff.</p> <p>11 Q. Tell me everything you recall about -- 12 well, did you have a discussion besides just 13 notifying Mary Zenzen that you were going to be 14 deposed today?</p> <p>15 A. No. Well, I mean, I asked them, you know, 16 like, "What's this MNCOGI lawsuit?" And they said 17 that there's a lawsuit with MNCOGI. And that's 18 about it.</p> <p>19 Q. Besides what we've covered then, have you 20 taken any other steps to prepare for this 21 deposition?</p> <p>22 A. I briefly looked at data requests that I've 23 handled for Paul Ostrow.</p> <p>24 Q. And did you say data "requests" or just one 25 request?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. I'm currently in graduate school.</p> <p>2 Q. You're currently in graduate school?</p> <p>3 A. Yes.</p> <p>4 Q. What's your area of study?</p> <p>5 A. Management information systems.</p> <p>6 Q. When are you graduating?</p> <p>7 A. Probably 2025.</p> <p>8 Q. Besides your associate's and your 9 bachelor's, do you have any professional 10 certificates?</p> <p>11 A. No.</p> <p>12 Q. Any licenses?</p> <p>13 A. I have a driver's license.</p> <p>14 Q. That's -- any other professional licenses?</p> <p>15 A. CJIS certified.</p> <p>16 Q. What does that mean?</p> <p>17 A. Criminal Justice Information Systems. I'm 18 certified so I can look up, like, NCIC stuff and 19 see law enforcement data.</p> <p>20 Q. So that's C-J-I-S, right?</p> <p>21 A. Correct.</p> <p>22 Q. So I'm going to go over a little bit about 23 your past work history. If you can start with the 24 last position that you held before you became an 25 employee for the City of Minneapolis. So what</p>
<p style="text-align: right;">Page 15</p> <p>1 A. One request.</p> <p>2 Q. So I want to talk a little bit about your 3 education. Did you graduate from high school?</p> <p>4 A. Yes.</p> <p>5 Q. Did you attend college?</p> <p>6 A. Yes.</p> <p>7 Q. Which college did you attend?</p> <p>8 A. I attended North Hennepin and Hamline for 9 my degrees. And Metro State for my master's.</p> <p>10 Q. What did you study at North Hennepin and 11 then at Hamline?</p> <p>12 A. Paralegal studies at North Hennepin. 13 Criminal justice at Hamline.</p> <p>14 Q. And North Hennepin -- well, did -- were you 15 pursuing an associate's degree at North Hennepin?</p> <p>16 A. I was.</p> <p>17 Q. And did you graduate?</p> <p>18 A. Yes.</p> <p>19 Q. And then you moved to Hamline. Were you 20 pursuing a bachelor's degree?</p> <p>21 A. Yes.</p> <p>22 Q. And did you graduate?</p> <p>23 A. I did.</p> <p>24 Q. And then you said you went to Metro State 25 for graduate school?</p>	<p style="text-align: right;">Page 17</p> <p>1 position was that?</p> <p>2 A. I was a paralegal.</p> <p>3 Q. Who did you work for?</p> <p>4 A. Livgard &amp; Lloyd.</p> <p>5 Q. How long were you there?</p> <p>6 A. 18 months.</p> <p>7 Q. And when did you leave?</p> <p>8 A. I began working for the City June 18th of 9 2018, so early June of 2018.</p> <p>10 Q. Why did you make the move?</p> <p>11 A. I wanted a new job.</p> <p>12 Q. And then you joined as an employee of the 13 City of Minneapolis and what was your position?</p> <p>14 A. I was a police support technician I for the 15 Minneapolis Police Department.</p> <p>16 Q. Police support technician I?</p> <p>17 A. Correct.</p> <p>18 Q. And you started that in June 2018?</p> <p>19 A. Correct.</p> <p>20 Q. What were your responsibilities as a police 21 support technician I?</p> <p>22 A. I created personnel files. I helped the 23 digitization project for personnel files. And I 24 discussed policy with my coworkers.</p> <p>25 Q. You said you created personnel files. What</p>

<p style="text-align: right;">Page 18</p> <p>1 does that mean?</p> <p>2 A. Someone would get hired, and then we'd have</p> <p>3 to make a physical file.</p> <p>4 Q. Okay.</p> <p>5 A. So just getting all the documents together,</p> <p>6 organizing the personnel file, then filing it.</p> <p>7 Q. And is that -- when you say "filing it," is</p> <p>8 that the digitization portion of it --</p> <p>9 A. That's --</p> <p>10 Q. -- or is that physically filing the copy?</p> <p>11 A. At that point, we were still physically</p> <p>12 filing the copy.</p> <p>13 Q. In 2018?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And then you said part of your</p> <p>16 responsibilities were the digitization of those</p> <p>17 personnel files. So when did those personnel files</p> <p>18 become digitized?</p> <p>19 A. We were starting on the project at the end</p> <p>20 of 2018, beginning of 2019. So it was just</p> <p>21 creating sort of the groundwork for how the files</p> <p>22 will be labeled, how they're going to get ingested.</p> <p>23 We didn't actually start the project at that point.</p> <p>24 We were just setting it up.</p> <p>25 Q. Okay. When you talk about creating a</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. So you listed a number of sections for a</p> <p>2 physical personnel file. I assume for the</p> <p>3 digitized version as well. Where would</p> <p>4 disciplinary records go? Which section would they</p> <p>5 go in of the personnel file?</p> <p>6 A. If there was discipline, there would be a</p> <p>7 "Discipline" section. But typically I handled new</p> <p>8 personnel files, so they didn't have one.</p> <p>9 Q. When did your employment as a police</p> <p>10 support technician I end?</p> <p>11 A. I started as a police support technician II</p> <p>12 in March of 2019 with the Records Information Unit.</p> <p>13 Q. You said the Records Information Unit?</p> <p>14 A. Correct. That is also in the police</p> <p>15 department.</p> <p>16 Q. Got it. So as a police support</p> <p>17 technician I, was your position housed in the</p> <p>18 police department?</p> <p>19 A. Yes.</p> <p>20 Q. Actually, I apologize. So let me back up</p> <p>21 to your position for a police support technician I.</p> <p>22 Who was your immediate supervisor?</p> <p>23 A. Kim MacDonald.</p> <p>24 Q. Okay. Then you moved to police support</p> <p>25 technician II in March of 2019. And what were your</p>
<p style="text-align: right;">Page 19</p> <p>1 personnel file, what exactly goes into a personnel</p> <p>2 file?</p> <p>3 A. You have to make sections, so there's an</p> <p>4 employment section, an assignment section, a</p> <p>5 performance evaluation section, and then an award</p> <p>6 section. And then you put the correct paperwork in</p> <p>7 each section, and then you file it into the filing</p> <p>8 cabinet.</p> <p>9 Q. Which department for the City of</p> <p>10 Minneapolis houses these physical personnel files?</p> <p>11 A. It was in the HR room. I worked in</p> <p>12 research and policy development. They're the ones</p> <p>13 that handled creating files and responding to</p> <p>14 requests for files.</p> <p>15 Q. You also said that one of your</p> <p>16 responsibilities as a police support technician I</p> <p>17 was discussing policy with your colleagues?</p> <p>18 A. They worked on policy development. That</p> <p>19 wasn't really something I did, but sometimes we</p> <p>20 talked about it.</p> <p>21 Q. Which types of policies?</p> <p>22 A. A lot of it was off-duty policies.</p> <p>23 Q. What is an off-duty policy?</p> <p>24 A. Policies regarding off-duty work of</p> <p>25 officers.</p>	<p style="text-align: right;">Page 21</p> <p>1 responsibilities as police support technician II?</p> <p>2 A. Dealing with the public when they're asking</p> <p>3 for data at the counter. And dealing with the</p> <p>4 public when they're asking for data electronically.</p> <p>5 Assigning data requests, redacting data, providing</p> <p>6 data to the public, answering questions when they</p> <p>7 made a phone call, and discussing the best way to</p> <p>8 move digitally for the whole unit as opposed to</p> <p>9 taking paper data requests so we had a record of</p> <p>10 them.</p> <p>11 Q. How long did you work as a police support</p> <p>12 technician II?</p> <p>13 A. I was reclassified to police support</p> <p>14 specialist. I believe the reclassification went</p> <p>15 back to June of 2021. I was still in the Records</p> <p>16 Information Unit at that point.</p> <p>17 Q. When you say "the reclassification went</p> <p>18 back to June 2021," what do you mean by that?</p> <p>19 A. I mean they did not complete the reclass</p> <p>20 until -- until later than that, but they did</p> <p>21 retroactive to June 2021 for back pay and for</p> <p>22 seniority purposes.</p> <p>23 Q. Understand. So -- and police support</p> <p>24 specialist, right? That was the title?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. Is that considered a promotion?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And so you moved into that position</p> <p>4 after June 2021, but they made it retroactive back</p> <p>5 to June 2021; is that right?</p> <p>6 A. (No response.)</p> <p>7 Q. So they gave you a title change maybe in</p> <p>8 July of 2021, for example. That's what I'm asking.</p> <p>9 A. Probably more like December, but yes.</p> <p>10 Q. December. Okay.</p> <p>11 When you were working as a police</p> <p>12 support -- I'm sorry -- police support tech II, who</p> <p>13 was your immediate supervisor?</p> <p>14 A. Caresa Meuwissen, M-e-u-w-i-s-s-e-n.</p> <p>15 Q. And who did -- is it Ms. "May-wis-sen"?</p> <p>16 A. "May-vis-son."</p> <p>17 Q. Meuwissen. Who did Ms. Meuwissen report</p> <p>18 to?</p> <p>19 A. Mary Zenzen.</p> <p>20 Q. Was Ms. Meuwissen in the police department</p> <p>21 as well, or was she part of a different department?</p> <p>22 A. Police department.</p> <p>23 Q. And Ms. Zenzen, is she part of the police</p> <p>24 department as well or part of a different</p> <p>25 department?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Caresa Meuwissen.</p> <p>2 Q. Okay. And she was still reporting to Mary</p> <p>3 Zenzen?</p> <p>4 A. Correct.</p> <p>5 Q. Are you still a police support specialist</p> <p>6 today?</p> <p>7 A. No.</p> <p>8 Q. What is your job now?</p> <p>9 A. I was detailed to enterprise information</p> <p>10 management analyst in October of 2022. That job</p> <p>11 was reclassified at some point in the last six to</p> <p>12 nine months, and I was officially hired as an</p> <p>13 enterprise information management analyst II as of</p> <p>14 yesterday.</p> <p>15 Q. Congratulations.</p> <p>16 A. Thank you.</p> <p>17 Q. And is that a move out of the police</p> <p>18 department and into a different department?</p> <p>19 A. Yes.</p> <p>20 Q. Which department?</p> <p>21 A. The City Clerk's Office.</p> <p>22 Q. Are you aware that MNCOGI submitted a data</p> <p>23 request that initiated this lawsuit in February of</p> <p>24 2021?</p> <p>25 A. That's what I was told.</p>
<p style="text-align: right;">Page 23</p> <p>1 A. When?</p> <p>2 Q. At this time, when you were a police</p> <p>3 support technician II?</p> <p>4 A. Police department.</p> <p>5 Q. Is she with a different department now?</p> <p>6 A. Yes.</p> <p>7 Q. Which department is she with now?</p> <p>8 A. The City Clerk's Office.</p> <p>9 Q. Do you know when that switch happened?</p> <p>10 A. Officially, January of this year, 2023.</p> <p>11 Q. You moved to police support specialist, and</p> <p>12 they made it retroactive to June of 2021. What</p> <p>13 were your responsibilities of police support</p> <p>14 specialist?</p> <p>15 A. A lot of the same duties as police support</p> <p>16 technician II, but they recognized that I did more</p> <p>17 lead work, so, you know, answering questions,</p> <p>18 assigning data requests to other workers, and</p> <p>19 helping to develop how we ingested data requests</p> <p>20 and how we used sort of the ServiceNow system. So</p> <p>21 just recognized that I was doing more elevated</p> <p>22 work. That's why I got the -- more points for my</p> <p>23 job classification.</p> <p>24 Q. When you were promoted to police support</p> <p>25 specialist, who did you report to?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Told by who?</p> <p>2 A. The attorneys.</p> <p>3 MR. ENSLIN: I'm just going to object</p> <p>4 on the record and instruct the witness not to talk</p> <p>5 about discussions that we had.</p> <p>6 So anything that we've disclosed, she's</p> <p>7 not asking about and you should not disclose.</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MS. NASCIMENTO:</p> <p>10 Q. When you responded to MNCOGI's data request</p> <p>11 in -- when you responded in March of 2021 to</p> <p>12 MNCOGI's February data request, you did so in your</p> <p>13 position as a police support technician II; is that</p> <p>14 right?</p> <p>15 A. What was the date?</p> <p>16 Q. So you would have -- you responded in</p> <p>17 March of 2021.</p> <p>18 A. Okay. I was a police support technician in</p> <p>19 March of 2021.</p> <p>20 Q. Okay.</p> <p>21 A. Well, police support technician II.</p> <p>22 Q. Thank you. What training did you receive</p> <p>23 in order to do your job as a police support</p> <p>24 technician II?</p> <p>25 A. I received instruction in the Minnesota</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 Government Data Practices Act and how it applies to</p> <p>2 the data I was handling, which is law enforcement</p> <p>3 data, and some personnel information and how to</p> <p>4 take that out of files and police reports so that</p> <p>5 when I gave a case to a member of the public, it</p> <p>6 did not contain any private, confidential, or</p> <p>7 not-public data.</p> <p>8 Q. Was this a one-time training, or was it</p> <p>9 annual?</p> <p>10 A. It was over the course of my employment.</p> <p>11 Q. Okay. Was it a formal training, or would</p> <p>12 you say it was on-the-job training?</p> <p>13 A. I did attend some formal trainings.</p> <p>14 Q. Did you receive any different training when</p> <p>15 you moved to your position as a police record</p> <p>16 specialist?</p> <p>17 A. I didn't have that position. You mean</p> <p>18 police support specialist?</p> <p>19 Q. Police support specialist. Thank you. I'm</p> <p>20 sorry.</p> <p>21 A. No.</p> <p>22 Q. During your time as a police support</p> <p>23 technician II, approximately how many data requests</p> <p>24 would you estimate that your department would get a</p> <p>25 day?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Okay. So at the time that MNCOGI submitted</p> <p>2 its request in February 2021, your department was</p> <p>3 already using that online portal to obtain -- to</p> <p>4 get data requests, correct?</p> <p>5 A. Do you mean members of the public?</p> <p>6 Q. Members of the public would use that online</p> <p>7 portal to submit data requests, but they would go</p> <p>8 to your department? Straight to your department?</p> <p>9 A. I'd --</p> <p>10 MR. ENSLIN: Object to the form.</p> <p>11 A. Do you mean people asking for police data?</p> <p>12 Q. Let me back up.</p> <p>13 When someone submits a data request on that</p> <p>14 online portal, how does it reach your department?</p> <p>15 A. If they submit a request for police data,</p> <p>16 we get requests that come from the police data form</p> <p>17 and we respond to those requests.</p> <p>18 Q. Does it go through the City Clerk's</p> <p>19 Office -- does a request for police data go through</p> <p>20 the City Clerk's Office first and then get routed</p> <p>21 to your department?</p> <p>22 MR. ENSLIN: Object to the form.</p> <p>23 THE WITNESS: What does that mean?</p> <p>24 MR. ENSLIN: My objection --</p> <p>25 THE WITNESS: I'm just wondering what</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. ENSLIN: Object to foundation</p> <p>2 grounds.</p> <p>3 BY MS. NASCIMENTO:</p> <p>4 Q. To the best of your knowledge.</p> <p>5 A. I don't know.</p> <p>6 Q. How are data requests assigned to a</p> <p>7 particular individual within your department during</p> <p>8 your time as a police support technician II?</p> <p>9 A. At approximately what date? Like what time</p> <p>10 period are you talking about?</p> <p>11 Q. Let's talk about the time period around</p> <p>12 this request, so approximately February of 2021.</p> <p>13 Thank you for clarifying.</p> <p>14 A. One of the PST IIs in the -- by "PST II," I</p> <p>15 mean police support technician II -- would review</p> <p>16 the data requests that came in and assign them.</p> <p>17 Q. So apologies for my ignorance, but at what</p> <p>18 point was the online portal, through which data</p> <p>19 requests are submitted, created?</p> <p>20 A. We started using it when the pandemic</p> <p>21 happened.</p> <p>22 Q. So back -- 2020.</p> <p>23 A. Yeah, the -- the clerk's office used it</p> <p>24 prior to that, but we really moved on to the</p> <p>25 platform after that.</p>	<p style="text-align: right;">Page 29</p> <p>1 "object to the form" means.</p> <p>2 MR. ENSLIN: It's nothing you have to</p> <p>3 worry about. So I get to lodge it. It's a legal</p> <p>4 objection for the record. So, again, I'll tell you</p> <p>5 if you need to answer or not. Otherwise, if you</p> <p>6 can answer the question, you should answer the</p> <p>7 question.</p> <p>8 THE WITNESS: Okay.</p> <p>9 A. When it is submitted using the police data</p> <p>10 form, it would come to us for intake. Everything</p> <p>11 else goes -- at -- at March of 2021, typically went</p> <p>12 to clerk's first.</p> <p>13 Q. Okay. The clerk's office, is that what you</p> <p>14 mean?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. In February of 2021, when MNCOGI</p> <p>17 submitted its request, how did you get assigned the</p> <p>18 data request that you were required to respond to?</p> <p>19 A. I don't recall.</p> <p>20 Q. Who was in charge of assigning data</p> <p>21 requests to specific technicians at that time?</p> <p>22 A. Are you talking about a specific day?</p> <p>23 Q. So in that February 2021 period.</p> <p>24 A. There was three of us doing intake.</p> <p>25 Q. Who were they?</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. Myself, Jen Kaess, K-a-e-s-s, and Noah 2 Inthichack. I-n-t-h-i-c-h-a-c-k I believe is how 3 he spelled it. 4 Q. During your employment as a police support 5 technician, how many data requests would you say 6 you were responsible for a day? 7 A. I don't recall. 8 Q. And during your time as a police support 9 technician I and II, where would you normally look 10 for records responsive to requests for data related 11 to the MPD? 12 MR. ENSLIN: Object to the form. Vague 13 and ambiguous. 14 A. Can you clarify what kind of a request 15 you're asking about? 16 Q. Yeah. So when you would get a request for 17 data related to the MPD, which files would you 18 normally look for responsive data? 19 MR. ENSLIN: Same objection. 20 A. It depends on what the request was. 21 Q. Which departments in the City of 22 Minneapolis house data related to the MPD? 23 MR. ENSLIN: Object on foundation 24 grounds. 25 A. If I got the request, I worked for the</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I wouldn't ask OPCR for data with -- when I 2 was with the police department. 3 Q. What about the broader Civil Rights 4 Department? 5 A. I don't know anything about how that works. 6 Q. If you were responsible for responding to a 7 request related to MPD data, would you have access 8 to the Human Resources Department's files to be 9 able to look for responsive records? 10 A. I did have access to the Human Resource's 11 files, yes. 12 Q. Were there any other departments' files 13 that you had access to, to locate responsive 14 records to data requests that you were responsible 15 for? 16 A. The police department. 17 Q. Can you walk me through what happens when 18 you are assigned a data request that you have to 19 respond to? So each of the steps that you would 20 take. 21 A. Can you clarify the time period you're 22 talking about? 23 Q. February of 2021. 24 A. I don't specifically recall how I responded 25 to data requests in February of 2021.</p>
<p style="text-align: right;">Page 31</p> <p>1 police department, so we looked at the police 2 department. 3 Q. You wouldn't look for records outside of 4 the police department? 5 A. No, because it came to the police 6 department. 7 Q. Did you have access to Internal Affairs 8 records? 9 A. Did I have access? What do you mean by 10 "access"? 11 Q. So if you got a request for data that would 12 implicate an -- IAU data, or Internal Affairs Unit 13 data, would you have access to be able to look for 14 responsive records there? 15 A. I would be able to look for responsive 16 records, but that typically would not be in the 17 course of my business line because we'd ask them to 18 provide the data. 19 Q. You'd ask IAU to provide the data that they 20 determined was responsive to their request? 21 A. I would ask them to provide any discipline 22 data. 23 Q. What about OPCR, would you have access to 24 their records to be able to look for data 25 responsive to a particular record?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. All right. Generally, over the course of 2 your employment as a police support technician I 3 and II, what were the general steps that you would 4 take to respond to a data request that you were 5 assigned? 6 A. We would get the data request. We would 7 see what it was for, and then we would respond to 8 it after reviewing and redacting any data. 9 Q. How would you determine what data to review 10 prior to responding? 11 A. What kind of data requests are you talking 12 about? 13 Q. Tell me generally for data requests that 14 you were assigned to during your period of 15 employment as a police support technician. 16 A. Could you repeat the question? 17 Q. Yeah. So how would you determine what data 18 to review before responding? 19 MR. ENSLIN: Object to the form. Vague 20 and ambiguous. 21 A. If it was for a police report, I would read 22 it, and then I would take out anything that was not 23 public. 24 Q. When you say "take out," do you mean 25 redact?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Yes. And I would cite the statutes that I 2 would use to redact the data. 3 Q. What about if it was for all emails about a 4 certain topic? 5 A. I did not review those. 6 Q. Would anyone have to review your responses 7 before you responded to data requests to which you 8 were assigned? 9 A. Not typically. 10 Q. You said "not typically." So were there 11 exceptions to that? 12 A. Not that I recall. 13 Q. And you were the individual that would 14 determine which records were responsive to the 15 request? 16 A. It would depend on the request. 17 Q. Give me an example of a request that you 18 wouldn't be the individual responsible for 19 determining which records were responsive. 20 A. In February of 2021? 21 Q. Please. 22 A. If somebody's asking for emails of a 23 specific person. 24 Q. Even if it was a police officer? 25 A. What do you mean?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. The documents. Okay. 2 You would apply any necessary redactions 3 and cite the respective statutes for those 4 redactions. 5 A. Yes. 6 Q. And then after all of that, you would 7 respond to the request, correct? 8 A. Yes. 9 Q. Is this the standard process that's used by 10 your department? 11 A. In what time period? 12 Q. In February of 2021. 13 A. Yes. 14 Q. Were you trained on this process? 15 A. I helped develop the process. It varied 16 depending on what data people were asking for. 17 Q. Is this process written down somewhere? 18 A. I don't know. 19 Q. Is it a process that everyone in your 20 department was required to follow in responding to 21 data requests received? 22 A. Everyone didn't do the same job in my 23 department. 24 Q. Is it a process that everyone who was a 25 police support technician was required to follow</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. So even if the emails belong -- that they 2 were asking for belonged to a police officer, a 3 member of the MPD. 4 A. I wouldn't be the one determining what 5 emails we're looking -- like, to look for. 6 Q. Who would be? 7 A. It would depend on the data request and the 8 officer, and whether or not they were still 9 employed. 10 Q. So the process that you testified to, let 11 me just make sure I understand it. And you correct 12 me, because I want to make sure I got the notes 13 down right. 14 You would get a request assigned to you. 15 You would review it to see what it was for. You 16 would then go and review documents that you 17 determined were responsive to the request -- 18 A. Or that were determined were responsive to 19 the request by someone else. 20 Q. Or review documents determined to be 21 responsive to the request by someone else. 22 A. Or I would ask someone else to review them. 23 Q. Or you would ask someone else to review the 24 documents or the request? 25 A. The documents.</p>	<p style="text-align: right;">Page 37</p> <p>1 for all data requests that they were assigned to 2 respond to? 3 A. I don't know. We were generally expected 4 to provide public data. So that's a general 5 process that we all followed. 6 Q. Is this the process that you followed when 7 you responded to MNCOGI's February 2021 data 8 request? 9 A. I don't specifically recall responding to 10 MNCOGI's data request. 11 Q. So you don't recall receiving the request 12 in February of 2021? 13 A. No. 14 Q. You don't recall reviewing the request at 15 that period? 16 A. No. 17 Q. You don't recall searching for responsive 18 records to that request? 19 A. No. 20 Q. Or making a determination whether those 21 records would be public? 22 A. No. 23 Q. Or whether any redactions needed to be 24 applied? 25 A. No.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. And you don't recall responding to the 2 request?</p> <p>3 A. I don't recall responding to the request.</p> <p>4 Q. Since you don't recall responding to 5 MNCOGI's request, is it possible that you didn't 6 take any of those steps in response to MNCOGI's 7 request?</p> <p>8 A. I don't know.</p> <p>9 Q. You can go ahead and look at the request. 10 So I'm handing you what's been marked as 11 Plaintiff's Exhibit 2. The Bates stamp on that is 12 PLF_000001. 13 (Exhibit 2 was marked for 14 identification.)</p> <p>15 Q. Did you review this request in preparation 16 for testifying today?</p> <p>17 A. I read it.</p> <p>18 Q. And do you recognize it as the data request 19 at issue in this lawsuit?</p> <p>20 A. I don't specifically recall responding to 21 this particular data request. I'm not sure what 22 else you're asking.</p> <p>23 Q. No, that was it.</p> <p>24 A. Thanks.</p> <p>25 MS. NASCIMENTO: Can we go off the</p>	<p style="text-align: right;">Page 40</p> <p>1 data request?</p> <p>2 A. Not in my searching.</p> <p>3 Q. No records that you would have sent at the 4 time that you received or were assigned the 5 request?</p> <p>6 A. No records that were included in the data 7 request, yeah.</p> <p>8 MS. WALKER: Can you read back the last 9 answer. (The requested portion was read back by 10 the court reporter as follows: 11 "ANSWER: No records that were included in 12 the data request, yeah.")</p> <p>13 Q. Included in the data request. What about 14 records that you would have sent about the request 15 once it was assigned to you?</p> <p>16 A. There were messages in the data request 17 that I don't recall sending at the time but that 18 were included in ServiceNow.</p> <p>19 Q. You mean messages in the portal?</p> <p>20 A. Yeah.</p> <p>21 Q. Otherwise, you found no other records that 22 were -- you found no other records about the 23 request after it was assigned to you?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 39</p> <p>1 record. 2 (Break: 9:16 a.m. to 9:32 a.m.) 3 BY MS. NASCIMENTO:</p> <p>4 Q. So, Ms. Knudsen, you testified earlier that 5 in preparation for your testimony today you looked 6 at the complaint in this case, correct?</p> <p>7 A. I did.</p> <p>8 Q. Did you look at the exhibits as well?</p> <p>9 A. No.</p> <p>10 Q. So just the complaint up to the signature 11 block?</p> <p>12 A. I might have scanned the exhibits. I 13 don't -- I didn't read them very closely.</p> <p>14 Q. Okay. And you said that you reviewed a 15 request by Paul Ostrow, correct?</p> <p>16 A. I did look at the request by Paul Ostrow.</p> <p>17 Q. And is this the request by Paul Ostrow that 18 you reviewed?</p> <p>19 A. This is the one that I looked at.</p> <p>20 Q. Okay. And you didn't look at any other 21 documents in preparation for your testimony today?</p> <p>22 A. No. I looked for any -- anything I might 23 have had related to the data request, but I didn't 24 find anything.</p> <p>25 Q. You didn't find any records related to the</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. All right. You see that this data request 2 on Exhibit 2 has four parts, correct?</p> <p>3 A. I see that it has four questions, yes.</p> <p>4 Q. The first part is asking for "All data 5 related to coaching of Derek Chauvin, including but 6 not limited to any coaching documentation forms." 7 Do you see that?</p> <p>8 A. I do see that's what it says.</p> <p>9 Q. The second part is "All data related to the 10 coaching of any officer as a result of his or her 11 involvement in any one of the 44 incidents 12 referenced" in a particular news report, and then 13 the hyperlink to that news report is provided. 14 Do you see that?</p> <p>15 A. I do see that, yes.</p> <p>16 Q. The third part asks for "All data related 17 to the coaching of any officer resulting from a 18 sustained complaint where the complaint alleged a 19 B-, C-, or D-level violation, and where coaching 20 was the only corrective action taken." 21 Do you see that?</p> <p>22 A. I see that, yes.</p> <p>23 Q. And part 4 asks for "All data in which 24 coaching is described as a form of discipline or is 25 acknowledged by a supervisor or the chief of police</p>

<p style="text-align: right;">Page 42</p> <p>1 to constitute a form of discipline."  2 Do you see that as well?  3 A. Yes.  4 MR. ENSLIN: I'd just object to the  5 extent what you just said is different than what's  6 in the written form, which speaks for itself.  7 A. I see number 4.  8 Q. Thank you.  9 A. I can -- I can read it if you'd like me to.  10 Q. (Shakes head.)  11 A. Okay.  12 Q. And I asked you earlier about whether you  13 remember this particular request, and you said you  14 didn't recall the request until the attorneys told  15 you about it. Correct?  16 A. I looked at the request after they told me  17 about it.  18 Q. But this request was assigned to you to  19 respond to?  20 A. That is what the record reflected.  21 Q. And you have no records of efforts that you  22 made searching for documents responsive to this  23 request?  24 A. No.  25 Q. Do you have any records of efforts you made</p>	<p style="text-align: right;">Page 44</p> <p>1 besides the denial that you provided?  2 A. I don't really want to speculate. I did  3 not find any notes about -- about what you're  4 talking about. I don't know of anything.  5 Q. You testified earlier that if a request was  6 for all documents about a certain topic, that that  7 wasn't your responsibility to respond to. Is that  8 right?  9 MR. ENSLIN: Object to the form to the  10 extent it misstates prior testimony.  11 A. Can you be more specific?  12 Q. Yeah. So if you got all emails about a  13 certain topic, for example, that wasn't your  14 responsibility to respond to, that part of the  15 request, correct?  16 A. I would be the one communicating with the  17 requester. I would not be the one conducting a  18 search.  19 Q. Why were those types of requests, even if  20 they implicated MPD data, treated differently?  21 A. Can you restate the question?  22 Q. Yeah. Why were those types of categorical  23 requests, so all emails of a certain kind, handled  24 differently than the request that -- the portions  25 of the request that you were responsible for</p>
<p style="text-align: right;">Page 43</p> <p>1 to review any documents that may be responsive to  2 this request?  3 A. What do you mean by "records"? I mean, do  4 you just mean emails or do you mean, like, notes or  5 anything like that in responding to this specific  6 request?  7 Q. Yep. All of that.  8 A. No.  9 Q. You don't recall conducting any searches in  10 response to this request?  11 A. I don't recall.  12 Q. You don't recall taking any steps to  13 respond to this request?  14 A. I don't recall, no.  15 Q. Do you know whether anyone took any steps  16 to respond to this request, besides yourself?  17 A. I don't know.  18 Q. So as far as you know, zero steps could  19 have been taken other than your response?  20 MR. ENSLIN: Object to the form.  21 Foundation.  22 A. I -- you know, I don't remember two years  23 ago. Two and a half.  24 Q. But as far as you know, it's possible that  25 no effort was made to respond to MNCOGI's request</p>	<p style="text-align: right;">Page 45</p> <p>1 responding to?  2 A. I don't have access to that data.  3 Q. So if you can look at the fourth part of  4 the request, on Exhibit 2, this asks for all data  5 of a certain category, right? "All data in which  6 coaching is described as a form of discipline or  7 acknowledged by a supervisor or the chief of police  8 to constitute a form of discipline."  9 So who would have been responsible for  10 handling that part of the response to the request?  11 A. Specifically in February of 2021?  12 Q. Correct.  13 A. It was my data request, but I don't recall  14 any steps that were involved in the response.  15 Q. Did you send it to anyone to respond to  16 that portion of the request?  17 A. I don't know.  18 Q. And you don't have any record of sending it  19 to anyone to respond to that part of the request?  20 A. No.  21 Q. But it would not have been your  22 responsibility to search for responsive data to  23 that request -- to that part of the request?  24 A. I'm not sure what you mean.  25 Q. When you were assigned this request, would</p>

<p style="text-align: right;">Page 46</p> <p>1 it have been your responsibility to respond to this 2 part of the request asking for a category -- for a 3 category of certain data? 4 A. I was the one handling the request, so to a 5 certain extent, the response is my responsibility, 6 but I wouldn't be the one who had all the data from 7 2011. 8 Q. Do you know who we should be asking this 9 particular question to who would have responded to 10 this part of the request? 11 A. I don't know. 12 Q. You don't recall discussing MNCOGI's data 13 request with anyone before you responded to it? 14 A. No. 15 Q. Do you recall what your response to 16 MNCOGI's data request was? 17 A. I read what the response was in the portal. 18 Q. Read it in preparation for today? 19 A. Yeah, when I looked at the data request. 20 Q. So the court reporter's going to hand you 21 what's been marked as Plaintiff's Exhibit 3, 22 Bates No. PLF_000003. 23 (Exhibit 3 was marked for 24 identification.) 25 Q. Do you recognize this as your response to</p>	<p style="text-align: right;">Page 48</p> <p>1 So you responded to MNCOGI's request on 2 March 26, 2021. Are you aware of that? 3 A. That's what it says, yes. 4 Q. So from the time the request was submitted 5 on February 15th to the time you responded on 6 March 26th, it was a little over a month. Do you 7 know when in that month you would have been 8 assigned to the request? 9 A. No. 10 Q. Do you recall when in that month you 11 actually started working on responding to MNCOGI's 12 request? 13 A. No. 14 Q. You don't recall talking to anyone about 15 the request? 16 A. No. 17 Q. Emailing anyone about the request? 18 A. No. 19 Q. Texting anyone about the request? 20 A. No. 21 Q. Did you search for responsive text messages 22 that you would have sent about the request? 23 A. I don't know. 24 Q. Did you search -- before -- before your 25 testimony today, did you search for any texts that</p>
<p style="text-align: right;">Page 47</p> <p>1 the February 2021 data request that we just 2 reviewed? 3 A. I recognize this is the response in 4 ServiceNow, yes. 5 Q. And your response was: "Coaching is not 6 discipline and has never been discipline. The data 7 you are requesting is private under Minnesota 8 Statute 13.43; MPD has no responsive data. Your 9 request is now closed." 10 Did I read that correctly? 11 A. You read that correctly. 12 Q. And by this response, you agree you were 13 denying MNCOGI's request, correct? 14 A. I don't know. That's certainly what it 15 looks like. 16 Q. Did you provide any responsive documents to 17 this request? 18 A. No. 19 Q. And you closed the request? 20 A. That's what it looks like, yes. 21 Q. So you denied the request? 22 A. I said there was no responsive data. And I 23 said that "The data you request -- you're 24 requesting is private under Minnesota 13.43." 25 Q. Okay. We'll come back to that.</p>	<p style="text-align: right;">Page 49</p> <p>1 you would have sent about responding to MNCOGI's 2 request? 3 A. Are you talking about, like, recently? 4 Q. Yes. 5 A. I don't text from my phone about business. 6 Q. Okay. Do you have a work phone? 7 A. No. 8 Q. And you don't recall doing any searches for 9 records responsive to MNCOGI's request? 10 A. I don't recall, no. 11 Q. You responded that there was no responsive 12 data. How did you know there was no responsive 13 data? 14 A. I don't know. 15 Q. Do you recall whether you found any 16 documents responsive to MNCOGI's request at the 17 time of the request? 18 A. I don't recall. 19 Q. In reviewing MNCOGI's request in 20 preparation for your testimony today, if you were 21 looking for documents responsive to that request, 22 where would you look for them? 23 A. If this came in today? 24 Q. Yes. 25 MR. ENSLIN: Object to the form. Vague</p>

<p style="text-align: right;">Page 50</p> <p>1 and ambiguous.</p> <p>2 A. I work for the City Clerk's Office, so I'd</p> <p>3 not just search in police specifically. I'm not</p> <p>4 sure. That would require some thought.</p> <p>5 Q. Please go ahead and take the time you need</p> <p>6 and then if you can answer the question.</p> <p>7 A. I would discuss it with my coworkers and</p> <p>8 bounce ideas off of them and then form a collection</p> <p>9 plan based on our discussions.</p> <p>10 Q. What is a collection plan?</p> <p>11 A. A plan on where to look for data.</p> <p>12 Q. Is that a step in the process that you</p> <p>13 would have done as a police support technician?</p> <p>14 A. As a police support technician with MPD, we</p> <p>15 didn't look outside the police department because</p> <p>16 we were the police department.</p> <p>17 Q. To the best of your knowledge, where are</p> <p>18 completed coaching forms typically kept?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know where notice of coaching forms</p> <p>21 are kept?</p> <p>22 A. No.</p> <p>23 Q. And I think you -- I'm going to ask this</p> <p>24 because I'm not sure we covered it earlier.</p> <p>25 So is there a difference between a</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. What is that difference?</p> <p>2 A. The personnel file didn't typically hold</p> <p>3 any discipline data other than notice of discipline</p> <p>4 letters or any settlements that may have happened</p> <p>5 in the course of the employment of the officer.</p> <p>6 Q. You said that was the personnel file,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And is there a difference between an OPCR</p> <p>10 file and an IAU file?</p> <p>11 A. I don't know.</p> <p>12 Q. If we can look back at your Plaintiff's</p> <p>13 Exhibit 3, excuse me, I want to talk to you a bit</p> <p>14 more about what you said in response to MNCOGI's</p> <p>15 request.</p> <p>16 Were you the person who drafted this</p> <p>17 response?</p> <p>18 A. I don't recall.</p> <p>19 Q. The response is under your name, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Would anybody have had access to your</p> <p>22 credentials to submit this response?</p> <p>23 A. It wouldn't say my name unless it was me.</p> <p>24 Q. All right. So would anyone else have</p> <p>25 access to be able to submit the response on your</p>
<p style="text-align: right;">Page 51</p> <p>1 personnel file and an OPCR file?</p> <p>2 A. Yes.</p> <p>3 Q. What is the difference?</p> <p>4 A. They're not kept in the same place. And</p> <p>5 they're not the same department.</p> <p>6 Q. Materially, what is kept -- what is the</p> <p>7 difference between which documents are kept in a</p> <p>8 personnel file versus an OPCR file?</p> <p>9 MR. ENSLIN: Object to foundation.</p> <p>10 A. The personnel file has employment</p> <p>11 documents. OPCR, I believe, is just everything</p> <p>12 else.</p> <p>13 Q. What is everything else?</p> <p>14 A. Well, I would assume -- well, I don't want</p> <p>15 to make assumptions, but there wasn't typically</p> <p>16 anything related to discipline or performance</p> <p>17 management other than the annual performance</p> <p>18 reviews in the personnel file.</p> <p>19 Q. But there would be discipline or</p> <p>20 performance management documents in the OPCR file?</p> <p>21 A. I don't know.</p> <p>22 Q. Is there a difference between the personnel</p> <p>23 file and an IAU file?</p> <p>24 MR. ENSLIN: Objection. Foundation.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 53</p> <p>1 behalf?</p> <p>2 A. No.</p> <p>3 Q. So you've had to have been the person to</p> <p>4 respond to this?</p> <p>5 A. I'm the one who wrote that, yes.</p> <p>6 Q. Okay. But you don't recall doing it?</p> <p>7 A. I don't.</p> <p>8 Q. Do you recall whether anyone else drafted</p> <p>9 the response?</p> <p>10 A. I don't.</p> <p>11 Q. Do you recall whether anyone else drafted</p> <p>12 any part of the response?</p> <p>13 A. I don't.</p> <p>14 Q. Do you recall anyone telling you what to</p> <p>15 write in response --</p> <p>16 A. No.</p> <p>17 Q. -- to the request?</p> <p>18 Do you recall anyone else providing input</p> <p>19 into the response to MNCOGI's request?</p> <p>20 A. No.</p> <p>21 Q. Do you recall anyone suggesting how you</p> <p>22 should respond to MNCOGI's response?</p> <p>23 A. No.</p> <p>24 Q. Did anyone have to sign off on your</p> <p>25 response before you responded to MNCOGI's request?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. I don't recall.</p> <p>2 Q. Looking at that first sentence of your</p> <p>3 response, "Coaching is not discipline and has never</p> <p>4 been discipline."</p> <p>5 How did you come up with this language?</p> <p>6 A. I'm not sure.</p> <p>7 Q. Had you used it before to respond to a data</p> <p>8 request?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you recall if anyone provided you with</p> <p>11 that particular wording?</p> <p>12 A. No.</p> <p>13 Q. What did you mean by the sentence "Coaching</p> <p>14 is not discipline and has never been discipline"?</p> <p>15 MR. ENSLIN: Object to the form. Vague</p> <p>16 and ambiguous.</p> <p>17 A. I can't speak to my specific intentions two</p> <p>18 years ago. I can just read what I wrote.</p> <p>19 Q. To the best of your knowledge, what did you</p> <p>20 mean?</p> <p>21 A. That coaching is not discipline.</p> <p>22 Q. Would you agree with me that if there were</p> <p>23 documents that say, "Coaching is a form of</p> <p>24 discipline," then that would have been responsive</p> <p>25 to MNCOGI's request?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. I don't specifically recall a date.</p> <p>2 Q. I don't need an exact date. Would it have</p> <p>3 been when you started in June of 2018?</p> <p>4 A. She wasn't my boss in 2018.</p> <p>5 Q. Would it have been in -- would it have been</p> <p>6 when you were promoted to police support</p> <p>7 technician II?</p> <p>8 A. It was at some point over the course of my</p> <p>9 employment in the Records Information Unit.</p> <p>10 Q. But after you were promoted so that Mary</p> <p>11 Zenzen was your boss?</p> <p>12 A. Correct.</p> <p>13 Q. At any point were you instructed not to</p> <p>14 search for documents when you received a request</p> <p>15 regarding coaching?</p> <p>16 A. I don't recall.</p> <p>17 Q. You were told that coaching is not</p> <p>18 discipline. At any point in your employment with</p> <p>19 the City of Minneapolis, did you review any</p> <p>20 documents to reach that conclusion?</p> <p>21 A. I don't know.</p> <p>22 Q. Besides instruction from Mary Zenzen that</p> <p>23 coaching is not discipline, have you relied on any</p> <p>24 other information to come to the conclusion that</p> <p>25 coaching is not discipline and has never been</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. ENSLIN: Object to the form. Vague</p> <p>2 and ambiguous.</p> <p>3 A. Can you repeat the question?</p> <p>4 Q. Yep. Would you agree that if there are</p> <p>5 documents that say, "Coaching is a form of</p> <p>6 discipline," that that would be responsive to</p> <p>7 MNCOGI's request?</p> <p>8 A. I've always been told that coaching is not</p> <p>9 discipline.</p> <p>10 Q. Who told you that?</p> <p>11 A. In the course of my work, my boss.</p> <p>12 Q. Which boss?</p> <p>13 A. Mary Zenzen.</p> <p>14 Q. Mary Zenzen told you that coaching is not</p> <p>15 discipline?</p> <p>16 A. I -- yes.</p> <p>17 Q. Did she say that that was the position of</p> <p>18 the City of Minneapolis?</p> <p>19 A. I don't specifically recall her ever using</p> <p>20 those words.</p> <p>21 Q. What else did Mary Zenzen tell you about</p> <p>22 coaching with respect to discipline?</p> <p>23 A. I don't know.</p> <p>24 Q. When did Mary Zenzen tell you that coaching</p> <p>25 is not discipline?</p>	<p style="text-align: right;">Page 57</p> <p>1 discipline?</p> <p>2 A. I've been told by Mary and, I believe, by</p> <p>3 Carol Bachun at some point that coaching is not</p> <p>4 discipline.</p> <p>5 Q. And you don't recall whether you were</p> <p>6 instructed not to look for responsive documents</p> <p>7 when you received a request for coaching? Do you</p> <p>8 know?</p> <p>9 A. No, I don't know.</p> <p>10 Q. Besides instruction from Mary Zenzen and</p> <p>11 Carol Bachun, did you receive instruction from</p> <p>12 anyone else that coaching is not discipline, has</p> <p>13 never been discipline?</p> <p>14 A. I don't know.</p> <p>15 Q. Have you had conversations with anyone else</p> <p>16 about whether coaching is discipline?</p> <p>17 A. When?</p> <p>18 Q. At any point in your employment with the</p> <p>19 City of Minneapolis?</p> <p>20 A. Have I at any point in my --</p> <p>21 Q. Employment with the City of Minneapolis,</p> <p>22 have you had a conversation with anyone about</p> <p>23 whether coaching is discipline?</p> <p>24 A. I don't specifically recall having a</p> <p>25 conversation about whether coaching was discipline</p>

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<p style="text-align: right;">Page 58</p> <p>1 with any of my coworkers.</p> <p>2 Q. You also responded in Plaintiff's</p> <p>3 Exhibit 3, "The data you are requesting is private</p> <p>4 under Minnesota Statute 13.43."</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. How did you reach that determination?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you know whether you reviewed any</p> <p>10 documents to reach that conclusion?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know whether anyone told you?</p> <p>13 A. No, I don't know.</p> <p>14 Q. Did you do anything to confirm that this</p> <p>15 was an accurate statement in preparation for today?</p> <p>16 A. I don't know what I did two years ago, two</p> <p>17 and a half years ago, in February of '21.</p> <p>18 Q. How about in preparation for today, have</p> <p>19 you taken any steps to confirm that that statement</p> <p>20 from two years ago was accurate at the time?</p> <p>21 A. No.</p> <p>22 Q. Did it occur to you that any of the data</p> <p>23 that MNCOGI requested in its request might actually</p> <p>24 not be private data?</p> <p>25 A. Could you specify a time period?</p>	<p style="text-align: right;">Page 60</p> <p>1 might actually not be private data?</p> <p>2 MR. ENSLIN: Object to the form.</p> <p>3 A. I wouldn't agree with that.</p> <p>4 Q. Why not?</p> <p>5 A. Because from my experience and my -- what</p> <p>6 I've been directed by various people in the course</p> <p>7 of my employment, I was told coaching is not</p> <p>8 discipline.</p> <p>9 Q. Okay. So if you can look specifically at</p> <p>10 paragraph number 4, would you agree with me that</p> <p>11 this part of the request seeks not just private</p> <p>12 data?</p> <p>13 MR. ENSLIN: Objection. Asked and</p> <p>14 answered.</p> <p>15 A. I've always been told that coaching is not</p> <p>16 discipline. So I'm not sure what else you're</p> <p>17 asking here.</p> <p>18 Q. Sure. Well, paragraph number 4 asks for</p> <p>19 "All data dating from January 1, 2011, to present</p> <p>20 in which coaching is described as a form of</p> <p>21 discipline or acknowledged by a supervisor or the</p> <p>22 chief of police to constitute a form of</p> <p>23 discipline."</p> <p>24 Do you see that?</p> <p>25 A. I don't know if that is something that</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. When you received the request, did it occur</p> <p>2 to you that any of the data that MNCOGI was</p> <p>3 requesting might actually not be private data?</p> <p>4 A. I don't recall.</p> <p>5 Q. As you sit here today and review</p> <p>6 Plaintiff's Exhibit 2, would you agree that it's</p> <p>7 possible that some of the data requested by MNCOGI</p> <p>8 in its request might actually not be private data?</p> <p>9 A. I don't know. That's -- I don't know.</p> <p>10 Q. So I'm going to ask you to review</p> <p>11 Plaintiff's Exhibit 2 --</p> <p>12 A. Okay.</p> <p>13 Q. -- the four parts of that request. We're</p> <p>14 going to go off the record, and you let me know</p> <p>15 when you're ready to go back on the record after</p> <p>16 you've reviewed it. And then I'm going to ask you</p> <p>17 the same question again. Okay? So just let me</p> <p>18 know when you're ready.</p> <p>19 MS. NASCIMENTO: We can go off the</p> <p>20 record.</p> <p>21 (Break: 9:58 a.m. to 9:58 a.m.)</p> <p>22 BY MS. NASCIMENTO:</p> <p>23 Q. So upon reviewing Plaintiff's Exhibit 2,</p> <p>24 would you agree that it is possible some of the</p> <p>25 data that MNCOGI was requesting in its data request</p>	<p style="text-align: right;">Page 61</p> <p>1 exists.</p> <p>2 Q. Sure. But your response was that the data</p> <p>3 we were -- that the data that MNCOGI was requesting</p> <p>4 is private under Minnesota Statute 13.43, right?</p> <p>5 A. That was my response, yes.</p> <p>6 Q. Your response was not "no data exists"?</p> <p>7 A. Yes. My response was that it's private.</p> <p>8 Q. Okay. And paragraph 4 asks for data in</p> <p>9 which coaching is described as a form of</p> <p>10 discipline.</p> <p>11 A. It does.</p> <p>12 Q. It doesn't just ask for coaching forms?</p> <p>13 A. That's -- it's not asking for coaching</p> <p>14 forms, you're right, in number 4.</p> <p>15 Q. So it's not inherently a request just for</p> <p>16 personnel data, correct?</p> <p>17 A. I -- yeah, I'm not sure.</p> <p>18 Q. You would agree if there was an email that</p> <p>19 said "Coaching is discipline," that that would be</p> <p>20 responsive to that part of the request?</p> <p>21 MR. ENSLIN: Object to the form. Vague</p> <p>22 and ambiguous.</p> <p>23 A. I don't know. I would guess you'd have to</p> <p>24 search for emails to see if anything like that ever</p> <p>25 existed. I don't know if that data exists.</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. Right. Because you don't know whether 2 you've conducted any searches? 3 A. Correct. 4 Q. But if that document existed, if there was 5 an email out there that says "Coaching is 6 discipline," you would agree with me that it's 7 responsive to that part of the request? 8 MR. ENSLIN: Object to the form. Vague 9 and ambiguous. 10 A. I don't make the call about whether a 11 document is responsive. 12 Q. Who makes that call? 13 A. The person that I'm asking or the person 14 conducting a server search. 15 Q. I'm sorry. Say the first part of your 16 response again. The person that you're asking? 17 A. For data, yes. 18 Q. Who would you be asking for data? 19 A. It depends on the data request. If it's 20 for a police report, I would get the data. If it's 21 for other data, I may ask someone else for data. 22 Q. And you don't recall whether you asked 23 anybody else for data responsive to this request? 24 A. I don't recall. 25 Q. Given what you've been told, that coaching</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Do you recall what you relied on to come to 2 the determination that MPD had no responsive data? 3 A. No. 4 Q. This part of the response is specific to 5 MPD. So what about the rest of the City of 6 Minneapolis? Did they have any responsive data? 7 A. I don't recall. 8 Q. You don't know whether any searches in any 9 other departments of the City of Minneapolis were 10 conducted for responsive documents? 11 A. Not regarding this particular request, no. 12 Q. You didn't conduct any -- you didn't 13 conduct any searches for -- outside of the MPD in 14 response to this request, correct? 15 A. I don't recall. 16 Q. Well, you testified earlier that if it was 17 data housed outside of the MPD, you would not have 18 looked for it, correct? 19 A. I don't recall what specifically I did in 20 response to this request. 21 Q. Right. But you testified earlier that if 22 you were look -- if you got a request assigned to 23 you and it called for data that was housed outside 24 of the MPD, that that was not within your purview. 25 You only looked for documents within the MPD; is</p>
<p style="text-align: right;">Page 63</p> <p>1 is not discipline and has never been discipline, do 2 you think it's possible you made zero effort to 3 look for responsive documents in response to 4 MNCOGI's request? 5 MR. ENSLIN: Object to the form. Asked 6 and answered. 7 A. I don't know. 8 Q. It's possible, correct? 9 A. I don't know. I'm sure it's -- you know, 10 it may be a possibility. That's true. I don't 11 remember what I did in February of 2021. 12 Q. You don't recall taking any steps in 13 particular? 14 A. I don't. 15 Q. So it's possible that you took no steps? 16 A. I suppose it is, yes. 17 Q. You also responded, "MPD has no responsive 18 data." Do you see that? 19 A. Yes. 20 Q. When you used the phrase "no responsive 21 data," what exactly did you mean? 22 A. That they had no responsive data. 23 Q. That no data existed? 24 A. I don't recall exactly what I meant in this 25 instance.</p>	<p style="text-align: right;">Page 65</p> <p>1 that right? 2 A. Yes. 3 Q. So you didn't conduct any searches outside 4 of MPD for documents responsive to data requests? 5 MR. ENSLIN: Objection. Asked and 6 answered. Argumentative. 7 BY MS. NASCIMENTO: 8 Q. You can answer. 9 A. I don't recall doing that in response to 10 this request, no. 11 Q. Why was this part of the response specific 12 to MPD only? 13 A. I worked for the police department. 14 Q. Do you still stand by this response today? 15 A. Yes. It looks true to me. 16 (Exhibit 4 was marked for 17 identification.) 18 Q. The court reporter handed you Plaintiff's 19 Exhibit No. 4, Bates stamped PLF-000012. Have you 20 seen this document before? 21 A. No. 22 Q. You didn't review this document in 23 preparation for your testimony today? 24 A. No. 25 Q. For the record, this is an August 2021</p>

<p style="text-align: right;">Page 66</p> <p>1 email, correct?</p> <p>2 A. The date on here is 8/13/21, yes.</p> <p>3 Q. It's an email from Rebecca Krystosek,</p> <p>4 correct?</p> <p>5 A. That's what it looks like, yes.</p> <p>6 Q. To counsel in this case, including me,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And the email states in the second</p> <p>10 paragraph there, "This is to confirm, as we</p> <p>11 discussed on the Rule 26 call, the City has no data</p> <p>12 responsive to the request for 'All data dating from</p> <p>13 January 1, 2011, to present, in which coaching is</p> <p>14 described as a form of discipline or acknowledged</p> <p>15 by a supervisor or the chief of police to</p> <p>16 constitute a form of discipline."</p> <p>17 Did I read that correctly?</p> <p>18 A. That is what I'm reading in this email,</p> <p>19 yes.</p> <p>20 Q. And you were the original person assigned</p> <p>21 to respond to MNCOGI's February 2021 data request.</p> <p>22 So did you confirm for Ms. Krystosek that no</p> <p>23 responsive documents existed to that fourth part of</p> <p>24 the MNCOGI request?</p> <p>25 MR. ENSLIN: I'll object to the form</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. More than two?</p> <p>2 A. I'm not sure. More than two, yes, that's</p> <p>3 true.</p> <p>4 Q. More than five?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you recall how you responded to those</p> <p>7 requests?</p> <p>8 A. No.</p> <p>9 Q. Do you recall, in response to any of them,</p> <p>10 whether you produced documents?</p> <p>11 A. No.</p> <p>12 Q. What about requests seeking coaching</p> <p>13 documents specifically? Have you ever been --</p> <p>14 besides MNCOGI's, have you ever been assigned to</p> <p>15 respond to those requests?</p> <p>16 A. I don't recall a specific request. I</p> <p>17 recall -- well, I've had other requests that</p> <p>18 involve coaching. I don't recall them</p> <p>19 specifically, though.</p> <p>20 Q. In response to any data requests regarding</p> <p>21 coaching, besides MNCOGI's, have you ever</p> <p>22 responded, quote, "Coaching is not discipline and</p> <p>23 has never been discipline. The data you are</p> <p>24 requesting is private under Minnesota Statute</p> <p>25 13.43. MPD has no responsive data"?</p>
<p style="text-align: right;">Page 67</p> <p>1 and instruct you not to answer to the substance of</p> <p>2 any communications that you may or may not have had</p> <p>3 with Ms. Krystosek.</p> <p>4 A. I don't recall talking to anyone about the</p> <p>5 data request.</p> <p>6 Q. Do you know whether anyone in your</p> <p>7 department was asked to confirm the accuracy of</p> <p>8 this statement?</p> <p>9 A. I don't know.</p> <p>10 Q. And you don't recall if you were asked to</p> <p>11 confirm the statement?</p> <p>12 A. I don't recall.</p> <p>13 Q. In your experience, would the City</p> <p>14 Attorney's Office typically have to come to someone</p> <p>15 like you in order to confirm a statement like this?</p> <p>16 MR. ENSLIN: Object to the form.</p> <p>17 Foundation.</p> <p>18 A. I don't know.</p> <p>19 Q. Was MNCOGI's February 2021 data request the</p> <p>20 only request you've ever been assigned that sought</p> <p>21 data regarding coaching?</p> <p>22 A. No.</p> <p>23 Q. Approximately how many requests regarding</p> <p>24 coaching have you been assigned to respond to?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 69</p> <p>1 Have you ever responded to any data</p> <p>2 requests regarding coaching, besides MNCOGI, that</p> <p>3 way?</p> <p>4 A. Could you repeat the question?</p> <p>5 Q. In response to any data requests regarding</p> <p>6 coaching, besides MNCOGI's, have you ever</p> <p>7 responded, quote, "Coaching is not discipline and</p> <p>8 has never been discipline. The data you are</p> <p>9 requesting is private under Minnesota</p> <p>10 Statute 13.43. MPD has no responsive data"?</p> <p>11 A. I don't recall if I've ever used those</p> <p>12 specific words, no.</p> <p>13 Q. Do you recall whether you've ever used the</p> <p>14 specific words, quote, "Coaching is not discipline</p> <p>15 and has never been discipline" --</p> <p>16 A. No.</p> <p>17 Q. -- in response to a request?</p> <p>18 MR. ENSLIN: Make sure you let her</p> <p>19 finish.</p> <p>20 THE WITNESS: Sorry.</p> <p>21 MR. ENSLIN: The court reporter is</p> <p>22 having enough trouble. So just let her -- even if</p> <p>23 you know where she's going, let her fully ask the</p> <p>24 question. That just gives the court reporter time</p> <p>25 to write it down.</p>

<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: Apologies.</p> <p>2 BY MS. NASCIMENTO:</p> <p>3 Q. Do you know whether this response was</p> <p>4 drafted for your department to use whenever it</p> <p>5 received requests regarding data about coaching?</p> <p>6 A. I don't know.</p> <p>7 Q. Are you familiar with the litigation</p> <p>8 Webster versus City of Minneapolis, Court File</p> <p>9 No. 27-CV-20-8207?</p> <p>10 A. Yes.</p> <p>11 Q. In what capacity are you familiar with it?</p> <p>12 A. I helped redact some discipline files that</p> <p>13 were related to the Webster litigation.</p> <p>14 Q. Were you the individual assigned to respond</p> <p>15 to his request?</p> <p>16 A. I don't know.</p> <p>17 Q. But you said you helped redact some files</p> <p>18 in response to the request?</p> <p>19 A. I helped redact some files that were sent</p> <p>20 to Tony Webster.</p> <p>21 Q. Specific to that lawsuit, Court File</p> <p>22 No. 27-CV-20-8207?</p> <p>23 A. I'm not sure if that was the court file</p> <p>24 number. It was Tony Webster. It was related to a</p> <p>25 lawsuit.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And you didn't review it in preparation for</p> <p>2 your testimony today?</p> <p>3 A. No.</p> <p>4 Q. You see from the cover page on this</p> <p>5 document that this is a 2013 fourth quarter report</p> <p>6 of the Office of Police Conduct Review, correct?</p> <p>7 A. I see that that's what it says on the cover</p> <p>8 page, yes.</p> <p>9 Q. If you can turn to the penultimate page,</p> <p>10 ending in Bates No. -0000895. And I've flagged it</p> <p>11 the blue flag there for you.</p> <p>12 You see that on this page there are two bar</p> <p>13 graphs, correct?</p> <p>14 A. I see that, yes.</p> <p>15 Q. Can you please read the title of the second</p> <p>16 bar graph on the page.</p> <p>17 A. "Race."</p> <p>18 Q. Are you looking at page 17 of 18? Or</p> <p>19 Bates -895.</p> <p>20 MR. ENSLIN: It would be one back.</p> <p>21 It's the second-to-last.</p> <p>22 MS. NASCIMENTO: "Penultimate." Sorry.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MS. NASCIMENTO:</p> <p>25 Q. So the second bar graph, if you can read</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Did you also help collect responsive</p> <p>2 documents?</p> <p>3 (Simultaneous crosstalk.)</p> <p>4 Q. "Yes"?</p> <p>5 A. Yes.</p> <p>6 Q. "Yes."</p> <p>7 So you're familiar with what documents were</p> <p>8 produced to Mr. Webster in that case?</p> <p>9 MR. ENSLIN: Object to the form.</p> <p>10 Foundation.</p> <p>11 A. I didn't have anything to do with</p> <p>12 production of documents in the lawsuit.</p> <p>13 (Exhibit 5 was marked for</p> <p>14 identification.)</p> <p>15 Q. Just for the record, the Bates stamp on</p> <p>16 Exhibit No. 5 is WEBSTER_0000879. I hope I put the</p> <p>17 correct number of zeros in front of that.</p> <p>18 Do you recognize this document?</p> <p>19 A. No.</p> <p>20 Can I stop to get some water?</p> <p>21 Q. Of course.</p> <p>22 A. Okay.</p> <p>23 Okay. I'm ready.</p> <p>24 Q. Have you ever seen this document before?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 73</p> <p>1 the title, please.</p> <p>2 A. It said, "Discipline Types Issued by the</p> <p>3 Chief."</p> <p>4 Q. And underneath the bar graph is a set of</p> <p>5 keys, like color coding keys, right?</p> <p>6 A. Yes.</p> <p>7 Q. And the first one there, listed as</p> <p>8 "Discipline Types Issued by Chief," is</p> <p>9 "Training/Coaching." Correct?</p> <p>10 A. That's what it says.</p> <p>11 Q. And would you agree with me that since this</p> <p>12 was a document produced by the City to Tony</p> <p>13 Webster, that it is a document in the City's</p> <p>14 possession?</p> <p>15 MR. ENSLIN: Object to the form.</p> <p>16 Foundation.</p> <p>17 A. If the City sent it, then I would assume</p> <p>18 they have it.</p> <p>19 Q. Would you agree with me that this is a</p> <p>20 public document?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you see any confidentiality designation</p> <p>23 on the bottom?</p> <p>24 A. What does a confidentiality designation</p> <p>25 look like?</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. Do you see the words "Confidential" printed 2 at the bottom of this document? 3 A. I do not. 4 Q. So if you'll go back to Exhibit 2 now, 5 which is a copy of MNCOGI's February 2021 data 6 request. And you can keep them both in front of 7 you. We'll be flipping to Exhibit 2 a lot, by the 8 way, so... 9 In that one, part 4 of the request 10 specifically asks for "All data in which coaching 11 is described as a form of discipline." Correct? 12 A. Correct. 13 Q. And this bar graph on Exhibit 5 is titled 14 "Discipline Types Issued by Chief," and then lists 15 "Coaching." Correct? 16 A. It says it on the bar graph, yes. 17 Q. This record was not produced to MNCOGI in 18 response to its February 2021 data request, 19 correct? 20 A. Not to my knowledge. 21 Q. Did you review this document before 22 responding to MNCOGI's February 2021 data request? 23 A. I don't know. I don't think so. 24 Q. Would you agree with me that this record is 25 responsive to the fourth part of MNCOGI's data</p>	<p style="text-align: right;">Page 76</p> <p>1 possession of the police department? 2 Q. Right. We discussed this -- if you flip to 3 the front part of this exhibit, it's a 2013 fourth 4 quarter report of the Office of Police Conduct 5 Review. 6 A. I typically didn't collect things outside 7 of the police department. 8 Q. Right. But the fourth -- would you agree 9 with me the fourth part of the MNCOGI request is 10 not limited to data just within the police 11 department? 12 A. Was it submitted to the police department? 13 Q. MNCOGI's request was submitted through the 14 online portal; is that correct? 15 A. I'm not sure. This one is a letter. 16 Q. Yep. So if you'll flip to Plaintiff's 17 Exhibit 3. Do you agree with me that this is a 18 copy -- a printed copy of the online portal request 19 that MNCOGI submitted -- 20 A. Yes. 21 Q. -- with your response? 22 And if you'll look at the second page of 23 that, Bates stamped PLF_000004, it lists Step 3 -- 24 so Plaintiff's Exhibit 3. Sorry. Ms. Knudsen, 25 Plaintiff's Exhibit 3.</p>
<p style="text-align: right;">Page 75</p> <p>1 request? 2 MR. ENSLIN: Object to the form. Calls 3 for a legal conclusion. 4 A. I don't know. 5 Q. Well, you see part 4, which asks for "All 6 data in which coaching is described as a form of 7 discipline," right? 8 MR. ENSLIN: Object to the form to the 9 extent it misstates what's stated in Request 4. 10 You're only reading a part of Request 4. Just 11 noting that for the record. 12 MS. NASCIMENTO: Thanks. 13 BY MS. NASCIMENTO: 14 Q. But you see Request No. 4, correct? 15 A. I do. 16 Q. And where it says, "in which coaching is 17 described as a form of discipline," correct? 18 A. It does say that. 19 Q. So, again, would you agree with me that 20 this record, in which it lists "Discipline Types 21 Issued by Chief" and lists "Coaching" as one such 22 discipline type, that that would be responsive to 23 the fourth part of MNCOGI's request? 24 A. I don't know. It would depend on, you 25 know, is this a police form? Like, was this in the</p>	<p style="text-align: right;">Page 77</p> <p>1 A. This one? 2 Q. Yes. 3 A. Yes, that is a copy of the request that I 4 handled, yes. 5 Q. And that was submitted through the online 6 data portal? 7 A. It was. 8 Q. And if you'll flip to the second page of 9 that exhibit. 10 A. (Witness complies.) 11 Q. Do you see halfway down the page there, it 12 says, "Step 3 - Who may have this data?" 13 Do you see that? 14 A. Yes. 15 Q. And it says, "We will determine where to 16 search based on the type of data requested. If you 17 believe specific roles -- people, roles, or 18 departments may have the data, identify them here." 19 Correct? 20 A. Yes. 21 Q. So the City of Minneapolis determines where 22 it needs to search for responsive records, correct? 23 A. Mm-hmm. 24 Q. And it's -- it does that based on the face 25 of the request?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. This one came to me at the police 2 department. 3 Q. I understand. But in look- -- in your job 4 in responding to data requests, you look at the 5 face of what's being requested, right? -- 6 A. Uh-huh. 7 Q. -- and determine where you need to search 8 for responsive records? 9 A. Yes. 10 Q. Is there anything that you can see in 11 Plaintiff's Exhibit 2, the specific data request, 12 that says that the only data being requested was 13 that within the MPD's possession? 14 A. In the function of my job as police support 15 technician II and with the RIU, we didn't usually 16 search for data outside of the police department. 17 Q. So you said you wouldn't look for records 18 beyond the MPD, correct? 19 A. (Nods head up and down.) 20 Q. We're not saying that -- 21 MR. ENSLIN: You got to listen to her 22 question, and then you have to -- you have to give 23 an audible. So you're starting to give "uh-huhs" 24 or head shakes, and she can't take that down. Or 25 it makes it much more difficult.</p>	<p style="text-align: right;">Page 80</p> <p>1 records are responsive to certain data requests? 2 A. No. But, I mean, they are -- they have the 3 City's position on training and coaching, and 4 typically that's where it comes from. At least I 5 think so. 6 Q. If you had found this document in 7 search- -- during a search in response to MNCOGI's 8 data request, is this -- would you have produced it 9 in response to the request? 10 A. I would have sent it for review. 11 Q. Sent it for review to who? 12 A. To whomever was doing review. What time 13 period are we talking about? 14 Q. Between February of 2021 and March of 2021. 15 A. Not exactly sure who was doing review at 16 that time, but if this was a document that was 17 found in a search, I wouldn't have reviewed it. 18 Q. But you didn't find this in a search? 19 A. Not to my knowledge. 20 Q. You didn't review it? 21 A. No. 22 Q. And you didn't produce it? 23 A. Not to my knowledge. 24 Q. All right. 25 MS. NASCIMENTO: Can we go off the</p>
<p style="text-align: right;">Page 79</p> <p>1 THE WITNESS: Thank you. 2 MR. ENSLIN: So make sure you talk as 3 loud as you can, too, because it's really hard to 4 hear with the fans going on and off. Just so she 5 can hear. So make sure you're pronouncing your 6 answers audibly and as loud as you possibly can. 7 THE WITNESS: Okay. 8 A. Yes. 9 Q. So I'm not saying that you were necessarily 10 required to respond to that part, but I'm asking 11 you today: In reading part 4 of MNCOGI's request, 12 is there anything that you see that says that this 13 is limited to only records in the possession of 14 MPD? 15 A. It does not specifically say only records 16 in the possession of MPD. 17 Q. So even though Plaintiff's Exhibit 5, the 18 fourth quarter 2013 Office of the Police Conduct 19 Review report, wasn't in the possession of the MPD, 20 you would agree with me that this record would 21 still be responsive to the fourth part of MNCOGI's 22 request? 23 A. I -- you know, I don't know. I'm not an 24 attorney, to make that call. 25 Q. Do only attorneys make the calls of what</p>	<p style="text-align: right;">Page 81</p> <p>1 record and take a quick break? 2 (Break: 10:24 a.m. to 10:30 a.m.) 3 BY MS. NASCIMENTO: 4 Q. So just to finish up on Exhibit 5. 5 You said that if you had found it, you 6 would have sent this particular exhibit for review. 7 Can you tell me more about what that means, to send 8 something for review? 9 A. Typically it's -- in 2021, usually it would 10 have been Kyle. 11 Q. Kyle? 12 A. MacDonald. He reviewed a lot of stuff for 13 the Records Information Unit when he was still in 14 there. 15 Q. What was Kyle's title? 16 A. At some point he was a records management 17 specialist, and then he was reclassified to an MPD 18 data management analyst. I don't know exactly 19 when, though. 20 Q. And would Kyle, or someone in Kyle's 21 position, have been the one to make the decision 22 whether to produce this document, ultimately? 23 A. I'm not sure. 24 Q. But it would not have been your 25 responsibility to make that determination?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. I don't think so.</p> <p>2 Q. All right. You can put aside Plaintiff's</p> <p>3 Exhibit 5. Thank you.</p> <p>4 Before the break you talked about what you</p> <p>5 would do if this particular request, so Plaintiff's</p> <p>6 Exhibit 2, came in today. And you testified that</p> <p>7 you would discuss it with coworkers, develop ideas,</p> <p>8 and form a production plan.</p> <p>9 Do you remember that testimony?</p> <p>10 A. Collection plan.</p> <p>11 Q. Collection plan. Thank you.</p> <p>12 But do you remember the rest of that</p> <p>13 testimony?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Would you agree with me that that's</p> <p>16 what should have happened back in February of 2021</p> <p>17 in response to MNCOGI's data request?</p> <p>18 A. I don't know that I agree with that</p> <p>19 statement.</p> <p>20 Q. Why not?</p> <p>21 A. I had a different team then. So we didn't</p> <p>22 handle things in quite the same way.</p> <p>23 Q. But you have no idea whether that actually</p> <p>24 happened?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 84</p> <p>1 looking to see if any -- any records existed?</p> <p>2 A. For this request?</p> <p>3 Q. Generally.</p> <p>4 A. Generally? No.</p> <p>5 Q. No, you wouldn't go looking for responsive</p> <p>6 records?</p> <p>7 A. I wouldn't ask people for their coaching</p> <p>8 forms, no.</p> <p>9 Q. So if you got a request for coaching data,</p> <p>10 you wouldn't even go looking to determine whether</p> <p>11 responsive documents even existed?</p> <p>12 A. Can you be more specific?</p> <p>13 Q. Yeah. So if you got a request, such as</p> <p>14 this one, for data regarding coaching, is it your</p> <p>15 testimony today that given what you knew or were</p> <p>16 instructed, that coaching is not discipline and has</p> <p>17 never been discipline, you wouldn't conduct any</p> <p>18 searches to determine if responsive records</p> <p>19 existed?</p> <p>20 MR. ENSLIN: Object to the form. Vague</p> <p>21 and ambiguous.</p> <p>22 A. In 2021?</p> <p>23 Q. Yes.</p> <p>24 A. I'm not specifically sure.</p> <p>25 Q. What about today?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. You also said earlier that you don't know</p> <p>2 where coaching forms or notice of coaching letters</p> <p>3 are kept. Correct?</p> <p>4 A. No.</p> <p>5 Q. Sorry. "No," as in you don't know, or</p> <p>6 "no," that's not what you said?</p> <p>7 A. I don't know.</p> <p>8 Q. You don't know where they're kept. Thank</p> <p>9 you.</p> <p>10 Do you think that you should have</p> <p>11 considered or looked for them when you got this</p> <p>12 request?</p> <p>13 A. In 2021?</p> <p>14 Q. In 2021.</p> <p>15 A. I probably wouldn't have, no.</p> <p>16 Q. Why not?</p> <p>17 A. Because coaching forms are -- I mean, I</p> <p>18 don't need to see them outside the scope -- or</p> <p>19 inside the scope of my business line. And I was</p> <p>20 told coaching is not discipline, so I wouldn't have</p> <p>21 looked for them.</p> <p>22 Q. So you wouldn't have even looked for --</p> <p>23 sorry. Let me back up.</p> <p>24 If you got a request for something that you</p> <p>25 believed was not public data, you wouldn't even go</p>	<p style="text-align: right;">Page 85</p> <p>1 A. I would probably form a collection plan</p> <p>2 with my team. And based on what we determined, we</p> <p>3 would ask different departments for data.</p> <p>4 Q. Even if you determined that the request was</p> <p>5 seeking data that is not public?</p> <p>6 A. If I got this data request today?</p> <p>7 Q. Yes.</p> <p>8 A. I would ask if, you know, OPCR MPD had any</p> <p>9 data.</p> <p>10 Q. Why is your practice different today than</p> <p>11 it was in 2021?</p> <p>12 A. I work for the City Clerk's Office.</p> <p>13 Q. As opposed to the Minneapolis Police</p> <p>14 Department?</p> <p>15 A. Uh-huh. And we have a different team, and</p> <p>16 we handle things a little bit differently now.</p> <p>17 Q. Did someone in the Minneapolis Police</p> <p>18 Department instruct you that if you determined that</p> <p>19 a request sought not-public data, that you should</p> <p>20 not go looking for responsive records?</p> <p>21 A. I don't recall that ever happening.</p> <p>22 Q. Sorry. And I think you testified earlier</p> <p>23 as well that discipline letters, such as a letter</p> <p>24 of reprimand, were kept in personnel files, but</p> <p>25 that other documents regarding discipline were kept</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 in OPCR or IAU files. Did I understand you 2 correctly earlier? 3 A. I don't recall seeing anything other than 4 notice of discipline documents or -- or, like, 5 letters or settlement agreements or arbitration 6 agreements in a personnel file. 7 Q. Okay. So the underlying investigatory 8 documents, you don't recall seeing those in the 9 personnel files? 10 A. Correct. 11 (Exhibit 6 was marked for 12 identification.) 13 MS. NASCIMENTO: I'm going to hand out 14 Plaintiff's Exhibit 7 already as well. 15 (Exhibit 7 was marked for 16 identification.) 17 BY MS. NASCIMENTO: 18 Q. So just to discuss Plaintiff's Exhibit 6 19 first. And then for the record, the Bates stamp on 20 that is CITY.001169, Exhibit 6. 21 A. Yes. 22 Q. Do you recognize this document? 23 A. No. 24 Q. Have you ever reviewed this document 25 before?</p>	<p style="text-align: right;">Page 88</p> <p>1 2003." 2 Did I read that correctly? 3 A. You did. 4 Q. So this appears to be the attachment from 5 this September 2020 email that's Plaintiff's 6 Exhibit 6, sent to Andrea Jenkins. Would you 7 agree? 8 MR. ENSLIN: Object to the form. 9 A. The attachment was labeled "2003 Federal 10 Mediation Agreement," and this said, "This 11 agreement is made in December 2003 between the 12 Unity Community Mediation Team and the Minneapolis 13 Police Department," so it very likely could be the 14 attachment, yes. 15 Q. And if I represent to you that this is the 16 attachment based on the metadata of these 17 documents, you don't have any reason to doubt that, 18 do you? 19 A. I do not. 20 Q. Would you agree with me that because we got 21 this document from the City in the course of 22 discovery, it's a record that was in the City's 23 possession? 24 A. Yes. 25 Q. And if you will flip now to the page ending</p>
<p style="text-align: right;">Page 87</p> <p>1 A. No. 2 Q. And you didn't review this document prior 3 to responding to MNCOGI's February 2021 data 4 request, correct? 5 A. I don't recall. 6 Q. This appears to be an email from a Glenn 7 Burt to Andrea Jenkins, correct? 8 A. That's what it looks like. 9 Q. Dated December 22, 2020? 10 A. Yes. 11 Q. And it has an attachment, 12 2003_Federal-Mediation-Agreement.pdf. Do you see 13 that? 14 A. I do. 15 Q. So if you'll look at Exhibit No. 7 now, 16 which, for the record, Bates stamp is CITY.001170. 17 Do you recognize this document? 18 A. No. 19 Q. You've never seen this document before? 20 A. Not to my knowledge. 21 Q. This document has the title "Memorandum of 22 Agreement." Correct? 23 A. Correct. 24 Q. And the first paragraph there says, "This 25 agreement is made this fourth day of December</p>	<p style="text-align: right;">Page 89</p> <p>1 in Bates No. -001189. I've tabbed it for you, the 2 blue tab. 3 A. Okay. 4 Q. Looking at paragraph numbered 7.3.2, 5 "Disciplinary Options." Do you see that? 6 A. Yes. 7 Q. And that says, "Pursuant to the Minneapolis 8 Civil Service Rules and the MPD Discipline Manual, 9 disciplinary options are coaching, oral reprimand, 10 written reprimand, suspension, demotion, and 11 termination." 12 Did I read that correctly? 13 A. You did. 14 Q. So this is a document in which coaching is 15 listed something as a form of discipline. Do you 16 agree with that? 17 MR. ENSLIN: Object to the form. 18 A. It says, "Disciplinary options are 19 coaching, oral reprimand, and written reprimand." 20 So, I mean, it says that it's a 21 disciplinary option. 22 Q. Okay. So would you agree with me that this 23 is a document in which coaching is listed as a form 24 of discipline? 25 A. That's what it looks like.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Is that a "yes"?</p> <p>2 A. Yes.</p> <p>3 Q. And would you agree with me, then, that</p> <p>4 this record is responsive to the fourth part of</p> <p>5 MNCOGI's request?</p> <p>6 MR. ENSLIN: Object to the form.</p> <p>7 A. It could be.</p> <p>8 Q. This was not a -- this document was not</p> <p>9 provided in response to MNCOGI's request, correct?</p> <p>10 A. I don't think so.</p> <p>11 Q. Instead, you told MNCOGI you had -- that</p> <p>12 the City -- that MPD, excuse me, had no responsive</p> <p>13 data?</p> <p>14 A. I did.</p> <p>15 (Exhibit 8 was marked for</p> <p>16 identification.)</p> <p>17 Q. So you've just been handed what's been</p> <p>18 previously [sic] marked Exhibit 8, for the record,</p> <p>19 Bates stamp CITY.001727.</p> <p>20 Do you recognize this document?</p> <p>21 A. No.</p> <p>22 Q. Have you ever seen this document before?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. This is a letter dated July 14, 2016,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. This appears to be a City of Minneapolis</p> <p>2 document, correct?</p> <p>3 A. It appears that way, yes.</p> <p>4 Q. The title of which is "Minneapolis Police</p> <p>5 Department Body-Worn Camera Policy: Response to</p> <p>6 Community Concerns." Correct?</p> <p>7 A. Yes.</p> <p>8 Q. So it appears to be the policy and City's</p> <p>9 response to what was noted in Mayor Hodge's letter</p> <p>10 that was Exhibit No. 8, correct?</p> <p>11 A. It appears that way.</p> <p>12 Q. If you can please turn to the page ending</p> <p>13 Bates No. 1733. Again, I flagged it with the blue</p> <p>14 tab there for you.</p> <p>15 A. All right.</p> <p>16 Q. Can you please read the first bold,</p> <p>17 underlined heading on that page?</p> <p>18 A. "Disciplinary consequences for violating</p> <p>19 the BWC Policy should be clearly set out in the</p> <p>20 policy."</p> <p>21 Q. So that says "disciplinary consequences,"</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And if you look to the paragraph starting,</p> <p>25 "City Considerations," it says, "Depending on the</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Yes.</p> <p>2 Q. From the Office of Mayor Betsy Hodges?</p> <p>3 A. That's what it says, yes.</p> <p>4 Q. To the residents and communities in</p> <p>5 Minneapolis, correct?</p> <p>6 A. Yes.</p> <p>7 Q. If you will look at the fifth paragraph,</p> <p>8 which begins, "Body cameras can only achieve the</p> <p>9 goals."</p> <p>10 Do you see where I'm reading?</p> <p>11 A. Yes.</p> <p>12 Q. And the next sentence there after the</p> <p>13 period is: "Today we are releasing a detailed</p> <p>14 explanation of the considerations that went into</p> <p>15 the key points of interest and concern about body</p> <p>16 camera policy that community and the public have</p> <p>17 repeatedly raised."</p> <p>18 Did I -- did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 (Exhibit 9 was marked for</p> <p>21 identification.)</p> <p>22 Q. So for the record, Exhibit 9 Bates stamp is</p> <p>23 CITY.001729. Have you ever seen this document</p> <p>24 before?</p> <p>25 A. Not to my knowledge.</p>	<p style="text-align: right;">Page 93</p> <p>1 circumstances, a violation of a policy provision</p> <p>2 may constitute an offense warranting suspension or</p> <p>3 termination, whereas other violations, only</p> <p>4 coaching or a written warning may be warranted."</p> <p>5 Did I read that correctly?</p> <p>6 A. You did.</p> <p>7 Q. And you agreed that this is a City</p> <p>8 document?</p> <p>9 A. It appears that way, yes.</p> <p>10 Q. And you would agree that this document</p> <p>11 describes coaching as a form of discipline?</p> <p>12 MR. ENSLIN: Object to the form.</p> <p>13 A. It says it's a violation.</p> <p>14 Q. Well, you see the bold and underlined</p> <p>15 heading there that says "Disciplinary</p> <p>16 Consequences"?</p> <p>17 A. I do, yes.</p> <p>18 Q. And under that, it says, "Depending on the</p> <p>19 circumstances, a violation of a policy provision</p> <p>20 may constitute an offense warranting suspension or</p> <p>21 termination, whereas others -- other violations,</p> <p>22 only coaching or a written warning may be</p> <p>23 warranted," correct?</p> <p>24 A. Correct.</p> <p>25 Q. Would you agree with me that a suspension</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 is a form of discipline?</p> <p>2 A. Yes.</p> <p>3 Q. Termination is a form of discipline?</p> <p>4 A. Yes.</p> <p>5 Q. And this doesn't make any distinction</p> <p>6 between suspension or termination or -- doesn't say</p> <p>7 "nondisciplinary coaching," correct?</p> <p>8 A. It doesn't say that.</p> <p>9 Q. Would you agree with me that this record</p> <p>10 is, then, responsive to the fourth part of MNCOGI's</p> <p>11 request?</p> <p>12 A. It could --</p> <p>13 MR. ENSLIN: Object to the form.</p> <p>14 A. It could be.</p> <p>15 Q. Would you agree with me that this is not,</p> <p>16 in fact, private personnel data under Minnesota</p> <p>17 Statute 13.43?</p> <p>18 A. It doesn't appear to be, no.</p> <p>19 Q. And this document was not provided in</p> <p>20 response to MNCOGI's data request, correct?</p> <p>21 A. I do not believe so, no.</p> <p>22 (Exhibit 10 was marked for</p> <p>23 identification.)</p> <p>24 THE WITNESS: Do you mind if I get some</p> <p>25 coffee real quick?</p>	<p style="text-align: right;">Page 96</p> <p>1 bullet point under "11 Corrective Actions" says "5</p> <p>2 coaching," correct?</p> <p>3 A. It does.</p> <p>4 Q. You'd agree that this is a City document?</p> <p>5 A. Yes.</p> <p>6 Q. In the City's possession?</p> <p>7 A. Yes.</p> <p>8 Q. It is not private personnel data under the</p> <p>9 Minnesota Statute Section 13.43?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. This document describes coaching as a form</p> <p>12 of discipline, correct?</p> <p>13 A. It --</p> <p>14 MR. ENSLIN: Object to the form.</p> <p>15 A. It looks that way.</p> <p>16 Q. This document would be responsive to the</p> <p>17 fourth part of MNCOGI's request?</p> <p>18 A. It could be.</p> <p>19 Q. And this document was not provided in</p> <p>20 response to the request, correct?</p> <p>21 A. Not to my knowledge.</p> <p>22 (Exhibit 11 was marked for</p> <p>23 identification.)</p> <p>24 Q. So for the record, the Bates stamp on that</p> <p>25 is PLF_000018. Do you recognize this document?</p>
<p style="text-align: right;">Page 95</p> <p>1 (Break: 10:46 a.m. to 10:47 a.m.)</p> <p>2 BY MS. NASCIMENTO:</p> <p>3 Q. All right. So looking at Exhibit 10, for</p> <p>4 the record, the Bates stamp is CITY.001865. Are</p> <p>5 you familiar with this document?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Have you ever seen this document before?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. This is the 29 -- 2019, excuse me, OPCR</p> <p>10 annual report, correct?</p> <p>11 A. That's what it says.</p> <p>12 Q. Dated October 16th of 2019?</p> <p>13 A. Yes.</p> <p>14 Q. If you'll turn to the page that I've</p> <p>15 flagged for you, ending in Bates -001874.</p> <p>16 A. I have turned to it, yes.</p> <p>17 Q. Can you please read the big bolded caption</p> <p>18 at the top?</p> <p>19 A. "Discipline."</p> <p>20 Q. And under it, the very first bullet point</p> <p>21 under the bullet of "11 Corrective Actions," what</p> <p>22 does that say?</p> <p>23 A. It says, "5 coaching, 4 letters of</p> <p>24 reprimand, 2 suspensions, 4 terminations."</p> <p>25 Q. Thanks. And just to clarify, that first</p>	<p style="text-align: right;">Page 97</p> <p>1 A. No.</p> <p>2 Q. Have you ever reviewed this document</p> <p>3 before?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Do you know where this document comes from?</p> <p>6 A. No.</p> <p>7 Q. But if I tell you that it's a page from a</p> <p>8 2017 report from the Minneapolis Civil Rights</p> <p>9 Department, do you have any reason to doubt that?</p> <p>10 A. No.</p> <p>11 Q. And it appears to be another bar graph?</p> <p>12 A. It does.</p> <p>13 Q. Can you read the big bolded heading above</p> <p>14 the bar graph, please.</p> <p>15 A. "Discipline Types Issued by Chief."</p> <p>16 Q. And then again, the set of bars furthest to</p> <p>17 the left, underneath that is stated</p> <p>18 "Training/Coaching." Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Would you agree with me this is a --</p> <p>21 that -- if my representation to you is correct that</p> <p>22 this is a 2017 report by the Minneapolis Civil</p> <p>23 Rights Department, this would be a City document?</p> <p>24 A. Yes.</p> <p>25 Q. In the City's possession?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 A. Yes.</p> <p>2 Q. It is not private personnel data under the</p> <p>3 Minnesota Statute Section 13.43?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. This document describes coaching as a form</p> <p>6 of discipline, correct?</p> <p>7 A. It --</p> <p>8 MR. ENSLIN: Object to the form.</p> <p>9 A. It looks that way.</p> <p>10 Q. Is -- would you agree that this is</p> <p>11 responsive to the fourth part of MNCOGI's data</p> <p>12 request?</p> <p>13 MR. ENSLIN: Object to the form.</p> <p>14 A. It could be.</p> <p>15 Q. But it was not provided in response to the</p> <p>16 request?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Ms. Knudsen, we are still in the process of</p> <p>19 receiving documents from the defendants and the</p> <p>20 intervenors in this case and may well receive other</p> <p>21 documents besides these that equate coaching with</p> <p>22 discipline. Would you agree that that's possible?</p> <p>23 A. It's possible.</p> <p>24 Q. And you would agree that if such documents</p> <p>25 exist and they're produced in response -- in this</p>	<p style="text-align: right;">Page 100</p> <p>1 A. No.</p> <p>2 Q. Have you ever reviewed this document</p> <p>3 before?</p> <p>4 A. No.</p> <p>5 Q. You didn't review this document before</p> <p>6 responding to MNCOGI's February 2021 data request,</p> <p>7 correct?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. And at the top of the document in bold</p> <p>10 lettering, that says "Notice of Coaching," correct?</p> <p>11 A. It says that.</p> <p>12 Q. And it appears to be a notice of coaching</p> <p>13 letter from -- dated December of 2019?</p> <p>14 A. Yes.</p> <p>15 Q. Sent from then-Chief Medaria Arradondo,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. To an officer of the Minneapolis Police</p> <p>19 Department?</p> <p>20 A. That's what it says.</p> <p>21 Q. Does this notice of coaching look like a</p> <p>22 letter of discipline that you've seen in personnel</p> <p>23 files?</p> <p>24 A. It looks different.</p> <p>25 Q. What would you say is different about it?</p>
<p style="text-align: right;">Page 99</p> <p>1 litigation, excuse me, that none of those documents</p> <p>2 were provided by you before denying the MNCOGI's</p> <p>3 request?</p> <p>4 A. No. I mean, they were not provided.</p> <p>5 Q. Thank you. And to the extent that those</p> <p>6 documents are not MPD documents, then they would</p> <p>7 not have been reviewed by you in response to</p> <p>8 MNCOGI's request, correct?</p> <p>9 MR. ENSLIN: Objection. Asked and</p> <p>10 answered.</p> <p>11 A. They were not reviewed by me.</p> <p>12 Q. Because you don't recall whether you looked</p> <p>13 for any documents?</p> <p>14 A. I don't recall.</p> <p>15 Q. And at that time in your position as a</p> <p>16 police support technician II, you didn't review</p> <p>17 documents outside of MPD's documents, correct?</p> <p>18 MR. ENSLIN: Object to the form.</p> <p>19 A. No, I didn't.</p> <p>20 (Exhibit 12 was marked for</p> <p>21 identification.)</p> <p>22 Q. So Plaintiff's Exhibit 12, just for the</p> <p>23 record, Bates is CITY002977, no period, unlike the</p> <p>24 others.</p> <p>25 Are you familiar with this document?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. They say "Notice of Discipline" on the top</p> <p>2 when I see them in personnel files.</p> <p>3 Q. Is there any other difference between these</p> <p>4 documents?</p> <p>5 A. Not really.</p> <p>6 Q. You previously testified that because the</p> <p>7 request was seeking coaching data, that you would</p> <p>8 not have looked for any data -- any responsive</p> <p>9 coaching records before denying that part of the</p> <p>10 request, correct?</p> <p>11 A. I don't recall looking for any records, no.</p> <p>12 Q. But you previously testified that because</p> <p>13 you were instructed coaching is not discipline and</p> <p>14 has never been discipline, if you received such a</p> <p>15 request, you would not have gone looking for</p> <p>16 coaching records, correct?</p> <p>17 A. Probably not.</p> <p>18 Q. So if you look at the first paragraph under</p> <p>19 the redacted line there, it says, "As discipline</p> <p>20 for this incident, you will receive coaching from</p> <p>21 your supervisor as 5-105(A)(4) Professional Code of</p> <p>22 Conduct was sustained at B level with coaching."</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. The next sentence there says, "This case</p>

<p style="text-align: right;">Page 102</p> <p>1 will remain in OPCR files per the record retention 2 guidelines mandated by state law." 3 Did I read that correctly? 4 A. Yes. 5 Q. By state law, do you understand that to 6 mean the MGDPA? 7 MR. ENSLIN: Object to the form. 8 Foundation. 9 A. I would assume it means MGDPA. 10 Q. Are you aware of any other state law 11 governing record retention? 12 A. No. 13 Q. Would you agree that this is a document 14 that was in the City's possession? 15 A. Yes. 16 Q. And according to the letter, it was kept in 17 OPCR files, correct? 18 A. That's what it says, yes. 19 Q. And the document informs the officer to 20 whom it's sent that the chief of police was 21 imposing coaching "as discipline for the incident." 22 MR. ENSLIN: Object to the form. 23 Foundation. 24 A. That's what it says. 25 Q. The incident being a sustained B-level</p>	<p style="text-align: right;">Page 104</p> <p>1 A. It could be. 2 MR. ENSLIN: Object to the form. 3 BY MS. NASCIMENTO: 4 Q. Part 4 of the request asks for "All data in 5 which coaching is described as a form of discipline 6 or acknowledged by a supervisor or the chief of 7 police to constitute a form of discipline." 8 Is that right? 9 A. It says that, yes. 10 Q. And here we have a document where the chief 11 of police writes, "As discipline for this incident, 12 you will receive coaching." Right? 13 A. It says that, yes. 14 Q. So would you agree with me that this 15 document is then responsive to that part of 16 MNCOGI's request? 17 MR. ENSLIN: Object to the form. 18 A. It could be. 19 Q. You testified that Mary Zenzen told you 20 that coaching is not discipline and that's why you 21 probably did not go looking for responsive records. 22 If you had gone looking and you had found this 23 document, do you think you might have questioned 24 what Ms. Zenzen told you? 25 MR. ENSLIN: Object to the form. Calls</p>
<p style="text-align: right;">Page 103</p> <p>1 violation, correct? 2 A. Correct. 3 Q. So if you look back at Exhibit No. 2, which 4 is MNCOGI's data request. Sorry. You might want 5 to just keep that one right next to you anyways 6 because we'll be looking at it a fair bit. 7 Part 3 of that request asks for "All data 8 related to coaching of any officer resulting from a 9 sustained complaint where the original complaint 10 alleged a B-, C-, or D-level violation where 11 coaching was the only corrective action taken." 12 Is that correct? 13 A. Yes. 14 Q. And the notice of coaching form that we 15 just looked at involved a sustained B-level 16 violation, correct? 17 A. Correct. 18 Q. Coaching was the only corrective action 19 imposed according to that document, correct? 20 MR. ENSLIN: Object to the form. 21 Foundation. 22 A. According to the document, yes. 23 Q. So would you agree with me that this 24 document would then be responsive to MNCOGI's data 25 request?</p>	<p style="text-align: right;">Page 105</p> <p>1 for speculation. 2 A. I don't know. 3 Q. Sitting here today, do you doubt her 4 instruction that coaching is not discipline? 5 A. No. 6 Q. Despite the fact that you have a document 7 in front of you that says, "As discipline for this 8 incident, you will receive coaching?" 9 A. What was the question? 10 Q. Do you doubt the instruction -- 11 A. No. 12 Q. -- that coaching -- 13 Why not? 14 A. Because that was what I was directed as, 15 you know, what discipline is for the City. It's -- 16 you know, in my job, I don't make policy decisions. 17 Q. In any event, this document was not 18 provided to MNCOGI in response to its request, 19 correct? 20 A. Not to my knowledge. 21 Q. And in your response to MNCOGI's data 22 request, do -- you specifically stated, "Coaching 23 is not discipline and has never been discipline." 24 But here we have a document in which a 25 chief of police is telling an officer he's being</p>

<p style="text-align: right;">Page 106</p> <p>1 coached, quote, "as discipline"; is that right?</p> <p>2 MR. ENSLIN: Object to the form. Asked</p> <p>3 and answered, repeatedly. Argumentative.</p> <p>4 A. That's what it says.</p> <p>5 Q. If you had searched for and found this</p> <p>6 document, would you have sent it for review?</p> <p>7 A. Yes.</p> <p>8 Q. Why would you have sent it for review?</p> <p>9 A. Any document that I get I send for review.</p> <p>10 Q. Did you consider whether you could collect,</p> <p>11 review, and redact documents for production in</p> <p>12 response to MNCOGI's request?</p> <p>13 A. In 2021?</p> <p>14 Q. Yes.</p> <p>15 A. I don't recall.</p> <p>16 Q. As you sit here today, do you think it</p> <p>17 would have been appropriate to collect, review, and</p> <p>18 redact documents to produce in response to MNCOGI's</p> <p>19 request?</p> <p>20 MR. ENSLIN: Object to the form. Vague</p> <p>21 and ambiguous.</p> <p>22 A. If I got this request today, you're saying</p> <p>23 what would I do?</p> <p>24 Q. Yes.</p> <p>25 A. Okay. I would talk about it with my team</p>	<p style="text-align: right;">Page 108</p> <p>1 A. That's what it says.</p> <p>2 Q. Dated February of 2020?</p> <p>3 A. Yes.</p> <p>4 Q. So approximately a year before MNCOGI</p> <p>5 submitted its request?</p> <p>6 A. Yes.</p> <p>7 Q. And this, again, appears to come from</p> <p>8 then-Chief Medaria Arradondo, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Sent to an officer of the Minneapolis</p> <p>11 Police Department?</p> <p>12 A. Yes.</p> <p>13 Q. Under the line listing the policy number,</p> <p>14 subsection, and so forth, it says, "As discipline</p> <p>15 for this incident you will receive coaching from</p> <p>16 your supervisor as 7-403 Vehicles - Emergency</p> <p>17 Response was sustained at a B-level with coaching."</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. And just like the last notice of coaching</p> <p>21 we looked at, the next sentence says, "This case</p> <p>22 will remain in OPCR files per the record retention</p> <p>23 guidelines mandated by state law."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 and form a collection plan. And if we decided to</p> <p>2 collect documents, then I would attempt to collect</p> <p>3 them from the department. And then anything that I</p> <p>4 received in response, I would send for review.</p> <p>5 Q. And if you had come across this document,</p> <p>6 would you consider whether you could redact it and</p> <p>7 produce it in response to MNCOGI's request?</p> <p>8 A. I don't review documents anymore in the</p> <p>9 course of my job. So anything that I get will go</p> <p>10 through review.</p> <p>11 Q. But you didn't do any redactions of any</p> <p>12 documents in response to MNCOGI's request, correct?</p> <p>13 A. No. Not to my knowledge.</p> <p>14 Q. Why not?</p> <p>15 A. I don't specifically recall what I did for</p> <p>16 the request. Just -- I mean, just my response.</p> <p>17 (Exhibit 13 was marked for</p> <p>18 identification.)</p> <p>19 Q. Ms. Knudsen, do you recognize this</p> <p>20 document?</p> <p>21 A. No.</p> <p>22 Q. Have you ever seen it before?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. This is another notice of coaching</p> <p>25 document, correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Considering this was a document produced to</p> <p>2 us in discovery by the City, would you agree that</p> <p>3 this is a document in the City's possession?</p> <p>4 A. Yes.</p> <p>5 Q. And like the last document that we looked</p> <p>6 at, this one informs the officer to whom it's sent</p> <p>7 that the chief of police was imposing coaching,</p> <p>8 quote, "as discipline for the incident." Correct?</p> <p>9 MR. ENSLIN: Object to the form.</p> <p>10 Foundation.</p> <p>11 A. That's what it says.</p> <p>12 Q. That incident being a sustained B-level</p> <p>13 violation?</p> <p>14 A. Yes.</p> <p>15 Q. Would you agree with me that this, then,</p> <p>16 would be responsive to the third part of MNCOGI's</p> <p>17 request?</p> <p>18 MR. ENSLIN: Object to the form.</p> <p>19 A. It's possible.</p> <p>20 Q. You've said "it's possible" a few times to</p> <p>21 these responses, and I'm wondering what's stopping</p> <p>22 you from making a definitive determination whether</p> <p>23 this is responsive to MNCOGI's request today.</p> <p>24 A. I don't remember what I did in 2021.</p> <p>25 Q. What about as you sit here today?</p>

<p style="text-align: right;">Page 110</p> <p>1 A. As a -- or as an employee of the City 2 Clerk's Office? 3 Q. Yeah. 4 A. I'd certainly say, you know, it's possible 5 that it's responsive, but it would need to go 6 through review to remove any not-public data. 7 Q. Would you also agree with me that it would 8 be responsive to part 4 of MNCOGI's request? 9 MR. ENSLIN: Object to the form. 10 A. It could be. 11 Q. If you look at the next page of that 12 document, Bates ending in CITY002980, this was cc'd 13 to OPCR Case File. Does that mean that it was kept 14 by the OPCR department in their files? 15 MR. ENSLIN: Object to the form. 16 Foundation. 17 A. I'm not sure where it was kept. 18 Q. This document was not provided in response 19 to MNCOGI's request, correct? 20 A. Not to my knowledge. 21 Q. You didn't collect this document, correct? 22 A. I don't believe so. 23 Q. You didn't review the document? 24 A. Not to my knowledge. 25 Q. You didn't redact the officer's name and</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. You said, "That's what it says"? 2 A. Yes. Sorry. 3 Q. And under the line listing the policy 4 number and so forth, it says, "As discipline for 5 this incident, you will receive coaching from your 6 supervisor as 5-104 Handling of Firearms was 7 sustained at a B-level with coaching." 8 Did I read that correctly? 9 A. Yes. 10 Q. And again, the next sentence there 11 states -- not "again," different -- "This case will 12 remain in IAU files per the record retention 13 guidelines mandated by state law." 14 Correct? 15 A. That's what it says. 16 Q. And you would agree that this was a 17 document possessed and maintained by the City? 18 A. Yes. 19 Q. This document informs the officer to whom 20 it was sent that the chief of police was imposing 21 coaching as, quote, "discipline for the incident"? 22 MR. ENSLIN: Object to the form. 23 A. That's what it says. 24 Q. The incident being a sustained B-level 25 violation?</p>
<p style="text-align: right;">Page 111</p> <p>1 then produce it? 2 A. Not to my knowledge. 3 Q. You didn't consider redacting and then 4 producing it? 5 A. I don't remember doing that. 6 (Exhibit 14 was marked for 7 identification.) 8 Q. So the Bates stamp on Plaintiff's 9 Exhibit 14 is CITY002998. Are you familiar with 10 this document? 11 A. I don't think I've seen it before. 12 Q. This is another notice of coaching, 13 correct? 14 A. Yes. 15 Q. Dated October of 2019? 16 A. Yes. 17 Q. So more than a year before MNCOGI's 18 request? 19 A. Yes. 20 Q. Like the last few, it was sent from 21 then-Chief of Police Medaria Arradondo, correct? 22 A. Yes. 23 Q. To an officer of the Minneapolis Police 24 Department? 25 A. That's what it says.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Yes. 2 Q. Would you agree with me, then, that this 3 would be responsive to part 3 of MNCOGI's data 4 request? 5 MR. ENSLIN: Object to the form. 6 A. It could be. 7 Q. As well as part 4 of the request? 8 MR. ENSLIN: Same objection. 9 A. It's possible. 10 Q. And this document was not provided in 11 response to MNCOGI's request? 12 A. Not to my knowledge. 13 Q. You didn't provide a redacted copy of this 14 document? 15 A. No. 16 (Exhibit 15 was marked for 17 identification.) 18 Q. Are you familiar with this document, 19 Ms. Knudsen? 20 A. I don't recall seeing it before. 21 Q. This is a letter from September of 2015, 22 correct? 23 A. Yes. 24 Q. Sent from then-Chief of Police -- is it 25 Janee Harteau? I'm so sorry.</p>

<p style="text-align: right;">Page 114</p> <p>1 A. "Jah-nay."  2 Q. "Jah-nay" -- thank you -- Harteau.  3 So it was sent from then-Chief of Police  4 Janee Harteau, correct?  5 A. Yes.  6 Q. To an officer of the Minneapolis Police  7 Department?  8 A. Yes.  9 Q. Under the bolded line listing the policy  10 number, it says, "You will receive a sustained  11 B-level violation with coaching."  12 Did I read that correctly?  13 A. Yes.  14 Q. The last sentence of that next  15 paragraph says, "This case will remain in IAU files  16 per the record retention guidelines mandated by  17 state law."  18 Do you see that?  19 A. Could you read that again?  20 Q. "This case will remain in IAU files per the  21 record retention guidelines mandated by state law."  22 A. That -- yeah, that's what it says in there.  23 Q. And we talked about this with respect to  24 it -- a notice -- a different notice of coaching,  25 but you understand that to mean the MGDPA, correct?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. That's what it says.  2 Q. This document was not provided in response  3 to MNCOGI's data request?  4 A. Not to my knowledge.  5 Q. You did not do any redactions and then  6 provide this document to MNCOGI?  7 A. Not to my knowledge.  8 MS. NASCIMENTO: Okay. My plan is to  9 do two more exhibits and then we can break after  10 that.  11 MR. ENSLIN: Okay.  12 (Exhibit 16 was marked for  13 identification.)  14 BY MS. NASCIMENTO:  15 Q. Are you familiar with this document,  16 Ms. Knudsen?  17 A. I don't recall seeing this document before.  18 Q. This document is titled "Notice of  19 Discipline," correct?  20 A. That is what it says.  21 Q. Dated from [REDACTED] ?  22 A. Yes.  23 Q. And you see there is a "RE" or "regarding"  24 line under the officer's name and precinct, which  25 reads "Notice of Written Reprimand and Coaching"?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. The first part -- so you didn't read the  2 whole paragraph here.  3 Q. Right. I'm talking specifically -- I'm  4 sorry. I'm asking you specifically about when  5 then-Chief Harteau references "the record retention  6 guidelines mandated by state law," you understand  7 she's referring to the MGDPA?  8 MR. ENSLIN: Object to the form.  9 Foundation.  10 A. I think so.  11 Q. And that last paragraph says, "Be advised  12 that any additional violations of department rules  13 and regulations may result in more severe  14 disciplinary action, up to and including discharge  15 from employment."  16 Correct?  17 A. That's what it says.  18 Q. This is another document possessed by the  19 City, correct?  20 A. Yes.  21 Q. For a sustained B-level violation?  22 A. Yes.  23 Q. Informing that the officer to which it was  24 sent could be subject to, quote, "more severe  25 disciplinary action"?</p>	<p style="text-align: right;">Page 117</p> <p>1 A. I'm sorry. Could you repeat that?  2 Q. Yeah. So you see that there is a "RE" or a  3 "regarding" line under the officer's name and  4 precinct, and that line reads "Notice of Written  5 Reprimand and Coaching."  6 Do you see that?  7 A. I see that, yes.  8 Q. This notice of discipline was sent from  9 then-Chief of Police [REDACTED] to an officer of  10 the Minneapolis Police Department, correct?  11 MR. ENSLIN: Object to the form.  12 Foundation.  13 A. That's what it says.  14 Q. For a sustained C-level violation, correct?  15 A. That's what it says, yes.  16 Q. And under that redacted line, the next line  17 reads, "As discipline for this incident, you will  18 receive this letter of reprimand. You will also  19 receive coaching from your supervisor."  20 Did I read that correctly?  21 A. That's what it says.  22 Q. It doesn't say nondisciplinary coaching,  23 correct?  24 A. It does not say that.  25 Q. The next paragraph says, "This case will</p>

<p style="text-align: right;">Page 118</p> <p>1 remain in OPCR files per the record retention 2 guidelines mandated by state law." 3 Correct? 4 A. That's what it says. 5 Q. You agree with me that this is a document 6 in the City's possession? 7 A. Yes. 8 Q. Informing the officer to whom it was sent 9 that the chief of police was imposing coaching? 10 MR. ENSLIN: Object to the form. Vague 11 and ambiguous. 12 A. Coaching and the letter of reprimand. 13 Q. Correct. 14 A. I -- 15 Q. Go ahead. I'm sorry. 16 A. Yes, then. 17 Q. This time for a sustained C-level 18 violation? 19 A. I don't know -- I mean, so they -- they're 20 receiving two kinds of discipline here, so I'm not 21 sure which one was coaching. So I don't know 22 exactly -- I don't know the answer to your 23 question. 24 Q. Well, you see that this is a notice of 25 discipline, correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Not to my knowledge. 2 (Exhibit 17 was marked for 3 identification.) 4 Q. Plaintiff's Exhibit 17. Bates number is 5 CITY002961. Have you seen this document before? 6 A. I don't recall seeing this document before. 7 Q. This is a letter dated November of 2016, 8 correct? 9 A. Correct. 10 Q. Sent from then-Chief of Police Janee 11 Harteau? 12 A. Yes. 13 Q. To [REDACTED], correct? 14 A. Yes. 15 Q. Ms. Knudsen, did you help with any of the 16 document collection in connection with [REDACTED] [REDACTED] 19 A. Not that I recall. 20 Q. Are you aware of any of the documents that 21 were collected and produced [REDACTED] -- 22 A. That's -- 23 Q. [REDACTED]? 24 A. I'm sorry. Not specifically. 25 Q. Who would have been responsible for</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes. 2 Q. And it says, "As discipline for this 3 incident, you will receive this letter of 4 reprimand." Right? 5 A. Yes. 6 Q. It also says, "You will also receive 7 coaching from your supervisor"? 8 A. Yes. 9 Q. And you see that above the redacted line, 10 it says "Category: C," correct? 11 A. Yes. 12 Q. "Disposition: Sustained." 13 A. Yes. 14 Q. So you'd agree with me that this letter is 15 informing the particular officer that they are 16 receiving, as discipline, this letter of reprimand 17 and coaching for a sustained C-level violation. 18 MR. ENSLIN: Object to the form. Vague 19 and ambiguous. 20 A. That's what it says. 21 Q. This document was not provided in response 22 to MNCOGI's request? 23 A. Not to my knowledge. 24 Q. You didn't redact the document and then 25 produce it to MNCOGI?</p>	<p style="text-align: right;">Page 121</p> <p>1 collecting documents [REDACTED] [REDACTED]? 3 MR. ENSLIN: Object to the form. 4 Foundation. 5 A. I'm not sure who all was involved in 6 document collection. 7 Q. Do you have any idea of who was involved? 8 A. I know some of the parties involved, but I 9 don't know all of the parties involved. 10 Q. Who are the parties that you know were 11 involved? 12 A. I believe Mary was involved. 13 Q. Mary Zenzen? 14 A. Yes. 15 Q. Anyone else? 16 A. I don't know. 17 Q. Looking back at Plaintiff's Exhibit 17, 18 this is a letter informing [REDACTED] that a 19 B-level professional code of conduct violation was 20 sustained against him, correct? 21 A. That's what it says. 22 Q. And under that bolded line, it says, "You 23 will receive coaching from your supervisor, and the 24 case will remain in OPCR files per the record 25 retention guidelines mandated by state law."</p>

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3 Q. [REDACTED]  
[REDACTED]  
7 Q. And part 4 of MNCOGI's request, correct?  
8 MR. ENSLIN: Same objection.  
[REDACTED]  
12 Q. Thank you. But it would be responsive to  
13 part 4, correct?  
14 A. It could be.  
15 MR. ENSLIN: Object to the form.  
16 THE WITNESS: Sorry.  
17 BY MS. NASCIMENTO:  
18 Q. But you don't recall reviewing this  
19 document before responding to MNCOGI's request?  
20 A. I do not recall.  
21 Q. And, in fact, you were instructed that  
22 coaching is not discipline, and has never been  
23 discipline, so it was your practice not to look for  
24 coaching forms even when a request for coaching was  
25 submitted?

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1 I did not look for coaching forms.  
2 Q. So the likelihood is that you would not  
3 have reviewed this -- this form before responding  
4 to MNCOGI's request, correct?  
5 A. I don't recall ever reviewing this form.  
6 Q. And you agree that this form is -- was in  
7 MPD's possession, specifically, correct?  
8 A. I don't --  
9 MR. ENSLIN: Object to the form.  
10 Foundation.  
11 A. I don't know.  
12 Q. You didn't produce this document in  
13 response to MNCOGI's request, correct?  
14 A. Not to my knowledge.  
15 Q. You didn't redact it and produce it?  
16 A. I don't recall doing that.  
17 Q. And you don't recall considering redaction  
18 of any of these documents to produce to MNCOGI?  
19 A. I do not recall.  
20 Q. Okay.  
21 MS. NASCIMENTO: Should we take a  
22 break?  
23 MR. ENSLIN: Sure.  
24 (Break: 11:22 a.m. to 12:20 p.m.)  
25 (Exhibits 18 to 26 were marked for


<p style="text-align: right;">Page 126</p> <p>1 identification.)</p> <p>2 BY MS. NASCIMENTO:</p> <p>3 Q. So over the break I asked you to review a</p> <p>4 number of exhibits, right?</p> <p>5 A. Yes.</p> <p>6 Q. Exhibits 18 through 26. And so I'm just,</p> <p>7 quick, going to read out the Bates numbers for</p> <p>8 those for the record.</p> <p>9 So Plaintiff's Exhibit 18, Bates is</p> <p>10 CITY002995. Plaintiff's Exhibit 19, the Bates is</p> <p>11 CITY002958.</p> <p>12 MS. WALKER: Slow down so they can look</p> <p>13 at it.</p> <p>14 MS. NASCIMENTO: Oh, sorry.</p> <p>15 MS. WALKER: So that's 18. 19?</p> <p>16 MS. NASCIMENTO: 002958.</p> <p>17 Plaintiff's Exhibit 20 is CITY002960.</p> <p>18 Plaintiff's 21 is CITY002971. 22 is CITY002975.</p> <p>19 Plaintiff's 23 is CITY002981. Plaintiff's 24 is</p> <p>20 002983. Plaintiff's 25 is CITY002986. And</p> <p>21 finally, Plaintiff's 26 is 002991.</p> <p>22 BY MS. NASCIMENTO:</p> <p>23 Q. Does that line up with everything that you</p> <p>24 have in front of you?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 128</p> <p>1 paragraph, it says, "Be advised that any additional</p> <p>2 violations of department rules and regulations may</p> <p>3 result in more severe disciplinary action, up to</p> <p>4 and including discharge." Correct?</p> <p>5 A. That is what it says.</p> <p>6 Q. This form was cc'd to personnel and OPCR?</p> <p>7 A. That is what it says.</p> <p>8 Q. Directing your attention to Plaintiff's</p> <p>9 Exhibit 23, which is CITY002981, you see in the</p> <p>10 last paragraph it has that same "more severe</p> <p>11 disciplinary action" language, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And, again, cc'd to personnel and OPCR,</p> <p>14 correct?</p> <p>15 A. That's what it says.</p> <p>16 Q. Plaintiff's Exhibit 24, this is labeled</p> <p>17 "Coaching Document." And just to direct your</p> <p>18 attention to the third bullet point, this was</p> <p>19 coaching was received -- or, excuse me, coaching</p> <p>20 was imposed in response to two B violations --</p> <p>21 correct? -- in that third bullet point?</p> <p>22 MR. ENSLIN: Object to the form.</p> <p>23 Foundation.</p> <p>24 A. It says that "[REDACTED] received two</p> <p>25 B violations with coaching," yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. So I can go through these one by one, but I</p> <p>2 was hoping, as we discussed, to streamline some of</p> <p>3 my questions. So these are all forms documenting</p> <p>4 instances of coaching or the imposition of</p> <p>5 coaching, correct?</p> <p>6 A. Yes.</p> <p>7 Q. You would agree that these would all be</p> <p>8 responsive to MNCOGI's February 2021 data request?</p> <p>9 A. They could be.</p> <p>10 MR. ENSLIN: Object to the form.</p> <p>11 BY MS. NASCIMENTO:</p> <p>12 Q. You didn't produce any of these documents</p> <p>13 in response to MNCOGI's requests?</p> <p>14 A. Not to my knowledge, no.</p> <p>15 Q. Not even with any redactions?</p> <p>16 A. Not to my knowledge, no.</p> <p>17 Q. And you can't recall doing any searches for</p> <p>18 documents, so you don't know whether you would have</p> <p>19 found these documents in response to MNCOGI's</p> <p>20 request, correct?</p> <p>21 A. Correct. I don't know if I would have</p> <p>22 found these documents.</p> <p>23 Q. And just to direct your attention</p> <p>24 specifically to Plaintiff's Exhibit 20, which is</p> <p>25 CITY002960. Just to confirm, in that last</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. And in the fourth bullet point,</p> <p>2 specifically those policy violations were Policy</p> <p>3 5-306, "Use of Force - Reporting" and "Use of</p> <p>4 Force - Post Incident Requirements - Supervisor</p> <p>5 Notification"?</p> <p>6 A. What was the question?</p> <p>7 Q. That this -- the two B violations were for</p> <p>8 policies "Use of Force - Reporting," "Use of</p> <p>9 Force - Post-Incident Requirements - Supervisor</p> <p>10 Notification"?</p> <p>11 A. I don't know specifically. It says they</p> <p>12 were reviewed with the officer.</p> <p>13 Q. You can set all of those aside.</p> <p>14 So in reviewing my notes during the break,</p> <p>15 I just want to make sure that I've clarified</p> <p>16 anything in the record for this part because I</p> <p>17 think I caused some confusion earlier, so</p> <p>18 apologies.</p> <p>19 In 2021, when you were a police support</p> <p>20 technician II, you were in the Minneapolis Police</p> <p>21 Department, and so you agree that -- sorry. You</p> <p>22 were -- you were situated in the Minneapolis Police</p> <p>23 Department, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And so you were responsible for retrieving</p>

<p style="text-align: right;">Page 130</p> <p>1 data responsive to requests where the data was 2 housed within the Minneapolis Police Department, 3 correct? 4 A. Yes. 5 Q. Not for data outside of the MPD? 6 A. Correct. 7 Q. And you agree that MNCOGI's request from 8 February 2021 is not limited to just MPD data? 9 A. It asks for all data. 10 Q. Right. So it's not limited to just MPD 11 data? 12 A. It doesn't say specifically MPD. 13 Q. So to the extent that records responsive to 14 MNCOGI's request were kept outside of MPD, that was 15 someone else's job to go find? 16 A. It's possible. 17 Q. But you don't know if that actually 18 happened in that case? 19 A. No, I don't. 20 Q. And you don't -- and no one told you that 21 they had responsive records from outside of MPD, 22 right? 23 A. I don't recall. 24 Q. Because you told MNCOGI that there were no 25 responsive records?</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Yes. 2 Q. So back in February of 2021, I think we 3 discussed the steps you would've taken -- the steps 4 you would have taken to respond to a data request 5 would have been to -- you would have received the 6 request, had it assigned to you, see what it was 7 asking for, review the documents responsive, 8 potentially make redactions, and then finally 9 provide a response, correct? 10 A. That is what we did, like, for most 11 standard data requests. 12 Q. Right. And I asked you, too, that -- 13 whether anyone had to review your responses before 14 you responded to a data request, correct? 15 A. I think you did ask that, yes. 16 Q. And you said not typically? 17 A. Not typically. 18 Q. And I asked you, "Okay. Can you give me an 19 example of a request that would have had to go for 20 review?" 21 And you said, "I can't recall any 22 exceptions." 23 A. I can't recall. 24 Q. But in your later testimony, I asked had 25 you found certain documents, such as the memorandum</p>
<p style="text-align: right;">Page 131</p> <p>1 A. That is what I said. No, wait. What I 2 said was we have no documents responsive to this 3 request. 4 Q. It's Exhibit 3. 5 A. Okay. Yeah. 6 Q. But we've now spent the better part of the 7 morning looking at documents that you agreed could 8 be responsive to MNCOGI's request? 9 A. I did say that. 10 Q. So looking back at your response in 11 Plaintiff's Exhibit 3, then, do you still stand by 12 the response that "The data you're requesting is 13 private, and there is no responsive data"? 14 MR. ENSLIN: Object to the form. Asked 15 and answered. 16 A. Yes. I mean, I still think that -- I still 17 like that answer. 18 Q. You still think that each of the documents 19 that we looked at today, including memorandum of 20 agreement or OPCR report, that those are not 21 responsive, and that it's just private data under 22 Minnesota Statute 13.43? 23 MR. ENSLIN: Object to the form. 24 A. They could be. I don't know. 25 Q. They could be responsive, right?</p>	<p style="text-align: right;">Page 133</p> <p>1 of agreement or some of the City Civil Rights 2 Department reports or OPCR reports, whether you 3 would agree that those were responsive to MNCOGI's 4 request, and you testified it could be, right? 5 A. I said that, yes. 6 Q. And you said that you would have to send it 7 for review? 8 A. I did say that. 9 Q. So I'm just a bit confused about what your 10 authority was as a police support technician in 11 February of 2021. So did you have -- did someone 12 have to review your responses before you responded? 13 A. In what instance? 14 Q. To any data requests? 15 A. To this one? I don't know. In 2021 in 16 general? Not typically. 17 Q. So why would you have to send -- so why, if 18 you had found these documents, would you have had 19 to send those for review? 20 MR. ENSLIN: Object to the form. Vague 21 and ambiguous. 22 A. I mean, I can't tell you because I 23 didn't -- I don't recall seeing the documents in 24 2021, so I don't know what I would have done in 25 2021.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. Right. So I guess I'm asking you, sitting 2 here today, you have testified they could be 3 responsive but you didn't want to say definitively 4 because you would need to send them to someone for 5 review, right? That was your testimony? 6 A. I don't know if those were, I think, my 7 exact words, but I believe generalities, probably. 8 Q. So why is it that you would have had to 9 send documents responsive to -- that you determined 10 could be responsive to MNCOGI's request for review? 11 A. Why would I send these particular documents 12 for review? 13 Q. Well, so far I've -- in response to almost 14 every document that I have shown you and asked, "So 15 would you agree with me that these are responsive 16 to some part of MNCOGI's request?" your response 17 has generally been, "It could be." Right? 18 A. Yes. 19 Q. When I ask, "What did you mean by that? 20 Can't you say definitively?" your testimony was, 21 "Well, I would need to send it for review." 22 Correct? 23 A. Yes. 24 Q. So why is it that despite your testimony 25 that no one was required to review your responses</p>	<p style="text-align: right;">Page 136</p> <p>1 requests, most of what I reviewed and redacted was 2 police reports, and these are not police reports. 3 Q. When you were assigned a request that 4 didn't ask for police reports or incident reports, 5 in those cases were you required to send what you 6 determined were responsive documents for review 7 before production? 8 A. I don't recall specific instances. 9 Q. But it would not have been your final call 10 whether these documents that you said could be 11 responsive to MNCOGI's request to actually produce 12 them? 13 MR. ENSLIN: Object to the form. 14 A. You're asking me if in 2021 I would be -- 15 Q. Were you the ultimate person to make the 16 determination whether to produce a document in 17 response to MNCOGI's February 2021 document 18 request? 19 A. I don't know. 20 Q. Okay. So in 2021, if you had found these 21 documents, you would have sent them for review, 22 correct? 23 MR. ENSLIN: Object to the form. 24 A. If I had found them? 25 Q. Yes.</p>
<p style="text-align: right;">Page 135</p> <p>1 before you responded, typically, and that you can't 2 recall any exceptions to that, why, then, if you 3 had found these documents and you said they could 4 be responsive to MNCOGI's requests, would you have 5 had to send these documents for review? 6 MR. ENSLIN: Okay. Hold on. Object to 7 the form. Vague and ambiguous because you're going 8 back and forth between time frames. 9 So you're saying -- sometimes you're 10 talking about what she would have done in 2021, and 11 sometimes now you're saying what would you do now. 12 So can you just clarify what -- what are you asking 13 as far as what she would have done when? 14 MS. NASCIMENTO: Sure. Sure. 15 BY MS. NASCIMENTO: 16 Q. So knowing what you know now, having 17 reviewed all of these documents together and with 18 your responses of they could be responsive to 19 MNCOGI's request, if you were again a police 20 support technician II responding to MNCOGI's 21 request, why would you have had to send these 22 documents for review? 23 MR. ENSLIN: I'll object to the form to 24 the extent it misstates prior testimony. 25 A. In my role as a PST II responding to data</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Yes. 2 Q. To whom would you have sent them? 3 A. It depends on who was employed at that 4 time. There was a pool of people that could have 5 done it. So it could have been Kyle MacDonald or 6 Shelby or -- I'm not exactly sure who else was 7 employed in the Clerk's Office at that time. They 8 did some of the document review. 9 Q. What is Shelby's last name? 10 A. Vandenberg. 11 Q. And you said that Kyle MacDonald and Shelby 12 Vandenberg, they were employed by the Clerk's 13 Office? 14 A. I don't know exactly when they got employed 15 by the Clerk's Office. 16 Q. They were not situated in the police 17 department? 18 A. Kyle was at one point. I don't know when 19 he moved. 20 Q. And for your testimony today, when you have 21 responded it could be responsive, what you mean is 22 that you think that those documents are responsive, 23 but ultimately someone else would have to make the 24 call whether they would be produced to MNCOGI, 25 correct?</p>

<p style="text-align: right;">Page 138</p> <p>1 MR. ENSLIN: Object to the form.</p> <p>2 A. I mean they could be responsive.</p> <p>3 Q. Well, if you didn't believe that they were</p> <p>4 responsive to MNCOGI's requests, why would you have</p> <p>5 sent them for review?</p> <p>6 A. I don't think I ever -- I'm not quite sure</p> <p>7 what you're asking. I don't recall seeing them in</p> <p>8 2021.</p> <p>9 Q. Right. I'm saying, now that you've seen</p> <p>10 them and I've asked you, "You would agree these are</p> <p>11 responsive, correct?"</p> <p>12 And you said, "Could be. I'd have to send</p> <p>13 them for review."</p> <p>14 What you meant -- and correct me if I'm</p> <p>15 wrong -- is that you think they are responsive on</p> <p>16 first review, but that you'd have to send them to</p> <p>17 someone else to make a final call; is that right?</p> <p>18 A. If I got them from a department now, I</p> <p>19 would send them for review because all documents go</p> <p>20 for review -- through review.</p> <p>21 Q. Okay. So setting aside my prior questions,</p> <p>22 just in your personal capacity, as you sit here</p> <p>23 today after having reviewed MNCOGI's data request</p> <p>24 and the documents that we went through, would you</p> <p>25 agree with me that they are responsive to MNCOGI's</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Have you read the MPD discipline matrix?</p> <p>2 A. I don't recall reading it.</p> <p>3 Q. Did anyone at any point show you a written</p> <p>4 policy that coaching is not discipline?</p> <p>5 A. I don't specifically recall an instance of</p> <p>6 someone showing me the policy saying, "This is not</p> <p>7 discipline."</p> <p>8 Q. It was just -- were you just told that</p> <p>9 orally?</p> <p>10 A. I don't know exactly how I was told.</p> <p>11 Q. Are you aware of any other policies like</p> <p>12 this where whole categories of documents -- that</p> <p>13 you're excused from looking for whole categories of</p> <p>14 documents?</p> <p>15 MR. ENSLIN: Object to the form.</p> <p>16 A. Could you restate your question or --</p> <p>17 Q. So are you aware of any other categories of</p> <p>18 documents that you are excluded from looking for</p> <p>19 based on a policy decision?</p> <p>20 A. I don't -- I'm not aware of any categories</p> <p>21 of documents that we're excluded from looking for</p> <p>22 based on policy.</p> <p>23 Q. Well, you testified earlier that you were</p> <p>24 told coaching is not discipline, has never been</p> <p>25 discipline, so you wouldn't go looking for coaching</p>
<p style="text-align: right;">Page 139</p> <p>1 request?</p> <p>2 A. I -- they could be responsive to MNCOGI's</p> <p>3 request.</p> <p>4 Q. Okay. Do you recall when I asked you</p> <p>5 previously whether you doubted Mary Zenzen's</p> <p>6 instruction that coaching is not discipline and has</p> <p>7 never been discipline? I believe you testified it</p> <p>8 was because you don't make policy decisions.</p> <p>9 Do you recall that testimony?</p> <p>10 A. Yes.</p> <p>11 Q. What did you mean by "policy decisions"?</p> <p>12 A. I don't determine what constitutes</p> <p>13 discipline or coaching or anything like that.</p> <p>14 Q. And someone told you that this was a policy</p> <p>15 decision, what constitutes coaching or discipline?</p> <p>16 MR. ENSLIN: Object to the form.</p> <p>17 Misstates prior testimony.</p> <p>18 A. It's in the policy and procedure manual.</p> <p>19 Q. What is in the policy and procedure manual?</p> <p>20 A. Discipline for MPD.</p> <p>21 Q. Have you read the MPD policy and procedure</p> <p>22 manual?</p> <p>23 A. Cover to cover? No.</p> <p>24 Q. Have you read the MPD disciplinary manual?</p> <p>25 A. I don't recall reading it.</p>	<p style="text-align: right;">Page 141</p> <p>1 forms, right?</p> <p>2 A. I think I did say that, yes.</p> <p>3 Q. So are you aware of any other categories of</p> <p>4 documents that you are excused from looking for</p> <p>5 based on any other policies?</p> <p>6 MR. ENSLIN: Objection. Asked and</p> <p>7 answered.</p> <p>8 A. No.</p> <p>9 Q. On any other occasions, has anyone told you</p> <p>10 that even if you know responsive documents exist,</p> <p>11 that you shouldn't go looking for them as a matter</p> <p>12 of policy?</p> <p>13 A. I don't recall that ever happening.</p> <p>14 Q. On any other occasions, has anyone told you</p> <p>15 that even if you know responsive documents exist,</p> <p>16 you shouldn't produce them?</p> <p>17 A. I don't recall that happening.</p> <p>18 Q. Do you know who would know more about the</p> <p>19 policy decision surrounding coaching as discipline?</p> <p>20 A. I don't know a specific person that would</p> <p>21 have, like, that particular knowledge, that there's</p> <p>22 lots of people who probably know more about it than</p> <p>23 I do.</p> <p>24 Q. Would Mary Zenzen know?</p> <p>25 A. She might.</p>



<p style="text-align: right;">Page 142</p> <p>1 Q. How about Carol Bachun?</p> <p>2 A. Possible.</p> <p>3 Q. Anyone else?</p> <p>4 A. I'm sure there are other people.</p> <p>5 Q. Can you recall anyone else?</p> <p>6 A. That would...</p> <p>7 Q. ...know about coaching as -- that</p> <p>8 coaching -- that the City's position is that</p> <p>9 coaching is not discipline and that that's a policy</p> <p>10 decision?</p> <p>11 A. I'm sure attorneys would know.</p> <p>12 Q. And in your personal capacity, your</p> <p>13 personal opinion, how do you square the instruction</p> <p>14 by Mary Zenzen that coaching is not discipline and</p> <p>15 has never been discipline with the forms that we</p> <p>16 looked at today that said coaching was being</p> <p>17 imposed as discipline?</p> <p>18 MR. ENSLIN: Object to the form. Vague</p> <p>19 and ambiguous.</p> <p>20 A. I don't know enough about these situations</p> <p>21 to really -- I mean -- how would I square it?</p> <p>22 Q. Yeah.</p> <p>23 A. What do you mean by that?</p> <p>24 Q. Well, you were told that coaching is not</p> <p>25 discipline. It's the City's position that it has</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MS. NASCIMENTO:</p> <p>2 Q. Ms. Knudsen, my last question is just: If</p> <p>3 all of these documents would have to be sent for</p> <p>4 review and you're not the ultimate decider of what</p> <p>5 was going to be produced, why did you have to put</p> <p>6 your name on the response?</p> <p>7 MR. ENSLIN: Object to the form.</p> <p>8 Again, it misstates prior testimony and conflates</p> <p>9 time frames. Multiple time frames.</p> <p>10 A. Yeah, can you be more specific about that.</p> <p>11 Q. Back in 2021, would all of the documents --</p> <p>12 besides the police reports, for example, would all</p> <p>13 of the documents have to be sent for review before</p> <p>14 being produced?</p> <p>15 MR. ENSLIN: Objection. Asked and</p> <p>16 answered, like, 20 times.</p> <p>17 A. Documents are always reviewed before</p> <p>18 they're produced.</p> <p>19 Q. Okay. You would have had to send them to</p> <p>20 someone else to review to make -- to make a final</p> <p>21 call on them, correct?</p> <p>22 A. To make a final call on what is public and</p> <p>23 what is not public?</p> <p>24 Q. Correct.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 143</p> <p>1 never been discipline, right?</p> <p>2 A. Yep.</p> <p>3 Q. And we went through a number of forms --</p> <p>4 Plaintiff's Exhibit 12, Plaintiff's Exhibit 13,</p> <p>5 Plaintiff's Exhibit 14, just to name a few -- that</p> <p>6 say, "As discipline, you will receive coaching."</p> <p>7 So in your personal capacity, how do you</p> <p>8 understand that the City can take the position</p> <p>9 coaching is not discipline now that you've seen</p> <p>10 these records?</p> <p>11 MR. ENSLIN: Objection. Asked and</p> <p>12 answered. She just answered that question.</p> <p>13 A. Are you asking if I'm offended by it?</p> <p>14 Q. No. I'm asking: How do you square those</p> <p>15 two things? They seem contradictory to me. Do</p> <p>16 they seem contradictory to you?</p> <p>17 A. They certainly say that there's coaching in</p> <p>18 here.</p> <p>19 Q. As discipline, right?</p> <p>20 A. That's what it says.</p> <p>21 MS. NASCIMENTO: All right. I need</p> <p>22 just a couple minutes to confer with counsel, and</p> <p>23 then I think we can wrap up.</p> <p>24 MR. ENSLIN: Great.</p> <p>25 (Break: 12:46 p.m. to 12:47 p.m.)</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. So if all of these documents would have had</p> <p>2 to have been sent for review to make a final call</p> <p>3 of what is public and what is not public and you</p> <p>4 weren't the ultimate decider of that fact, then why</p> <p>5 did you have to be -- why did your name have to</p> <p>6 appear on the response?</p> <p>7 A. I was the person who was assigned the</p> <p>8 request, so I was responsible for communicating</p> <p>9 with the requester and giving an answer and</p> <p>10 providing documents to -- that were provided by any</p> <p>11 department.</p> <p>12 MS. NASCIMENTO: I don't have anything</p> <p>13 else.</p> <p>14 MR. ENSLIN: Okay. No questions.</p> <p>15 MR. KELLY: None from me. Thank you.</p> <p>16 MS. WALKER: Do you want to read and</p> <p>17 sign?</p> <p>18 MR. ENSLIN: Yes. Can I put -- I don't</p> <p>19 have the protective order, but --</p> <p>20 MS. NASCIMENTO: I do.</p> <p>21 MR. ENSLIN: -- is there any</p> <p>22 disagreement that documents that are marked</p> <p>23 "Confidential" that are used as an exhibit retain</p> <p>24 their confidentiality?</p> <p>25 MS. WALKER: That's fine.</p>

<p style="text-align: right;">Page 146</p> <p>1 MR. ENSLIN: Okay. And, yes, we'll</p> <p>2 read and sign.</p> <p>3 MS. NASCIMENTO: I did bring a copy of</p> <p>4 it. Do you want her to sign it? I figured since</p> <p>5 she was a City employee, that it was already</p> <p>6 covered.</p> <p>7 MR. ENSLIN: No, no. I was more</p> <p>8 talking about the language related to</p> <p>9 confidentiality of the documents.</p> <p>10 (Time Noted: 12:49 p.m.,</p> <p>11 September 19, 2023.)</p> <p>12 - - -</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 148</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6</p> <p>7 September 29, 2023</p> <p>8</p> <p>9 To: Mr. Enslin</p> <p>10</p> <p>11 Case Name: Minnesota Coalition On Government Information v. City Of</p> <p>12 Minneapolis, et al.</p> <p>13 Veritext Reference Number: 6089496</p> <p>14 Witness: Katherine Knudsen Deposition Date: 9/19/2023</p> <p>15</p> <p>16 Dear Sir/Madam:</p> <p>17</p> <p>18 Enclosed please find a deposition transcript. Please have the witness</p> <p>19 review the transcript and note any changes or corrections on the</p> <p>20 included errata sheet, indicating the page, line number, change, and</p> <p>21 the reason for the change. Have the witness' signature notarized and</p> <p>22 forward the completed page(s) back to us at the Production address</p> <p>23 shown</p> <p>24</p> <p>25 above, or email to production-midwest@veritext.com.</p> <p>26</p> <p>27 If the errata is not returned within thirty days of your receipt of</p> <p>28 this letter, the reading and signing will be deemed waived.</p> <p>29</p> <p>30 Sincerely,</p> <p>31</p> <p>32 Production Department</p> <p>33</p> <p>34</p> <p>35 NO NOTARY REQUIRED IN CA</p>
<p style="text-align: right;">Page 147</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 STATE OF MINNESOTA )</p> <p>4 ) ss.</p> <p>5 COUNTY OF HENNEPIN )</p> <p>6</p> <p>7 I hereby certify that I reported the</p> <p>8 deposition of KATHERINE KNUDSEN, on</p> <p>9 September 19, 2023, in Minneapolis, Minnesota, and</p> <p>10 that the witness was by me first duly affirmed to</p> <p>11 tell the whole truth;</p> <p>12</p> <p>13 That the testimony was transcribed by me and</p> <p>14 is a true record of the testimony of the witness;</p> <p>15 That the cost of the original has been</p> <p>16 charged to the party who noticed the deposition,</p> <p>17 and that all parties who ordered copies have been</p> <p>18 charged at the same rate for such copies;</p> <p>19</p> <p>20 That I am not a relative or employee or</p> <p>21 attorney or counsel of any of the parties, or a</p> <p>22 relative or employee of such attorney or counsel;</p> <p>23</p> <p>24 That I am not financially interested in the</p> <p>25 action and have no contract with the parties,</p> <p>26 attorneys, or persons with an interest in the</p> <p>27 action that affects or has a substantial tendency</p> <p>28 to affect my impartiality;</p> <p>29</p> <p>30 That the right to read and sign the</p> <p>31 deposition by the witness was preserved.</p> <p>32</p> <p>33 WITNESS MY HAND AND SEAL THIS 28th day of</p> <p>34 September, 2023.</p> <p>35</p> <p>36 </p> <p>37 <small>Heather O. Johnson, RRR, CRC, RSA</small></p> <p>38 Notary Public, Hennepin County, Minnesota</p> <p>39 My commission expires January 31, 2026</p>	<p style="text-align: right;">Page 149</p> <p>1 DEPOSITION REVIEW</p> <p>2 CERTIFICATION OF WITNESS</p> <p>3</p> <p>4 ASSIGNMENT REFERENCE NO: 6089496</p> <p>5 CASE NAME: Minnesota Coalition On Government Information v.</p> <p>6 City Of Minneapolis, et al.</p> <p>7 DATE OF DEPOSITION: 9/19/2023</p> <p>8 WITNESS' NAME: Katherine Knudsen</p> <p>9 In accordance with the Rules of Civil</p> <p>10 Procedure, I have read the entire transcript of</p> <p>11 my testimony or it has been read to me.</p> <p>12 I have made no changes to the testimony</p> <p>13 as transcribed by the court reporter.</p> <p>14</p> <p>15</p> <p>16 Date Katherine Knudsen</p> <p>17 Sworn to and subscribed before me, a</p> <p>18 Notary Public in and for the State and County,</p> <p>19 the referenced witness did personally appear</p> <p>20 and acknowledge that:</p> <p>21</p> <p>22 They have read the transcript;</p> <p>23 They signed the foregoing Sworn</p> <p>24 Statement; and</p> <p>25 Their execution of this Statement is of</p> <p>26 their free act and deed.</p> <p>27</p> <p>28 I have affixed my name and official seal</p> <p>29</p> <p>30 this _____ day of _____, 20____.</p> <p>31</p> <p>32 _____</p> <p>33 Notary Public</p> <p>34 _____</p> <p>35 Commission Expiration Date</p>

<p style="text-align: right;">Page 150</p> <p>1           DEPOSITION REVIEW 2           CERTIFICATION OF WITNESS</p> <p>3           ASSIGNMENT REFERENCE NO: 6089496 4           CASE NAME: Minnesota Coalition On Government Information v. 5           City Of Minneapolis, et al. 6           DATE OF DEPOSITION: 9/19/2023 7           WITNESS' NAME: Katherine Knudsen 8           In accordance with the Rules of Civil 9           Procedure, I have read the entire transcript of 10          my testimony or it has been read to me. 11          I have listed my changes on the attached 12          Errata Sheet, listing page and line numbers as 13          well as the reason(s) for the change(s). 14          I request that these changes be entered 15          as part of the record of my testimony. 16 17          I have executed the Errata Sheet, as well 18          as this Certificate, and request and authorize 19          that both be appended to the transcript of my 20          testimony and be incorporated therein. 21 22          Date                   Katherine Knudsen 23 24          Sworn to and subscribed before me, a 25          Notary Public in and for the State and County,             the referenced witness did personally appear             and acknowledge that:             They have read the transcript;             They have listed all of their corrections             in the appended Errata Sheet;             They signed the foregoing Sworn             Statement; and             Their execution of this Statement is of             their free act and deed.             I have affixed my name and official seal             this _____ day of _____, 20____.             _____             Notary Public              _____             Commission Expiration Date</p>	
<p style="text-align: right;">Page 151</p> <p>1           ERRATA SHEET 2           VERITEXT LEGAL SOLUTIONS MIDWEST 3           ASSIGNMENT NO: 6089496 4           PAGE/LINE(S) /    CHANGE    /REASON 5           _____ 6           _____ 7           _____ 8           _____ 9           _____ 10          _____ 11          _____ 12          _____ 13          _____ 14          _____ 15          _____ 16          _____ 17          _____ 18          _____ 19          _____ 20          _____ 21          Date                   Katherine Knudsen 22          SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ 23          DAY OF _____, 20____. 24          _____ 25          Notary Public              _____             Commission Expiration Date</p>	

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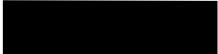
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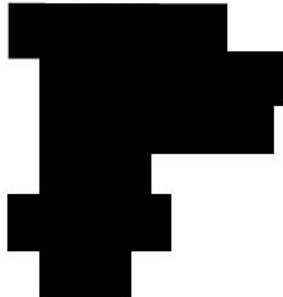
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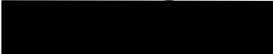

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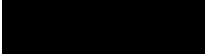

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

## VERITEXT LEGAL SOLUTIONS

## COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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# **EXHIBIT**

# **B**

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

-----  
MINNESOTA COALITION ON

GOVERNMENT INFORMATION,

Plaintiff,

vs.

Court File No. 27-CV-21-7237

CITY OF MINNEAPOLIS; CASEY J. CARL,

in his official capacity as Clerk for the City of

Minneapolis; NIKKI ODOM, in her official

capacity as Chief Human Resources Officer for

the City of Minneapolis; MINNEAPOLIS

POLICE DEPARTMENT; and BRIAN

O'HARA, in his official capacity as Chief of

Police for the Minneapolis Police Department,

Defendants.  
-----

DEPOSITION OF AMELIA HUFFMAN

DATE: November 7, 2023

TIME: 8:30 a.m.

PLACE: Ballard Spahr LLP, Minneapolis, Minnesota 55402

REPORTED BY: KELLEY E. ZILLES, RPR; Job No.: 6139782

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2	2
3 ON BEHALF OF THE PLAINTIFF:	3
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6 Leita Walker, Esq.	6
7 80 South Eighth Street, 2000 IDS Center	7 EXAMINATION BY MS. WALKER..... 14
8 Minneapolis, Minnesota 55402	8 AFTERNOON SESSION..... 161
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11 Email: WalkerL@BallardSpahr.com	11
12	12
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18 Minneapolis, Minnesota 55415	18 Exhibit 12 Notice of Coaching, 12/10/19
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<p style="text-align: right;">Page 14</p> <p>1 (Exhibits premarked before deposition.)</p> <p>2 AMELIA HUFFMAN,</p> <p>3 duly sworn, was questioned and testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MS. WALKER:</p> <p>6 Q. Good morning, Ms. Huffman. How are you?</p> <p>7 A. I'm doing very well, thank you.</p> <p>8 Q. Good. My name is Leita Walker and I represent</p> <p>9 the plaintiffs in this case, the Minnesota Coalition on</p> <p>10 Government Information, which I'll refer to sometimes as</p> <p>11 MNCOGI.</p> <p>12 And how should I address you, is it Ms. Huffman,</p> <p>13 Officer Huffman, what do you prefer?</p> <p>14 A. Amelia is fine, or Ms. Huffman.</p> <p>15 Q. Ms. Huffman, okay, I'll stick with that.</p> <p>16 I assume you've been deposed or testified under</p> <p>17 oath before?</p> <p>18 A. I have.</p> <p>19 Q. Okay. And so you understand that you are under</p> <p>20 oath and you must answer truthfully?</p> <p>21 A. I do.</p> <p>22 Q. You've heard these rules before in a deposition</p> <p>23 I'm sure, but if you don't understand a question I ask,</p> <p>24 just tell me, I can rephrase it, I want to make sure you</p> <p>25 understand it. If you don't ask me to rephrase it I'll</p>	<p style="text-align: right;">Page 16</p> <p>1 A. In July.</p> <p>2 Q. Of 2023?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And that's about 30 years?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And I imagine you held a number of</p> <p>7 positions over those 30 years, but in broad strokes can</p> <p>8 you give me sort of your rise through the ranks at the</p> <p>9 Minneapolis Police Department?</p> <p>10 A. Yes. I was an officer from 1994 until 1999</p> <p>11 working in both patrol assignments and specialized</p> <p>12 community response team doing enforcement of</p> <p>13 neighborhood nuisance complaints largely.</p> <p>14 As a sergeant I worked in investigations in</p> <p>15 financial crimes, handling child abuse cases and also in</p> <p>16 Internal Affairs. I was promoted to lieutenant in 2005</p> <p>17 and I worked as a patrol lieutenant, the public</p> <p>18 information officer for the department, and homicide</p> <p>19 lieutenant. In 2008 I was promoted to captain, I was a</p> <p>20 captain of the criminal investigation division and</p> <p>21 support services division until 2013 when the department</p> <p>22 got rid of the rank of captain. So I returned to being</p> <p>23 a lieutenant and I was lieutenant in training in</p> <p>24 licensing and financial crimes and patrol until 2019.</p> <p>25 I took over as the inspector of the Fifth</p>
<p style="text-align: right;">Page 15</p> <p>1 assume you understand.</p> <p>2 If you need a break at any time we can take one</p> <p>3 as long as there's not a question pending. Your</p> <p>4 attorney may object, but unless he tells you not to</p> <p>5 answer, which would typically only be for privileged</p> <p>6 information, you can go ahead and answer the question.</p> <p>7 Any questions on that?</p> <p>8 A. No.</p> <p>9 Q. Okay. Can you tell me just briefly about your</p> <p>10 education after high school?</p> <p>11 A. Yes. I spent four years at Smith College in</p> <p>12 Massachusetts and graduated with my bachelor's degree</p> <p>13 and then was hired by the police department. While</p> <p>14 employed there I went back to school and completed a</p> <p>15 master's degree at Stephens College.</p> <p>16 Q. So you were, your first job at a police</p> <p>17 department was in Minneapolis?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And approximately when was that?</p> <p>20 A. I was hired in 1994.</p> <p>21 Q. Okay. And you're no longer employed by the</p> <p>22 police department, you're now employed by the city,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And when did you leave the police department?</p>	<p style="text-align: right;">Page 17</p> <p>1 Precinct in 2019 and I stayed there until January of</p> <p>2 2021 when I moved downtown to become the deputy chief of</p> <p>3 professional standards, and then in January of 2022 took</p> <p>4 over as the interim chief.</p> <p>5 Q. All right. Thank you. And tell me your current</p> <p>6 title with the City of Minneapolis, you're in the City</p> <p>7 Attorney's Office, is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And what's your title?</p> <p>10 A. Senior advisor, police policy reform and</p> <p>11 implementation.</p> <p>12 Q. That's kind of a mouthful.</p> <p>13 A. Indeed.</p> <p>14 Q. And in broad strokes, what are your</p> <p>15 responsibilities?</p> <p>16 A. Advising the City Attorney's Office and all of</p> <p>17 the other departments that have work to do related to</p> <p>18 the implementation of the consent decree, research,</p> <p>19 connecting with other agencies. Also under consent</p> <p>20 decree to learn about best practices.</p> <p>21 In broad strokes, you know, this is very early</p> <p>22 in the implementation, so it's a lot of meetings in</p> <p>23 discussing how to make the changes that will result in</p> <p>24 compliance. And then eventually once we're further down</p> <p>25 the road it will be working on the oversight of those</p>

<p style="text-align: right;">Page 18</p> <p>1 efforts.</p> <p>2 Q. And the consent decree that's currently in place</p> <p>3 is with the Minnesota Department of Human Rights,</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And presumably there is a second consent decree</p> <p>7 coming from the Department of Justice, is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And are you involved in negotiation of</p> <p>10 the DOJ consent decree?</p> <p>11 A. The negotiations have not started.</p> <p>12 Q. Will you be involved?</p> <p>13 A. Only as an advisor, but not as a participant at</p> <p>14 the negotiating table.</p> <p>15 Q. Who do you report to?</p> <p>16 A. Kristyn Anderson.</p> <p>17 Q. Okay. And you work with Chief O'Hara on some of</p> <p>18 this?</p> <p>19 A. With Chief O'Hara's team. So there's an</p> <p>20 implementation unit in the MPD and then other parts of</p> <p>21 the department have very significant work, which is</p> <p>22 Internal Affairs and training. So the City Attorney's</p> <p>23 Office has a team of attorneys and me, and then the</p> <p>24 police department has an implementation team as well as</p> <p>25 people in a variety of roles throughout the department</p>	<p style="text-align: right;">Page 20</p> <p>1 news report made by both Kristyn Anderson and yourself</p> <p>2 and I just want to ask you about them.</p> <p>3 First of all, isn't it true what Kristyn</p> <p>4 Anderson said that you are, "Uniquely qualified" and</p> <p>5 that you have "Deep knowledge of both actual and PD</p> <p>6 policy and practice"?</p> <p>7 MR. ENSLIN: Object to form.</p> <p>8 Q. And this is the third paragraph down. Is that</p> <p>9 statement by Kristyn Anderson true?</p> <p>10 A. I appreciate her opinion that I'm uniquely</p> <p>11 qualified, but I certainly do have 29, almost 30 years</p> <p>12 of experience with the police department, so that is a</p> <p>13 certain amount of knowledge and experience.</p> <p>14 Q. So yes?</p> <p>15 A. Yes, with the qualification that her opinion</p> <p>16 about my unique qualifications is not something that I</p> <p>17 can confirm.</p> <p>18 Q. Can you think of anyone else currently employed</p> <p>19 by the city enterprise who has more institutional</p> <p>20 knowledge of the Minneapolis Police Department than you</p> <p>21 do?</p> <p>22 A. I think Deputy Chief Glampe who has served in</p> <p>23 many roles and has the same length of service with the</p> <p>24 department certainly has deep institutional knowledge.</p> <p>25 There's a variety of others who maybe have served less</p>
<p style="text-align: right;">Page 19</p> <p>1 who are doing pieces of this work and we all work</p> <p>2 collaboratively.</p> <p>3 Q. Okay. And are you working also with the new</p> <p>4 commissioner of public safety?</p> <p>5 A. I think once he has a chance to get settled in,</p> <p>6 that is part of my role to serve as a communications and</p> <p>7 sort of subject matter expert between the City</p> <p>8 Attorney's Office and Office of Community Safety, but he</p> <p>9 is quite new in that position and so we haven't really</p> <p>10 had a chance to do any work yet.</p> <p>11 Q. Okay. I'm going to hand you, we premarked all</p> <p>12 the exhibits and I've got them in a binder here and</p> <p>13 Isabella will be handing them across the table to</p> <p>14 everyone. This is Exhibit 27.</p> <p>15 And first of all I'll ask, do you recognize or</p> <p>16 do you recall reading this article here in the Star</p> <p>17 Tribune?</p> <p>18 A. Yes.</p> <p>19 Q. And it was about the announcement that you were</p> <p>20 likely to be appointed into your current role in the</p> <p>21 City Attorney's Office, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And in fact you did, you were appointed and you</p> <p>24 currently have that role. And there's a number of</p> <p>25 statements about you and your qualifications in this</p>	<p style="text-align: right;">Page 21</p> <p>1 time, but have also served in key roles. I'm certainly</p> <p>2 not the only one who can speak authoritatively about the</p> <p>3 police department's practices.</p> <p>4 Q. Okay. Does anyone else spring to mind other</p> <p>5 than Officer Glampe?</p> <p>6 A. Deputy Chief Glampe.</p> <p>7 Q. Deputy Chief Glampe?</p> <p>8 A. Lieutenant Troy Schoenberger certainly.</p> <p>9 Q. Anyone else?</p> <p>10 A. A variety of people who have left of course.</p> <p>11 Q. You also gave a statement to the Star Tribune in</p> <p>12 this news report, they say, and they're paraphrasing</p> <p>13 here that, "Huffman stressed her nearly three decades of</p> <p>14 experience among several assignments through the ranks</p> <p>15 saying it's brought 'Deep knowledge of our systems and</p> <p>16 experience implementing change.'" Is that a true</p> <p>17 statement?</p> <p>18 A. Yes.</p> <p>19 Q. So we're going to, this is a lawsuit over data</p> <p>20 practices act requests, do you understand that?</p> <p>21 A. I do.</p> <p>22 Q. Okay. And I just want to ask some high level</p> <p>23 questions first, which is over the last 30 years in the</p> <p>24 police department what has been your role in responding</p> <p>25 to data practices act requests?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. The only role that I've had in responding to 2 data practices requests has been to provide information 3 at the request of typically someone in the records 4 office, the city clerk's office, or to review 5 information before it is released. 6 Q. So you've never in your 30 years run point on a 7 data practices request, you would just be responding to 8 inquiries from someone else? 9 A. Correct. 10 Q. Okay. And that's true even in those years where 11 you served as a public information officer? 12 A. Correct. The data practices requests still were 13 processed through the records office, and so as the 14 public information officer I would be, you know, 15 sometimes talking about those records that were released 16 or giving quotes, providing quotes from other leadership 17 within the department, but certainly did not have the 18 role of being the primary person gathering or redacting 19 records. 20 Q. How often, and I don't expect you to have a 21 precise number, but if you could just ballpark, was it 22 weekly, monthly, how often would someone from the data 23 practices office come to you and ask if you had records 24 responsive to a request? 25 MR. ENSLIN: Object to form.</p>	<p style="text-align: right;">Page 24</p> <p>1 something about a police department policy or a 2 particular incident. It really would just depend on the 3 nature of the request. 4 Q. Okay. But that's a relatively easy thing to do, 5 for example, to run a search term across your email for 6 a word such as coaching? 7 A. Yes. 8 Q. Again, we'll come back to this in some detail, 9 but could you explain a little more what your role has 10 been over your 30 years in the department in the process 11 of disciplining officers for misconduct? 12 MR. ENSLIN: Object to the form. 13 A. So in terms of the actual point of, of imposing 14 discipline, it's been relatively brief. As the deputy 15 chief of professional standards I assisted Chief 16 Arradondo in documenting his discipline decisions and 17 then as interim chief preparing my own discipline 18 decisions. 19 Q. So as deputy chief and interim chief you were 20 involved in actually imposing and documenting 21 discipline, is that correct? 22 A. That's correct. 23 Q. And in other roles I take it where you might 24 have reported misconduct or been asked about misconduct, 25 that you were not personally investigating or making</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Not weekly. I would say depending upon the role 2 I was in, sometimes almost never. You know, as an 3 officer or a sergeant in Internal Affairs I had 4 virtually no contact with records requests. As a 5 lieutenant, you know, a few times a year. Much more as 6 a public information officer of course because I was 7 working much more closely with the folks in records. 8 And in other roles, I would say every few months. 9 Q. And then when someone would come to you and say 10 we have this request, do you have any responsive 11 records, what would be your personal process for looking 12 for them and finding them if they existed? 13 MR. ENSLIN: Object to the form. 14 A. To do a search using the key terms. If I didn't 15 immediately recognize what would be responsive to the 16 request, it would be to search typically through emails 17 or other files using the key terms. 18 Q. Okay. And you did that personally, that wasn't 19 something that IT would run on the back end necessarily? 20 A. I believe IT also runs those queries on the back 21 end, but I would also do that. 22 Q. And a search term might be an officer's name, 23 for example? 24 A. It could be whatever would be responsive to the 25 request, depending on the request. It could be</p>	<p style="text-align: right;">Page 25</p> <p>1 decisions about misconduct? 2 A. Correct. In the broad discipline process as it 3 typically is referred to in MPD, you know, I have 4 certainly made reports to Internal Affairs about 5 incidents that I believe should be investigated. As an 6 Internal Affairs investigator, completed investigations 7 that were assigned to me; as a lieutenant, participated 8 on discipline panels; and a captain, participated on 9 discipline panels. 10 So in the large process I've certainly had a 11 variety of roles over time, but at the point of actually 12 the discipline decision and the documentation, it's been 13 only as the deputy chief of professional standards and 14 interim chief. 15 Q. Okay. And in general you know this case is 16 about coaching within the Minneapolis Police Department, 17 correct? 18 A. I do. 19 Q. Okay. And you're familiar with that term? 20 A. I am. 21 Q. And that concept? 22 A. I am. 23 Q. And were you involved in the adoption of 24 coaching as a, as a mechanism the police department used 25 to address behavioral or misconduct issues?</p>

<p style="text-align: right;">Page 26</p> <p>1 MR. ENSLIN: Object to the form.</p> <p>2 A. No, coaching has existed as a concept for my</p> <p>3 entire career.</p> <p>4 Q. Was it always called coaching?</p> <p>5 A. Yes, to my knowledge it was always called</p> <p>6 coaching.</p> <p>7 Q. So your position is coaching existed within the</p> <p>8 MPD prior to 1994?</p> <p>9 A. At least as early as 1995.</p> <p>10 Q. Do you know if it was defined as far back as</p> <p>11 1995 in any official policy or manual or agreement?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Do you know when that might have started?</p> <p>14 A. I don't.</p> <p>15 Q. So you were not involved in the first 15 years</p> <p>16 of your career with coaching and with evolution within</p> <p>17 the Minneapolis Police Department?</p> <p>18 MR. ENSLIN: Object to the form.</p> <p>19 A. [REDACTED]</p> <p>20 [REDACTED] but I did not have</p> <p>21 any role in the development of any of those processes.</p> <p>22 So I know that it existed as a function in the</p> <p>23 department and over time has certainly, we've certainly</p> <p>24 expressed it in a variety of ways with different kinds</p> <p>25 of paperwork. But I couldn't, I couldn't provide</p>	<p style="text-align: right;">Page 28</p> <p>1 I have not seen any paperwork from 1995.</p> <p>2 Q. One more high level question. What has your</p> <p>3 role been over the last 30 years in collective</p> <p>4 bargaining negotiations?</p> <p>5 A. I participated in the negotiations that resulted</p> <p>6 in the last contract.</p> <p>7 Q. Okay. Which is still in effect, correct?</p> <p>8 A. It was the 2020 through 2022 contract.</p> <p>9 Q. But just forgive me because I don't fully</p> <p>10 understand, it's still in effect because a new one has</p> <p>11 not been finalized, correct?</p> <p>12 A. That is correct.</p> <p>13 Q. So even though it ended in 2022, without a new</p> <p>14 one it remains in effect?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And that's the only contract negotiation</p> <p>17 you participated in?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And are you involved in the ongoing</p> <p>20 negotiations over the next contract?</p> <p>21 A. No.</p> <p>22 Q. All right. I'm going to hand you what's been</p> <p>23 premarked, or Isbella will hand you what's been</p> <p>24 premarked as Plaintiff's Exhibit Number 2. And while</p> <p>25 she's getting it, I'll tell you that it is the data</p>
<p style="text-align: right;">Page 27</p> <p>1 examples of those, I certainly haven't kept all of those</p> <p>2 records over time and I don't know off the top of my</p> <p>3 head when or how the current coaching documentation was</p> <p>4 produced because I was not involved in that.</p> <p>5 Q. Okay. [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. Do you think it still exists?</p> <p>22 A. I do not have any knowledge that we have</p> <p>23 paperwork going back that far, with the exception of</p> <p>24 Internal Affairs may have some records from very</p> <p>25 significant, very large disciplinary investigations, but</p>	<p style="text-align: right;">Page 29</p> <p>1 practices act request that is the center of this</p> <p>2 lawsuit.</p> <p>3 I'll give you a minute to scan it, but my first</p> <p>4 question is whether you've ever seen it before and when</p> <p>5 you first saw it? Have you ever seen it before?</p> <p>6 A. No.</p> <p>7 Q. You didn't look at it in preparation for your</p> <p>8 deposition today?</p> <p>9 A. I did not.</p> <p>10 Q. Okay. And does anything, there's four requests,</p> <p>11 do any of them sound even vaguely familiar to you?</p> <p>12 A. Yes, because I did read the complaint and so</p> <p>13 these same ideas are referenced.</p> <p>14 Q. So we, I believe there's a date at the top, we</p> <p>15 submitted this, or our client submitted this</p> <p>16 February 15, 2021. And I take it you were not aware of</p> <p>17 this request when it was submitted, is that correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And you would have been deputy chief at that</p> <p>20 point, is that correct?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. And to the best of your recollection, no</p> <p>23 one came to you and asked you to find and provide any</p> <p>24 documents responsive to this request, is that correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. Looking at it, do you think you might 2 have had responsive documents? 3 MR. ENSLIN: Object to the form. 4 A. I would not have personally had these records, 5 but I would have been able to identify where they were 6 kept. 7 Q. So you would have been able to say there are 8 responsive records and here's where you can go find 9 them, is that correct? 10 A. Correct. 11 Q. Okay. And what about No. 4, which isn't a 12 request for any personnel data, would you have had 13 records responsive to No. 4? 14 A. I would not. 15 Q. Where would you have told people to go look for 16 records responsive to No. 4? 17 A. If someone had asked me about No. 4, I would 18 have directed them to look at the successive versions of 19 the discipline matrix, which is specific in saying that 20 coaching is not discipline. 21 Q. Okay. What about emails, would you have told 22 people to go search for emails? 23 A. I don't think I would have thought of emails 24 because I would have simply referred to that particular 25 document.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. So documents responsive to No. 3 and 2 notice of coaching letters, your testimony is they're 3 all kept in the same place? Let me rephrase. 4 Documents responsive to the first three requests 5 are kept in the same place as notice of discipline 6 letters, is that your testimony? 7 MR. ENSLIN: Object to the form. 8 A. Yes. 9 Q. You weren't asked to collect any documents 10 responsive to this and you were not asked to review any 11 documents collected from others, is that correct? 12 A. That's correct. 13 Q. Do you have any idea why no one asked you to 14 help respond to this request? 15 MR. ENSLIN: Object to the form. 16 A. I have no idea. 17 Q. Does it surprise you that no one asked you for 18 help in responding to this request? 19 MR. ENSLIN: Object to the form, 20 argumentative. 21 A. No. 22 Q. Why doesn't it surprise you? 23 A. I would not have been the only person by far who 24 would have been able to collect these documents or even 25 the person closest to this records management system, so</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. 2 A. And suggested if they wanted further information 3 to talk to the chief. 4 Q. Okay. Where would you have told people to go 5 look for documents responsive to the first three items? 6 A. Completed coaching forms are retained in the 7 records management system for complaint data, which at 8 this point was Practice Manager. So all completed 9 coaching documentation forms would be found in that 10 system. 11 Q. Who maintains that system? 12 A. Office of Police Conduct Review and Internal 13 Affairs jointly produce documentation and enter it into 14 Practice Manager. 15 Q. Do you know what I mean when I refer to a 16 determination letter? 17 A. The notice of discipline letter? 18 Q. Sometimes it's called that, yes, at the top. 19 A. Mm-hmm. 20 Q. Where are those kept? 21 A. Those are also kept in Practice Manager. 22 Q. Are they kept anywhere else? 23 A. That's the only system that I would go to to 24 find them. So if they are kept anyplace else, I don't 25 have personal knowledge of it.</p>	<p style="text-align: right;">Page 33</p> <p>1 there would have been no need to rely on me specifically 2 to carry out this process. 3 Q. The woman at the Minneapolis Police Department 4 who responded to this request told our client that the 5 department had no responsive data, are you aware of 6 that? 7 A. No. 8 Q. Would that surprise you? 9 A. I'm not sure what she meant by that. So we 10 certainly have data, but whether or not it's responsive 11 to this request, that language is not my area of 12 expertise, so I'm not sure what she meant by that. 13 Q. She testified that as a matter of policy, 14 coaching is not disciplinary action. Does that surprise 15 you that she testified to that? 16 MR. ENSLIN: Object to the form. 17 Q. I can rephrase. Does it surprise you that this 18 woman told us that as a matter of policy, coaching is 19 not disciplinary action? 20 MR. ENSLIN: Object to the form. 21 A. No, it doesn't surprise me. 22 Q. Does it surprise you that she said in all 23 likelihood she did not even bother to look for 24 responsive documents? 25 MR. ENSLIN: Object to the form.</p>

<p style="text-align: right;">Page 34</p> <p>1 A. I don't know what their protocol is, so I don't 2 really, I can't really answer that question because I'm 3 not sure what she was supposed to have done according to 4 the work flow outlined in records. 5 Q. In your current role as the senior advisor of 6 police policy reform and implementation, is transparency 7 and accountability part of what you're looking at? 8 A. To the extent that those are both explicit parts 9 of the current settlement agreement and I anticipate a 10 future consent decree, yes. 11 Q. So if it's not mandated by the state or the DOJ, 12 transparency isn't something you're focused on? 13 MR. ENSLIN: Object to the form. 14 A. You asked me specifically about my current role 15 which is indeed very much to focus on working with all 16 the city departments to implement and come into 17 compliance with the settlement agreement with MDHR, so 18 that is very much a specific requirement and those 19 requirements are laid out in the document. 20 Q. In your current role would it concern you if a 21 request like this came in and no one even bothered to 22 look for responsive documents? 23 MR. ENSLIN: Object to the form. 24 A. I can't answer questions about what records 25 protocol is for this, and so I'm not the best person to</p>	<p style="text-align: right;">Page 36</p> <p>1 expectations for records. If their records staff are 2 instructed that any request related to coaching would 3 not contain public information, then I would not be 4 surprised that they did not look for responsive 5 documents. But I don't know what their protocol is, so 6 I can't speak to that. 7 Q. I'm going to hand you what's been marked as 8 Exhibit 28. And while Isbella is passing it around, 9 I'll tell you that this is the complaint filed by the 10 plaintiff over the data practices request we just looked 11 at. 12 And I don't have any specific questions about 13 it, you're welcome to flip through it if you want, but I 14 believe you testified that you did look at this 15 complaint prior to your deposition, correct? 16 A. I looked at the complaint. I have not seen all 17 of the exhibits I don't think. 18 Q. Okay. When did you look at the complaint for 19 the first time? 20 A. I looked at the complaint about a week ago, 21 which I believe is the first time that I had seen the 22 complaint. 23 Q. Okay. So the complaint was filed on June 3rd, 24 2021, you can see that on Page 30. You did not see the 25 complaint in 2021, I take it?</p>
<p style="text-align: right;">Page 35</p> <p>1 speak to that. 2 Q. Well, I'd like you to answer the question. I'm 3 asking you in your current role given your current 4 responsibilities, if a request like this was made would 5 you expect the Minneapolis Police Department to look for 6 responsive records? 7 MR. ENSLIN: Object to the form, 8 argumentative, asked and answered. She already answered 9 the question. 10 MS. WALKER: I don't think she did. 11 MR. ENSLIN: She did. 12 MS. WALKER: You're getting very hostile. 13 This is my deposition and I can ask questions. I 14 rephrased it so she understood. She is here to answer 15 my questions and you can object for the record. 16 MR. ENSLIN: I did, I did object for the 17 record. 18 MS. WALKER: Are you instructing her not to 19 answer? 20 MR. ENSLIN: No. I objected for the 21 record. 22 MS. WALKER: Okay. Would you read the 23 question back to the witness, please. 24 (Requested material read back.) 25 A. I don't know what the protocol is and the</p>	<p style="text-align: right;">Page 37</p> <p>1 A. That's correct. 2 Q. No one asked you to review the complaint and 3 help respond to it back in 2021? 4 A. No. 5 Q. Do you know if they asked anyone, if anyone 6 asked anyone in the Minneapolis Police Department for 7 help responding to this complaint? 8 MR. ENSLIN: Object to the form, 9 foundation. 10 A. I have no knowledge. 11 Q. Do you know if anyone in the Minneapolis Police 12 Department reviewed this complaint before the defendants 13 responded to it? 14 MR. ENSLIN: Object to the form, 15 foundation. 16 A. I don't know. 17 Q. And just given your counsel's objections, I'm 18 only asking for your personal knowledge, I don't know is 19 always a fine answer. 20 Isbella will hand you what's been premarked as 21 Plaintiff Exhibit 29. This is the defendants' joint 22 answer to the complaint. And my question for you is, 23 have you ever seen this document? 24 A. Yes. 25 Q. When did you first see it?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. I believe the first time I seen it was about a 2 week ago. 3 Q. So it was filed, if you look at the last page, 4 on July 13th, 2021. Do you see that? 5 A. I do see that. 6 Q. Okay. And so you didn't review this answer 7 before it was filed with the court, correct? 8 A. I did not. 9 Q. And no one asked you to review it for accuracy, 10 correct? 11 A. That's correct. 12 Q. And based on your personal knowledge, do you 13 know if anyone in the Minneapolis Police Department 14 reviewed it for accuracy? 15 A. I don't know. 16 Q. Would it surprise you to hear that no one in the 17 Minneapolis Police Department reviewed the answer to 18 this complaint? 19 MR. ENSLIN: Object to the form. 20 A. I don't, I don't know how to answer that 21 question because I don't know who -- 22 Q. I can rephrase it, let me rephrase it. 23 When the Minneapolis Police Department is sued, 24 is someone within the department typically asked to 25 review the answer to the complaint?</p>	<p style="text-align: right;">Page 40</p> <p>1 that before? 2 A. No. 3 Q. Have you been asked to help respond to written 4 discovery requests in this case? 5 MR. ENSLIN: Object to the extent it seeks 6 the disclosure of any communications with counsel. So 7 she's just asking I think whether you -- 8 MS. WALKER: I can rephrase it. 9 MR. ENSLIN: -- had communications. Go 10 ahead. 11 BY MS. WALKER: 12 Q. Did you assist with responding to written 13 discovery in this case? 14 A. Yes. 15 Q. How did you assist? 16 A. By searching for records. 17 Q. Okay. Did you assist by reviewing the written 18 responses in advance of their service on the plaintiff? 19 A. Not all of them. 20 Q. So you personally cannot vouch for the accuracy 21 of the answers in these responses? 22 A. I cannot without comparing what I have seen and 23 been involved in with all of these documents. I can't 24 state which ones, I mean, this is hundreds of pages, so 25 I don't know that anything that I worked on is part of</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Not to my knowledge, that is not necessarily a 2 universal practice and I would not be surprised that the 3 attorneys representing the city have answered complaints 4 without someone from the police department reviewing the 5 final document. 6 Q. Who would typically review it, if anyone does? 7 MR. ENSLIN: Object to the form. 8 A. I can't answer that question. I haven't been 9 involved in the City Attorney's Office with civil 10 litigation cases, many civil litigation cases to have 11 that kind of knowledge. 12 Q. I'm going to, we're going to now hand you a very 13 large exhibit, which again you don't need to flip 14 through, but we're just putting it in the record. It is 15 premarked as Exhibit 30. And you have a couple of tabs, 16 so we're going to hand you Exhibit 30, 30A and 30B all 17 together. 18 And I'll represent to you that these are 19 defendants' responses to discovery requests that the 20 plaintiff served on them. And my question for you is 21 whether you've seen Exhibit 30, 30A or 30B prior to 22 today? 23 A. I don't think I've seen either of these before. 24 Q. Okay. What about I think you looked at 30A and 25 B, what about 30, the larger one, have you ever seen</p>	<p style="text-align: right;">Page 41</p> <p>1 this exhibit that you've given me. And for anything 2 that I haven't seen, I can't vouch for its accuracy. 3 Q. Do you know based on your personal knowledge if 4 anyone in the Minneapolis Police Department reviewed the 5 responses to ensure their accuracy? 6 A. I don't know. 7 Q. Okay. If it wasn't you, do you know who might 8 have been asked to do that? 9 A. It could have been Chief Arradondo prior to his 10 retirement, it could have been the commander of Internal 11 Affairs, it could have been the director of OPCR, it 12 could have been Chief Deputy Troy Schoenberger in his 13 role, or the deputy chief of professional standards. It 14 could have been a variety of people. 15 Q. Have you talked to any of those people you just 16 named about this case? 17 A. I have not, other than Chief Arradondo in 18 preparation for the PCOC meeting where we both discussed 19 coaching. You know, certainly the fact that there, 20 there was outstanding scrutiny came up during that 21 conversation, but about these documents or the 22 preparation, no. 23 Q. Okay. You're referencing a PCOC meeting where 24 you both appeared in May of 2021, is that correct? 25 A. That's correct.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. And the lawsuit was filed in June of 2 2021, so that was after the PCOC meeting, correct? 3 A. Yes. 4 Q. Okay. And I think you just testified that you 5 have assisted in collecting documents to produce in this 6 litigation, is that correct? 7 A. Correct. 8 Q. Okay. How many times did you meet with counsel 9 to prepare for your deposition today? 10 A. Twice. 11 Q. When was the first time, approximately? 12 A. About a week ago. 13 Q. Was that the first time you had met with counsel 14 about this case? And let me preface. The case has been 15 going on for two and a half years, was a week ago the 16 first time you had ever spoken to counsel about this 17 case? 18 A. No, because I assisted in identifying records, 19 but that was the first time we met to talk about 20 preparations for this deposition. 21 Q. When did you talk to counsel about collecting 22 responsive discovery records? 23 A. I would have to go back and look at my calendar. 24 It's been several months. 25 Q. Okay. Do you think it was over the summer?</p>	<p style="text-align: right;">Page 44</p> <p>1 you mean the form that documents the actual coaching 2 session? 3 A. Yes. 4 Q. Okay. Do you also mean determination letters 5 where coaching is issued by the chief? 6 A. Yes, a much smaller number of coaching cases 7 that came from a chief's determination. 8 Q. Okay. And I wanted to go back. You've referred 9 now a couple times to the PCOC meeting. And to the 10 extent that keeps happening, I just want to understand 11 that we're both talking about the PCOC meeting in May of 12 2021, correct? 13 A. That's correct. 14 Q. And if it was another PCOC meeting, you would 15 specify as you did that it was, for example, in 2014, 16 correct? 17 A. Correct. 18 Q. Okay. So I'm going to shift gears and start to 19 talk a little bit more about coaching here. And I would 20 just like to ask you how you would describe coaching 21 within the MPD to others? 22 A. I would describe coaching as a performance 23 management tool that is used to support employees in 24 carrying out performance that meets with department 25 expectations and could include discussion about better</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I would have to go back and look at my calendar 2 to be sure, but over the summer and maybe even in the 3 spring, but I would have to go back and look at my 4 calendar to be sure. 5 Q. Other than the complaint, what documents did you 6 review to prepare for today? 7 A. I reviewed the complaint and the transcript from 8 the PCOC meeting and the other documents related to the 9 PCOC meeting, the presentation, and the presentation 10 from the previous PCOC meeting in 2014. 11 Q. Anything else? 12 A. Not these particular exhibits you've given me, 13 but some, some response from the city related to this 14 lawsuit. 15 Q. What documents did you personally search for 16 when asked by the City Attorney's Office to go looking? 17 A. For coaching documentation. 18 Q. Do you mean completed coaching forms? 19 A. Yes. 20 Q. Okay. Anything else? 21 A. I worked with the civilian support staff in 22 Internal Affairs for them to do a comprehensive search 23 for completed coaching documents. So I pulled some 24 records myself and then recruited them to pull others. 25 Q. When you say completed coaching documents, do</p>	<p style="text-align: right;">Page 45</p> <p>1 ways to handle a particular incident or a refresher on 2 policy, it could result in a referral for retraining, it 3 could result in a discussion about health and wellness 4 and other kinds of employee assistance support that 5 might benefit an employee, just depending upon the 6 nature of the situation. 7 Q. And did you have any specific role in developing 8 the concept of coaching or implementing its use at the 9 police department? 10 A. I did not. 11 Q. Do you think the use of coaching has evolved 12 within the department over the last 30 years? 13 A. I don't, I don't know what the expectations of 14 coaching were early in my career, I didn't have any role 15 in that, [REDACTED] so I can't 16 talk about any of the back end processes. But over the 17 course of my career how we carry out work has evolved 18 across the board, and so I would certainly speculate 19 that coaching has evolved and changed in terms of the 20 paperwork that's generated and the training that we've 21 provided and the skills that supervisors may or may not 22 have over the course of 30 years. 23 Q. I'm going to hand you an exhibit that's been 24 premarked Exhibit Number 31. This is a PowerPoint slide 25 deck of the OJP steering committee from September of</p>

<p style="text-align: right;">Page 46</p> <p>1 2015. Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. What is the OJP steering committee, do you know?</p> <p>4 A. So I was not a part of this work, so I can't</p> <p>5 speak to any of this, but I certainly have seen it</p> <p>6 relative to the early intervention system.</p> <p>7 Q. Do you know what OJP stands for?</p> <p>8 A. Office of Justice Programs.</p> <p>9 Q. Okay. Have you ever seen this slide deck before</p> <p>10 or a version of it?</p> <p>11 A. I have seen a report, which I believe has</p> <p>12 similar content, but I don't think I've seen this</p> <p>13 particular slide deck before.</p> <p>14 Q. So on all these documents there's a tracking</p> <p>15 number in the lower right-hand corner. This document</p> <p>16 was produced by the federation. And if you could flip</p> <p>17 about ten pages in, the tracking number ends in 3136.</p> <p>18 And the top heading there says, "Performance mentoring</p> <p>19 form (not to be confused with the IAD coaching form)."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Okay. I take it there are two different forms</p> <p>23 within the Minneapolis Police Department as referenced</p> <p>24 here?</p> <p>25 A. There may have been. At this particular time</p>	<p style="text-align: right;">Page 48</p> <p>1 again where it refers to IAD coaching form, is this</p> <p>2 Exhibit 32 the IAD coaching form?</p> <p>3 MR. ENSLIN: Object to the form.</p> <p>4 A. Yes. To the best of my ability this form may</p> <p>5 have been slightly different in 2015 than the exhibit</p> <p>6 that you've handed to me, but by and large, yes, this is</p> <p>7 the coaching documentation form.</p> <p>8 Q. Okay. And do you recall when this coaching</p> <p>9 documentation form or an earlier version of it was first</p> <p>10 created?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Do you think it was in 1994 when you</p> <p>13 started?</p> <p>14 A. I have no idea.</p> <p>15 Q. Okay.</p> <p>16 A. I have no idea.</p> <p>17 Q. Okay. Do you know if this form is used with</p> <p>18 every incident of coaching?</p> <p>19 MR. ENSLIN: Object to the form.</p> <p>20 A. This form should be used for every instance of</p> <p>21 coaching that arises from a complaint either internal or</p> <p>22 external.</p> <p>23 Q. Okay. So some coaching I take it is another</p> <p>24 word for it would be mentoring, very informal, taking a</p> <p>25 walk to get a coffee and you're talking with a</p>
<p style="text-align: right;">Page 47</p> <p>1 I'm not aware of a performance mentoring form that is in</p> <p>2 current use.</p> <p>3 Q. Okay. What's an IAD coaching form?</p> <p>4 A. So there is, a coaching form currently can come</p> <p>5 from either Office of Police Conduct Review or the</p> <p>6 Internal Affairs division that is completed by a</p> <p>7 supervisor when they handle a coaching matter.</p> <p>8 Q. Okay. So they meet with the officer and coach</p> <p>9 the officer and then complete the form to document the</p> <p>10 coaching, is that correct?</p> <p>11 A. So prior to meeting with the officer they would</p> <p>12 review the matter because they don't get a completed</p> <p>13 package when coaching is referred by the joint</p> <p>14 supervisors, that's not a practice that happens anymore.</p> <p>15 But when joint supervisors refer coaching matters to</p> <p>16 supervisors they had to then do the research to, you</p> <p>17 know, review body worn camera video or other kinds of</p> <p>18 related materials to determine what happened before they</p> <p>19 would meet with the employee.</p> <p>20 Q. I can maybe simplify this. We're going to hand</p> <p>21 you what's been premarked as Exhibit 32. This is a</p> <p>22 document with the heading, "Coaching documentation,"</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And if you're looking at that PowerPoint</p>	<p style="text-align: right;">Page 49</p> <p>1 supervisor, that can be coached in the absence of a</p> <p>2 complaint, right?</p> <p>3 A. Correct.</p> <p>4 Q. You understand what I'm saying?</p> <p>5 A. I do.</p> <p>6 Q. There's informal feedback that we all receive</p> <p>7 from each other all the time outside of something</p> <p>8 documented, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And what you're saying is that if coaching is</p> <p>11 the result of a complaint, this form should be</p> <p>12 completed, is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. Do you know if it always is completed?</p> <p>15 A. I don't know. I haven't reviewed every instance</p> <p>16 of a coaching referral to be able to say that the form</p> <p>17 has been completed 100 percent of the time.</p> <p>18 Q. Okay. And you told me a minute ago where this</p> <p>19 form would be kept, it was a software system, can you</p> <p>20 remind me?</p> <p>21 A. Yes, Practice Manager.</p> <p>22 Q. Have you ever completed one of these forms?</p> <p>23 A. Yes, I believe I have.</p> <p>24 Q. Do you know how many times?</p> <p>25 A. I don't.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Okay. Do you know of any specific instances 2 where a coaching session that should have been 3 documented was not? 4 A. Where a supervisor completed the coaching, met 5 with the employee, had the discussion, and then failed 6 to complete any documentation? 7 Q. Yeah. Do you know of any specific instances? 8 A. I don't. 9 Q. But it's possible it's happened, you just don't 10 know? 11 A. It is possible. 12 Q. And so we've talked a little bit already about 13 determination letters or notices of discipline. And I 14 can represent to you that defendants have also produced 15 in this case letters that reference coaching and 16 sometimes they're labeled notice of action or notice of 17 coaching, are you aware of that? 18 A. Yes. 19 Q. Okay. In fact, let me give you an example of 20 one. We're going to hand you what's been marked as 21 Exhibit 21. And this is a notice of action dated May 8, 22 2017, correct? 23 A. Yes. 24 Q. And this would be considered a determination 25 letter, correct?</p>	<p style="text-align: right;">Page 52</p> <p>1 see that? 2 A. I do. 3 Q. Were you involved in the decision to issue 4 determination letters for coaching decisions? 5 A. I was not. 6 Q. Okay. Do you have any reason to dispute that 7 what Commander Granger said here actually came to pass, 8 that coaching letters like this were drafted to look 9 like discipline letters? 10 A. No. 11 Q. Why would you draft a coaching letter to look 12 like a discipline letter? 13 A. I can't, I can't answer any questions about why 14 they decided on that particular format. I can speculate 15 that they were making an effort to ensure that we had 16 good, complete documentation, but I can't speculate 17 about why they chose the format. 18 Q. Fair to say they wanted to make sure the officer 19 had notice, correct? 20 MR. ENSLIN: Object to the form. 21 A. I think it would be more appropriate to say that 22 they wanted to ensure that the officer understood the 23 outcome. 24 Q. And this Granger memo, Exhibit 33, is from 2015, 25 correct?</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Correct. 2 Q. Okay. I also would like to hand you Exhibit 33. 3 Poor Isbella is going to stand up and down a lot today. 4 MS. NASCIMENTO: It's okay, good exercise. 5 Q. Exhibit 33 has a headline on it of, "IAU case 6 processing - panel report, SOP February 2015," correct? 7 A. It does. 8 Q. And I can represent to you that this is a memo 9 drafted by Christopher Granger. Does this look familiar 10 to you, have you ever seen something like this before? 11 Let me back up. 12 If you flip to the second page you can see at 13 the end the last point says, "Thanks, Commander 14 Granger." Do you see that? 15 A. I do. 16 Q. And that's my basis for telling you it was 17 drafted by Christopher Granger. Do you agree with that? 18 A. I do. 19 Q. All right. Have you ever seen this before? 20 A. No. 21 Q. Let me point you to the last item on the first 22 page, No. 4. It says, "New, coaching as part of an 23 administrative case outcome." Roman numeral i, "The 24 notification letter will be drafted like a discipline 25 letter outcome requiring signatures and date." Do you</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Correct. 2 Q. Just like that PowerPoint is from 2015, correct? 3 A. Yes. 4 Q. Okay. Is 2015 sort of a turning point for you 5 in the world of coaching within the Minneapolis Police 6 Department at all? 7 A. I don't -- 8 Q. Were things changing when it comes to coaching 9 around 2015? 10 A. I wasn't involved in any of this work, so I 11 don't have any knowledge about how much of a change any 12 of this was. 13 Q. Who would know, would that be Christopher 14 Granger? 15 A. Christopher Granger since he wrote this memo 16 would be the best person to speak to it. 17 Q. Anyone else in 2015 have been involved in 18 coaching and its development? 19 A. I don't know. 20 Q. What about Chief Rondo? 21 A. Perhaps. 22 Q. Sorry, Arradondo, Chief Arradondo? 23 A. I'm not sure if that was during the time period 24 when Chief Rondo was involved in the Internal Affairs 25 processes. Certainly, you know, he worked in Internal</p>

<p style="text-align: right;">Page 54</p> <p>1 Affairs and would have been involved in that work during 2 certain periods of his career, I'm not sure if it was 3 2015. 4 Q. Okay. Remind me what the exhibit number is on 5 that coaching form right there. 6 A. This one? 7 Q. Yes. 8 A. Exhibit number is 32. 9 Q. Okay. So the determination letter that you see 10 there, would that issue in addition to or instead of the 11 coaching form? 12 A. There should be both this letter or a similar 13 letter should let the employee know the outcome of that 14 particular matter. And then the coaching or retraining 15 or other kinds of performance support should occur with 16 the supervisor and be documented in addition to this 17 letter. 18 Q. And then would they all be kept in the same 19 place in Practice Manager? 20 A. Yes, that's correct. 21 Q. Do you know if they would be kept anywhere else? 22 A. I do not know that they would be kept anywhere 23 else. 24 Q. It's possible, but you don't know? 25 A. It's possible.</p>	<p style="text-align: right;">Page 56</p> <p>1 that? 2 A. I do. 3 Q. Okay. Why would it be cc'd to personnel? 4 MR. ENSLIN: Object to the form. 5 A. I don't know why that was included on this 6 letter, other than the fact that it was likely a feature 7 of the template that they used to generate these. 8 Q. Okay. Well, I'll represent to you that not all 9 of these letters are cc'd to personnel, only some of 10 them are. Does that change your answer? 11 A. No. 12 Q. When something is cc'd to personnel where does 13 it go, does it go to a personnel file? 14 MR. ENSLIN: Object to the form. 15 A. I can't answer that question because I've never 16 been on the other end in personnel to receive any kinds 17 of documents. 18 Q. Okay. 19 A. So I don't know. 20 Q. So is personnel, cc'ing something to personnel, 21 is that the same thing as cc'ing something to human 22 resources? 23 A. Yes. 24 Q. Okay. So who in human resources might know the 25 answer to that?</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. And was a determination letter like you see 2 there issued in every case where an officer was coached? 3 I'll rephrase. 4 In every case where coaching arose out of a 5 complaint would we see a determination letter like that 6 one? 7 MR. ENSLIN: Object to the form. 8 A. You would not. 9 Q. Okay. And why, why wouldn't we? 10 A. A letter like this would only be generated in a 11 case where coaching arose as part of a chief's decision. 12 Most coaching cases arise, arose in the past through the 13 joint supervisor process prior to any kind of complete 14 investigation and would not have involved a decision by 15 the chief. 16 Q. If you could continue to look there at 17 Exhibit 21. The second page has signatures on it, do 18 you see that? 19 A. I do. 20 Q. Okay. And that's consistent with what Commander 21 Granger said, correct, that the notification will be 22 drafted like a discipline letter outcome requiring 23 signatures and date, correct? 24 A. That is correct. 25 Q. Okay. And it was cc'd to personnel, do you see</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Rich Parocha who was most recently the HR 2 business partner for the police department for the past 3 couple of years, he's now been promoted to a new 4 position, but would have sort of the most recent and 5 long-term knowledge. 6 Q. Can you spell the last name of Rich Parocha? 7 A. Yes, P-A-R-O-C-H-A. 8 Q. Just like it sounds. 9 A. Correct. 10 Q. We're going to hand you what's been marked as 11 Exhibit 34. This is an undated letter from [REDACTED] [REDACTED] of the Minneapolis Police Officer's 13 Federation, correct? 14 A. Correct. 15 Q. Okay. And the heading on this letter is, "Your 16 personnel file," correct? 17 A. Correct. 18 Q. And it appears that this is a letter that went 19 to the federation's members from [REDACTED] about their 20 personnel files, correct? 21 A. It does. 22 Q. All right. And you're welcome to read the whole 23 thing, but I want to refer you to the very first 24 paragraph. He is in the first sentence encouraging 25 members to keep a duplicate copy of their personnel</p>

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<p style="text-align: right;">Page 58</p> <p>1 file, do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And that he tells them in the second sentence,</p> <p>4 "Review what is contained in your personnel file on an</p> <p>5 annual or biannual basis." Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And then he explains why a few sentences later,</p> <p>8 four lines from the bottom of that paragraph, he begins,</p> <p>9 "Many times." Do you see where I'm at?</p> <p>10 A. Yes.</p> <p>11 Q. He says, "Many times old coaching documents or</p> <p>12 disciplinary letters are in the file beyond the date</p> <p>13 they should be removed." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. So he's telling the federation members that</p> <p>16 coaching documents are maintained in their personnel</p> <p>17 files, you would agree?</p> <p>18 A. Yes.</p> <p>19 Q. And you don't have any reason to dispute what</p> <p>20 [REDACTED] is saying here, correct?</p> <p>21 MR. ENSLIN: Object to the form.</p> <p>22 A. I have no knowledge of what [REDACTED] based this</p> <p>23 on and no knowledge of whether it's correct or</p> <p>24 speculation.</p> <p>25 Q. So you can neither confirm nor deny what [REDACTED]</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. What did you do to prepare for that meeting?</p> <p>2 A. I reviewed the documents from the 2014 PCOC</p> <p>3 meeting and talked to Trina Chernos, then a lawyer for</p> <p>4 the city.</p> <p>5 Q. Okay. Did you review coaching documentation</p> <p>6 forms?</p> <p>7 A. I did not.</p> <p>8 Q. Did you review coaching determination letters?</p> <p>9 A. I did not.</p> <p>10 Q. Okay. Did you review emails about coaching?</p> <p>11 A. No.</p> <p>12 Q. Did you meet with anyone from the HR department?</p> <p>13 A. No.</p> <p>14 Q. Did you meet with the city clerk?</p> <p>15 A. No.</p> <p>16 Q. Did you meet with Chief Arradondo?</p> <p>17 A. I did talk to Chief Arradondo to coordinate, but</p> <p>18 not to talk deeply or substantively about coaching.</p> <p>19 Q. And it seemed like he let you do most of the</p> <p>20 speaking at that about police department policy, is that</p> <p>21 your recollection?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember if anyone asked you to review</p> <p>24 remarks they had prepared for this meeting?</p> <p>25 A. No one else asked me to review remarks, to my</p>
<p style="text-align: right;">Page 59</p> <p>1 [REDACTED] said here?</p> <p>2 A. Correct.</p> <p>3 Q. We're going to now hand you Exhibit 35, which</p> <p>4 we'll spend a lot of time with today. This is the</p> <p>5 transcript of that May 2021 PCOC meeting. And let me</p> <p>6 first ask you if you recall this meeting?</p> <p>7 A. I do.</p> <p>8 Q. You attended it, correct?</p> <p>9 A. I did.</p> <p>10 Q. Okay. And you listened to what others said at</p> <p>11 that meeting?</p> <p>12 A. Yes.</p> <p>13 Q. If you had heard something inaccurate, would you</p> <p>14 have interjected?</p> <p>15 A. In the live meeting, I probably wouldn't have</p> <p>16 interjected. I might have tried to reframe it, but I</p> <p>17 wouldn't have stopped someone right in the middle of</p> <p>18 their statement.</p> <p>19 Q. Okay. Do you recall whether you heard any</p> <p>20 public official speaking at that meeting say something</p> <p>21 inaccurate?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall trying to reframe or correct what</p> <p>24 someone said after the fact?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 61</p> <p>1 recollection. I did review the PowerPoint that was</p> <p>2 developed, very short PowerPoint that was developed.</p> <p>3 Q. Did you prepare written remarks for the meeting?</p> <p>4 A. No.</p> <p>5 Q. Take a look at Page 33 of this transcript. And</p> <p>6 you'll see the first full paragraph on that page</p> <p>7 Assistant City Attorney Trina Chernos is speaking there,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And a couple paragraphs down -- let me just read</p> <p>11 this whole paragraph beginning at Line 9 to you. She</p> <p>12 says, "In the city, we have a practice of trying to</p> <p>13 always make sure that an employee leaves a conversation</p> <p>14 understanding whether discipline has occurred or not. I</p> <p>15 want to really emphasize, and I think this is really</p> <p>16 important to understand, is that there is no obligation</p> <p>17 to document coaching, but the MPD utilizes a coaching</p> <p>18 documentation form in part for accountability, and I am</p> <p>19 sure that DC Huffman and the chief could probably</p> <p>20 explain this better than I can." Did I read that</p> <p>21 correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Do you agree with Ms. Chernos that the</p> <p>24 Minneapolis Police Department has a practice of trying</p> <p>25 to always make sure that an employee leaves a</p>

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<p style="text-align: right;">Page 62</p> <p>1 conversation understanding whether discipline has 2 occurred or not? 3 A. We communicate discipline decisions in writing, 4 so to the extent that that's part of a conversation, 5 yes. I think we also make an attempt to be really clear 6 on the discipline matrix about what is and what is not 7 discipline. And so with both of those things together, 8 yes, I would agree that we do try to communicate clearly 9 to employees when discipline has happened. 10 Q. Okay. She then says a few lines down, "There is 11 no obligation to document coaching." Do you see that? 12 A. I do. 13 Q. Okay. Which is not quite what your testimony 14 was a minute ago. Your testimony was that if a coaching 15 session arises out of a complaint, there is an 16 obligation to document it, correct? 17 A. Yes, because we've created an obligation for our 18 employees to document coaching. But I, what I 19 understood during this conversation is that she meant 20 that there was no obligation to document coaching based 21 on some other kind of Civil Service rule or discipline 22 procedure, that that was an obligation that MPD had 23 created for itself. 24 Q. And there's no legal obligation because coaching 25 is a verbal process, correct?</p>	<p style="text-align: right;">Page 64</p> <p>1 today is the documentation of the verbal coaching 2 session, correct? 3 MR. ENSLIN: Object to the form. 4 A. Yes. 5 Q. Okay. And if I say verbal, you understand that 6 I also mean oral? 7 A. I do. 8 Q. Okay. Those are synonyms? 9 A. Yes. 10 Q. How does the form create accountability? And 11 I'm asking because Ms. Chernos says that DC Huffman 12 could explain this better than she could. 13 A. So kind of her. It creates accountability in a 14 couple of ways. One is just procedurally so that we can 15 track that a process has had the required steps and that 16 a supervisor has done what we've asked them to do, which 17 is to look into the incident and produce some 18 documentation accounting for the action that they took. 19 The other is because coaching is repeated within 20 certain periods of time for the same violation could 21 then result in a written reprimand or other kinds of 22 disciplinary action. 23 Q. So coaching is part of progressive discipline, 24 correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. ENSLIN: Object to the form, calls for 2 a legal conclusion. 3 MS. WALKER: I can rephrase it. 4 Q. Coaching is a verbal process, correct? 5 MR. ENSLIN: Object to the form. 6 A. There is no obligation because, there's no 7 obligation outside of the one that MPD has created for 8 itself because coaching is not going to result in 9 further processes like arbitration in which we need a 10 record. 11 Q. That's not really my question. The coaching 12 session where the officer is actually coached, that's a 13 verbal process, correct? 14 MR. ENSLIN: Object to the form. 15 A. Yes, coaching is verbal and then documented with 16 the coaching documentation form. 17 Q. Okay. And as Ms. Chernos said, the MPD 18 voluntarily, I think is what you're saying, utilizes a 19 coaching documentation form in part for accountability, 20 is that correct? 21 A. That is correct. 22 Q. So there's no obligation to document, the MPD 23 has just chosen to do so? 24 A. Yes. 25 Q. And the form we've talked about a few times</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. As I read this entire transcript it seemed clear 2 to me that one of the reasons the police department uses 3 coaching and likes the concept is that it at least 4 theoretically allows them to deal with problems 5 specifically, do you agree with that? 6 A. I do. 7 Q. And several people spoke about this at the 8 May 2021 meeting, correct? 9 A. Yes. 10 Q. In fact, I'll take you to Page 15. And 11 actually, you need to look at Page 14 to see who is 12 speaking here, but it's Director Patience Ferguson. And 13 Patience Ferguson at the time was the head of HR for the 14 city, correct? 15 A. Correct. 16 Q. And then you can go ahead and flip back to 17 Page 15. In the first paragraph there, Line 4, she 18 talks about how coaching is, "Just in time one-on-one 19 feedback." Do you see that? 20 A. I do. 21 Q. And then on Line 10 she says, "It provides 22 immediate feedback and direction." Do you see that? 23 A. I do. 24 Q. And then you also talked about the speed of 25 coaching yourself. You can flip to Page 35. Line 10</p>

<p style="text-align: right;">Page 66</p> <p>1 you said, "We're able to handle coaching referrals much 2 more quickly than we do disciplinary cases because 3 disciplinary cases require much more significant 4 investigation." Do you see that? 5 A. I do. 6 Q. And you stand by that statement today? 7 A. I do. 8 Q. If you flip to the next page. Around Line 13 9 you're explaining that, "Coaching is quicker because you 10 don't have to go down 'The very adversarial pathway' 11 required in a disciplinary case." Do you see that? 12 A. I do. 13 Q. Okay. What did you mean by "very adversarial 14 pathway"? 15 A. For every discipline outcome with discipline 16 imposed, whether it's a written reprimand, suspension, 17 demotion, termination, there is a grievance period. So 18 after the end of a potentially long investigation then 19 there is the imposition of discipline, there's 21 days 20 to start the grievance period for a step 1, a step 2, 21 and then something can kind of go in a long-term pending 22 waiting for arbitration. So this kind of end stage 23 process with a grievance period and potentially an 24 arbitration does not exist for coaching. 25 Q. Okay. And in fact, for discipline there's a</p>	<p style="text-align: right;">Page 68</p> <p>1 determination letter, we can assume that that went 2 through the adversarial pathway leading up to the 3 decision, correct? 4 A. That's correct. 5 Q. And in fact, the dates on this, this decision 6 was issued in May of 2017, correct? 7 A. Yes. 8 Q. And the OPCR case number begins with a 16, 9 correct? 10 A. Correct. 11 Q. Meaning that the incident across in 2016? 12 MR. ENSLIN: Object to the form. 13 A. Correct. 14 Q. That's what that first number in the OPCR case 15 number refers to, the year of the incident? 16 A. The year that the case was opened, which is 17 generally the year of the incident. 18 Q. Okay. And so it could have been late 2016 I 19 suppose, but at the very least this decision took at 20 least five months to reach, is that correct? 21 A. That is correct. 22 MR. ENSLIN: Object to the form. 23 Q. So now if you could go back to Exhibit 35 and 24 flip to 48. This is another spot where you talk about 25 how quickly coaching can happen. So starting at Line 9,</p>
<p style="text-align: right;">Page 67</p> <p>1 predisiplinary process as well, correct, you have to 2 comply with PDPA and give a Loudermill and a Garrity 3 warning, is that correct? 4 A. Yes. And so when I was talking about the long 5 investigative timeline, it includes those pieces of 6 work. 7 Q. Okay. And so the very adversarial pathway that 8 you're referencing here for discipline would include all 9 the process leading up to a decision by the chief and 10 then potentially the grievance and arbitration process 11 afterwards, correct? 12 A. Correct. 13 Q. And you're making the point here to the PCOC 14 that coaching is quicker because we don't have to do all 15 that, correct? 16 A. That is correct. 17 Q. Okay. But when coaching is issued in a 18 determination letter, at least some of that process has 19 been complied with, correct? 20 A. Yes. So that's a much smaller proportion of the 21 coaching matters so, you know, sort of a separate 22 category from the larger coaching process that came out 23 of joint supervisors referrals. 24 Q. Fair point. But, for example, Exhibit Number 25 21, a coaching decision issued by the chief on a</p>	<p style="text-align: right;">Page 69</p> <p>1 you say, "So coaching as a process, an administrative 2 investigation that can result in discipline are two very 3 different animals." Do you see that? 4 A. I do. 5 Q. Okay. So the administrative investigation, 6 that's the very adversarial process that you were 7 referencing earlier, correct? 8 A. Correct. 9 Q. Okay. And your point here today is that some 10 coaching, the coaching that comes out of the 11 determination letter, goes through that administrative 12 investigation and goes through the adversarial process, 13 correct? 14 A. My point at the PCOC meeting was not about these 15 kinds of coaching like Exhibit 21 at all. 16 Q. Correct. And let me stop you there, because 17 this kind of coaching didn't even come up at the 18 meeting, correct? 19 A. That's correct, yes. 20 Q. No one told the PCOC that this kind of coaching 21 happened, correct? 22 A. I mean, the way you make that sound is that we 23 were intentionally not talking about this kind of 24 coaching. 25 Q. Can I ask you a question. Were you</p>

<p style="text-align: right;">Page 70</p> <p>1 intentionally avoiding the question?</p> <p>2 A. No. I was asked to talk about the joint</p> <p>3 supervisor referral process for coaching, and that's</p> <p>4 what I talked about during that meeting.</p> <p>5 Q. Okay. And so during the meeting you were</p> <p>6 talking about coaching that never reaches the chief's</p> <p>7 desk, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And that kind of coaching doesn't go down the</p> <p>10 administrative investigation path, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And your position today is that's the vast</p> <p>13 majority of coaching that happens within the MPD, is</p> <p>14 that right?</p> <p>15 A. That is right.</p> <p>16 Q. And then there is some coaching that does get to</p> <p>17 the chief, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And he issues a determination letter, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And by the time he has done that, a very</p> <p>22 adversarial process has occurred, correct?</p> <p>23 A. Correct.</p> <p>24 Q. That entire administrative investigation has</p> <p>25 occurred, correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Yes, the CCPO is the reconstituted slightly</p> <p>2 different civilian oversight mechanism.</p> <p>3 Q. Has any effort been made to inform the CCPO of</p> <p>4 this kind of coaching reflected in Exhibit 21?</p> <p>5 A. To my knowledge, the CCPO at their public</p> <p>6 meetings hasn't had any presentations about coaching,</p> <p>7 there have only been a small number of meetings so far,</p> <p>8 public meetings. I don't know what training that</p> <p>9 they've received from the Civil Rights Department, and</p> <p>10 that may have included training about coaching outcomes,</p> <p>11 but I haven't been part of that, so I can't speak to it.</p> <p>12 Q. Do you think it's important for the public to</p> <p>13 know about the kind of coaching reflected in Exhibit 21?</p> <p>14 A. I don't think that there's any reason why the</p> <p>15 public shouldn't know about that process.</p> <p>16 Q. Do you have plans to shed light on this</p> <p>17 publicly?</p> <p>18 A. I'm not sure what you mean by that.</p> <p>19 Q. Well, do you understand the possibility that the</p> <p>20 PCOC was misled by the statements you and others were</p> <p>21 making at that May 2021 meeting about coaching?</p> <p>22 MR. ENSLIN: Object to the form.</p> <p>23 A. I disagree. There was no, there was no effort</p> <p>24 or intention to --</p> <p>25 Q. Yeah, but I'm not asking about intention. I'm</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Correct.</p> <p>2 Q. Do you think the PCOC might have been interested</p> <p>3 in knowing that?</p> <p>4 A. I don't know what they were interested in</p> <p>5 knowing about specifically beyond the topic of coaching.</p> <p>6 Q. What made you think they only wanted to hear</p> <p>7 about the early stage coaching referrals?</p> <p>8 MR. ENSLIN: Object to the form.</p> <p>9 MS. WALKER: I can rephrase.</p> <p>10 Q. Why didn't you personally think they wanted to</p> <p>11 hear about this kind of coaching represented in</p> <p>12 Exhibit 21?</p> <p>13 A. I don't remember, I don't remember exactly what</p> <p>14 I thought preparing for this meeting. I'm not sure I</p> <p>15 even thought about these much smaller number of coaching</p> <p>16 cases rather than the coaching process around the joint</p> <p>17 supervisor referrals just because that is the most</p> <p>18 significant number of coaching cases that happen. I'm</p> <p>19 not sure I thought about these smaller number of chief's</p> <p>20 decision coaching at all in preparing for that meeting.</p> <p>21 Q. Why not?</p> <p>22 A. This was in 2021, so I'm only speculating that</p> <p>23 it just didn't occur to me.</p> <p>24 Q. The PCOC has been reformulated and it exists</p> <p>25 today, correct?</p>	<p style="text-align: right;">Page 73</p> <p>1 asking do you think --</p> <p>2 MR. ENSLIN: Can you let her finish her</p> <p>3 answer.</p> <p>4 MS. WALKER: Well, she wasn't answering my</p> <p>5 question.</p> <p>6 MR. ENSLIN: No, no, no, but you still</p> <p>7 don't get to interrupt her.</p> <p>8 BY MS. WALKER:</p> <p>9 Q. Go ahead and finish. Do you want me to rephrase</p> <p>10 the question?</p> <p>11 A. No. Why don't you just give me a second to</p> <p>12 think about what I was about to say.</p> <p>13 I hadn't been a part of any previous discussions</p> <p>14 with the PCOC about coaching or coaching processes, so</p> <p>15 other than the 2014 presentation, I can't say what they</p> <p>16 already knew going into that meeting. Certainly I would</p> <p>17 anticipate that at least some of the members of the PCOC</p> <p>18 had a very thorough knowledge of coaching processes to</p> <p>19 begin with and others did not, as is typical in any kind</p> <p>20 of a meeting with an advisory body or a public group.</p> <p>21 If it didn't occur to me to talk about the</p> <p>22 smaller number of cases, it wasn't in any kind of an</p> <p>23 effort to mislead anyone, it was simply a representation</p> <p>24 of our overall vast majority of coaching case process.</p> <p>25 I can't speak for anyone else at the meeting, but for</p>

<p style="text-align: right;">Page 74</p> <p>1 myself I was just talking about in general the way most 2 coaching referrals are generated. 3 Q. Okay. And I wasn't asking about your intent, I 4 was asking, do you think it's possible the PCOC and 5 members of the public were misled by what public 6 officials said at that meeting? 7 A. So I think when you use the word misled, that 8 has a very negative connotation that implies intent. 9 Q. How about the word confused? 10 A. And so I object to that. 11 Q. Well, you don't get to object today, you just 12 get to answer my questions. 13 A. No, I'm saying that I object to that in the 14 normal use of the word object. 15 MR. ENSLIN: You cannot speak over her when 16 she's answering your question. So she wasn't using 17 objection in a formal legal sense, she was stating it in 18 a, clearly in a sense that she disagrees with your 19 statement, which she has a right to do in response to 20 your question. 21 MS. WALKER: If she's not answering my 22 question, Mark -- 23 MR. ENSLIN: Please let her finish though 24 and then you can ask a different question or do whatever 25 you want. You can't interrupt her, otherwise the court</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. And in fact, what you didn't talk about at that 2 meeting was the coaching of the most serious misconduct, 3 is that correct, because all the stuff you did talk 4 about was the A level stuff, correct? 5 A. Yes, the joint supervisors referrals are 6 intended to be only for the lowest level violations. 7 It's also true that a case that makes its way to the 8 chief's desk could include lower level violations with 9 allegations that were initially more serious. 10 It's also true that at the end of the process 11 the chief has the authority to make those discipline 12 decisions, which could include using coaching for a 13 variety of allegations. But to characterize it as all 14 of the most serious violations I think would be 15 incorrect. 16 Q. Okay. Isn't it true that every public official 17 who spoke at that meeting told the PCOC that the only 18 thing eligible for coaching is A level? 19 A. Yes. Because I speak for myself, I was talking 20 about the joint supervisors processes and that was the 21 expectation that only the lowest level cases would be 22 referred by the joint supervisors. 23 Q. And no one bothered to tell the PCOC that B 24 level violations were being coached, is that correct? 25 A. I can't speak for the other people at the</p>
<p style="text-align: right;">Page 75</p> <p>1 reporter is not going to be able to take down the 2 record. 3 MS. WALKER: I don't want to interrupt the 4 witness. And if you'll agree that no matter how long 5 she talks about something that is not my question, 6 you're not going to cut off this deposition at the seven 7 and a half hour mark, I'll allow it. But I am asking a 8 very direct question and I am offering to rephrase it if 9 she doesn't understand. 10 BY MS. WALKER: 11 Q. So let me ask the question again. Do you 12 understand that members, do you think it's possible that 13 members of the PCOC and members of the public were 14 confused given the statements public officials were 15 making about coaching at that meeting? 16 A. I think that it's, it's certainly true that we 17 didn't discuss every possible detailed part of the 18 coaching process, and so we didn't discuss coaching that 19 comes out of the chief's decision. So yes, if there was 20 somebody who came into that meeting knowing nothing 21 about that particular outcome, then they would have left 22 the meeting also not knowing about that. I'm not sure 23 whether that's confusion as much as it is just the lack 24 of knowledge of all of the intricacies of MPD's 25 processes.</p>	<p style="text-align: right;">Page 77</p> <p>1 meeting and what they intended, but because I was only 2 speaking about the joint supervisor processes, that was 3 all I discussed. 4 Q. Do you have a document from the PCOC that told 5 you that they only wanted to hear about the joint 6 supervisors process, I mean, what made you think that 7 that was the only topic on the table? 8 MR. ENSLIN: Object to the form, compound. 9 Q. What made you think that was the only topic to 10 be discussed that day? 11 A. Because this was in 2021, I can't reconstruct 12 all of the conversations that we had in preparing for 13 this. But my impression was I was being asked to talk 14 about the joint supervisor process and coaching 15 referrals, and so that's what I talked about. 16 Q. Do you think you have any documents framing the 17 topic of discussion that way? 18 A. I do not. As I recall, I didn't have anything 19 written about what was being asked other than to come to 20 the meeting and talk about coaching referrals. 21 Q. I can't remember if I asked you about another 22 sentence on Paragraph 48 here, I don't think I did. So 23 look at Line 13, you say, "I mean, ideally we would 24 really like to have the shortest possible lag time 25 between a supervisor recognizing that there is something</p>

<p style="text-align: right;">Page 78</p> <p>1 that we would all benefit from investigating some</p> <p>2 coaching in or the department receiving a complaint to</p> <p>3 let us know that something happened that we need to take</p> <p>4 a closer look at." Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Okay. And so again, you're emphasizing to the</p> <p>7 PCOC that coaching, at least the joint supervisors piece</p> <p>8 of it, should happen very quickly, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And on Page 51, if you can flip there. Line 13</p> <p>11 you're still talking I think, based on what you</p> <p>12 testified here today, about the joint supervisors</p> <p>13 process. And at Line 13 you say, "We like to have that</p> <p>14 happen within 30 days, so the timeline in comparison can</p> <p>15 be much shorter and more direct than a disciplinary</p> <p>16 investigation." Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Okay. And in a disciplinary investigation that</p> <p>19 results in something like Exhibit 21, that doesn't</p> <p>20 happen in 30 days, correct?</p> <p>21 A. Correct. If the coaching is the outcome of a</p> <p>22 full investigation and a chief's decision, then that</p> <p>23 process of the investigation, the chief's decision has</p> <p>24 not taken 30 days. In Line 14 when I'm talking about</p> <p>25 30 days, what I'm talking about there is once the joint</p>	<p style="text-align: right;">Page 80</p> <p>1 the lowest level violations were to be eligible for</p> <p>2 coaching, and typically that is A level when it's a</p> <p>3 referral from the joint supervisors.</p> <p>4 Q. And you didn't tell the PCOC that B level</p> <p>5 violations were being coached, did you?</p> <p>6 A. I did not talk at all about any coaching that</p> <p>7 came out of a chief's discipline.</p> <p>8 Q. Okay. And you left the PCOC with the impression</p> <p>9 that only the lowest level violations are coached,</p> <p>10 correct?</p> <p>11 A. From the joint supervisor process. Everything</p> <p>12 that I talked about throughout the meeting was clearly</p> <p>13 part of the joint supervisor process discussion.</p> <p>14 Q. And you don't think it's material in, you know,</p> <p>15 a year after George Floyd was murdered to explain that</p> <p>16 some high level violations were being coached, you</p> <p>17 didn't think that was material to tell the PCOC?</p> <p>18 MR. ENSLIN: Object to the form, asked and</p> <p>19 answered, argumentative.</p> <p>20 Q. It's a yes or no question, did you think it was</p> <p>21 material?</p> <p>22 A. I can't answer that as a yes or no question. It</p> <p>23 did not occur to me to talk about any coaching that came</p> <p>24 out of a chief's discipline process. And those may or</p> <p>25 may not be something that the public would consider high</p>
<p style="text-align: right;">Page 79</p> <p>1 supervisors made that referral to the supervisor, the</p> <p>2 conversation with the employee was to have happened in</p> <p>3 30 days.</p> <p>4 Q. Okay. And you didn't tell the PCOC that some</p> <p>5 coaching goes all the way up to the chief and it can</p> <p>6 take months or years to reach a decision, you didn't</p> <p>7 tell them that?</p> <p>8 A. Correct.</p> <p>9 Q. And it didn't occur to you to add that detail?</p> <p>10 A. No.</p> <p>11 Q. Because you thought they only wanted to know</p> <p>12 about the joint supervisors process?</p> <p>13 A. Because I thought that I was being asked to talk</p> <p>14 about the joint supervisor process.</p> <p>15 Q. So I have some questions about representations</p> <p>16 you made about how only A level violations can be</p> <p>17 coached. And I can walk you through those or I could</p> <p>18 just ask. You agree that the public officials speaking</p> <p>19 at that meeting conveyed to the PCOC that only A level</p> <p>20 violations are eligible for coaching, is that correct?</p> <p>21 A. What I conveyed was the joint supervisor</p> <p>22 referrals for coaching were only to be eligible for A</p> <p>23 level, the lowest level violations. Not every policy in</p> <p>24 the main role at that point had a specification for what</p> <p>25 was A level or B level or B through D level, but only</p>	<p style="text-align: right;">Page 81</p> <p>1 level.</p> <p>2 Q. So let me hand you Exhibit 30B. Actually, you</p> <p>3 already have it, it's one of the discovery responses.</p> <p>4 And if you could flip to Page 3, request for admission</p> <p>5 82.</p> <p>6 We asked the defendants to admit that at the</p> <p>7 time of the May 11, 2021 meeting of the PCOC, low level</p> <p>8 violations did not include B, C, D or E level</p> <p>9 violations, and defendants admitted that and you admit</p> <p>10 that as you sit here today, correct?</p> <p>11 A. Correct.</p> <p>12 Q. So I may refer throughout the day to A level</p> <p>13 violations as low level violations, I'll use those as</p> <p>14 synonyms, you're comfortable with that?</p> <p>15 A. I am.</p> <p>16 Q. And if I understand your testimony here today,</p> <p>17 you endeavored to tell the PCOC that only A level</p> <p>18 violations were eligible for coaching by the joint</p> <p>19 supervisors?</p> <p>20 A. Correct. I was attempting to reflect our</p> <p>21 process, which specified that joint supervisor referrals</p> <p>22 were for low level A violations.</p> <p>23 Q. And your testimony here today is it did not</p> <p>24 occur to you to tell the PCOC about coaching that comes</p> <p>25 out of the disciplinary process for B, C or D level</p>

<p style="text-align: right;">Page 82</p> <p>1 violations, is that correct?</p> <p>2 A. It did not occur to me to talk about coaching</p> <p>3 that arose from a chief's disciplinary decision after a</p> <p>4 full investigation, regardless of the level of</p> <p>5 violation.</p> <p>6 Q. Okay. So I want to shift gears then and talk</p> <p>7 about the disciplinary process, and specifically what</p> <p>8 happens before discipline is imposed, so before a letter</p> <p>9 like that found in Exhibit 21 issues.</p> <p>10 So let's start from the point where OPCR or IAU</p> <p>11 received a signed complaint, and what happens first?</p> <p>12 A. So let's talk about the processes prior to the</p> <p>13 reconstituting of IA and OPCR because it's different now</p> <p>14 than it was before the new ordinance took effect.</p> <p>15 So in the old process, once a complaint was</p> <p>16 received by either entity the joint supervisors would</p> <p>17 review that complaint with whatever documentation the</p> <p>18 intake investigation had found to determine whether</p> <p>19 there was actually a complaint articulated that would be</p> <p>20 a violation of the policy and procedure manual.</p> <p>21 Sometimes if the complaint came in and did not</p> <p>22 articulate a violation of that policy and procedure</p> <p>23 manual or was a complaint about another law enforcement</p> <p>24 agency, for example, those things would not move forward</p> <p>25 into any internal process.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Correct.</p> <p>2 Q. Who will gather some more information, maybe</p> <p>3 talk to the complainant, look at body cam or dash cam</p> <p>4 video, kind of get the whole set of facts that's</p> <p>5 possible together, it's still A level, and then make a</p> <p>6 decision about how to address it possibly through</p> <p>7 coaching, is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And that's the joint supervisor process you were</p> <p>10 talking about to the PCOC?</p> <p>11 A. Correct.</p> <p>12 Q. And everything I just talked about would be</p> <p>13 considered a preliminary investigation, correct?</p> <p>14 A. So preliminary investigation was typically a</p> <p>15 term that IA and OPCR would use for when they were doing</p> <p>16 an investigation. They typically did not refer to it,</p> <p>17 MPD typically did not refer to the work done by a</p> <p>18 supervisor in a coaching matter as a preliminary</p> <p>19 investigation.</p> <p>20 Q. Okay. Once it goes to the supervisor to</p> <p>21 investigate further, like joint supervisor saying this</p> <p>22 is an A, let's send it to the supervisor, the supervisor</p> <p>23 does some more investigation. I presume at that point</p> <p>24 the supervisor could send it back to the joint</p> <p>25 supervisors to say this is more serious than you</p>
<p style="text-align: right;">Page 83</p> <p>1 But assuming it survived that first threshold,</p> <p>2 if it was a complaint that appeared to be only a</p> <p>3 violation, a low level A type violation of the policy</p> <p>4 and procedure manual, the joint supervisors could refer</p> <p>5 it directly to the chain of command in an employee's</p> <p>6 precinct or command depending upon where they worked for</p> <p>7 the supervisor to review the incident, review any</p> <p>8 evidence that would shed light on what happened, and</p> <p>9 then make a determination about whether or not there was</p> <p>10 a policy violation and the best kind of performance,</p> <p>11 coaching, you know, policy review, training refresher or</p> <p>12 other kinds of support to provide to make sure to return</p> <p>13 the employee's performance to something that meets the</p> <p>14 department standards.</p> <p>15 Q. So can I stop you there.</p> <p>16 A. Yes.</p> <p>17 Q. Because I have a feeling I'm going to have some</p> <p>18 questions about this process.</p> <p>19 A. Sure.</p> <p>20 Q. So I think we've gotten to the point where the</p> <p>21 joint supervisors have decided there's jurisdiction,</p> <p>22 it's not beyond the reckoning period, it states the</p> <p>23 claims, and maybe one fork in the road is they have</p> <p>24 decided it's an A level violation. And I think you just</p> <p>25 described that it then goes back to the supervisor?</p>	<p style="text-align: right;">Page 85</p> <p>1 thought, you should take another look?</p> <p>2 A. Correct.</p> <p>3 Q. But assuming everyone continues to agree it's an</p> <p>4 A level, it's handled by the supervisor through coaching</p> <p>5 or some other process?</p> <p>6 A. Correct.</p> <p>7 Q. If the joint supervisors determine there's a</p> <p>8 claim stated for something above an A level, a B, C, D</p> <p>9 or now E level, then they would begin what we have</p> <p>10 referred to today as an administrative investigation,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And this is the very adversarial pathway you</p> <p>14 talked about at the PCOC meeting, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And it would only be at this point that the</p> <p>17 officer who is the subject of the complaint would know</p> <p>18 that an investigation has been opened, is that correct?</p> <p>19 A. Correct. Typically the focused employee will</p> <p>20 not know that an investigation has been opened until he</p> <p>21 or she receives their notification letter that they're</p> <p>22 being called in for an interview.</p> <p>23 Q. Okay. Is the interview -- that's not the</p> <p>24 Loudermill hearing, the interview is different?</p> <p>25 A. Correct, the interview is different.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. The interview has to be preceded by a Garrity 2 warning, correct? 3 A. Correct. 4 Q. And they have to come in for an interview, it's 5 a condition of their employment, correct? 6 A. Correct. 7 Q. And the Minneapolis Police Department always 8 gives an officer a Garrity warning before that formal 9 interview, correct? 10 A. Correct. 11 Q. And the Minneapolis Police Department would also 12 always comply with the police officer discipline 13 procedure act, correct? 14 A. Correct. 15 Q. And they would comply with any requirements of 16 the collective bargaining agreement during this 17 administrative investigation, correct? 18 A. Correct. 19 Q. And those rights include a right to a union 20 representative at the interview, correct? 21 A. Correct. 22 Q. Or an attorney? 23 A. Or both. 24 Q. Or both. And the officer would have a right 25 under the collective bargaining agreement to review the</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And then is it submitted to a review panel? 2 A. So for OPCR cases it would then go to the police 3 conduct review panel, which was at that point made up of 4 two civilians and two sworn appointed staff. 5 Q. And just to be clear, this is, the process we're 6 talking about now predates the ordinance that came into 7 effect when? 8 A. The ordinance took effect in April. 9 Q. Of 2023? 10 A. Of 2023, correct. So this would have been the 11 process directly preceding the new CCPO body that was 12 constituted after the ordinance change. 13 Q. Okay. So the report goes to the police conduct 14 review panel and then they decide whether the complaint 15 has merit or no merit, correct? 16 A. Correct. And also if a case was not an OPCR 17 case, if it was one of the kind of violations that only 18 runs through Internal Affairs, for example, an ADH&amp;R 19 violation that's investigated jointly between the human 20 resources investigators and Internal Affairs or in the 21 old process a case that was older than 270 days after 22 the incident, all of these steps that you have 23 articulated would remain true up until being sent to the 24 police conduct review panel. In those cases in the old 25 process they went to an internal only police department</p>
<p style="text-align: right;">Page 87</p> <p>1 evidence or the summary of evidence against him, 2 correct? 3 A. Yes. So the summary is a very short summary, 4 it's included in the notification letter, so it is not 5 the full case file of all evidence gathered to date, 6 it's merely summary. 7 Q. Okay. And he has a right just to review the 8 summary or the whole case file? 9 A. Not the entire case file at the time that they 10 make their statement, it is only a summary. 11 Q. And if the Minneapolis Police Department did not 12 comply with these requirements, whether it's PDPA or the 13 collective bargaining agreement or Garrity, then the 14 discipline issued by the chief would not be sustainable, 15 correct? 16 A. Correct. 17 Q. And so the interview happens and then the 18 investigator concludes the investigation collecting any 19 other facts or evidence at the time, correct? 20 A. Correct. 21 Q. And then there's an investigative report that's 22 written up? 23 A. Correct. 24 Q. And that's submitted to the joint supervisors? 25 A. Correct.</p>	<p style="text-align: right;">Page 89</p> <p>1 panel that served the same function. 2 Q. Okay. What's ADH&amp;R? 3 A. It's the discrimination and harassment cases. 4 Q. So more of an HR issue versus dealing with the 5 public issue? 6 A. Correct. 7 Q. And the police conduct review panel would decide 8 the merit or no merit sort of allegation-by-allegation, 9 right? 10 A. Yes. The police conduct review panel would make 11 a recommendation to the chief about merit or no merit 12 for the allegations that were articulated in the case 13 file. 14 Q. And we've seen that with some disciplinary 15 letters it will say sustained at B level, not sustained, 16 sustained at B level, that's what they are recommending 17 to the chief? 18 A. I'm not sure which letters you're referring to. 19 The police conduct review panel had a form that they 20 filled out where they recommended merit or no merit for 21 each allegation. And in the old process that was the 22 extent of their recommendation was simply that binary 23 merit or no merit. 24 Q. Okay. And so that panel would not assign it a 25 violation level?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. Correct.</p> <p>2 Q. Who would do that?</p> <p>3 A. Ultimately the chief is the one who makes that</p> <p>4 final determination.</p> <p>5 Q. Okay. If that panel returns a no merit</p> <p>6 determination, the complainant would be notified,</p> <p>7 correct?</p> <p>8 A. No, you're sort of missing some steps. If the</p> <p>9 panel, police conduct review panel made a recommendation</p> <p>10 of no merit and then it was reviewed by the chief and</p> <p>11 the chief agreed with the panel then the violation, the</p> <p>12 chief would determine if the violation was not sustained</p> <p>13 and then that would generate that notice letter, notice</p> <p>14 of action or notice of outcome, it has a variety of</p> <p>15 names.</p> <p>16 Q. Okay. So even a no merit determination goes to</p> <p>17 the chief?</p> <p>18 A. Yes. And the chief can determine that the panel</p> <p>19 was wrong in their assessment and sustain a violation</p> <p>20 that the panel has not recommended merit for.</p> <p>21 Q. Would it go to the deputy chief of professional</p> <p>22 standards before it went to the chief if it's a no merit</p> <p>23 recommendation?</p> <p>24 A. So I can't speak for every administration</p> <p>25 because different chiefs do things different ways. But</p>	<p style="text-align: right;">Page 92</p> <p>1 predetermination hearing, the Loudermill as it's</p> <p>2 specifically called in MPD. And they do that for all</p> <p>3 disciplinary violations, written reprimands, suspension,</p> <p>4 demotion across the board.</p> <p>5 Q. So they hold that even if the officer will not</p> <p>6 lose pay or is not at risk of losing pay, he still gets</p> <p>7 a Loudermill?</p> <p>8 A. Correct, that has been the practice.</p> <p>9 Q. And is that the practice or is that a legal</p> <p>10 requirement, based on your understanding?</p> <p>11 A. It's a practice.</p> <p>12 Q. So Loudermill does not require, the Loudermill</p> <p>13 decision does not require you to have that</p> <p>14 predetermination hearing so long as you do not strip the</p> <p>15 officer of compensation, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So your testimony is that the MPD for as long as</p> <p>18 you have been there, Loudermill is allowed for any type</p> <p>19 of discipline?</p> <p>20 A. Correct. And it has functioned for all types of</p> <p>21 potential discipline as an opportunity for the officer</p> <p>22 and/or his representative to articulate any mitigating</p> <p>23 factors that the officer would like the chief to</p> <p>24 consider.</p> <p>25 And because in general I think there has been a</p>
<p style="text-align: right;">Page 91</p> <p>1 as the deputy chief of professional standards for Chief</p> <p>2 Arradondo, I received that notification from Office of</p> <p>3 Police Conduct Review about the outcome of the police</p> <p>4 conduct review panel, so as the chief we were jointly</p> <p>5 notified, and then I would review the case along with</p> <p>6 Chief Rondo and then he would ultimately make the</p> <p>7 determination about the outcome.</p> <p>8 Q. Okay. And then if there's a merit</p> <p>9 determination, same process just like no merit, it would</p> <p>10 go to the chief or maybe the deputy chief, correct?</p> <p>11 A. Yes. All notifications, regardless of the</p> <p>12 recommendation from the police conduct review panel,</p> <p>13 were transmitted to the chief's office the same way by</p> <p>14 an email from the Office of Police Conduct Review</p> <p>15 stating that there had been a panel and that their</p> <p>16 recommendations were attached to this email and it would</p> <p>17 include that form.</p> <p>18 Q. Okay. And if the chief who may be working in</p> <p>19 conjunction with the deputy chief agrees with the merit</p> <p>20 determination, then a Loudermill hearing would be held,</p> <p>21 is that correct?</p> <p>22 A. That's correct. If the chief agrees with the</p> <p>23 recommendation from the police conduct review panel,</p> <p>24 then the next step in the process is that the officer's</p> <p>25 command or precinct will arrange to have the</p>	<p style="text-align: right;">Page 93</p> <p>1 philosophy that up until the point the chief makes their</p> <p>2 discipline decision, it hasn't been determined whether</p> <p>3 something would result in a written reprimand or</p> <p>4 suspension, I believe that's the genesis of holding a</p> <p>5 Loudermill across the board.</p> <p>6 Q. Right. Because you don't want to prejudge or</p> <p>7 box yourself in to a low level form of discipline just</p> <p>8 because you didn't hold a Loudermill hearing, is that</p> <p>9 correct?</p> <p>10 A. I can only speculate what other chiefs have</p> <p>11 thought. But yes, I believe that for me it would be</p> <p>12 important to hear those final, any mitigating factors</p> <p>13 that the officer wanted to have considered before making</p> <p>14 my final decision.</p> <p>15 Q. Okay. So for a letter like you see in</p> <p>16 Exhibit 21, the determination letter.</p> <p>17 A. Yes.</p> <p>18 Q. A Loudermill hearing would have been held before</p> <p>19 that decision issued?</p> <p>20 A. Correct, I believe a Loudermill would have been</p> <p>21 held prior to this.</p> <p>22 Q. I understand you don't have every single record</p> <p>23 at your fingertips to double check, but I think what I'm</p> <p>24 hearing you say is that if a determination issued,</p> <p>25 determination letter issued from the chief imposing</p>

<p style="text-align: right;">Page 94</p> <p>1 coaching, pretty safe to assume a Loudermill hearing was 2 held?</p> <p>3 A. Correct. If the coaching was the result of a 4 chief's decision, it would be safe to believe that a 5 Loudermill happened.</p> <p>6 Q. Okay.</p> <p>7 MR. ENSLIN: Can we take a five-minute 8 bathroom break whenever you're ready?</p> <p>9 MS. WALKER: Yeah, I think we can stop now. 10 (A break was taken at 10:22 a.m.)</p> <p>11 BY MS. WALKER:</p> <p>12 Q. So I'm going to tie up a couple loose ends here 13 on what we were just talking about. So if the police 14 conduct review panel finds merit but finds it -- they 15 don't make a determination of what level, correct, so 16 they wouldn't find merit at the A level, they would just 17 find merit, correct?</p> <p>18 A. Correct, they make a recommendation only on 19 merit regardless of any level.</p> <p>20 Q. And then it would go to the chief to decide 21 which level?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And the chief might decide it has merit 24 at the A level, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 96</p> <p>1 city clerk, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Who is Lisa Brock?</p> <p>4 A. I don't know Lisa Brock.</p> <p>5 Q. And the subject is, "PCOC presentation," and 6 this email is dated April 7, 2021, correct?</p> <p>7 A. Correct.</p> <p>8 Q. So this was about a month before that PCOC 9 meeting?</p> <p>10 A. Correct.</p> <p>11 Q. And Lisa Brock is sending to Casey Carl what she 12 refers to as the amended staff direction, do you see 13 that?</p> <p>14 A. Yes.</p> <p>15 Q. And this direction, which is what the PCOC wants 16 to hear from you all on is, "Directing the city clerk to 17 notify appropriate city department leaders of the Police 18 Conduct Oversight Commission's request to have 19 clarification provided with respect to the definition, 20 application and data classification implications of 21 coaching as that term is used in connection with 22 employee performance management, including an 23 explanation of how a new Section 2-112 entitled, 24 'Complaint, coaching and disciplinary system,' was added 25 to the MPD policy and procedures manual on or about</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And then he might issue a coaching decision like 2 the one we've seen in Exhibit 21, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Or he could decide merit at the B level 5 and then issue a coaching decision like the one we see 6 in Exhibit 21, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And we talked a little bit about how, again 9 referring back to 21 as sort of our sample, a Loudermill 10 hearing would have occurred in all likelihood before 11 that decision issued, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And is it fair to say that the Minneapolis 14 Police Department complied with all rights of the police 15 officer and obligations it owed the police officer 16 before issuing a decision like that?</p> <p>17 MR. ENSLIN: Object to the form.</p> <p>18 A. Yes. In theory there would have been all of the 19 requirements covered from the formal statement on 20 through a Loudermill.</p> <p>21 Q. All right. So I'm going to hand you, or Isbella 22 will hand you what we premarked as Exhibit 127. She can 23 hand you 128 at the same time.</p> <p>24 And starting with 127, this is an email from 25 Lisa Brock to Casey Carl. Casey Carl is and was the</p>	<p style="text-align: right;">Page 97</p> <p>1 December 31st, 2020. And to further request those city 2 leaders to appear at the commission's regular meeting on 3 April 13th to provide responsive information and to 4 respond to questions." Did I read that correctly?</p> <p>5 A. You did.</p> <p>6 Q. Okay. And I think it's fair to say that the 7 meeting was postponed, it was not held on April 13th, it 8 was held in May, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And so this is what you all were asked to speak 11 about at that PCOC meeting, correct?</p> <p>12 MR. ENSLIN: Object to the form.</p> <p>13 A. I don't know that I ever saw this or read this 14 before the meeting.</p> <p>15 Q. Do you know that you did not?</p> <p>16 A. I don't know, I don't remember this.</p> <p>17 Q. It's possible you got this?</p> <p>18 A. It's possible.</p> <p>19 Q. Okay. If you had received this, do you think 20 you might have spoken about more than that joint 21 supervisors process?</p> <p>22 MR. ENSLIN: Object to the form.</p> <p>23 A. So some of this I couldn't speak to. I wasn't 24 involved with the drafting of Section 2-112 of the 25 policy manual. And certainly the attorneys at the</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 meeting were in the best position to talk about the data 2 classification implications, so I would have left that 3 to them as well.</p> <p>4 You know, the definition and application, I 5 don't know that it would have occurred to me to talk 6 about the chief's discipline or not after having read 7 this simply because that is such a, sort of an ancillary 8 process for how coaching cases are created. It's really 9 the joint supervisor process that I think would have 10 taken precedence in my mind.</p> <p>11 Q. But you agree with me that nothing in this staff 12 direction limits the discussion to the joint supervisors 13 process?</p> <p>14 A. Correct.</p> <p>15 Q. And to the extent you were under that 16 impression, that would have been conveyed to you by who?</p> <p>17 MR. ENSLIN: Object to the form.</p> <p>18 A. I don't know that it was necessarily conveyed to 19 me. Perhaps it was everyone's perception.</p> <p>20 Q. You don't remember receiving anything about what 21 you were being asked to discuss, you don't remember 22 receiving this and you don't remember receiving anything 23 else in writing about what you were being asked to 24 discuss, is that correct?</p> <p>25 A. I don't. It's been a long time, so it's</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Anyone besides Ms. Chernos and Mr. Jeffries?</p> <p>2 A. Patience Ferguson was part of the meeting. I 3 don't recall having any direct conversations with her, 4 just between the two of us in preparation for that 5 meeting, and I didn't have any conversations with Jim 6 Rowader.</p> <p>7 Q. You did not or you did?</p> <p>8 A. I did not.</p> <p>9 Q. Take a look at Exhibit 128. This is an email 10 you received from Casey Carl after the meeting, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And he says, "Thanks to all of you for pulling 13 together the presentation at tonight's PCOC meeting on 14 the issue of coaching." Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. He says, "The discussion, while extended, was 17 long overdue and I hope informative to those 18 commissioners and public who are listening to learn 19 about how coaching is or is not applied across both the 20 enterprise and specifically in MPD." Did I read that 21 correctly?</p> <p>22 A. You did.</p> <p>23 Q. He doesn't suggest that the discussion was or 24 was supposed to be simply about the joint supervisors 25 process, does he?</p>
<p style="text-align: right;">Page 99</p> <p>1 possible that I received something. What I do remember 2 is having conversations in preparation particularly with 3 Trina Chernos.</p> <p>4 Q. What did she tell you was the scope of the 5 discussion?</p> <p>6 MR. ENSLIN: Object to the form. I'm just 7 going to caution you because we're going into privileged 8 material. So I'm going to instruct you not to answer as 9 to specific conversations that you had with Trina 10 Chernos.</p> <p>11 A. She provided the materials from the previous 12 2014 PCOC meeting and described that discussion and her 13 approach to the coaching question.</p> <p>14 Q. What was her approach?</p> <p>15 MR. ENSLIN: I'm going to instruct you not 16 to answer because that would reveal privileged 17 communication.</p> <p>18 Q. Did you speak to anyone other than Trina Chernos 19 about the scope of the discussion, the anticipated scope 20 of discussion at that May 2021 meeting?</p> <p>21 A. Jared Jeffries was playing the role of the 22 coordinator between the various people, and so he 23 certainly brought us together to discuss, but I don't 24 recall having any explicit discussions about the chief 25 coaching outcomes as part of that preparation at all.</p>	<p style="text-align: right;">Page 101</p> <p>1 A. He does not.</p> <p>2 Q. In fact, he talks about how the discussion was 3 about how coaching is or is not applied across the 4 enterprise and specifically in MPD, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Would you be willing to look for more documents 7 in April and May of 2021 regarding what you were 8 expected to talk about at that meeting?</p> <p>9 MR. ENSLIN: Object to the form. You can 10 send that to counsel if you would like.</p> <p>11 MS. WALKER: Okay. We'll make a record 12 that we're requesting those documents.</p> <p>13 MR. ENSLIN: Can you send it to me after, 14 please.</p> <p>15 MS. WALKER: Yes.</p> <p>16 BY MS. WALKER:</p> <p>17 Q. Okay. So I briefly want to talk about what 18 happens after the termination letter is issued. And the 19 short answer I think is that after disciplinary action 20 issues, an officer may be entitled to certain appeal 21 rights, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And there's a state law called PELRA, are you 24 familiar with it?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. Okay. And it says that all written discipline 2 must be subject to some sort of grievance procedure that 3 must include compulsory binding arbitration, is that 4 your understanding? 5 A. Yes. 6 Q. Okay. And PELRA does not mention oral or verbal 7 discipline, correct? 8 A. Not to my knowledge. 9 Q. And so it only requires an appeal process and an 10 arbitration procedure for written discipline, correct? 11 MR. ENSLIN: I'll object to the form, calls 12 for a legal conclusion. 13 Q. That's your understanding? 14 A. As not a lawyer, that is my understanding. 15 Q. Okay. Are you aware based on your 30 years of 16 experience of any state law that requires a grievance 17 procedure for oral or verbal discipline? 18 A. I am not. 19 Q. Fair to say that PELRA creates sort of the 20 minimum standard and if you wanted to negotiate 21 something more in the collective bargaining agreement 22 you could, is that correct? 23 A. That is my understanding. 24 Q. Okay. And the collective bargaining agreement 25 between the federation and the city does list what may</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Okay. Beyond written discipline, correct? 2 A. Beyond, yes, the written reprimand, suspension, 3 demotion, discharge or transfer. 4 Q. A letter of reprimand would be kept in Practice 5 Manager, is that your testimony? 6 A. Yes. 7 MR. ENSLIN: Object to the form. 8 Q. Same for a letter imposing a suspension would be 9 kept in Practice Manager? 10 A. Yes. 11 MR. ENSLIN: Object to the form. 12 Q. And I think your testimony is you don't know 13 where else it would be kept? 14 A. Correct. 15 Q. If you were going to look for an officer's prior 16 discipline, you would go to Practice Manager? 17 A. I would. 18 Q. And you would do that yourself or you would ask 19 for HR's help? 20 A. I would not ask for HR's help. I would either 21 do it myself if I were in a position where I had access 22 to Practice Manager or request it from either Internal 23 Affairs or OPCR, depending upon the type of case. 24 Q. We're going to hand you what's been premarked as 25 Exhibit 44. This is a letter of reprimand, correct?</p>
<p style="text-align: right;">Page 103</p> <p>1 be appealed through the grievance procedure, correct? 2 A. It does. 3 Q. And that procedure is a three-step process? 4 A. Correct. 5 Q. And the last step is the compulsory binding 6 arbitration process, is that correct? 7 A. Correct. 8 Q. And the collective bargaining agreement 9 currently in effect lists the following as types of 10 discipline that can be grieved, suspension, written 11 reprimand, transfer, demotion and discharge, is that 12 your recollection? 13 A. That's correct. 14 Q. It doesn't list any type of oral or verbal 15 discipline as grievable, correct? 16 A. Correct. 17 Q. And PELRA doesn't require that, correct? 18 A. Correct. 19 Q. So the collective bargaining agreement doesn't 20 give officers any more appeal rights than PELRA does, is 21 that correct? 22 MR. ENSLIN: Object to the form. 23 A. Correct. The collective bargaining agreement 24 doesn't recognize a right to grieve any other outcomes 25 beyond what's listed.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Yes. 2 Q. This is also referred to as a determination 3 letter, is that right? 4 A. Yes. 5 Q. Okay. And it's signed by the officer, the 6 subject officer on the second page, correct? 7 A. Yes. 8 Q. And there's no question this is disciplinary, 9 correct? 10 A. Correct. 11 Q. This is written discipline? 12 A. Yes. 13 Q. And so it would be grievable? 14 A. Correct. 15 Q. And this would be kept in Practice Manager? 16 A. It would. 17 Q. Okay. On the second page do you see a cc to the 18 inspector, to personnel and to OPCR, IAU. Is one of 19 those the equivalent of sending it to Practice Manager? 20 A. OPCR and IA staff would be the ones to upload 21 documents into Practice Manager. 22 Q. Okay. So if you want to get something in 23 Practice Manager, you send it to OPCR and IAU? 24 A. Correct. 25 Q. Okay. Why would it also be sent to personnel?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. I can't answer because I didn't create this 2 template, but I can speculate that the sustained 3 discipline was also reflected in a personnel file. But 4 because I've never worked either in HR or the part of 5 the department that deals with personnel files, I don't 6 have any experience with what that looks like, so I 7 can't tell you how that's reflected. 8 Q. Okay. In the second paragraph, the last 9 sentence, it says, "The case will remain in the OPCR 10 file per the record retention guidelines mandated by 11 state law." The OPCR file just means Practice Manager? 12 A. Correct. 13 Q. I've seen other letters that tell officers the 14 case will remain in IAU files. Are those terms used 15 interchangeably, OPCR and IAU? 16 A. Both can upload documents into Practice Manager, 17 each one has like a side of the system where they upload 18 their work product. So IAU files would also be retained 19 in Practice Manager, OPCR files would be retained in 20 Practice Manager. 21 Q. Okay. So let me just hand you Exhibit 45. So 22 this is another letter of reprimand and I just wanted to 23 show you an example. 24 So the second paragraph, last sentence, here it 25 says, "The case will remain in the IAU files per the</p>	<p style="text-align: right;">Page 108</p> <p>1 A. They're organized by matter number. 2 Q. Okay. So if I wanted to look at disciplinary 3 decisions against John Smith, I could run a search for 4 his name in Practice Manager? 5 MR. ENSLIN: Object to the form. 6 A. It is not quite that easy. The easiest way to 7 look at discipline for a particular officer is to obtain 8 a copy of the blue card, which is the compilation of all 9 of those matter numbers. There's a public version and 10 there's, you know, an internal version that has more 11 information than the public version. 12 But when you run someone's name in Practice 13 Manager, because of the vagaries of how data has been 14 entered over time and how OPCR has used the system 15 versus IA, it's not as comprehensive or as easy to get 16 results as one might hope. 17 Q. So where is the blue card kept? 18 A. The blue card is a creation of the Internal 19 Affairs and the staff who do that work of compiling all 20 of the results and turn it into a blue card. 21 Q. Okay. So bear with me, because I'm just 22 guessing at how this works, correct me if I'm wrong. So 23 an officer gets a letter of reprimand and it's sent to 24 OPCR, IAU, and someone puts it in Practice Manager and 25 then someone also has to add it to the blue card?</p>
<p style="text-align: right;">Page 107</p> <p>1 record retention guidelines mandated by state law." So 2 it's an identical sentence to Exhibit 44, Exhibit 44 3 says OPCR, Exhibit 45 says IAU. I'm just trying to 4 figure out why there's a difference? 5 A. Well, the 2015 letter identifies this as an OPCR 6 case, so this complaint would have originated and gone 7 through the OPCR complaint process. This letter from 8 2014 also says OPCR case, but the case number starts 9 with the number 12, which I believe predates the 10 existence of OPCR and would have actually originated 11 when the Civilian Review Authority maybe was in its last 12 years. I'd have to go back and look at dates to be 13 sure, but this is quite an old matter number. 14 Q. Okay. I'm just trying to understand if there's 15 like a meaningful difference between we're sending it to 16 OPCR for record retention versus we're sending it to IAU 17 for record retention? 18 A. There's not a meaningful difference, both are 19 going to end up in Practice Manager. 20 Q. Okay. Accessible by anyone who has access to 21 Practice Manager? 22 A. Accessible to anyone who has access to either or 23 both of the OPCR files, IA files in Practice Manager. 24 Q. Okay. Are those files organized like by 25 officer?</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. ENSLIN: Object to the form to the 2 extent it misstates prior testimony. 3 Q. Please clarify. 4 A. So I'm not the best person to speak to this 5 because I haven't had any of those jobs of creating blue 6 cards. But my observations are that it's a little bit 7 more complicated than that. 8 So when Internal Affairs or OPCR opens an 9 investigation they create a matter in Practice Manager 10 under that matter number and add information either that 11 they have at the outset about the complaint or that they 12 learn that the complaint is ongoing. And that would 13 include the name of a focus officer or officers. 14 And my observation, not as a person who has 15 worked recently in either of those units, is that OPCR 16 has arranged their system to name focus officers in a 17 way that is easier to run a query against and IA has 18 used badge numbers, so. 19 Q. So how does it get onto the blue card? 20 A. An individual person will look at the records 21 and make sure that we have a comprehensive blue card. 22 There is a system that does an automatic data pull, but 23 then we go back and have a human being, to the best of 24 my knowledge, check it and confirm that it's correct 25 because the data systems don't make the automated data</p>

<p style="text-align: right;">Page 110</p> <p>1 pulls easy.</p> <p>2 Q. Okay. And that human being is in OPCR or HR or</p> <p>3 IAU?</p> <p>4 A. Internal Affairs.</p> <p>5 Q. So Internal Affairs is responsible for the blue</p> <p>6 card?</p> <p>7 A. Correct.</p> <p>8 Q. And the blue card is kept in Practice Manager or</p> <p>9 in like a physical file drawer?</p> <p>10 A. No. It's a creation coming from the records in</p> <p>11 Internal Affairs side and OPCR side of Practice Manager,</p> <p>12 but it's not an actual physical card that lives</p> <p>13 anywhere.</p> <p>14 Q. Sure. Are coaching determination letters like</p> <p>15 Exhibit 21 put on the blue card?</p> <p>16 A. So when a matter is opened, whether it's an</p> <p>17 Internal Affairs or OPCR, they create that matter</p> <p>18 number. If it's referred by the joint supervisors to</p> <p>19 the officer's chain of command for coaching, it still</p> <p>20 retains that matter number and all of the documentation</p> <p>21 would be contained, should be contained within that</p> <p>22 electronic file.</p> <p>23 The same thing is true, they receive that</p> <p>24 complaint, create the matter number and it goes to an</p> <p>25 administrative investigation and then all the way</p>	<p style="text-align: right;">Page 112</p> <p>1 A. 45?</p> <p>2 Q. 45 works for me. So if this were on a blue</p> <p>3 card, would it say the OPCR number and letter of</p> <p>4 reprimand, or would it say OPCR closed with discipline?</p> <p>5 A. If you look at the -- well, it's been a while</p> <p>6 since I've looked at a blue card and so I'd have to go</p> <p>7 back and refresh my memory. I can't remember whether it</p> <p>8 says the level of discipline that's imposed, I can't</p> <p>9 recall.</p> <p>10 But for the public blue cards a coaching, a case</p> <p>11 that's disposed of with the coaching outcome will say</p> <p>12 closed, no discipline, and on an internal blue card it</p> <p>13 will say closed with coaching. And I can't remember</p> <p>14 whether the disciplinary cases specify the level of</p> <p>15 discipline.</p> <p>16 Q. I'm taking a minute because I think I can</p> <p>17 eliminate some questions, so bear with me.</p> <p>18 I'm going to have you look at Exhibit 49. So</p> <p>19 this is a letter of reprimand, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And it's for a C level?</p> <p>22 A. Correct.</p> <p>23 Q. From 2016?</p> <p>24 A. Yes.</p> <p>25 Q. And at this time there were four levels of</p>
<p style="text-align: right;">Page 111</p> <p>1 through to a chief's decision, all of that documentation</p> <p>2 is still retained under that matter number. So no</p> <p>3 matter which side of the house it originated under and</p> <p>4 whether it goes to joint supervisor review or ultimately</p> <p>5 a chief's decision, it still exists in Practice Manager</p> <p>6 under that matter number.</p> <p>7 Q. And you would see the decision on the blue card?</p> <p>8 A. Yes. So when you look at the blue card you will</p> <p>9 see the matter and an outcome.</p> <p>10 Q. Okay. So it looks like Exhibit 21 then, this</p> <p>11 was coaching of a B level violation. What would the</p> <p>12 blue card say?</p> <p>13 A. I don't, I'm not sure. It's been a while since</p> <p>14 I've looked at a blue card and I don't think I've ever</p> <p>15 looked at this blue card. But when you look at the</p> <p>16 officer's blue card you would see this matter number and</p> <p>17 you would see that it was closed with coaching. And</p> <p>18 beyond that, I would have to go back and look at a blue</p> <p>19 card to refresh my memory.</p> <p>20 Q. Do you think it's possible it would say closed</p> <p>21 with discipline?</p> <p>22 A. No, it would say closed with coaching.</p> <p>23 Q. And do you have Exhibit 46? I just want to</p> <p>24 point you to one of the letters of reprimand I gave you</p> <p>25 just as an example.</p>	<p style="text-align: right;">Page 113</p> <p>1 discipline, correct, A, B, C and D?</p> <p>2 A. Correct.</p> <p>3 Q. And C was the second highest?</p> <p>4 A. Correct.</p> <p>5 Q. And were C level violations eligible for</p> <p>6 anything other than discipline back in 2016?</p> <p>7 A. C levels would not have been eligible for a</p> <p>8 referral for coaching by the joint supervisors.</p> <p>9 Q. Were they --</p> <p>10 A. The chief has the ultimate authority to make the</p> <p>11 discipline decision that they feel is best. The chief</p> <p>12 isn't necessarily constrained by those categories. But</p> <p>13 this would not have been, should not have been eligible</p> <p>14 for a coaching referral by the joint supervisors.</p> <p>15 Q. I understand. Your testimony is it would have</p> <p>16 landed, it should and would have landed on the chief's</p> <p>17 desk, but he is at liberty to coach as the exclusive</p> <p>18 consequence for the most egregious thing if he wants to?</p> <p>19 A. Correct.</p> <p>20 Q. This letter, Exhibit 49, it does not explicitly</p> <p>21 say that the reprimand is a form of disciplinary action,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And there's no heading at the top that says</p> <p>25 notice of discipline, correct?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. Correct.</p> <p>2 Q. It doesn't say that as discipline you will</p> <p>3 receive this letter of reprimand, correct?</p> <p>4 A. Correct.</p> <p>5 Q. But it's definitely discipline, a letter of</p> <p>6 reprimand?</p> <p>7 A. It is.</p> <p>8 Q. We've talked about Ms. Chernos' statement back</p> <p>9 in May 2021 that employees should leave a conversation</p> <p>10 understanding whether discipline occurred, do you</p> <p>11 remember that?</p> <p>12 A. I do.</p> <p>13 Q. And you basically agreed with that I think?</p> <p>14 A. Yes.</p> <p>15 Q. All right. How is an employee who receives this</p> <p>16 letter supposed to know that it's disciplinary?</p> <p>17 A. Because a letter of reprimand is discipline,</p> <p>18 it's reflected in the collective bargaining agreement</p> <p>19 that it is grievable as a consequence of receiving that</p> <p>20 discipline, and it's reflected, you know, just as common</p> <p>21 knowledge in the department that a letter of reprimand</p> <p>22 and higher is discipline.</p> <p>23 Q. Okay. Anything on the face of the letter that</p> <p>24 would tell them it's disciplinary?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. You did.</p> <p>2 Q. Do you remember her explaining to the PCOC that</p> <p>3 it's this language I just read that is sort of the clue</p> <p>4 to the employee that they're being disciplined?</p> <p>5 MR. ENSLIN: Object to the form.</p> <p>6 A. I see that in the transcript, but at the time I</p> <p>7 didn't pick up on that as being anything particularly</p> <p>8 noteworthy. I mean, it's true that this coaching</p> <p>9 documentation from the joint supervisor process doesn't</p> <p>10 reflect that kind of language, so that wouldn't have</p> <p>11 stood out to me.</p> <p>12 Q. Right. You don't remember hearing this and</p> <p>13 thinking that's not right?</p> <p>14 A. No.</p> <p>15 Q. Do you agree with this as you sit here today?</p> <p>16 A. To the extent that she's talking about this</p> <p>17 coaching documentation form that comes out of the joint</p> <p>18 supervisor process, yes.</p> <p>19 Q. Okay. She says more than that though. She</p> <p>20 says, "A key part is that discipline states at the</p> <p>21 bottom that further misconduct will result in discipline</p> <p>22 up to and including termination." Do you agree with</p> <p>23 that statement?</p> <p>24 A. I think that she -- well, I can only speculate</p> <p>25 as to what she was thinking of. I only agree with that</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. And everyone knew that a C level was supposed to</p> <p>2 be discipline, correct?</p> <p>3 A. Correct.</p> <p>4 Q. So the City Attorney back in that May 2021</p> <p>5 meeting pointed to the last paragraph here, the</p> <p>6 Assistant City Attorney I should say, pointed to the</p> <p>7 last paragraph here as sort of the key to making sure</p> <p>8 employees understand they're being disciplined, do you</p> <p>9 recall that?</p> <p>10 MR. ENSLIN: Object to the form.</p> <p>11 A. In the PCOC meeting?</p> <p>12 Q. Yes.</p> <p>13 A. I guess I don't.</p> <p>14 Q. Let me point you back then to Exhibit 35. And</p> <p>15 we're going to flip to Page 34 and we're going to start</p> <p>16 on Line 16. So she's talking about -- let me just give</p> <p>17 you a little framing for this.</p> <p>18 Remember on Page 33 she's talking about we want</p> <p>19 to make sure employees know they're being disciplined.</p> <p>20 And then on Page 34 starting at Line 16 she says, "And</p> <p>21 then the key part of that, which is very different than</p> <p>22 the coaching document in the MPD, is that it will state</p> <p>23 at the bottom that further misconduct will result in</p> <p>24 discipline up to and including termination." Did I read</p> <p>25 that correctly?</p>	<p style="text-align: right;">Page 117</p> <p>1 statement to the extent that we're talking about this</p> <p>2 coaching documentation form.</p> <p>3 Q. So you're saying because this language I just</p> <p>4 read is not on that form, that's a clue that that form</p> <p>5 is not discipline?</p> <p>6 A. I agree with her assessment that that language</p> <p>7 is not on this coaching documentation form and that</p> <p>8 informs a key part of how these coaching sessions go.</p> <p>9 But I will say that coaching if it's a repeated</p> <p>10 violation is enhanceable, and so that is printed right</p> <p>11 on the discipline matrix over the years.</p> <p>12 So clearly, you know, employees know that, you</p> <p>13 know, if you are coached for tardiness, for example, but</p> <p>14 you continue to exhibit that same behavior and the</p> <p>15 coaching doesn't result in correction of it, that that</p> <p>16 could become a formal adversarial process, full</p> <p>17 investigation resulting discipline matter. And so it's,</p> <p>18 it's not by itself a full explanation of how somebody</p> <p>19 would understand a disciplinary matter.</p> <p>20 At the end of the day, as far as I know, it is</p> <p>21 commonly understood by members of the department that a</p> <p>22 written reprimand, suspension, demotion and termination</p> <p>23 are discipline.</p> <p>24 Q. Okay.</p> <p>25 A. That those are the categories that are</p>

<p style="text-align: right;">Page 118</p> <p>1 recognized as discipline.</p> <p>2 Q. I'm not saying that this language is on the</p> <p>3 form. Let me read you that whole paragraph. So she's</p> <p>4 talking about the distinction between forms of</p> <p>5 discipline and coaching. And at Line 6 she says,</p> <p>6 "Written warning, as is set out in the Civil Service</p> <p>7 Commission rules, is for something that is actually</p> <p>8 disciplinary and the document would be different. We</p> <p>9 use in the city either the chief's discipline memo for</p> <p>10 the MPD or what's called a determination letter in the</p> <p>11 city. And the subject line of that document indicates</p> <p>12 or elsewhere in the body of that letter will indicate</p> <p>13 what is being imposed with the employee and will</p> <p>14 indicate that it is a disciplinary measure. And then</p> <p>15 the key part of that, which is very different than the</p> <p>16 coaching document in the MPD, is that it will state at</p> <p>17 the bottom that further misconduct will result in</p> <p>18 discipline up to and including termination, and that's</p> <p>19 not what coaching documents under either the MPD system</p> <p>20 or other labor agreements within the city system would</p> <p>21 show."</p> <p>22 So is there a part of that you disagree with?</p> <p>23 MR. ENSLIN: Object to the form, asked and</p> <p>24 answered.</p> <p>25 A. So she's talking about a variety of things</p>	<p style="text-align: right;">Page 120</p> <p>1 a little later.</p> <p>2 This letter, Exhibit 49, has what Ms. Chernos</p> <p>3 called the key language, correct?</p> <p>4 A. I'm sorry, which one are we looking at now?</p> <p>5 Q. 49.</p> <p>6 A. Yes.</p> <p>7 Q. And the officer had to sign it, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Do officers always have to sign notices of</p> <p>10 discipline?</p> <p>11 A. Yes.</p> <p>12 Q. Why?</p> <p>13 A. So that we can confirm that they've been</p> <p>14 notified.</p> <p>15 Q. Would there be any other reason to make an</p> <p>16 officer sign a notice like this?</p> <p>17 A. I'm not sure what other reasons, but I think the</p> <p>18 primary reason is to make sure that someone has been</p> <p>19 properly notified.</p> <p>20 Q. Okay. We're still on Exhibit 35, and I'm going</p> <p>21 to point you to 29, Page 29. And actually, my question</p> <p>22 begins on Page 28 where there's a question from PCOC</p> <p>23 Commissioner Abigail Cerra, do you see that?</p> <p>24 A. I do.</p> <p>25 Q. She says, "I have several questions." And then</p>
<p style="text-align: right;">Page 119</p> <p>1 before she references that specific coaching document.</p> <p>2 I agree that it's not on the coaching document, however,</p> <p>3 a coaching letter that comes out of the chief's process</p> <p>4 may have that language or similar language. Those</p> <p>5 letters are templates, and so that language may be</p> <p>6 carried over or a form of that language may be carried</p> <p>7 over into those letters.</p> <p>8 Q. Okay. Do you disagree that it's a key part?</p> <p>9 MR. ENSLIN: Object to the form, asked and</p> <p>10 answered.</p> <p>11 A. I think that the most, the most key components</p> <p>12 are the common knowledge within the department, the</p> <p>13 collective bargaining agreement, and the discipline</p> <p>14 matrix. And these letters that go out to employees are</p> <p>15 communications to people who are understanding what</p> <p>16 they're receiving within that framework. So I don't</p> <p>17 think that that, the inclusion of that particular</p> <p>18 language in a coaching letter would be confusing for an</p> <p>19 employee.</p> <p>20 Q. And yet several employees tried to grieve</p> <p>21 coaching decisions that included that language, correct?</p> <p>22 MR. ENSLIN: Object to the form,</p> <p>23 foundation.</p> <p>24 A. That's not something that I know about.</p> <p>25 Q. Okay. I'll show you a few documents about that</p>	<p style="text-align: right;">Page 121</p> <p>1 at the top of Page 29 she says, "My first question is</p> <p>2 really basic, 'What is discipline?'" Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And Director Ferguson answers and then Chief</p> <p>5 Arradondo answers and then Ms. Chernos jumps in around</p> <p>6 Page 30 with her own answer. Do you see where her name</p> <p>7 is on Line 10 of Page 30?</p> <p>8 A. I do.</p> <p>9 Q. And she says, "Commissioner Cerra, if I may add</p> <p>10 to that." She said, "There are at least two places</p> <p>11 where we would look for that definition, and one is the</p> <p>12 Civil Service Commission rule." Did I read that part</p> <p>13 correctly?</p> <p>14 A. You did.</p> <p>15 Q. Okay. So while we're here, let's look at those</p> <p>16 Civil Service Commission rules, which are Exhibit 50.</p> <p>17 And specifically if you could flip to Section 11.04,</p> <p>18 which is the third page. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And this lists four types, actually five types</p> <p>21 of discipline available to city departments, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And you're generally familiar with these rules</p> <p>24 and these forms of discipline?</p> <p>25 A. I am.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q. And so then back on Page 30. Ms. Chernos says</p> <p>2 that, "These rules," and I'm at Line 17, "address and</p> <p>3 define what constitutes discipline within the city</p> <p>4 system, and that includes written warnings, written</p> <p>5 reprimands, suspension, demotion and discharge." Did I</p> <p>6 read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. And you agree with Ms. Chernos on this point,</p> <p>9 correct?</p> <p>10 MR. ENSLIN: Object to the form.</p> <p>11 A. Correct.</p> <p>12 Q. You agreed with her at the time she said it back</p> <p>13 in 2021?</p> <p>14 A. Yes.</p> <p>15 Q. Then so remember she says there's two places we</p> <p>16 could look for that definition. And so starting at Line</p> <p>17 22 she starts talking about the second place, do you see</p> <p>18 where I am at?</p> <p>19 A. I do.</p> <p>20 Q. So she says at Line 22, "And then the second</p> <p>21 place to look, given that the primary focus here at</p> <p>22 least with respect to the authority of this commission I</p> <p>23 should say, the federation labor agreement could come</p> <p>24 into play here as well."</p> <p>25 And she says, "It does not lay out what is</p>	<p style="text-align: right;">Page 124</p> <p>1 agreement, correct?</p> <p>2 A. I mean, the policy manual and the discipline</p> <p>3 matrix and the city's complaint process manual and the</p> <p>4 discipline process manual, all of those things also</p> <p>5 exist, but in terms of carrying out the discipline</p> <p>6 processes, the first thing we would look to is the</p> <p>7 federation's contract.</p> <p>8 Q. Okay. And the contract does not actually list</p> <p>9 the forms of discipline available to the police</p> <p>10 department, correct?</p> <p>11 A. Correct.</p> <p>12 Q. It only lists what's grievable, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Are you aware that the defendants admitted in</p> <p>15 this case that a warning is available to the police</p> <p>16 department?</p> <p>17 A. If that's somewhere in all these many pages.</p> <p>18 Q. Let me just ask you differently. You would</p> <p>19 agree with me that the Minneapolis Police Department can</p> <p>20 issue a disciplinary warning to its officers, correct?</p> <p>21 MR. ENSLIN: Object to the form.</p> <p>22 A. The Civil Service rules clearly allow that as a</p> <p>23 possibility.</p> <p>24 Q. Okay. And you mentioned a minute ago some of</p> <p>25 these other documents, such as the policy and procedure</p>
<p style="text-align: right;">Page 123</p> <p>1 discipline, at least the way that you framed your</p> <p>2 question, but it does indicate that the following</p> <p>3 actions by the police chief would be subject to the</p> <p>4 grievance procedure that I had mentioned as mandated</p> <p>5 under state law, and those are suspension, written</p> <p>6 reprimand, demotion and discharge." Did I read that</p> <p>7 correctly?</p> <p>8 A. You did.</p> <p>9 Q. And you agree with what she said here, correct?</p> <p>10 A. I do.</p> <p>11 Q. And you agreed with her at the time she said it</p> <p>12 in May of 2021, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And would you agree with her that these are the</p> <p>15 only two sources that we can look to for a definition of</p> <p>16 discipline?</p> <p>17 MR. ENSLIN: Object to the form.</p> <p>18 A. Yes. I think the federation contract for MPD is</p> <p>19 the first place that we look to and that reflects and is</p> <p>20 informed by the common understanding in the department</p> <p>21 about what constitutes discipline.</p> <p>22 Q. Okay. You can't identify any other, whether</p> <p>23 it's Civil Service rules or an agreement or a policy or</p> <p>24 manual, you can't identify anything for me beyond the</p> <p>25 Civil Service rules or the collective bargaining</p>	<p style="text-align: right;">Page 125</p> <p>1 manual, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And are you aware that back in 2001 the policy</p> <p>4 and procedure manual listed oral reprimand as an</p> <p>5 available form of discipline?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Did you ever issue an oral reprimand</p> <p>8 yourself?</p> <p>9 A. No.</p> <p>10 Q. You also referenced the complaint process</p> <p>11 manual?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware that in 2016 it listed an oral</p> <p>14 reprimand as available to the police department?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ever issue an oral reprimand?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. In 2022 that was not a category of discipline</p> <p>20 that was in use. I can't speak to whether anyone has</p> <p>21 used that any time in the past 30 years, but in recent</p> <p>22 years written reprimand, suspension, discharge and</p> <p>23 demotion have been kind of the categories of discipline</p> <p>24 that have been in play and commonly used as reflected in</p> <p>25 the contract.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. And that's a matter of custom, not a matter of 2 contract or law, correct?</p> <p>3 MR. ENSLIN: Object to the form, calls for 4 a legal conclusion.</p> <p>5 A. As not an attorney, my understanding 6 operationally is that employees must be afforded the 7 opportunity to grieve discipline and there is no 8 opportunity to grieve beyond what's listed in the 9 federation contract.</p> <p>10 Q. Well, that's not what you testified to a minute 11 ago.</p> <p>12 MR. ENSLIN: Object to the form, 13 argumentative.</p> <p>14 Q. You would agree with me that oral discipline is 15 not grievable under the contract, correct?</p> <p>16 A. The contract is silent about an oral reprimand 17 and it's not a category to my knowledge that we have 18 used in recent years.</p> <p>19 Q. When did you stop using it?</p> <p>20 A. I have no idea whether anyone has used it.</p> <p>21 Q. But you agree with me that the police department 22 could issue a warning?</p> <p>23 A. I agree that the Civil Service rules has created 24 that as a category. To my knowledge the police 25 department has not used that and the federation contract</p>	<p style="text-align: right;">Page 128</p> <p>1 what that means, communicating that to people and having 2 it reflected in the contract and having, if it's 3 discipline, specifying that it would be grievable.</p> <p>4 So that, my personal opinion is that while it 5 might exist in the Civil Service and the chief might 6 have the authority to use it, I would be very hesitant 7 to do that.</p> <p>8 Q. Because you think the union would try to grieve 9 it?</p> <p>10 A. Certainly, yes.</p> <p>11 Q. But you would agree with me that they would not 12 have grounds to grieve it?</p> <p>13 MR. ENSLIN: Object to the form, calls for 14 a legal conclusion.</p> <p>15 A. I'm not an attorney. So in my interpretation of 16 the contract, the contract is silent about warnings, I 17 think that would create a lot of confusion. Personally, 18 I would not choose to use a warning that when we had not 19 communicated to employees that this was discipline and 20 what it means and that it was part of the regular 21 grievance process.</p> <p>22 Q. Why would you assume it would be part of the 23 regular grievance process?</p> <p>24 MR. ENSLIN: Object to the form.</p> <p>25 A. Before we consider discipline to be at the final</p>
<p style="text-align: right;">Page 127</p> <p>1 is silent about warnings.</p> <p>2 Q. Okay. Could you go back to Exhibit 30A, which 3 is one of those discovery responses. I'm going to have 4 you flip to request No. 52, which is on Page 17. And we 5 asked defendants to admit that the chief of police has 6 discretion to issue a warning to an officer for a 7 violation of the policy manual, and you'll see that the 8 defendants admitted this. Do you see that?</p> <p>9 A. I do, following an objection.</p> <p>10 Q. Right. You're not trying to change the answer 11 there, are you?</p> <p>12 A. No.</p> <p>13 Q. Okay. And you would agree with me that the 14 chief of police has discretion to issue a warning even 15 though a warning is not grievable under the CBA, 16 correct?</p> <p>17 MR. ENSLIN: I'll object to the form.</p> <p>18 A. I mean, I honestly don't know what would happen 19 if the chief used forms of discipline that might be 20 recognized by the Civil Service, but we have, you know, 21 silence in the contract.</p> <p>22 I mean, it certainly appears to me like in the 23 city's answer that yes, a warning to Civil Service and 24 we could use it, but I would personally be very hesitant 25 to do that without having some infrastructure around</p>	<p style="text-align: right;">Page 129</p> <p>1 imposition status it must have, the employee must have 2 been afforded the opportunity for a grievance.</p> <p>3 Q. According to what?</p> <p>4 A. So that, that is our practical understanding of 5 when discipline becomes final in data practices, that 6 the final imposition status isn't reached until the 7 department has made its final discipline decision and 8 any arbitration if there was one has been completed.</p> <p>9 Q. But what is your assumption, you seem to be 10 making an assumption that a written warning would be 11 grievable, and I'm asking you why you believe that?</p> <p>12 MR. ENSLIN: Object to the form, asked and 13 answered.</p> <p>14 A. Yes, I, I believe that because of our practical 15 understanding in the department for discipline to have 16 reached its final imposition, the employee must have 17 been afforded the opportunity for a grievance and an 18 arbitration, which has to have either been waived or 19 completed.</p> <p>20 So our practical understanding is that that 21 informs our processes, and so any discipline in order 22 for it to be considered final discipline must have had 23 that step included.</p> <p>24 Q. Okay. But as a non-lawyer you can't really 25 speak to whether your practical understanding aligns</p>

<p style="text-align: right;">Page 130</p> <p>1 with what is legally required, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And you would have no basis to dispute</p> <p>4 that neither PELRA nor the collective bargaining</p> <p>5 agreement exempts an oral warning from the grievance</p> <p>6 process, you don't have any reason to dispute that,</p> <p>7 correct?</p> <p>8 A. We rely on the City Attorneys obviously for</p> <p>9 advice on those things. But you were asking me about my</p> <p>10 own approach to this and that would be my approach</p> <p>11 informed by our practical understanding in the</p> <p>12 department.</p> <p>13 Q. Okay. So let me, let us hand you Exhibit 96.</p> <p>14 So I'll represent to you that the city, the defendants</p> <p>15 have acknowledged that to the best of their knowledge no</p> <p>16 warning has issued within the Minneapolis Police</p> <p>17 Department for the last decade. Does that sound right</p> <p>18 to you?</p> <p>19 A. As far as I know.</p> <p>20 Q. Okay. So this is an email from 2011 when Tim</p> <p>21 Dolan I believe was the chief of police, do you see</p> <p>22 that?</p> <p>23 A. I do.</p> <p>24 Q. And he is emailing, is it Sherral Miller, is</p> <p>25 that how you say that name?</p>	<p style="text-align: right;">Page 132</p> <p>1 Are you aware that in addition to issuing</p> <p>2 warnings, the Minneapolis Police Department has issued</p> <p>3 oral reprimand?</p> <p>4 MR. ENSLIN: Object to the form, misstates</p> <p>5 prior testimony, misstates the facts in evidence.</p> <p>6 A. I'm not aware of any particular cases.</p> <p>7 Q. Okay. This document is evidence that an oral</p> <p>8 reprimand was issued about ten years ago by the</p> <p>9 Minneapolis Police Department. And I'll have you flip</p> <p>10 to Page 6.</p> <p>11 MR. ENSLIN: I'll object to the form and</p> <p>12 object to the characterization. I'll just note for the</p> <p>13 record that this is an Amici brief submitted in a case</p> <p>14 between Law Enforcement Labor Services, Inc. and the</p> <p>15 City of Richfield.</p> <p>16 Q. At the bottom of Page 6 there's a block</p> <p>17 quotation, do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And it says that, "Since August of 2011 Kinsey</p> <p>20 had been counseled four times on the topic of use of</p> <p>21 force reporting." And then it goes on to say that, "In</p> <p>22 January 2013 Kinsey received a documented oral reprimand</p> <p>23 for overly excessive strikes to the head and lack of</p> <p>24 details in his report to justify his action." Do you</p> <p>25 see that?</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Sherral.</p> <p>2 Q. Sherral, regarding a grievance on two officers.</p> <p>3 And Chief Dolan says in the third sentence, "I'm going</p> <p>4 to reduce the discipline to an A level violation with a</p> <p>5 warning letter." Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Okay. So at least 12 years ago the Minneapolis</p> <p>8 Police Department was issuing warnings, correct?</p> <p>9 MR. ENSLIN: Object to the form,</p> <p>10 foundation.</p> <p>11 A. I don't know what Chief Dolan meant by this. He</p> <p>12 used both the term A level violation, which we identify</p> <p>13 as coaching, and a warning letter. He would be the best</p> <p>14 person to speak to this. I, I don't know what it is he</p> <p>15 meant beyond the words on the page.</p> <p>16 Q. Okay. Do you think of a warning letter as the</p> <p>17 same thing as a coaching letter?</p> <p>18 A. I do not.</p> <p>19 Q. Do you think it's possible he did?</p> <p>20 A. I don't know, you would have to ask him.</p> <p>21 Q. We're going to hand you what's been premarked as</p> <p>22 Exhibit 61. I'll give you just a minute to flip through</p> <p>23 that. This was a document produced by the federation in</p> <p>24 this case, you can tell that by the Bates stamp in the</p> <p>25 lower right-hand corner.</p>	<p style="text-align: right;">Page 133</p> <p>1 A. I do.</p> <p>2 Q. I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. You don't have any reason to dispute that as</p> <p>5 late as January of 2013 the Minneapolis Police</p> <p>6 Department was issuing oral reprimands, do you?</p> <p>7 MR. ENSLIN: I'm just going to object to</p> <p>8 the form, I'm going to object on foundation grounds, and</p> <p>9 I'm going to note for the record that there's been no</p> <p>10 establishment that Officer Kinsey is a Minneapolis</p> <p>11 Police Department officer or ever has been.</p> <p>12 MS. WALKER: Okay.</p> <p>13 A. Yeah, other than what you have read to me, I</p> <p>14 have no idea what this case is about or any of the</p> <p>15 circumstances and I can't answer any questions about it</p> <p>16 without having had a chance to read this and prepare.</p> <p>17 Q. So in response to the objection, the document</p> <p>18 speaks for itself and identifies Kinsey, but I can ask</p> <p>19 you a straightforward question separate and apart from</p> <p>20 this.</p> <p>21 Do you have any reason to dispute that as late</p> <p>22 as January 2013 the Minneapolis Police Department was</p> <p>23 issuing oral reprimand?</p> <p>24 A. I have no knowledge of a previous case involving</p> <p>25 oral reprimand, I have no basis for answering any</p>

<p style="text-align: right;">Page 134</p> <p>1 questions about it.</p> <p>2 Q. It's possible that they issued oral reprimand?</p> <p>3 A. Yes, absolutely.</p> <p>4 Q. Possible they issued oral warnings?</p> <p>5 A. That's possible.</p> <p>6 Q. Would you agree with me that at least</p> <p>7 historically the forms of discipline available to the</p> <p>8 police department include the following, a warning, an</p> <p>9 oral reprimand, a written reprimand, a suspension, a</p> <p>10 transfer, a demotion and a discharge?</p> <p>11 MR. ENSLIN: Object to the form.</p> <p>12 A. Yes, I have no specific knowledge of any cases</p> <p>13 that were categorized as warnings or oral reprimands,</p> <p>14 but I have no knowledge that that was never used either,</p> <p>15 I just don't have any knowledge.</p> <p>16 Q. Okay. And you're not disputing the admission in</p> <p>17 the discovery requests that a warning is available to</p> <p>18 the police department if they wanted to issue one?</p> <p>19 A. Correct.</p> <p>20 Q. All right. So now let's look at the collective</p> <p>21 bargaining agreement, which is Exhibit 48. And I'm</p> <p>22 going to have you flip to Section 12, which governs</p> <p>23 discipline, and specifically 12.02, which has the sub</p> <p>24 head, "Appeals." Do you see that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Let me ask it differently. Is there a reason</p> <p>2 there's not just a section in the collective bargaining</p> <p>3 agreement that says the following forms of discipline</p> <p>4 are available to the chief of police?</p> <p>5 MR. ENSLIN: Object to the form,</p> <p>6 foundation.</p> <p>7 A. I don't know the answer to that question because</p> <p>8 I haven't been involved in contract negotiations</p> <p>9 historically beyond the most recent contract, so I can't</p> <p>10 say the sort of origin of this section and why that was</p> <p>11 left out, so I don't think I can really knowledgeably</p> <p>12 speak to it.</p> <p>13 Our sort of practical interpretation has been</p> <p>14 that this list in Section 12.02 is our universe of</p> <p>15 discipline. I can't say that that has been applied</p> <p>16 historically for 30 years, I can only speak to recent.</p> <p>17 Q. So do you understand though that that practical</p> <p>18 interpretation means that the Minneapolis Police</p> <p>19 Department isn't exploiting a form of nongrievable</p> <p>20 discipline?</p> <p>21 MR. ENSLIN: Object to the form.</p> <p>22 A. I hear what you're saying. All I can tell you</p> <p>23 is that, you know, the Civil Service rules, you know,</p> <p>24 they certainly exist, but the collective bargaining</p> <p>25 agreement is above that, you know, sort of the document</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. And we talked just a minute ago about the</p> <p>2 Assistant City Attorney Chernos' interpretation of this</p> <p>3 section, which is that this section lists what is</p> <p>4 appealable and grievable, correct?</p> <p>5 A. Correct.</p> <p>6 Q. All right. It does not purport to list every</p> <p>7 form of discipline available to the police department,</p> <p>8 correct?</p> <p>9 A. It is silent on that.</p> <p>10 Q. Okay. And it only lists as grievable things</p> <p>11 that are written, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And a warning, which is oral, is not listed</p> <p>14 here, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Even though in discovery requests defendants</p> <p>17 admitted that a warning is available to the chief of</p> <p>18 police, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And there's no other place in this collective</p> <p>21 bargaining agreement where forms of discipline available</p> <p>22 are listed, correct?</p> <p>23 A. Correct, to the best of my knowledge.</p> <p>24 Q. Do you think that's odd?</p> <p>25 MR. ENSLIN: Object to form.</p>	<p style="text-align: right;">Page 137</p> <p>1 that we use to shape some of these discipline processes.</p> <p>2 Q. But why when you have this other form of</p> <p>3 discipline available to you, why aren't you using it?</p> <p>4 A. I can't answer that question.</p> <p>5 Q. Do you believe there's any conflict between the</p> <p>6 Civil Service Commission rules and this collective</p> <p>7 bargaining agreement?</p> <p>8 A. I have never thought of them as being in</p> <p>9 conflict. I have always thought of the Civil Service</p> <p>10 rules as, you know, setting out the baseline above which</p> <p>11 the contract can have more specific, narrower</p> <p>12 requirements.</p> <p>13 Q. You're not aware of anything in the collective</p> <p>14 bargaining agreement that says the Civil Service rules</p> <p>15 don't apply to the police department?</p> <p>16 A. No.</p> <p>17 Q. In fact, the collective bargaining agreement</p> <p>18 embraces the Civil Service rules, correct?</p> <p>19 A. Correct.</p> <p>20 Q. In contract negotiations here in Minneapolis did</p> <p>21 you look at other contracts with, for example, the City</p> <p>22 of St. Paul contract with its union?</p> <p>23 A. I can't speak to what was done at the beginning</p> <p>24 of contract negotiations for the last contract because I</p> <p>25 was not involved. There may have been that kind of</p>

<p style="text-align: right;">Page 138</p> <p>1 work. We were already in interest arbitration by the 2 time I became involved, so the issues were already set. 3 And at that point we were, we were not extensively 4 comparing other contracts. I do believe we looked at 5 some sections related to the services provided to 6 employees after critical incidents. 7 Q. Are you aware that the collective bargaining 8 agreement actually does reference disciplinary warning? 9 A. No, I can't think of the section off the top of 10 my head. 11 Q. So let me point you to Section 30.08. 12 MR. ENSLIN: Would you give me that number 13 again. 14 MS. WALKER: 30.08. 15 Q. Bear with me for just a minute, I forgot to 16 highlight my document. 17 A. I see where you're -- 18 Q. Do you want to help me? 19 A. I do. It's in C, and it's three lines up from 20 the -- 21 Q. Yes, right. So this is talking about employees 22 who fail a drug test, correct? 23 A. Yes. 24 Q. And the collective bargaining agreement 25 explicitly notes that the employee may receive a</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Not to my knowledge in the last round of 2 contract negotiations. 3 Q. Okay. Did anyone try to list oral reprimand as 4 a grievable form of discipline? 5 A. Not to my knowledge in the last contract 6 negotiations. 7 Q. And you would agree with me that under the Civil 8 Service rules, a warning is verbal discipline, correct, 9 it's not written discipline? 10 MR. ENSLIN: Object to the form. Could you 11 just, could you state that again, I'm sorry. 12 MS. WALKER: Would you mind reading it 13 back. 14 (Requested material read back.) 15 MR. ENSLIN: Object to the form. 16 A. Correct, it's described as a verbal discussion 17 with a written memo documenting the event. 18 Q. One more question on the collective bargaining 19 agreement back at Section 11. Section 11 is on the 20 grievance procedure, correct? 21 A. Correct. 22 Q. And in 11.02, subdivision 1, it talks about 23 step 1 of the grievance? 24 A. Correct. 25 Q. And the grievance has to be filed within 21 days</p>
<p style="text-align: right;">Page 139</p> <p>1 warning, a written reprimand, a suspension, a demotion 2 or a discharge, correct? 3 A. Correct. 4 Q. And so even though a warning is not grievable, 5 the collective bargaining agreement acknowledges that 6 it's available to the police department, correct? 7 MR. ENSLIN: Object to the form. 8 A. In the section about Fitness for Duty and drug 9 testing, yes. 10 Q. In your mind is there a difference between a 11 warning and an oral reprimand? 12 A. I don't have any knowledge of how those might 13 have been used in the past and differentiated. To me a 14 warning implies a very specific construction where you 15 are telling someone if you do this again, these would be 16 the consequences. 17 Q. Okay. 18 A. An oral reprimand is a more general description. 19 Q. A warning has a threat component to it? 20 A. Yes, a warning does appear to have a threat 21 component. 22 Q. I know your involvement in negotiating the 23 collective bargaining agreement has been limited, but do 24 you recall that anyone from the federation ever tried to 25 include a warning as a grievable form of discipline?</p>	<p style="text-align: right;">Page 141</p> <p>1 of the notice of discipline, correct? 2 A. Yes. The grievance has to be filed within 3 21 days of when an employee became aware of or should 4 have become aware of the grievable event. 5 Q. Okay. And does the Minneapolis Police 6 Department strictly enforce that deadline? 7 A. I cannot speak historically, but in recent, 8 2021, 2022, yes, we have tried to stick very closely to 9 those deadlines. The language also says that the 10 parties can mutually agree to extend those deadlines, 11 but we have followed those, to the best of my knowledge. 12 Q. And the 21 days begins when the employee gets 13 notice, regardless whether the federation knows about 14 the discipline, correct? 15 A. Correct. 16 Q. I don't remember if I handed you Exhibit 51 yet. 17 This is the policy and procedure manual from 2001, 18 correct? 19 A. Yes, that's what it's dated. 20 Q. Okay. And on the second page you see a heading 21 for, "The disciplinary system used in the policy and 22 procedure manual." Do you see that? 23 A. I do. 24 Q. And it lists disciplinary categories, and under 25 category B it says that, "The discipline imposed could</p>

<p style="text-align: right;">Page 142</p> <p>1 be a written reprimand, a documented oral reprimand, or 2 up to 40 hours of suspension." Do you see that? 3 A. I do. 4 Q. What's the difference in your mind between a 5 written reprimand and a documented oral reprimand? 6 A. In my mind, the written reprimand would be akin 7 to the letter of reprimand that we use now where the 8 employee receives a letter, that's their notice. An 9 oral reprimand would include a conversation with a 10 supervisor who provided them with the notice that they 11 were officially being reprimanded for their conduct, and 12 then that would be documented later, but the employee 13 might not receive that document as a letter on the spot. 14 Q. So does this help you distinguish then between 15 how a warning might be different than a documented oral 16 reprimand, or are they the same? 17 MR. ENSLIN: Object to the form. 18 A. I mean, I, I can't speak to how any of these 19 might have been used in the department, so these are 20 just my personal opinions. You know, we have the 21 language from the Civil Service agreement about the 22 format, the warning of verbal discussion with the 23 employee and followed up by written documentation. 24 Q. As being similar? 25 A. So they seem similar, different words, but</p>	<p style="text-align: right;">Page 144</p> <p>1 hey, in order to improve your performance we really need 2 to sit here and go through this policy and make sure you 3 understand the point so that it informs your behavior. 4 Q. So are you thinking that a documented oral 5 correction is akin to coaching, is that what you're 6 saying there in category A? 7 A. Yes. So I think that we have used coaching as 8 sort of a broad umbrella term, at least I have and I 9 think many other people have, to include a variety of 10 conversations that result in helping somebody either, 11 you know, get connected with employee assistance and get 12 support that way or is some kind of a training and 13 developmental conversation between the supervisor and 14 the employee or a little bit of a training refresher on 15 policy or maybe even a discussion that results in, hey, 16 I think you need to go back and have some retraining on 17 this particular topic. And all of those have been 18 talked about as coaching performance, mentoring 19 performance, improvement processes. 20 Q. So as Mr. Enslin pointed out, this is from 2001, 21 correct? 22 A. Correct. 23 Q. Would it surprise you that 15 years later 24 coaching was described as an oral reprimand in the 2016 25 complaint process manual?</p>
<p style="text-align: right;">Page 143</p> <p>1 similar concepts. 2 Q. Okay. Do you remember back in 2011, was a 3 documented oral reprimand grievable? 4 A. In 2011? 5 Q. Yeah, at the time of this policy and procedure 6 manual? 7 MR. ENSLIN: It's dated 2001, do you mean 8 2001? 9 MS. WALKER: You're correct. 10 Q. 2001, do you remember if it was grievable? 11 A. I have no idea. 12 Q. On that same document, category A talks about a 13 documented oral correction, do you see that? 14 A. Yes. 15 Q. Do you know how that would be different than a 16 documented oral reprimand? 17 A. In my mind all of the conversations that 18 happened within the context of coaching are intended to 19 be supportive and improving an officer's performance. 20 And within the context of discipline there is more of 21 that punitive or consequential component that is more at 22 the forefront. 23 So a coaching discussion should have at its 24 core, you know, really a supportive conversation about 25 improving performance, even if that includes, you know,</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. ENSLIN: Object to the form. 2 Q. I'll show you the document. We'll hand you 3 Exhibit 52. If you flip to Page 15 -- well, let me ask 4 you first, just could you confirm for me that this is 5 the complaint process manual from 2016? 6 A. Yes. 7 Q. Okay. If you could flip to Page 15, and Roman 8 numeral viii defines coaching investigations. And it 9 says, "An investigation of an A level complaint 10 conducted by the focus officer's supervisor that may 11 lead to an oral reprimand." Did I read that correctly? 12 A. Yes. 13 Q. And then it says in parentheses, "A coaching 14 session." Do you see that? 15 A. I do. 16 Q. Given the testimony you just provided, does it 17 concern you that a coaching session is discussed as an 18 oral reprimand? 19 A. I think that there are inconsistencies among 20 these documents, they were created by different people 21 over time with different understandings. But at the end 22 of the day, it's all been within the framework that 23 coaching is not discipline. 24 So there have been a variety of words used over 25 time by different people whose understanding may not be</p>

<p style="text-align: right;">Page 146</p> <p>1 the same as mine, but at the end of the day, coaching A 2 level violations have not been categorized as 3 discipline, regardless of the inconsistencies between 4 very many documents, which I assume we will discuss at 5 length. 6 Q. Yeah. So I hear what you're saying and I know 7 that's the city's position, but can you explain to me, 8 when you say that what I hear is the documents are all 9 over the place and can't be trusted, but believe me when 10 I say coaching is not discipline, is that your 11 testimony? 12 MR. ENSLIN: Object to the form, misstates 13 prior testimony. 14 A. So I can tell you that over my career I have 15 always understood that coaching is not disciplinary. 16 It's been reflected on the discipline matrix and I 17 believe that that understanding is widely shared. So 18 while there might be inconsistencies in the language 19 used in the documents over time, that has been 20 consistently represented in our discipline matrix. And 21 I believe it is consistently understood by the employees 22 with whom I've interacted, so. 23 Q. Other than your belief in the discipline matrix, 24 any other document, can you point me to consistent 25 documents that say this, other than the discipline</p>	<p style="text-align: right;">Page 148</p> <p>1 A. I think that most officers understand that A 2 level violations if they're repeated could result in 3 discipline. So I don't think by itself that would be 4 confusing, at least I believe that there would be a wide 5 understanding that would be reinforced by their 6 federation representative who was involved in the case 7 with them. 8 Q. Do you think officers understand that 9 consequences imposed for B level violations are 10 disciplinary? 11 MR. ENSLIN: Object to the form. 12 A. I think officers understand that if they're 13 being, if they're getting a letter that says a written 14 reprimand, if they're being suspended, obviously if 15 they're being demoted or discharged that they have been 16 disciplined. 17 Q. What if they get a letter that says as 18 discipline for this B level misconduct you're being 19 coached, do you think they would understand that to be 20 discipline? 21 A. I think that the word coaching will put them in 22 the frame of not discipline. 23 Q. And this is your speculation? 24 MR. ENSLIN: Object to the form. 25 Q. Go ahead and answer.</p>
<p style="text-align: right;">Page 147</p> <p>1 matrix? 2 MR. ENSLIN: Object to the form. 3 A. I think the discipline matrix is the most 4 consistent document. 5 Q. Is there any requirement that when you impose a 6 consequence for misconduct -- you used a specific name 7 for it. I can give you an example, a hypothetical. 8 A. Sure. 9 Q. So if you tell an officer that because of his 10 misconduct he's going to take a time out and he's going 11 to not get paid for ten days and you give him a notice 12 of time out, but you never use the word unpaid 13 suspension, is that discipline? 14 MR. ENSLIN: Object to the form, calls for 15 speculation, incomplete hypothetical. 16 A. I believe that the officer would understand that 17 he's being disciplined because he's losing ten days 18 worth of pay. 19 Q. What if he doesn't lose pay, but you give him a 20 notice letter that says you're in trouble, don't do this 21 again, further discipline could result in, further 22 misconduct could result in additional disciplinary 23 action. Do you think that would be, a you're in trouble 24 letter, is that disciplinary? 25 MR. ENSLIN: Same objections.</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Yes, because that's what you were asking me to 2 do is to speculate what officers would understand. 3 Q. You don't actually know this for a fact? 4 MR. ENSLIN: Object to the form. 5 A. I haven't talked to all 560 officers in the 6 Minneapolis Police Department to ask that question, so 7 no, I can't say that every one of them would understand 8 the letter the same way. 9 Q. So there is or is not a requirement that you 10 call disciplinary action by a specific name? 11 MR. ENSLIN: Object to the form, asked and 12 answered. 13 A. There is not a requirement that I can think of. 14 There is past practice and there are various documents, 15 but an overarching requirement from outside of MPD, 16 there is not that I know of. 17 Q. And I think your testimony is what matters is 18 the intent and the officer's understanding? 19 MR. ENSLIN: Object to the form, misstates 20 prior testimony. 21 A. I mean, if you're asking me are we communicating 22 using a commonly understood term like coaching to 23 someone who understands that coaching is not discipline, 24 then yes, that's what we're attempting to do is to 25 communicate coaching to people who understand because it</p>

<p style="text-align: right;">Page 150</p> <p>1 says in the discipline matrix that coaching is not 2 discipline. 3 Q. I'm going to hand you what's been marked as 4 Exhibit 57. This is an article from a week or two after 5 George Floyd was murdered published by the Star Tribune, 6 correct? 7 A. Correct. 8 Q. And it should be no surprise to you that all the 9 media in town were starting to look into how the, how 10 that incident happened and how Minneapolis police 11 officers are disciplined, correct? 12 A. Correct. 13 Q. And this is an article about that very thing, 14 correct? 15 A. Correct. 16 Q. And so it says, "Minneapolis police officers 17 disciplined in fraction of cases," correct? 18 A. Correct. 19 Q. That's a true headline, correct? 20 MR. ENSLIN: Object to the form. 21 A. Correct. 22 Q. Do you remember reading this article when it was 23 published? 24 A. No. 25 Q. Do you think you probably did?</p>	<p style="text-align: right;">Page 152</p> <p>1 say that, "Only A level violations such as foul 2 language, speeding through a neighborhood or not turning 3 on a body camera at the start of a call are eligible for 4 coaching." Did I read that correctly? 5 A. Yes. 6 Q. And the context of this in that same paragraph 7 suggests that this is information the Star Tribune got 8 from Ms. Jaafar, would you agree? 9 MR. ENSLIN: Object to the form. 10 A. Yes. 11 Q. And that is not an accurate statement, correct? 12 A. It is not if you include coaching when it comes 13 from the chief's decision. I don't know if in the 14 context of the interview that she was giving to the Star 15 Tribune if she was talking about joint supervisors 16 coaching, we don't have any context for this, but as 17 it's represented here, it's incomplete. 18 Q. Right. Because much more than A level 19 violations are eligible for coaching, correct? 20 A. The chief has the authority to make the 21 discipline decision that he or she feels would be the 22 best outcome in the case, not tied to the categories of 23 the violation. 24 Q. Do you know if anyone -- well, let me back up. 25 I mean, there was a steady stream of interest</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I think I probably did at some point. It may 2 not have been around June 9th, which was a difficult 3 time. 4 Q. Yes. If you look at the last paragraph on the 5 first page -- actually, one paragraph up from there. 6 The Star Tribune is talking about a woman named Imani 7 Jaafar, do you see that? 8 A. I do. 9 Q. And she's identified as the lawyer who directs 10 the Office of Police Conduct Review, correct? 11 A. Correct. 12 Q. In the next paragraph they, the article here 13 says that she was asked if the 3 percent discipline 14 outcome and use of coaching was acceptable, and Jaafar 15 said that was a question for the police department, do 16 you see that? 17 A. I do. 18 Q. Do you agree with her that that was a question 19 for the police department? 20 MR. ENSLIN: Object to the form. 21 A. I mean, I think that's a fair question for the 22 Office of Police Conduct Review, the police department, 23 the city as a whole. I disagree that it's only a matter 24 for the police department to be concerned about. 25 Q. All right. And then the paragraph goes on to</p>	<p style="text-align: right;">Page 153</p> <p>1 after George Floyd's murder in coaching and discipline 2 at the Minneapolis Police Department, you would agree 3 with me on that? 4 A. Yes. 5 Q. And it seems like regardless of intent, a fair 6 amount of misinformation was being published about the 7 use of coaching within the MPD, would you agree with 8 that? 9 MR. ENSLIN: Object to the form. 10 Q. I mean, this is not accurate that only A level 11 violations are eligible for coaching, correct? 12 A. Correct, that's an incomplete explanation. 13 Q. Did you or anyone else attempt to collect the 14 public record and say no, no, no, we actually 15 discipline, we actually coach B level violations too? 16 A. In June of 2020 I was a precinct commander, not 17 involved in any of these processes at the point of 18 making discipline decisions and was not involved in the 19 interview with the Star Tribune, so I didn't have any 20 discussions about coaching or coaching eligibility with 21 the Star Tribune or any other media source in June of 22 2020. 23 Q. But that's not really my question. My question 24 is, since June of 2020 have you or anyone else to your 25 knowledge attempted to correct the public's</p>

<p style="text-align: right;">Page 154</p> <p>1 misunderstanding of how coaching is used within the 2 Minneapolis Police Department?</p> <p>3 MR. ENSLIN: Object to the form, assumes 4 facts not in evidence.</p> <p>5 A. I don't know what information all of the other 6 people with their role in here have given and made 7 available to any media source. So I don't know whether 8 anyone has talked with reporters about coaching that 9 comes out of chief's decision cases compared to the 10 entire coaching processes that are the joint supervisor 11 referrals.</p> <p>12 Q. Do you think that might be an important thing to 13 clarify with the public?</p> <p>14 MR. ENSLIN: Object to the form.</p> <p>15 A. I mean, I think, you know, it's certainly 16 factual information about our processes. The coaching 17 cases that come from the chief are a much smaller number 18 of cases than joint supervisor referrals.</p> <p>19 So, I mean, I think as you're talking about the 20 processes in general, when you talk about the joint 21 supervisor referrals, this information that Imani Jaafar 22 described is the way that that process is supposed to 23 work. But I don't think that there's any reason not to 24 talk about the full process, it's just I think generally 25 regarded as being ancillary to the overarching joint</p>	<p style="text-align: right;">Page 156</p> <p>1 case could go all the way through the process.</p> <p>2 The recommendation from the police conduct 3 review panel could be no merit to all of what we would 4 think of as serious allegations in the case, the chief 5 could agree with that assessment, and yet there still 6 could be an A level violation that the chief wants to 7 make sure is addressed out of that case.</p> <p>8 Q. Well, we'll talk about some of the documents in 9 a minute. I'm going to hand you Exhibit 58.</p> <p>10 And while Isbella is getting that, I'll 11 represent to you that this is a transcript of an 12 interview that Andrew Hawkins gave to two journalists 13 here in town named Tony Webster and Max Nesterak. We 14 have the audio and we've produced it to your counsel, 15 and for simplicity today I'm just going to use this 16 certified transcript, if that's okay.</p> <p>17 Did you know that Andrew Hawkins was giving an 18 interview about coaching to these two journalists?</p> <p>19 A. No, I don't think so. What media outlet are 20 they, were they doing this work for, do you know?</p> <p>21 Q. The Minnesota Reformer.</p> <p>22 A. I may have known that there was a Reformer piece 23 being published around that time, depending upon when it 24 was published versus when this interview was, but I 25 certainly did not know beforehand or have any</p>
<p style="text-align: right;">Page 155</p> <p>1 supervisor referral process.</p> <p>2 Q. Do you know if you or anyone else explained this 3 ancillary process to the DOJ?</p> <p>4 MR. ENSLIN: Object to the form.</p> <p>5 A. I do not remember if it came up in my interviews 6 with the DOJ, and I don't know the content of other 7 people's interviews. But it is entirely possible that 8 in those many hours of interviews we talked about it, I 9 just don't remember if that came up in my interviews.</p> <p>10 Q. And you've used the word ancillary, I think you 11 used another word to denote that the coaching issued by 12 the chief is a small percentage of total coaching within 13 the MPD, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And I understand that, I'm not disagreeing. But 16 you would agree with me that that's the coaching 17 involving the most serious misconduct, correct?</p> <p>18 MR. ENSLIN: Objection, asked and answered 19 earlier.</p> <p>20 A. I don't know that that's necessarily accurate 21 because there could be a case that goes for a full 22 administrative investigation because there are 23 allegations that are not eligible to be referred to 24 coaching. And there are also less serious violations 25 discovered during the course of the investigation. That</p>	<p style="text-align: right;">Page 157</p> <p>1 participation with Andrew Hawkins in preparing for this.</p> <p>2 Q. Okay. And he was, he worked for the Civil 3 Rights Department, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Does he still?</p> <p>6 A. He does not.</p> <p>7 Q. Okay. And he served as something of a resource 8 for the PCOC when they needed information, is that 9 correct?</p> <p>10 MR. ENSLIN: Object to the form.</p> <p>11 A. I'm not sure whether he was designated as the 12 support for the PCOC long-term, but I do think he was 13 involved at least in some of those discussions.</p> <p>14 Q. Have you reviewed this transcript, have you ever 15 seen it?</p> <p>16 A. No, I've never seen it.</p> <p>17 Q. So if you could flip to Page 15. And actually, 18 it begins on Page 14. Andrew Hawkins is speaking on the 19 last line on Page 14, he says, "So, um, like coaching is 20 essentially, it's the process that's, um, undertaken by 21 the precinct supervisors with the individual. Only 22 certain, um, offenses are eligible for coaching and 23 that's established by the Minneapolis Police 24 Department." That's not an accurate statement, is it?</p> <p>25 MR. ENSLIN: I'm just going to object to</p>

<p style="text-align: right;">Page 158</p> <p>1 this entire line of questioning. You've handed her a 2 transcript that is 66 pages. She's testified she's 3 never seen it, she's not been given the opportunity to 4 review it, and now you're picking spots in the middle of 5 this in which to ask questions. And so this objection 6 will go to any questions on this particular topic. 7 Q. Okay. Let's break for lunch and you can review 8 it and we can meet back here in 30 minutes. 9 MR. ENSLIN: If she's going to review it 10 though, it's going to be on the record time. 11 MS. WALKER: Oh, no, I'm not doing that. 12 MR. ENSLIN: Then we're counting it, you 13 don't get to review it on your lunch break. If you want 14 her to answer questions and you want her to have a full 15 scope of this so she can, it's going to be on the record 16 using up her time, it's your choice. 17 MS. WALKER: What I just proposed is pretty 18 standard, but I can ask questions without giving her a 19 chance to review this, like it will be the very same 20 thing. 21 BY MS. WALKER: 22 Q. Unless you want to use, would you like to use 23 your lunch break to review this? 24 A. No. 25 Q. All right. It's not true, is it, that only</p>	<p style="text-align: right;">Page 160</p> <p>1 understand? 2 MR. ENSLIN: Object to the form. 3 A. I, I don't know that this represents Andrew 4 Hawkins not knowing -- 5 Q. That's not my question. 6 A. -- how coaching works. If there were a city 7 employee who was instrumental in those processes and was 8 not a new employee and didn't understand how the process 9 worked, yes, I would be concerned, but I'm not going to 10 apply that to Andrew Hawkins. 11 Q. Let's look at the Exhibit 59, which I will 12 represent to you is a letter that the City Attorney's 13 Office drafted in September of 2020. Have you ever seen 14 this letter before? 15 A. Yes, I have seen this letter. I'm not sure if 16 this is exactly the same version I've seen with the same 17 attachments, but this does look familiar. 18 Q. Okay. Do you know when you would have seen it? 19 A. I believe that Trina Chernos shared this with me 20 prior to the 2021 PCOC meeting. 21 Q. So you don't think you saw it before it was sent 22 to the recipients? 23 A. No. 24 Q. She shared this with you presumably to help you 25 prepare for that meeting?</p>
<p style="text-align: right;">Page 159</p> <p>1 certain offenses are eligible for coaching? 2 A. It is not accurate if you're talking about both 3 joint supervisor processes and discipline decisions that 4 come from the chief. Obviously I haven't had a chance 5 to look through this transcript to see what Andrew 6 Hawkins is talking about. 7 Q. You don't need to, you can just answer the 8 question I asked. 9 MR. ENSLIN: She was trying to answer the 10 question, and again, you interrupted her before she was 11 finished with her answer. Please don't do that again. 12 Q. Were you done answering? 13 A. Yes. 14 Q. Let me ask you this. If someone like Andrew 15 Hawkins, who had sort of an insider's view of the 16 Minneapolis Police Department and coaching and how it 17 was used was confused, would that concern you? 18 MR. ENSLIN: Object to the form, misstates 19 facts in evidence, foundation. 20 A. I, I don't know that he was confused or what he 21 was trying to convey because I wasn't part of the 22 interview. 23 Q. If someone working for the city, such as Andrew 24 Hawkins or anyone else, didn't understand how coaching 25 was used, how would you expect members of the public to</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Correct. 2 Q. Did she give you any -- 3 MR. SHULMAN: Can we just take a minute, I 4 have a question for you. 5 MS. WALKER: Yeah, we could break for lunch 6 now. 7 (Lunch break taken from 12:06 p.m. to 8 12:49 p.m.) 9 AFTERNOON SESSION 10 BY MS. WALKER: 11 Q. Okay. When we left for lunch we were on 12 Exhibit 59, which is the letter signed by Trina Chernos, 13 correct? 14 A. Correct. 15 Q. And you testified that you think you first saw 16 this letter right before the May 2021 PCOC meeting, 17 correct? 18 A. Correct. 19 Q. You didn't review it at the time it was sent 20 back in 2020, correct? 21 A. Correct. 22 Q. And you don't personally have any background on 23 why it was sent or who requested it or anything like 24 that? 25 A. I do not.</p>

<p style="text-align: right;">Page 162</p> <p>1 Q. When you read it in the spring of 2021, do you 2 recall seeing anything with which you disagreed or that 3 you thought was inaccurate? 4 A. I don't. I wasn't really reading it like that, 5 I was just reviewing it as part of the historical 6 materials related to this issue, so I didn't give it 7 that kind of scrutiny. 8 Q. Okay. At the top of Page 3 there's a reference 9 to the Minneapolis Civil Service rules, do you see that? 10 A. I do. 11 Q. And it talks about how those rules, specifically 12 Rule 11.04, lists forms of discipline that we've 13 discussed today, correct? 14 A. Correct. 15 Q. One of them being a warning, correct? 16 A. Correct. 17 Q. And Ms. Chernos wrote that Rule 11.04 defines 18 warning as, "A disciplinary warning includes a verbal 19 discussion between the employee and supervisor covering 20 the details of the problem, plans for correcting the 21 problem, and a written memo to document the event. 22 Disciplinary warnings are distinguishable from 23 coaching." Correct, I read that correctly? 24 A. Correct. 25 Q. And she doesn't actually explain how</p>	<p style="text-align: right;">Page 164</p> <p>1 performance in a variety of ways. 2 Q. Okay. Any other difference? 3 A. I mean, I think that the description of the 4 warning here as a verbal discussion between the employee 5 and the supervisor covering the details of the problem, 6 plans for correcting the problem and a written memo to 7 document the event doesn't recognize that in coaching we 8 could be using a variety of processes outside that sole 9 conversation. I mean, specifically we talk about other 10 methods of performance improvement such as training or 11 referrals to employee assistance as well as a 12 conversation between an employee and supervisor. 13 Q. So coaching could involve more than a warning? 14 A. Coaching could involve different processes, 15 different kinds of performance support than merely 16 having a conversation where you warn someone, again, 17 with that idea that a warning seems to include some kind 18 of a threat. There could certainly be overlap because 19 there is this conversation where you talk about a plan 20 to address the issue. 21 So I'm not suggesting that, you know, a 22 conversation between an employee and a supervisor 23 doesn't occur in both kinds of processes, but at the end 24 of the day we have designated coaching as a 25 nondisciplinary process, we've represented that our</p>
<p style="text-align: right;">Page 163</p> <p>1 disciplinary warnings are distinguishable from coaching, 2 she just says it, correct? 3 MR. ENSLIN: Object to the form. 4 A. Correct. 5 Q. And I'll represent to you that throughout this 6 litigation the city has taken that position that a 7 disciplinary warning is different from coaching. And I 8 just would like to hear from you how you think they are 9 different or if you don't think they are different? 10 A. I think that a -- 11 Q. And let me -- no, go ahead, that's my question. 12 A. I think that a disciplinary warning and coaching 13 are different categories of things because we've said 14 they're different categories of things. 15 So at least with the extent of recent 16 disciplinary processes, we haven't used warnings as a 17 category in recent discipline. And we have explicitly 18 told employees that coaching is a nondisciplinary 19 process and that it is meant to support their 20 performance, whereas the Civil Service rules have 21 designated a warning as disciplinary. 22 So these are identified as two separate 23 processes because we have represented them to be so and 24 we have told our employees that coaching is a 25 performance management tool designed to improve</p>	<p style="text-align: right;">Page 165</p> <p>1 employees, we told them that this is a performance 2 management tool, and the Civil Service rules have 3 created warnings as a category that is specifically 4 disciplinary. 5 Q. Do you think you've done that consistently? 6 MR. ENSLIN: Object to the form. 7 A. I think as we talked about earlier, there has 8 been inconsistent language used in various documents 9 over time, but the discipline matrix has been very 10 faithful at representing that coaching is not 11 discipline. 12 Q. And you think the discipline matrix trumps 13 everything else? 14 A. I think the discipline matrix is a very 15 fundamental communication that sets expectations for our 16 employees. 17 Q. More than the policy and procedure manual? 18 A. I think that they exist alongside one another. 19 But to represent on the discipline matrix that coaching 20 is not discipline I think is a very direct communication 21 intended to go to employees that specifically answers 22 that question. 23 Q. More than the complaint process manual? 24 A. For sure more than the complaint process manual. 25 The complaint process manual is not the kind of document</p>

<p style="text-align: right;">Page 166</p> <p>1 that is read by people who aren't involved in the 2 complaint process within the department, it's not going 3 to be something that your sort of average street cop is 4 going to have read or refer to, whereas the discipline 5 matrix is widely distributed and discussed at each time 6 that there's an update to the discipline matrix. It's 7 communicated to employees and they're specifically told 8 this discipline matrix is now the standard by which all 9 conduct will be judged going forward. 10 Q. Any other difference between coaching as defined 11 here and -- sorry, a warning as defined here and 12 coaching? 13 A. Those are the things that sort of immediately 14 come to mind. 15 Q. Okay. And the first thing you said when I asked 16 for the difference, you said it's different because we 17 said it's different. Where have you said that, just the 18 matrix? 19 A. So the discipline matrix is a very clear, very 20 consistent document that has said over time that A level 21 violations and coaching are not discipline. 22 Q. Okay. Anything else, anywhere else you've said 23 they're different? 24 A. At different times different documents have also 25 included that information. Certainly the complaint</p>	<p style="text-align: right;">Page 168</p> <p>1 A. Yes. 2 Q. And it says, "These are general guidelines. 3 Chief of police" -- well, first of all, she says, "These 4 are general guidelines." Did I read that correctly? 5 A. Yes. 6 Q. Okay. So you're not actually bound by these, is 7 that what it means? 8 A. I didn't write this language, so I'm not sure 9 what it originally intended, but the discipline matrix 10 does not have a list of every policy violation. And 11 because the chief makes all final determinations, these 12 are the general guidelines, but they're not exhaustive. 13 Q. Okay. And they're just guidelines, they're not 14 mandates, is that correct? 15 A. Correct. 16 Q. Okay. And then you read the second sentence, or 17 essentially said it. The third sentence says, "A level 18 violations are not listed in the matrix and are 19 considered coaching, not discipline." Did I read that 20 correctly? 21 A. Correct. 22 Q. Is there anywhere else in this matrix that 23 coaching is referenced? 24 A. I believe that's the sole reference. 25 Q. Okay. And so this matrix, which was in effect</p>
<p style="text-align: right;">Page 167</p> <p>1 process manual over time has designated coaching cases 2 as nondisciplinary. 3 Q. And some documents say that coaching is 4 discipline? 5 A. We would have to look at some specific 6 documents. 7 Q. Do you know when the discipline matrix first 8 expressly stated that coaching is not discipline? 9 A. I believe the first discipline matrix was 10 released in 2009 and has language on there about A level 11 violations and coaching not being disciplinary, but I 12 would have to look at the actual document to refresh my 13 memory about the exact language. 14 Q. Do you know if any disciplinary matrix has ever 15 addressed whether coaching at B level is disciplinary? 16 A. I believe that the matrix has always just 17 referred to coaching as nondisciplinary. 18 Q. So if you have that letter in front of you, the 19 Trina Chernos letter, Exhibit 59. The discipline matrix 20 is actually attached to it. The Bates number is 21 actually going to be in the top right-hand corner, it's 22 printed sideways, and it's CITY.001553. Do you see it? 23 A. Yes. 24 Q. So it's the last page of the matrix, the last 25 row has a special note on the matrix, do you see that?</p>	<p style="text-align: right;">Page 169</p> <p>1 at the time of the September 2020 letter, doesn't 2 actually say anything about whether coaching is, B, C or 3 D level violations is nondisciplinary, is that correct? 4 A. Correct. 5 Q. So is there anywhere else beyond the matrix 6 where you've told officers that warnings and coaching 7 are different because we've said so, where else have you 8 maybe said so? 9 MR. ENSLIN: Object to the form. 10 A. We would have to review the other related 11 complaint process manuals. Those are more specialty 12 documents that would not necessarily be referenced by 13 the average officer, but certainly have included 14 language over time, both IA manuals and the city's 15 complaint process manual that covered the work of both 16 EA and the joint supervisors have referred to coaching 17 as nondisciplinary, but we would have to look at the 18 specific language for each of those. 19 Q. Okay. Anything else? 20 A. I think that those are the primary, you know, 21 the policy and procedure manual, the complaint process 22 manual, the discipline process manual, the matrix, the 23 contract which is silent about coaching, those are the 24 main documents. And then there's always of course 25 things that we have publicly communicated to officers</p>

<p style="text-align: right;">Page 170</p> <p>1 either at roll calls or other ways when supervisors talk 2 to employees directly. 3 Q. So if you could go back to Page 3 of that letter 4 where Ms. Chernos quoted the Civil Service definition. 5 And feel free to look at Exhibit 32, which is the 6 coaching form that we talked about earlier this morning 7 if you want to. But I just want to march through this 8 definition. 9 So the first part of the definition is a verbal 10 discussion between the employee and supervisor covering 11 the details of the problem, that's the first part of the 12 definition of warning, correct? 13 A. Correct. 14 Q. Okay. And coaching also involves a verbal 15 discussion between the employee and supervisor covering 16 the details of the problem, correct? 17 A. Correct. 18 Q. And then the second component of a warning is 19 plans for correcting the problem, correct? 20 A. Correct. 21 Q. And the coaching form and the coaching process 22 also includes plans for correcting the problem, correct? 23 A. Correct. 24 Q. And the third and final component of a warning 25 is, "A written memo to document the event," correct?</p>	<p style="text-align: right;">Page 172</p> <p>1 now let's talk about a written reprimand. And we'll 2 look at two exhibits side-by-side, Exhibit 44 and 3 Exhibit 17. 4 MR. ENSLIN: Are these new? 5 MS. NASCIMENTO: You have Exhibit 44, but 6 I'm handing you Exhibit 17. 7 Q. All right. So Exhibit 44 we've at least touched 8 on. This is a letter of reprimand to an Officer Devick, 9 correct? 10 A. Correct. 11 Q. And Exhibit 17 is a coaching determination 12 letter to [REDACTED], correct? 13 A. Correct. 14 Q. All right. And both of these are on letterhead, 15 correct? 16 A. Correct. 17 Q. And for both of them the re line involves an 18 OPCR case number, correct? 19 A. Correct. 20 Q. And the letter to Officer Devick is called a 21 letter of reprimand, in all caps, correct? 22 A. Correct. 23 Q. The letter to [REDACTED] doesn't have a 24 similar notation, correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Correct. 2 Q. And coaching also involves a written memo, 3 correct? 4 A. Yes, it includes a written form. 5 Q. Okay. And I think you testified that coaching 6 can also include other components such as training? 7 A. Yes. 8 Q. Okay. So coaching can involve or impose on the 9 officer things beyond what a warning would impose upon 10 the officer? 11 MR. ENSLIN: Object to the form. 12 A. Correct. And the coaching process could involve 13 beyond the discussion between the employee and the 14 supervisor additional training delivered by a subject 15 matter expert in the relevant area or it could include 16 referrals to employee assistance or other kinds of 17 supportive service. 18 Q. Can you point me to anything in this definition 19 here that makes a warning different than coaching? 20 MR. ENSLIN: Object to the form, asked and 21 answered. 22 Q. Beyond what you've already said, anything more? 23 A. No. 24 Q. So now I want to compare a written reprimand to 25 coaching. So we've talked about a warning and coaching,</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. And both letters advise on a B level finding, 2 correct? 3 A. Correct. 4 Q. And both letters say, "You will receive," the 5 Devick letter says, "You will receive this letter of 6 reprimand," the [REDACTED] letter says, "You will receive 7 coaching," correct? 8 A. Correct. 9 Q. And the letter to Devick says the case can be 10 used as progressive discipline, correct? 11 A. Correct. 12 Q. And the letter to [REDACTED] is silent on 13 this, correct? 14 A. The letter to [REDACTED] describes that 15 additional violations of department rules and 16 regulations could result in discipline, but it is silent 17 on the records retention period piece of it. 18 Q. Well, it says, "It will remain in OPCR files per 19 the records retention guidelines," correct? 20 A. Correct. It just doesn't specifically say 21 anything about a reckoning period. 22 Q. Right. And it doesn't say anything about 23 progressive discipline, correct? 24 A. Except the advisement that additional violations 25 of department policies and rules could be used, right,</p>

<p style="text-align: right;">Page 174</p> <p>1 which is the underlying foundation of progressive 2 discipline, if you continue to violate department rules 3 and policies it could result in disciplinary action up 4 to and including termination. 5 Q. Right. And I'm not, I think I want to agree 6 with you that coaching letters can be used for 7 progressive discipline, correct? 8 A. Yes. 9 Q. Yes. So I'm not trying to mislead you or trap 10 you on that question in any way. 11 So we've covered this, but both letters say, 12 "The case will remain in the OPCR files per the record 13 retention guidelines mandated by state law," correct? 14 A. Correct. 15 Q. And the letter to Devick tells him that, "Any 16 additional violations of department rules and 17 regulations may result in more severe disciplinary 18 action up to and including discharge from employment," 19 correct? 20 A. Correct. 21 Q. And the letter to [REDACTED] has nearly 22 identical language, "Be advised that any additional 23 violations of department rules and regulations may 24 result in more severe disciplinary action up to and 25 including discharge," correct?</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. Okay. And when someone gets a letter of 2 reprimand, assuming they don't grieve it and they just 3 accept it, they just get it and it goes in their file 4 and they go on with their life, correct? 5 A. Mm-hmm. 6 Q. Whereas [REDACTED] presumably had to sit 7 through a coaching session? 8 A. Yes, that should have been the next step after 9 this letter was delivered. 10 Q. Right. So in a sense it was more of a hassle to 11 get coaching than a letter of reprimand if you're the 12 focused officer, correct? 13 MR. ENSLIN: Object to the form. 14 A. I mean, more of a hassle in that it would take 15 up more of your time potentially, yes. 16 Q. And the coaching discussion, or the coaching 17 session with [REDACTED] is where a verbal discussion 18 would have taken place, correct? 19 A. Yes. 20 Q. And then presumably the form would have been 21 completed? 22 A. Correct. 23 Q. Okay. Do you agree that both of these officers 24 were disciplined? 25 A. No. The letter to [REDACTED] specifies that</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Correct. 2 Q. These were both issued by the chief and signed 3 by Kristine Arneson, the assistant chief, correct? 4 A. Correct. 5 Q. And Devick was apparently asked to sign his 6 letter, [REDACTED] was not asked to sign, correct? 7 A. Or at least we don't have the signature page. 8 Q. Do you think it's possible the signature page 9 exists somewhere? 10 A. It's possible there was a signature page that 11 was never uploaded into Practice Manager, or it's 12 possible that it doesn't exist. 13 Q. These determination letters typically were 14 signed, correct? 15 A. Correct. 16 Q. So to the extent [REDACTED] did not sign 17 it, that would have been an oversight? 18 A. Yes. 19 Q. And both letters are copied to an inspector, to 20 personnel, and to OPCR, correct? 21 A. Correct. 22 Q. Any other differences or similarities between 23 these letters? 24 A. There are slightly varying letterheads, but 25 beyond that, very similar.</p>	<p style="text-align: right;">Page 177</p> <p>1 he was being coached, which is commonly understood in 2 the MPD not to be discipline. 3 Q. Okay. Back in 2016? 4 A. Yes, for my entire career, to the best of my 5 knowledge. 6 Q. And you would point me to the discipline matrix 7 for that? 8 A. The discipline matrix. Prior to the existence 9 of the discipline matrix, I'm not sure what documents 10 there were that were in use for coaching, but to the 11 best of my knowledge, coaching was commonly understood 12 not to be discipline even prior to the existence of the 13 discipline matrix. 14 Q. The discipline matrix we looked at talks about A 15 level violations that are coached are nondisciplinary? 16 A. Correct. 17 Q. It doesn't say anything about B level 18 violations, which is what [REDACTED] got? 19 A. Correct. 20 Q. So anything other than disciplinary matrix? 21 A. Only as I've said before, other kinds of manuals 22 and documents over time that have talked about the 23 coaching process being nondisciplinary. 24 Q. And those are all inconsistent, as you've 25 earlier testified?</p>

<p style="text-align: right;">Page 178</p> <p>1 A. There is certainly inconsistent language used in 2 those to describe coaching processes. 3 Q. And nonetheless, you think officers across the 4 board uniformly have the same understanding of coaching, 5 despite the fact that the matrix doesn't mention B level 6 coaching and despite rampant inconsistencies across all 7 the other documents? 8 A. To the best of my knowledge, coaching is widely 9 known to be nondisciplinary, widely understood to be 10 nondisciplinary, an understanding that I am certain 11 would be reinforced by the federation representatives 12 who are typically working with officers during the 13 course of not a joint supervisor referral, but a 14 decision that comes from the chief. 15 So while I can't account for the more than 1,000 16 officers who worked in the Minneapolis Police Department 17 during my 30-year career, I certainly do believe that 18 coaching is widely understood to be nondisciplinary. 19 And in my position as supervisor, did not generally 20 receive questions where people were trying to clarify a 21 misunderstanding or a confusion about coaching. 22 I've certainly received lots of other questions 23 across every other topic that you can think of, but I 24 haven't been peppered with questions about the meaning 25 of coaching.</p>	<p style="text-align: right;">Page 180</p> <p>1 MR. ENSLIN: Object to the form, 2 foundation. 3 A. So I don't know how these letters were generated 4 in 2016, but I believe that it was probably similar to 5 how they've been generated in the last few years, which 6 is using a template. And so the specific officer 7 information, date, policy violation gets filled in, but 8 the rest of the template language remains the same and 9 carries over from letter to letter. 10 So as you can see, some letters include some 11 slight variations that an individual person preparing 12 the letter had included and others just use the template 13 language, but the beginning of the letter is a template 14 that someone then modifies. 15 Q. You would agree with me that the language "more 16 severe disciplinary action" at least suggests that what 17 he got on November 15th was a form of disciplinary 18 action? 19 MR. ENSLIN: Object to the form. 20 Q. Would you agree with that, that's what that 21 language suggests? 22 A. Or it could suggest that the way that MPD talks 23 about the disciplinary process from complaint to 24 resolution uses the term disciplinary to mean broadly 25 everything that resolves a complaint, even while</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. So I'll try to ask you questions that only 2 require a yes or no, and given the time limit that your 3 attorney is planning to enforce, I'd just ask that you 4 answer my question. 5 MR. ENSLIN: And if you can answer yes or 6 no, you can. If you can't answer yes or no, then you 7 can answer questions fully and truthfully like you have 8 all along. 9 Q. Would it change your testimony that everyone 10 understood that coaching was nondisciplinary to know 11 that multiple officers grieved coaching decisions? 12 MR. ENSLIN: Object to the form, assumes 13 facts not in evidence. 14 A. I haven't seen grievances related to coaching, 15 so I'm unaware of that. I can only speak from my 16 experience, in which I have not, as I said, received a 17 lot of questions, or really any questions about the 18 meaning of coaching. So I can think of a whole variety 19 of reasons that people might have grieved something, it 20 does not necessarily include a misunderstanding about 21 the nature of coaching. 22 Q. On this Exhibit 17 letter to [REDACTED], why 23 does that last paragraph say that, "Additional 24 violations may result in more severe disciplinary 25 action"?</p>	<p style="text-align: right;">Page 181</p> <p>1 understanding that coaching is not discipline, because 2 that would be consistent with my experience. 3 Q. That would be pretty confusing to the officer 4 receiving this, you would agree, if it could mean either 5 of those things? 6 A. I don't think it would be confusing to most 7 officers because most officers know and have been told 8 and have heard, have been reinforced from supervisors 9 and peers that coaching is not disciplinary and I think 10 would key in on the word coaching and understand what 11 that means. 12 Q. So your position on why it has more severe 13 disciplinary action is just careless drafting? 14 MR. ENSLIN: Object to the form, misstates 15 prior testimony. 16 Q. I can reask the question. 17 A. No, I understand what you mean. I mean, 18 careless drafting or using a template that no one has 19 criticized in this way, I mean, I think it's true that 20 no one at least in my experience prior to these recent 21 discussions had been suggesting that there was confusion 22 in MPD about discipline versus coaching. And so that 23 conversation and scrutiny of these templates is 24 relatively recent. 25 And, I mean, I can't answer for whoever prepared</p>

<p style="text-align: right;">Page 182</p> <p>1 these letters, but I don't think that within MPD there</p> <p>2 was general confusion when you got notified that you</p> <p>3 were being coached that this was disciplinary, I don't</p> <p>4 believe that.</p> <p>5 Q. So can we rely on what these letters say, or</p> <p>6 not?</p> <p>7 MR. ENSLIN: Object to the form.</p> <p>8 A. These letters were internal communications</p> <p>9 between people in the administration who knew what they</p> <p>10 were communicating and officers who also generally were</p> <p>11 using the same kind of language. So I believe that this</p> <p>12 letter communicated to [REDACTED] that he was being</p> <p>13 coached, which he would have interpreted as not being</p> <p>14 disciplined.</p> <p>15 Q. We'd have to ask [REDACTED] to be sure about</p> <p>16 that?</p> <p>17 A. Yes, we would.</p> <p>18 Q. You're speculating?</p> <p>19 A. I am speculating.</p> <p>20 Q. I'm going to hand you Exhibit 85. These are</p> <p>21 minutes from a labor-management meeting in January 2015,</p> <p>22 these were produced by the federation. Have you ever</p> <p>23 seen minutes like this before?</p> <p>24 A. Yes.</p> <p>25 Q. Are these labor-management meetings, they're</p>	<p style="text-align: right;">Page 184</p> <p>1 A. Yes.</p> <p>2 Q. Do you have any reason to dispute that</p> <p>3 approximately January 2015 was the first known case</p> <p>4 where a B level violation was coached?</p> <p>5 MR. ENSLIN: Object to the form,</p> <p>6 foundation.</p> <p>7 A. I don't know that that is true or not true, and</p> <p>8 I don't know that at this labor-management meeting the</p> <p>9 federation board member who brought it up would actually</p> <p>10 have known that either.</p> <p>11 Q. Okay. Well, Harteau was there, right?</p> <p>12 A. Yes.</p> <p>13 Q. If you look at the members present?</p> <p>14 A. Yes.</p> <p>15 Q. And at that time she would have been chief?</p> <p>16 A. Yes.</p> <p>17 Q. And Glampe was there?</p> <p>18 A. Yes.</p> <p>19 Q. And he was a high ranking person in the police</p> <p>20 department?</p> <p>21 A. Yes.</p> <p>22 Q. And future Chief Arradondo was there, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And none of them disputed, according to the</p> <p>25 minutes, that this was the first known case of a</p>
<p style="text-align: right;">Page 183</p> <p>1 attended by labor and management, is that what that</p> <p>2 means?</p> <p>3 A. Correct.</p> <p>4 Q. And so these minutes were circulated both among</p> <p>5 the federation and the city, is that correct?</p> <p>6 A. Yes, it would have been between the federation</p> <p>7 board members and the chief's office appointed staff.</p> <p>8 Q. Okay. So this would have been a document in the</p> <p>9 possession of the city as well as the federation?</p> <p>10 A. Yes.</p> <p>11 Q. And if the city -- well, I'll address that</p> <p>12 question to your counsel later.</p> <p>13 So I'd like you to look under, "New business,"</p> <p>14 subsection B. The minutes say, "Current grievances.</p> <p>15 Delmonico brought up [REDACTED] case where he was given</p> <p>16 two B level violations listed as coaching put in his</p> <p>17 discipline file. [REDACTED] never had a Loudermill</p> <p>18 hearing and was never coached on the incident by a</p> <p>19 supervisor. This is the first known case of a violation</p> <p>20 higher than A being listed as coaching. Management will</p> <p>21 discuss the issue and Glampe will follow up with</p> <p>22 O'Connor. [REDACTED] arbitration was cancelled." I</p> <p>23 think I can stop there, I think we're only talking about</p> <p>24 [REDACTED].</p> <p>25 Did I read that portion accurately?</p>	<p style="text-align: right;">Page 185</p> <p>1 violation higher than A being coached, correct?</p> <p>2 A. We don't have anything that really describes</p> <p>3 whatever the ongoing discussion at that meeting was,</p> <p>4 there's nothing reflected in the minutes.</p> <p>5 Q. Right. And presumably if someone had thought</p> <p>6 that was wrong, they would have reviewed the minutes and</p> <p>7 corrected them?</p> <p>8 MR. ENSLIN: Object to form and foundation.</p> <p>9 A. I have never actually seen a correction to</p> <p>10 labor-management in all the labor-management minutes</p> <p>11 I've received, so I don't know that that would have</p> <p>12 happened, I can't speak to that one way or the other.</p> <p>13 Q. Let me just ask you just directly. Are you</p> <p>14 aware of any time before January 2015 where a B level, C</p> <p>15 level or D level was coached?</p> <p>16 A. I would have to review documents to be sure.</p> <p>17 Q. As you sit here today are you aware of any?</p> <p>18 A. I'm not, because I don't have perfect recall of</p> <p>19 the dates of all the memos.</p> <p>20 Q. Fine, you can say no.</p> <p>21 A. But I honestly am saying that I don't know that</p> <p>22 this was represented factually because it's possible</p> <p>23 that it was not.</p> <p>24 Q. You don't have any evidence to the contrary as</p> <p>25 you sit here today?</p>

<p style="text-align: right;">Page 186</p> <p>1 A. I don't.</p> <p>2 Q. Okay. And this coaching of a B level was a</p> <p>3 current grievance, that's what this says, correct?</p> <p>4 A. Correct.</p> <p>5 Q. So at least [REDACTED] thought he was being</p> <p>6 disciplined, correct?</p> <p>7 MR. ENSLIN: Object to the form,</p> <p>8 foundation.</p> <p>9 Q. You were very willing to speculate on what other</p> <p>10 officers thought, so I'm asking you to speculate --</p> <p>11 MR. ENSLIN: Objection, argumentative.</p> <p>12 Q. -- about what [REDACTED] must have thought if</p> <p>13 he decided to grieve this.</p> <p>14 MS. WALKER: And now I'm done and you can</p> <p>15 make your objection.</p> <p>16 MR. ENSLIN: That's argumentative, it's</p> <p>17 uncalled for, it's unnecessary. She's been answering</p> <p>18 your questions which have asked her to speculate all</p> <p>19 day. You've continually showed her documents that she's</p> <p>20 neither the author of nor recipient of nor has said she</p> <p>21 never seen when you've asked her for information. So</p> <p>22 she has not been doing anything wrong. And your</p> <p>23 statement, which is not part of a question, is</p> <p>24 argumentative and unnecessary. Please limit your</p> <p>25 questions to professional questions. Thank you.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. I don't know if this was a grievance because</p> <p>2 there's not grievance paperwork that's accompanying</p> <p>3 this. But I can say from my experience that under</p> <p>4 grievances you have a lot of things that are brought up</p> <p>5 that are not grievances that have actually been filed.</p> <p>6 But if there is a grievance that goes with this</p> <p>7 paperwork, then that would be clear that the federation</p> <p>8 was arguing that there was a violation of either rights</p> <p>9 that are listed in the contract or some kind of past</p> <p>10 practice.</p> <p>11 Q. I think we can short circuit this. We're going</p> <p>12 to hand you Exhibit 86. And this appears to be</p> <p>13 [REDACTED] grievance, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So this was a grievance of a coaching, is</p> <p>16 that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So [REDACTED] thought he had been</p> <p>19 disciplined, correct?</p> <p>20 A. All right. That's a lot more clear having all</p> <p>21 of the documentation instead of just --</p> <p>22 Q. I'd forgotten we had that, otherwise I would</p> <p>23 have brought it out earlier. I wasn't trying to hide</p> <p>24 it.</p> <p>25 A. Yeah, so I can see in reading this that, you</p>
<p style="text-align: right;">Page 187</p> <p>1 A. So if I can answer, I don't, I don't know. I</p> <p>2 don't think we can tell from what's reflected in the</p> <p>3 minutes here that they were, that someone, [REDACTED] or</p> <p>4 his federation representative or Delmonico, had come to</p> <p>5 the conclusion that this was discipline. It appears to</p> <p>6 me to be a genuine inquiry about this particular</p> <p>7 incident.</p> <p>8 They note that there was not a Loudermill, which</p> <p>9 if it was discipline imposed by the chief, the chief's</p> <p>10 office should have sent for a Loudermill, that's the</p> <p>11 common practice in MPD.</p> <p>12 Q. But not required by law?</p> <p>13 A. But not required. And they brought up that he</p> <p>14 was never coached by the supervisor. So there are a</p> <p>15 variety of, you know, deviations from what would have</p> <p>16 been common practice that are being described here.</p> <p>17 So I don't think we can come to the conclusion</p> <p>18 that they're asking the question was this discipline or</p> <p>19 not. I think they're asking for information because</p> <p>20 this process was not like others.</p> <p>21 Q. That's your best guess based on this document?</p> <p>22 A. That's my best guess based on this document.</p> <p>23 Q. And despite the first words of that paragraph B,</p> <p>24 "Current grievances," you're questioning whether this</p> <p>25 was actually a grievance?</p>	<p style="text-align: right;">Page 189</p> <p>1 know, there's clearly a lot of confusion about what</p> <p>2 happened, because as they point out in the letter, steps</p> <p>3 3, 4 and 5 of the complaint manual process --</p> <p>4 Q. Can I pause you --</p> <p>5 A. -- were skipped, so.</p> <p>6 MR. ENSLIN: Let her answer.</p> <p>7 Q. I had a question pending that was a yes or no</p> <p>8 question. If you can't answer it as a yes or no, I can</p> <p>9 rephrase it.</p> <p>10 MS. WALKER: Do you mind rereading the</p> <p>11 question that I asked.</p> <p>12 (Requested material read back.)</p> <p>13 MR. ENSLIN: Object, foundation.</p> <p>14 BY MS. WALKER:</p> <p>15 Q. Based on what you just read, is it your</p> <p>16 impression that [REDACTED] believed he had been</p> <p>17 disciplined, yes or no?</p> <p>18 A. Yes.</p> <p>19 Q. All right. If you could actually flip back to</p> <p>20 Paragraph 85. Sorry, Exhibit 85, which is the minutes.</p> <p>21 And that paragraph B notes that the two B level</p> <p>22 violations listed as coaching were put in [REDACTED]</p> <p>23 discipline file, do you see that in the second line?</p> <p>24 A. I do.</p> <p>25 Q. And you're aware that investigations into an</p>

<p style="text-align: right;">Page 190</p> <p>1 employee's conduct that do not result in discipline 2 shall not be entered into their official personnel file, 3 correct? 4 A. Correct. 5 Q. But here [REDACTED] B level violations that were 6 coached according to these minutes were put in his 7 discipline file, is that right? 8 A. That's what these minutes say, but I don't know 9 what they mean by discipline file. 10 Q. So back to Exhibit 86. Fifth line from the top, 11 it says, "Final discipline letter, coaching." Do you 12 see that? 13 A. Yes. 14 Q. That's how the federation is describing its 15 grievance, is that a fair characterization? 16 A. Yes. 17 MR. ENSLIN: Object to the form. 18 Q. Okay. And then it lists several findings, 19 including two category B findings related to use of 20 force, correct? 21 A. Correct, I see use of force reporting and use of 22 force post incident requirements. 23 Q. And then in the narrative, the first sentence 24 says, "In hand I have what appears to be a 'Final 25 discipline letter' on MPD letterhead dated August 28,</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Correct. 2 Q. And I will represent to you this is the only 3 document, as best I can tell, that we have related to 4 this attempt to initiate a grievance proceeding, there 5 may be other documents, I just don't have them because 6 the city didn't produce them. 7 So the top email is from Travis Glampe to 8 someone at the federation saying he's denying a 9 grievance at step 1, coaching is not discipline, and 10 therefore cannot be grieved, do you see that? 11 A. I do. 12 Q. So we don't know which officer, but apparently 13 some officer in 2016 tried to grieve coaching, correct? 14 A. Correct. 15 MR. ENSLIN: Object to the form. 16 MS. WALKER: And I would just make the 17 request if the city has other documents related to this 18 grievance, we would like to see those. 19 Q. So just to back up. In 2014 we have minutes 20 suggesting that that's the first time an officer is 21 coached for a B level, correct? 22 A. Correct. 23 MR. ENSLIN: Object to the form. 24 Q. And it's grieved and that grievance is 25 continuing into 2015, correct?</p>
<p style="text-align: right;">Page 191</p> <p>1 2014," correct? 2 A. Correct. 3 Q. And apparently it was formatted to look like 4 other discipline letters? 5 A. Correct. 6 Q. Which is just what Christopher Granger had said 7 in that memo we looked at this morning, correct? 8 A. Correct. 9 Q. In the second paragraph it says, actually, third 10 sentence of the second paragraph, it begins, "On 11 January 5, 2015" 12 A. Mm-hmm. 13 Q. "I contacted Lieutenant Halvorson by phone and 14 inquired about whether IAU had a log of the discipline 15 letter being sent out." Do you see that? 16 A. I do. 17 Q. So here again we have the federation on behalf 18 of one of its members referring to a coaching 19 determination as discipline, correct? 20 A. Correct. 21 Q. All right. I'm going to hand you, we're going 22 to hand you Exhibits 55 and 56. And we can talk about 23 Exhibit 55 first. And this was produced by the city, 24 you can see that at the Bates stamp in the lower 25 right-hand corner, correct?</p>	<p style="text-align: right;">Page 193</p> <p>1 A. Correct. 2 Q. And here in April 2016 we have another officer 3 who is apparently confused and thinking that he's been 4 disciplined through coaching and he's trying to grieve 5 it, correct? 6 MR. ENSLIN: Object to the form, 7 foundation. 8 A. Yes. Without more information it's hard to 9 know, but certainly there was a grievance initiated. 10 Q. And that information would be in the possession 11 of the city, correct? 12 MR. ENSLIN: Object to the form, 13 foundation. 14 A. Yes. 15 Q. Okay. Does this change your thinking about what 16 [REDACTED] might have presumed in 2016 when he was 17 coached and told that more severe disciplinary action 18 might be imposed if the misconduct continued? 19 A. Well, like I said, I'm only speculating about 20 what [REDACTED] understood, but I do think that 21 despite individual examples, that coaching is widely 22 understood to not be disciplinary. 23 Q. Let's take a look at Exhibit 56. This one is 24 from 2015 and this is a grievance by [REDACTED], do 25 you see that?</p>

<p style="text-align: right;">Page 194</p> <p>1 A. I do.</p> <p>2 Q. And Travis Glampe responds to the federation and</p> <p>3 says, "I'm denying step 1 of the grievance. Coaching is</p> <p>4 not discipline and therefore cannot be grieved per the</p> <p>5 contract." Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And the federation says, "We request to move to</p> <p>8 step 2." Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And so the federation rejected the notion that</p> <p>11 coaching is not discipline, is that correct?</p> <p>12 MR. ENSLIN: Object to the form,</p> <p>13 foundation.</p> <p>14 A. I think in this particular case, you know, I</p> <p>15 don't have enough information to speculate on what this</p> <p>16 was about, but at no time have I understood that the</p> <p>17 federation as an entity was rejecting the fact that</p> <p>18 coaching is nondisciplinary. But I have experienced all</p> <p>19 sorts of cases where the federation wants to make a</p> <p>20 point about a particular incident and that may be what's</p> <p>21 going on here, but I don't know, that's just</p> <p>22 speculation.</p> <p>23 Q. All right.</p> <p>24 A. But at no time have I understood that the</p> <p>25 federation as an entity was rejecting coaching as</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Correct.</p> <p>2 Q. Do you still stand by your testimony that across</p> <p>3 the board officers of the Minneapolis Police Department</p> <p>4 understand that coaching is nondisciplinary?</p> <p>5 A. Yes, I do think that it is widely understood</p> <p>6 that coaching is not discipline.</p> <p>7 Q. Uniformly or widely?</p> <p>8 A. Widely. And I have said since the beginning</p> <p>9 that I have never talked to over 1,000 officers who have</p> <p>10 worked for the Minneapolis Police Department in the</p> <p>11 30 years that I've worked there, but I also have not</p> <p>12 received questions about the nature of coaching. I</p> <p>13 wasn't involved in any of these incidents, so I can't</p> <p>14 speak to it, but I do think that coaching is widely</p> <p>15 understood to be nondisciplinary.</p> <p>16 Q. Okay. [REDACTED], if you go back to Exhibit 56,</p> <p>17 requested a move to step 2, do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Do you know what happened to this grievance?</p> <p>20 A. I do not.</p> <p>21 Q. The city would have those documents in its</p> <p>22 possession though, right?</p> <p>23 MR. ENSLIN: Object to the form,</p> <p>24 foundation.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 195</p> <p>1 nondisciplinary.</p> <p>2 Q. We'll hand you what's been marked as Exhibit 76,</p> <p>3 which gives a little background on this [REDACTED]</p> <p>4 grievance.</p> <p>5 This is a letter from someone with the</p> <p>6 federation to Travis Glampe enclosing the grievance</p> <p>7 filed on behalf of [REDACTED] She received a B level</p> <p>8 violation and coaching, do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And the grievance form that's attached to the</p> <p>11 cover letter explains that the grievance is because</p> <p>12 there was no just cause for discipline, do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. And is there any way to interpret this</p> <p>15 other than [REDACTED] believed she had been</p> <p>16 disciplined through coaching?</p> <p>17 MR. ENSLIN: Object to the form,</p> <p>18 foundation.</p> <p>19 A. Yes, that is certainly what the paperwork</p> <p>20 represents.</p> <p>21 Q. Okay. So this is a third person who believed,</p> <p>22 within the course of about a year, this is a third</p> <p>23 person who believed that coaching was discipline?</p> <p>24 MR. ENSLIN: Object to the form,</p> <p>25 foundation.</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. We're going to hand you what's been marked as</p> <p>2 Exhibit 125. This document was also produced by the</p> <p>3 federation. And this is an email at the top from Bob</p> <p>4 Kroll to another federation member, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And this email appears to have been sent after</p> <p>7 step 1 was denied and before a decision was made on</p> <p>8 step 2, do you see that, just based on the date?</p> <p>9 A. Yes.</p> <p>10 Q. All right. And Bob Kroll says to Sherral</p> <p>11 Schmidt, "This will be a good test on B level coaching,</p> <p>12 he denied it." Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. So the president of the union seemed to</p> <p>15 be saying that no one quite knew what coaching, whether</p> <p>16 coaching a B level was disciplinary or not, do you agree</p> <p>17 with that?</p> <p>18 MR. ENSLIN: Object to the form,</p> <p>19 foundation.</p> <p>20 A. I'm not sure what they were testing about B</p> <p>21 level coaching.</p> <p>22 Q. They were testing something though, right?</p> <p>23 A. Correct.</p> <p>24 Q. Isn't it true that in the aftermath of a series</p> <p>25 of grievances the city came to the federation and told</p>

<p style="text-align: right;">Page 198</p> <p>1 them coaching is not discipline, it's just coaching, 2 don't worry about it? 3 MR. ENSLIN: Object to the form, 4 foundation. 5 Q. Or something to that effect? 6 A. I have no idea. I wasn't part of any of those 7 conversations. But this email from Travis Glampe says 8 coaching is not discipline, so it was clearly conveying 9 the message in that communication about the step 1 that 10 coaching was not discipline. 11 Q. But we talked about earlier how it doesn't 12 matter what you call something, if it feels 13 disciplinary, it's disciplinary, you can call it a time 14 out, but if it's a suspension, it's disciplinary? 15 MR. ENSLIN: Object to the form, misstates 16 prior testimony. 17 Q. Correct? 18 A. I mean, if it's a suspension called a time out, 19 it will definitely feel disciplinary because you're not 20 getting paid. 21 Q. Right. And the coaching feels like a warning, 22 right, it has all those components, and in fact it can 23 require more burden on the officer than a disciplinary 24 warning, that's what you testified to? 25 MR. ENSLIN: Object to the form, misstates</p>	<p style="text-align: right;">Page 200</p> <p>1 that discipline can be enhanced. So, I mean, that's a 2 true statement and is represented on the discipline 3 matrix and across other documents as well. 4 Q. Well, the discipline matrix doesn't talk about 5 coaching B level, we've established that? 6 A. Correct. 7 Q. All right. Why is it your position that the 8 federation just has to take your word for it? If it 9 feels like discipline, why should they have to believe 10 you when you say coaching is not discipline? 11 MR. ENSLIN: Object to the form. 12 A. I mean, the categories throughout the process 13 are in some sense the city simply telling the 14 federation, you know, this is a C level or this is a D 15 level. There's a whole bunch of components in the 16 process that are just the city telling the federation of 17 course, you know, the federation and the city meet and 18 confer on things beyond what's negotiated in contract 19 negotiations, but at the end of the day there are all 20 sorts of things that the city simply tells the 21 federation this is what something is. 22 Q. And as long as you all agree behind closed 23 doors, none of it ever gets made public, right? 24 MR. ENSLIN: Object to the form, 25 argumentative.</p>
<p style="text-align: right;">Page 199</p> <p>1 prior testimony. 2 A. I said if you're looking at the amount of time 3 spent by the officer, then yes, a coaching could require 4 more time spent, but the coaching sessions are not meant 5 to feel like a threat, they're meant to be supportive of 6 improved performance. 7 So, you know, any time an employee is having 8 conversation with their supervisor, even in the most 9 casual noncomplaint driven situation and your supervisor 10 is telling you I don't like the way you did this, I 11 think you should do something else, it's not going to 12 feel good. 13 Q. But those coaching letters all have a threat in 14 them, don't they, every single one of them that you've 15 seen today says further misconduct may result in 16 additional disciplinary action, is that a threat? 17 A. I think you could interpret it as a threat, but 18 you could also interpret it as just restating what all 19 of our disciplinary documents, including the matrix say, 20 which is even if you're leaving out coaching and you're 21 talking about things that are clearly in the world of 22 discipline, if you've received a letter of reprimand for 23 a particular policy violation and then within the 24 reckoning period you continue to exhibit that behavior 25 and you have another investigation and another outcome,</p>	<p style="text-align: right;">Page 201</p> <p>1 A. I don't think that accurately represents this 2 process to the extent that I've been involved in and is 3 clearly intended to use language that suggests some kind 4 of malfeasance. 5 Q. But as long as the federation went along with 6 the city's notion that coaching is not discipline, then 7 dozens of incidents of officer misconduct would never 8 see the light of day, isn't that true? 9 MR. ENSLIN: I'll object to the form, 10 misstates facts in evidence, assumes facts not in 11 evidence, calls for a legal conclusion. 12 A. To the extent that coaching is not disciplinary, 13 complaints that are resolved with coaching do not become 14 public. But as to the number or the number that come 15 from a chief's disciplinary decision versus the joint 16 supervisor referral, I can't speak to that because I 17 don't have those numbers in front of me. 18 Q. Who would have been involved from the 19 Minneapolis Police Department in conversations with the 20 federation about whether coaching was grievable in 2015 21 or 2016? 22 A. The chief. 23 Q. Harteau at that point? 24 A. Harteau in 2015, assistant chief, a deputy chief 25 of professional standards. Those are typically the</p>

<p style="text-align: right;">Page 202</p> <p>1 positions most closely associated with those</p> <p>2 conversations. Or in the case of conversation at a</p> <p>3 labor-management meeting, conceivably any of the</p> <p>4 appointed staff who participated in that</p> <p>5 labor-management meeting.</p> <p>6 Q. It's true that changes to the policy manual</p> <p>7 don't have retroactive application, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And changes to the discipline matrix don't have</p> <p>10 retroactive application?</p> <p>11 A. Correct.</p> <p>12 Q. Same for changes to the complaint process</p> <p>13 manual?</p> <p>14 A. Correct.</p> <p>15 Q. Any other policy where changes have retroactive</p> <p>16 application?</p> <p>17 MR. ENSLIN: Object to the form.</p> <p>18 A. No, nothing that comes to mind.</p> <p>19 Q. So if you could go again to Exhibit 17, which is</p> <p>20 the determination letter issued to [REDACTED]. His</p> <p>21 case number began with a 14, correct?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. And that meant it was opened in 2014?</p> <p>24 A. Correct.</p> <p>25 Q. And he was not actually -- well, we don't</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. And the chief did not make a decision until the</p> <p>2 very end of 2019?</p> <p>3 A. Correct.</p> <p>4 Q. So this took about a year, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Not the 30 to 45 days you told the PCOC happens</p> <p>7 with coaching referrals to the joint supervisors,</p> <p>8 correct?</p> <p>9 A. So what I said was the portion of the process</p> <p>10 where it's been referred to the supervisor and the</p> <p>11 supervisor has a conversation is supposed to happen</p> <p>12 within 30 days, that's not inclusive of the entire</p> <p>13 process.</p> <p>14 Q. You don't consider a year to get to coaching</p> <p>15 swift or expedient or immediate, do you?</p> <p>16 A. I do not.</p> <p>17 Q. This letter is pretty explicit. In the second</p> <p>18 paragraph it says, "As discipline for this incident, you</p> <p>19 will receive coaching." Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. And [REDACTED] has signed this, do you</p> <p>22 see that?</p> <p>23 A. I do.</p> <p>24 Q. It has that key language that Trina Chernos</p> <p>25 mentioned at the PCOC meeting in the final paragraph, do</p>
<p style="text-align: right;">Page 203</p> <p>1 actually know if he was ever coached, right?</p> <p>2 A. Correct.</p> <p>3 Q. Because we don't have those forms?</p> <p>4 A. Yes.</p> <p>5 Q. But the chief didn't issue a disciplinary or a</p> <p>6 coaching decision until 2017, correct?</p> <p>7 A. This letter stated 2016.</p> <p>8 Q. So it took a year or two to get to that</p> <p>9 decision?</p> <p>10 A. Correct.</p> <p>11 Q. I'm going to hand you Exhibit 12. This is a</p> <p>12 determination letter issued to [REDACTED], do you</p> <p>13 see that?</p> <p>14 A. I do.</p> <p>15 Q. It says, "Notice of coaching" at the top?</p> <p>16 A. Correct.</p> <p>17 Q. The chief said he should be coached for a B</p> <p>18 level, correct?</p> <p>19 A. Correct.</p> <p>20 Q. He might have been coached, he might not have</p> <p>21 been, correct?</p> <p>22 A. Correct. We don't have any coaching</p> <p>23 documentation attached to this notice.</p> <p>24 Q. And his case was opened sometime in 2018?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 205</p> <p>1 you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Where he's told that additional violations may</p> <p>4 result in disciplinary action, correct?</p> <p>5 A. Correct.</p> <p>6 Q. She said, "This is the key language that tips</p> <p>7 off an officer that he's being disciplined." Do you</p> <p>8 remember her telling that to the PCOC?</p> <p>9 MR. ENSLIN: Object to the form.</p> <p>10 A. I do.</p> <p>11 Q. This is a disciplinary letter, correct?</p> <p>12 A. This is a notice of coaching.</p> <p>13 Q. Okay. And how is [REDACTED] not supposed</p> <p>14 to believe he's been disciplined?</p> <p>15 A. It's called a notice of coaching and it says</p> <p>16 he's going to receive coaching, which I believe [REDACTED]</p> <p>17 [REDACTED] would have understood is nondisciplinary.</p> <p>18 Q. So it literally says, "As discipline for this</p> <p>19 incident, you will receive coaching." He's supposed to</p> <p>20 ignore that language?</p> <p>21 MR. ENSLIN: Object to the form,</p> <p>22 foundation.</p> <p>23 A. As I've said before, I believe it's widely</p> <p>24 understood that coaching is nondisciplinary and I</p> <p>25 believe that most officers would receive it as such.</p>

<p style="text-align: right;">Page 206</p> <p>1 Q. So this is another example of careless drafting 2 by the Minneapolis Police Department? 3 MR. ENSLIN: Object to the form. 4 A. These documents are created using a template and 5 I think you'll find in many, if not most cases, the 6 basic form of the template hasn't been altered or at 7 least hasn't been altered very much. 8 Q. The template according to Christopher Granger 9 for a coaching letter should be the discipline letter 10 template, correct, he said he wanted them to be drafted 11 like discipline letters, do you remember that? 12 A. Yes. I think he meant the overall style. 13 Q. Why would you use the discipline letter format 14 for coaching if coaching is not discipline? 15 MR. ENSLIN: Object to the form, 16 foundation. 17 A. That would be a better question for Christopher 18 Granger. But because it was a template that was on hand 19 and used in communications, that may have been why they 20 decided to use that same style, but I don't know because 21 I wasn't part of those conversations. 22 Q. Could you go back to Exhibit 2, which is one of 23 the very first exhibits we looked at this morning, it's 24 our data practices request. 25 A. Okay.</p>	<p style="text-align: right;">Page 208</p> <p>1 be a form of discipline does not include coaching, and 2 so I think it's possible that this, given that, that 3 No. 4 would not be read as this letter. 4 Q. So do you think the Minneapolis Police 5 Department when it gets a data practices request is just 6 entitled to reimagine what its documents actually say 7 because that's not what we meant to say? 8 MR. ENSLIN: Object to the form, 9 argumentative, asked and answered. 10 A. Yeah, I mean, I can't answer that question 11 except to say that I don't know what the processes are 12 in records for retrieving these documents. But if it is 13 to ask for discipline documents or anything related to 14 discipline, it will exclude coaching because the 15 department's position is and has been widely 16 communicated is that coaching is not discipline. 17 Q. And that's its position even though his, and 18 I'll show you more, that's its position even though it's 19 issued multiple letters that say as discipline for this 20 incident you'll get coaching? 21 A. Yes. 22 Q. Do you see a problem with that? 23 A. Yes. Here's what I see, this is confusing not 24 for the internal audience by and large, but it is 25 confusing in the context of this discussion. This</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. So putting aside the first three, the fourth 2 request was, "All data from January 1st, 2011 to present 3 in which coaching is described as a form of discipline." 4 Do you see that request? 5 A. I do. 6 MR. ENSLIN: Object to the form to the 7 extent you didn't read the entire request. 8 Q. And this notice of coaching to [REDACTED] 9 described coaching as discipline, does it not? 10 MR. ENSLIN: Object to the form. 11 A. Yes, it uses the word, both the words coaching 12 and discipline in the letter. 13 Q. So this document would have been responsive to 14 the fourth part of that request, correct? 15 MR. ENSLIN: Object to the form, calls for 16 a legal conclusion. 17 A. I think that this letter that was generated for 18 [REDACTED] was intended by -- 19 Q. I'm going to stop you because my question is not 20 about intent. My question is, do you agree with me that 21 the letter is responsive to No. 4 in the data practices 22 request? 23 MR. ENSLIN: Same objection. 24 A. It's hard to answer that question because what 25 we internally inside the police department understand to</p>	<p style="text-align: right;">Page 209</p> <p>1 template that has been used, I am speculating based on 2 my experience that the creators of this letter and the 3 chief, who can come in and answer this for himself, did 4 not intend this letter to be received or communicated as 5 discipline. 6 Q. If someone had asked you to look for documents 7 responsive and you had found this one, would you have 8 produced it? 9 MR. ENSLIN: Object to the form, calls for 10 speculation. 11 A. I'm not sure whether I would have produced it to 12 attorneys and let the attorneys then make a decision and 13 do appropriate redactions, that's possible, but I wasn't 14 asked to produce any of this data. And if I had been 15 asked in February of 2021, I would have said the same 16 thing that I'm saying now is that the department did not 17 intend to communicate that coaching was discipline. 18 Q. But we have to ask Chief Arradondo to be sure, 19 correct? 20 A. Yes. 21 Q. And Chief Harteau for letters she issued, 22 correct? 23 A. Correct. 24 Q. Both [REDACTED] before they 25 got these letters would have been afforded all</p>

<p style="text-align: right;">Page 210</p> <p>1 procedural due process, they would have gone through 2 that administrative investigation, correct? 3 MR. ENSLIN: Object to the form, 4 foundation. 5 A. Yes, I believe so. I mean, as we saw from the 6 labor-management notes, there may have been instances in 7 which that did not occur, that those steps in the 8 process were missed, but yes, in theory all of those 9 steps should have taken place. 10 Q. So in theory all the rights and obligations, all 11 the rights to which they were entitled and all the 12 obligations the city owed them before imposing 13 discipline were complied with? 14 MR. ENSLIN: Object to the form. 15 A. Correct. The only thing that would not have 16 been allowed was a grievance that went to arbitration. 17 Q. Right. And let's say a judge decides this 18 letter to [REDACTED] is a discipline letter because it 19 says it's discipline, coaching is oral, right, so it 20 wouldn't be subject to grievance? 21 MR. ENSLIN: Object to the form, calls for 22 a legal conclusion. 23 A. I'm not an attorney, and to the extent that I've 24 been involved in these processes, we haven't been using 25 oral warnings, oral reprimands, we would have been using</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. All right. And in 2017 what was your role at 2 the police department, a lieutenant? 3 A. In 2017 I was a lieutenant. 4 Q. Okay. Did you have any involvement with 5 discipline around that time? 6 A. I did not, not with discipline processes. 7 Q. Okay. Would you have been generally familiar 8 with this manual as a lieutenant and 20-year veteran of 9 the police department? 10 A. I have seen multiple versions of this manual 11 over the years, so would have been generally familiar 12 with the content. 13 Q. Okay. So if you could flip to Page 10, which is 14 also CITY000166, and you'll see there's discipline 15 categories. And in the description of a C level 16 violation there's a reference to education based 17 discipline. Can you tell me what that is? 18 A. I cannot. 19 Q. You've never heard that phrase before? 20 A. I have seen the phrase in this manual and I 21 believe that they mean retraining, but I don't know 22 where they got the term education based discipline. 23 Q. And so training can be a form of discipline? 24 A. I don't know what they, what they meant. It 25 could certainly be a part of what happens to go along</p>
<p style="text-align: right;">Page 211</p> <p>1 that category. So I've never conferred with any of the 2 attorneys representing the city about how that would be 3 impacted by the grievance process, so I don't know the 4 answer to your question. 5 Q. You would rely on your attorneys to answer that? 6 A. I would. 7 Q. And I think you said if you had found these 8 letters at the time of the data practices request, you 9 would have at least forwarded them to counsel for 10 guidance, is that your testimony? 11 MR. ENSLIN: Objection to the extent it 12 misstates prior testimony. 13 A. I mean, I'm not sure what I would have done in 14 2021 having this conversation in 2023, but it's likely I 15 would have endeavored to produce everything related to 16 coaching and then for our experts to make a decision 17 about what should be released and what should not. 18 MR. ENSLIN: Can we take like three 19 minutes? 20 MS. WALKER: Sure. Off the record. 21 (A break was taken at 2:00 p.m.) 22 BY MS. WALKER: 23 Q. Exhibit 36. This is a version of the discipline 24 process manual from 2017, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 213</p> <p>1 with suspension, letter of reprimand, but I have not 2 myself seen a case where a C level violation as an 3 outcome used the phrase education based discipline 4 alone. 5 Q. Okay. Back to Exhibit 35 for a minute, which is 6 the transcript. And I'll point you to Pages 57 and 58. 7 You were asked by one of the -- 8 MR. ENSLIN: She's still looking for it. 9 Q. Oh, sorry. 10 A. Sorry, my documents are all out of order. 11 MR. ENSLIN: Did you say 57 and 58? 12 MS. WALKER: Yes. 13 A. There we go. I just hadn't gotten far enough 14 down in the stack. Okay. 15 Q. Page 57, and we'll move on to the top of 16 Page 58. Starting at Line 11 at Page 57, one of the 17 commissioners asked you, you know, I won't read it, you 18 can read it yourself, but generally like couldn't we do 19 more to be transparent here. And you responded at 20 Line 21, "I think that if transparency were our 21 paramount goal, you might find that we would have other 22 significant downsides to that that would, that people 23 would find to be significant downsides." 24 And you continue at the top of Page 58, "We 25 handled every case as an administrative case to run</p>

<p style="text-align: right;">Page 214</p> <p>1 through our official discipline system, you know, the 2 timelines for every case including the serious ones 3 would go longer because we would be doing a full 4 administrative investigation on many, many more cases 5 and so it would just take longer for everything." Did I 6 read that correctly? 7 A. You did. 8 Q. And do you generally stand by that as you sit 9 here today? 10 A. I do. 11 Q. But there is some coaching that does go through 12 the full administrative investigation, correct? 13 A. Yes. 14 Q. And that takes almost as long as discipline, 15 except that historically it's not been grievable, 16 correct? 17 A. Correct. 18 Q. And so for that kind of misconduct that goes 19 through the full administrative investigation, coaching 20 does not provide any real speed advantage, correct? 21 A. Correct. 22 Q. But the disadvantage then with coaching, to get 23 back to the commissioner's question, is that it doesn't 24 accomplish anything by way of transparency, correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 216</p> <p>1 information to release, the chief should be issuing a 2 written reprimand. 3 Q. That's grievable however, correct? 4 A. Correct. 5 Q. And if you wanted to ensure transparency, but 6 avoid the grievance process, the chief should be issuing 7 a warning, correct? 8 MR. ENSLIN: Object to the form. 9 A. So as we discussed before, I can't answer 10 questions about how the introduction of the warning 11 would impact our system because that's not a category 12 that we have used recently. I would rely on advice from 13 the City Attorneys about that. 14 But if that were to be an option considered by 15 the city, then we would communicate that, we would make 16 sure that the employees understood that, we would be 17 clear about what it means and how it fits in with our 18 processes. Ideally a chief wouldn't introduce that 19 without any of those efforts. 20 Q. Why not? 21 A. Because that would be -- 22 Q. Let me ask it a little more differently. 23 There's nothing in the collective bargaining agreement 24 that prohibits him from doing so, correct? 25 MR. ENSLIN: Object to the form.</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. When an officer is coached for B level 2 misconduct after a full administrative investigation, no 3 one ever finds out about it, correct? 4 A. Correct. 5 Q. So if you had been discussing the chief ordered 6 coaching at this PCOC meeting, might you have answered 7 this question a little bit differently? 8 MR. ENSLIN: Object to the form. 9 A. Yes. I wasn't talking about the chief's 10 discipline decisions, I was talking about the system 11 overall and the joint supervisors cases. So if you're 12 talking about discipline that comes out of a chief's 13 decision process, you know, that investigation has 14 already taken place and the chief is using his or her 15 authority to make the final decision, discipline 16 decision to determine that coaching is the best outcome. 17 Q. And if the paramount goal, and that's your 18 phrase, paramount goal, if the paramount goal is 19 transparency, then for the administrative cases what the 20 chief should be doing is issuing a verbal warning, not 21 coaching, correct? 22 MR. ENSLIN: Object to the form. 23 A. If, if -- so there's a lot of things in there. 24 If the ultimate goal is to make sure that we're in the 25 realm of discipline and thereby we have public</p>	<p style="text-align: right;">Page 217</p> <p>1 A. Correct, there's nothing in the collective 2 bargaining agreement. But in my experience introducing 3 what would feel like a completely new concept within the 4 agency without any prior communications or discussions 5 would be a poor way to manage employees and would create 6 all sorts of problems with morale and just the 7 operations of the department. 8 Q. Let me ask you this. If the paramount goal is 9 transparency, another option would be to issue a written 10 reprimand, allow it to be grieved, and then settle it 11 with coaching, and that would be a final disposition 12 that's public, correct? 13 MR. ENSLIN: Object to the form, calls for 14 a legal conclusion. 15 A. So I'm not an attorney, but in practice the way 16 that those cases have been handled, to the best of my 17 knowledge, is that the final disposition is coaching and 18 therefore not discipline and it would not be public. 19 Q. I want to come back to that when I find it in my 20 outline. Just hold that thought a minute. 21 I'm going to hand you Exhibit 80. So this is an 22 email string, at the top it's with Bob Kroll and other 23 members of the federation. If you flip to the second 24 page in the middle there, there's an email from Caroline 25 Bachun to I believe certain people in the data practices</p>

<p style="text-align: right;">Page 218</p> <p>1 office on January 9th, 2020, do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. This document was produced to us by the</p> <p>4 federation. And maybe I'll just give you a minute to</p> <p>5 read that whole email that Carol Bachun sent on</p> <p>6 January 9th, those three paragraphs. Just let me know</p> <p>7 when you're done.</p> <p>8 A. Okay.</p> <p>9 Q. And so Carol Bachun in the third paragraph says</p> <p>10 to the data practices office, "Please note that</p> <p>11 settlement agreements are public, even if they result in</p> <p>12 coaching and not discipline." Did I read that</p> <p>13 correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have any reason to dispute that statement</p> <p>16 by the City Attorney, Assistant City Attorney?</p> <p>17 A. I do not, although there may be conflicting</p> <p>18 opinions. I do not know that we have published this</p> <p>19 data, so I would have to do more research.</p> <p>20 Q. Okay. But as you sit here today, you don't have</p> <p>21 any legal basis to testify that settlements of</p> <p>22 grievances that result in coaching are anything other</p> <p>23 than final disposition of discipline which would be</p> <p>24 public?</p> <p>25 A. I'm not an attorney, so I would rely on legal</p>	<p style="text-align: right;">Page 220</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 Q. You should stop.</p> <p>25 MR. ENSLIN: You should not disclose any</p>
<p style="text-align: right;">Page 219</p> <p>1 advice from the City Attorney's Office. However, I</p> <p>2 believe that there may also be in practice an opinion</p> <p>3 that a settlement agreement that results in coaching is,</p> <p>4 coaching is not discipline and therefore would not be</p> <p>5 public, the same way an arbitration that reverses</p> <p>6 discipline is not public. I'm not an attorney, so I</p> <p>7 would not be the final decisionmaker on that. We would</p> <p>8 rely on the City Attorney ultimately to make that</p> <p>9 decision if there are differing opinions.</p> <p>10 Q. Referring you back to Exhibit 17, which is the</p> <p>11 determination letter sent to [REDACTED].</p> <p>12 A. Okay.</p> <p>13 Q. It's from 2016, correct, if I'm remembering?</p> <p>14 A. Correct.</p> <p>15 Q. And did you know about this letter at the time</p> <p>16 you appeared at the May 2021 PCOC meeting?</p> <p>17 A. No, I don't believe so.</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 MR. ENSLIN: Object to the form,</p>	<p style="text-align: right;">Page 221</p> <p>1 conversations.</p> <p>2 Q. Yeah, I remember the portion. [REDACTED]</p> <p>3 [REDACTED].</p> <p>4 Did it occur to you at that moment though that</p> <p>5 the PCOC might be interested in coaching a B level</p> <p>6 violation?</p> <p>7 A. No.</p> <p>8 Q. That never crossed your mind?</p> <p>9 A. It did not.</p> <p>10 Q. Do you remember a question at the PCOC meeting</p> <p>11 about whether use of force had ever been coached?</p> <p>12 A. I don't remember that portion off the top of my</p> <p>13 head. I'm not sure if that was a question to me.</p> <p>14 Q. But that wouldn't have triggered you to</p> <p>15 understand that the PCOC was interested in things beyond</p> <p>16 what's referred to the joint supervisors at the</p> <p>17 preliminary stage?</p> <p>18 A. No, it didn't, it didn't.</p> <p>19 Q. Okay. Okay. Let's take a look at Exhibit 72.</p> <p>20 This is a notice of discipline that you issued as</p> <p>21 interim chief, correct?</p> <p>22 A. Correct.</p> <p>23 Q. [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

<p style="text-align: right;">Page 222</p> <p>1 [REDACTED].</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 A. Correct.</p> <p>18 Q. And this would have gone through a full</p> <p>19 administrative investigation before it ended up on your</p> <p>20 desk?</p> <p>21 A. Yes.</p> <p>22 Q. Loudermill, Garrity, PDPA, all of those would</p> <p>23 have been complied with?</p> <p>24 A. Yes.</p> <p>25 Q. And the key language Ms. Chernos referenced at</p>	<p style="text-align: right;">Page 224</p> <p>1 to a grievance proceeding?</p> <p>2 A. Yes, ideally we would like them to be perfect.</p> <p>3 Q. But no one was taking any care whatsoever across</p> <p>4 any of the letters we've seen so far to make sure that</p> <p>5 the template they were using was accurate for the</p> <p>6 situation at hand?</p> <p>7 MR. ENSLIN: Object to the form.</p> <p>8 A. I mean, I can't speak to again what happened</p> <p>9 before I became involved in this process. I mean, we</p> <p>10 certainly would have made changes to the template if we</p> <p>11 had been advised to do so or, you know, as you've seen</p> <p>12 there might be individual, individual letters where the</p> <p>13 person preparing the letter either was instructed or</p> <p>14 wanted themselves to communicate something in addition</p> <p>15 to what was on the template or slightly different from</p> <p>16 the template.</p> <p>17 But I just, I don't think, at least to my</p> <p>18 knowledge, that we in MPD perceived that there was an</p> <p>19 issue with the templates because we understood what we</p> <p>20 were communicating to the employee and we believed that</p> <p>21 employees broadly speaking understand that coaching is</p> <p>22 not discipline and so would receive the message that we</p> <p>23 intended to send.</p> <p>24 Q. Take a look at Exhibit 73. It's a similar</p> <p>25 situation, a notice of discipline signed by you,</p>
<p style="text-align: right;">Page 223</p> <p>1 the PCOC meeting is on this letter in the last</p> <p>2 paragraph, correct?</p> <p>3 A. Yes.</p> <p>4 Q. You sent this to payroll as a cc, do you have</p> <p>5 any idea why?</p> <p>6 A. Only because that was the template.</p> <p>7 Q. So you do keep talking about a template, but all</p> <p>8 of these letters are slightly different, some go to</p> <p>9 payroll, some don't, some go to OPCR, some go to IAU.</p> <p>10 Is there a single template you have in mind here?</p> <p>11 A. So over time I'm sure that there have been</p> <p>12 changes to the template, and I can't speak to how</p> <p>13 letters were created in the past before I had any</p> <p>14 involvement, but as of 2021 there was a Microsoft Word</p> <p>15 document template for various kinds of outcome letters</p> <p>16 that would be used either by civilian staff or someone</p> <p>17 in the chief's office who was creating a letter and then</p> <p>18 the appropriate information would be filled in about the</p> <p>19 officer and their assignment, the date and the violation</p> <p>20 information.</p> <p>21 Q. So this is a written reprimand, so this could</p> <p>22 have been grieved, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Isn't it important that the thing that imposes</p> <p>25 the discipline just be perfect when it could be subject</p>	<p style="text-align: right;">Page 225</p> <p>1 correct?</p> <p>2 A. (Nodding head.)</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 Q. And this would have gone through the full</p> <p>19 administrative investigation?</p> <p>20 A. Yes.</p> <p>21 Q. And the key language that Ms. Chernos mentioned</p> <p>22 at the PCOC meeting is here, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Let's take a look at Number 74. This is</p> <p>25 also a notice of discipline signed by you, correct?</p>

<p style="text-align: right;">Page 226</p> <p>1 A. Correct.</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 228</p> <p>1 another notice of discipline signed by you, correct?</p> <p>2 A. Correct.</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 Q. Okay. All right. We're going to hand you</p> <p>15 Exhibit 19. This is a determination letter to Officer</p> <p>16 [REDACTED], correct?</p> <p>17 A. Correct.</p> <p>18 Q. And he had two sustained B violations with</p> <p>19 coaching, is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. And this case took about three years from start</p> <p>22 to finish, is that right?</p> <p>23 A. Yes.</p> <p>24 Q. And this is a different incident of coaching</p> <p>25 than [REDACTED], this is the one that [REDACTED] grieved,</p>
<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 A. Yes. And that was what I meant, as discipline</p> <p>8 for the incident he received the letter of reprimand.</p> <p>9 Q. Did you have a meeting with the employee to</p> <p>10 explain what you meant or did you just assume he would</p> <p>11 figure it out based on how you phrased it here?</p> <p>12 A. I did not have a meeting with the employee.</p> <p>13 Q. So you didn't send this notice of discipline to</p> <p>14 payroll, personnel or HR, why not?</p> <p>15 MR. ENSLIN: Object to the form.</p> <p>16 A. I don't know.</p> <p>17 Q. But it made it into that software -- remind me</p> <p>18 what it's called?</p> <p>19 A. Practice Manager.</p> <p>20 Q. Because you sent it to OPCR, is that right?</p> <p>21 MR. ENSLIN: Object to the form,</p> <p>22 foundation.</p> <p>23 A. Yes, it was an OPCR case and so it would have</p> <p>24 been uploaded into Practice Manager by OPCR.</p> <p>25 Q. Okay. Let's look at Exhibit 75. This is</p>	<p style="text-align: right;">Page 229</p> <p>1 does that sound right to you?</p> <p>2 A. It sounds like the right time period, but I</p> <p>3 would check the paperwork to be sure.</p> <p>4 Q. Someone sent this to personnel, is that correct,</p> <p>5 on the second page?</p> <p>6 A. Yes.</p> <p>7 Q. And that's why this coaching decision ended up</p> <p>8 in his personnel file, correct?</p> <p>9 MR. ENSLIN: Object to the form,</p> <p>10 foundation.</p> <p>11 A. I don't know that this ended up in his personnel</p> <p>12 file. We would have to confirm that with someone with</p> <p>13 access to the personnel file.</p> <p>14 Q. Do you remember those minutes from the</p> <p>15 labor-management meeting where the minutes said that the</p> <p>16 coaching form was put in his personnel file?</p> <p>17 A. It says, "Listed as coaching, put in his</p> <p>18 discipline file."</p> <p>19 Q. You don't have any reason to dispute that based</p> <p>20 on the fact that it went to personnel?</p> <p>21 MR. ENSLIN: Object to the form,</p> <p>22 foundation.</p> <p>23 A. I have no idea what they mean by discipline</p> <p>24 file. It doesn't say personnel file and it's possible</p> <p>25 that they meant the records management system for</p>

<p style="text-align: right;">Page 230</p> <p>1 complaint data, it doesn't specify.</p> <p>2 Q. And as far as you know, this would have complied</p> <p>3 with the full administrative investigation and all the</p> <p>4 procedural due process, correct?</p> <p>5 A. As far as I know it should have, but I don't</p> <p>6 know that it did.</p> <p>7 Q. It was signed by [REDACTED] just like</p> <p>8 discipline letters are signed?</p> <p>9 A. Yes.</p> <p>10 Q. And it has that key language that Ms. Chernos</p> <p>11 mentioned at the PCOC in the last paragraph?</p> <p>12 A. It does.</p> <p>13 Q. Let's look at Exhibit 20. This is another</p> <p>14 coaching for B level, correct?</p> <p>15 A. Correct.</p> <p>16 Q. It has the key language that Ms. Chernos talked</p> <p>17 about?</p> <p>18 A. It does.</p> <p>19 Q. It went to personnel, correct?</p> <p>20 A. Correct.</p> <p>21 Q. We can assume it went through the full</p> <p>22 administrative investigation?</p> <p>23 A. It should have.</p> <p>24 Q. In compliance with all the due process</p> <p>25 requirements?</p>	<p style="text-align: right;">Page 232</p> <p>1 correct, it looks like a discipline letter?</p> <p>2 A. Yes, it uses the same format.</p> <p>3 Q. And in fact, the first paragraph says, "As</p> <p>4 discipline for this incident, you will receive coaching</p> <p>5 from your supervisor," correct?</p> <p>6 A. Correct.</p> <p>7 Q. And it says the file is going to remain in OPCR,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And that key language that Ms. Chernos said is</p> <p>11 the clue to an officer that he's being disciplined,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And the officer was required to sign it on the</p> <p>15 second page, do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Do you agree with me that an officer could have</p> <p>18 easily understood that he was being disciplined through</p> <p>19 coaching?</p> <p>20 MR. ENSLIN: Object to the form.</p> <p>21 A. As I've said before, I do believe that coaching</p> <p>22 is widely understood among members of the department to</p> <p>23 be nondisciplinary. I believe that that is what Chief</p> <p>24 Arradondo was intending to communicate and it is</p> <p>25 probably how it was interpreted by the employee,</p>
<p style="text-align: right;">Page 231</p> <p>1 A. It should have.</p> <p>2 Q. We're handing you what's been marked as 22.</p> <p>3 This is another example of coaching for B level,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And this also would have gone through the full</p> <p>7 administrative investigation?</p> <p>8 A. As far as I know, perhaps it did. It's signed</p> <p>9 by the commander of the Internal Affairs Unit, which is</p> <p>10 different than these letters that we've looked at signed</p> <p>11 by the chiefs, chief or assistant chief, so I don't know</p> <p>12 if there were other deviations in this particular case.</p> <p>13 Q. No reason to believe there were, you just don't</p> <p>14 know?</p> <p>15 A. No information.</p> <p>16 Q. And it has the key language that Ms. Chernos</p> <p>17 emphasized as the clue to employees that they are being</p> <p>18 disciplined, correct?</p> <p>19 A. Yes, it does have that language.</p> <p>20 Q. Let's take a look at Exhibit 13. This is also a</p> <p>21 notice of coaching letter from February 14, 2020,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. It looks just like from a formatting</p> <p>25 perspective, it looks just like a letter of reprimand,</p>	<p style="text-align: right;">Page 233</p> <p>1 although I don't know because I haven't asked her</p> <p>2 particularly, but I do believe that coaching is widely</p> <p>3 understood to be nondisciplinary.</p> <p>4 Q. Is it a fun experience for the officers who are</p> <p>5 coached?</p> <p>6 A. It is not. Any time a supervisor comments</p> <p>7 negatively on your performance, even if it's in the most</p> <p>8 immediate, spontaneous, noncomplaint driven way, it</p> <p>9 feels unpleasant to have someone tell you that you</p> <p>10 aren't doing something as well or the right way as you</p> <p>11 should.</p> <p>12 Q. Does it feel punitive?</p> <p>13 A. I don't know that it feels punitive,</p> <p>14 particularly if you believe it's in a nondisciplinary</p> <p>15 context, but it certainly feels bad.</p> <p>16 Q. And every reason to believe this went through</p> <p>17 the full administrative process, correct?</p> <p>18 A. As far as I know.</p> <p>19 Q. Here is Exhibit 23. This is another coaching</p> <p>20 letter for a B level misconduct, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And it has that key language that Ms. Chernos</p> <p>23 referenced at the PCOC meeting?</p> <p>24 A. It does.</p> <p>25 Q. And as far as you know, it went through the full</p>

<p style="text-align: right;">Page 234</p> <p>1 administrative investigation?</p> <p>2 A. I have no reason to think it didn't.</p> <p>3 Q. And it went to personnel?</p> <p>4 A. It did.</p> <p>5 Q. And if I'm understanding your testimony, the</p> <p>6 only way that this is distinguished from a disciplinary</p> <p>7 letter is officers you believe know coaching is not</p> <p>8 discipline, is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. There's no other, other than that belief, you</p> <p>11 have no other basis to assert that this is not</p> <p>12 disciplinary?</p> <p>13 A. Correct.</p> <p>14 Q. Exhibit 15, a similar set of questions. This is</p> <p>15 coaching for a B level, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And the third paragraph there is similar to the</p> <p>18 [REDACTED] letter, it says, "Be advised that any</p> <p>19 additional violations of department rules and</p> <p>20 regulations may result in more severe disciplinary</p> <p>21 action up to and including discharge from employment."</p> <p>22 Did I read that correctly?</p> <p>23 A. You did.</p> <p>24 Q. And the more severe language suggests that the</p> <p>25 coaching itself is a form of disciplinary action, does</p>	<p style="text-align: right;">Page 236</p> <p>1 testing and at no time in my experience has the</p> <p>2 federation ever represented that they believed coaching</p> <p>3 was discipline, so I think it's only appropriate for the</p> <p>4 federation to represent the meaning behind that because</p> <p>5 I don't know what it is that they meant to test.</p> <p>6 Q. Are you involved in current labor negotiations?</p> <p>7 A. No.</p> <p>8 Q. Are you aware that the federation is currently</p> <p>9 taking no position on whether coaching is disciplinary?</p> <p>10 MR. ENSLIN: Object to the form.</p> <p>11 A. No, I haven't been involved in those</p> <p>12 negotiations.</p> <p>13 Q. Would that surprise you if you heard that?</p> <p>14 MR. THORNTON: Object to the form.</p> <p>15 A. I'm not sure what context that is for these</p> <p>16 particular negotiations, but in every interaction I've</p> <p>17 had with the federation board in the past, they clearly</p> <p>18 have represented the understanding that coaching was not</p> <p>19 discipline. So I'm not sure what the context is for the</p> <p>20 current labor negotiations because I haven't been</p> <p>21 involved, but that is definitely different from my</p> <p>22 experience to date.</p> <p>23 Q. And we don't know what happened with the</p> <p>24 [REDACTED] grievance because the city hasn't produced</p> <p>25 those documents, correct?</p>
<p style="text-align: right;">Page 235</p> <p>1 it not?</p> <p>2 MR. ENSLIN: Object to the form.</p> <p>3 A. I do not believe that that was what was intended</p> <p>4 to be conveyed by Chief Harteau or Assistant Chief</p> <p>5 Arneson.</p> <p>6 Q. But I'm not asking about intent, I'm just asking</p> <p>7 about the plain meaning of the words on the page?</p> <p>8 MR. ENSLIN: Object to the form, asked and</p> <p>9 answered.</p> <p>10 A. Yes, I think alone without any understanding of</p> <p>11 how the language is used in the department, it could be</p> <p>12 misinterpreted.</p> <p>13 Q. And this was signed by the officer just like</p> <p>14 discipline letters have to be signed, right?</p> <p>15 A. Yes.</p> <p>16 Q. And it went to personnel, right?</p> <p>17 A. It did.</p> <p>18 Q. And in fact, [REDACTED] grieved this, did</p> <p>19 she not?</p> <p>20 A. Yes, she did.</p> <p>21 Q. She asked to pursue it to a level 2, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And Bob Kroll said this was going to be a test</p> <p>24 of the Minneapolis Police Department, correct?</p> <p>25 A. Yes. It's unclear exactly what it was they were</p>	<p style="text-align: right;">Page 237</p> <p>1 A. Correct.</p> <p>2 Q. We're going to look at Exhibit 18. I'll give</p> <p>3 you a minute to look at this.</p> <p>4 This is a settlement agreement between the city</p> <p>5 and the federation and one of its officers, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And the chief had wanted to issue a letter of</p> <p>8 reprimand to this particular officer, correct?</p> <p>9 A. Correct.</p> <p>10 Q. But the officer filed a grievance and then the</p> <p>11 parties settled the grievance with a downgrading of the</p> <p>12 consequence, is that a fair characterization?</p> <p>13 A. Yes.</p> <p>14 Q. And ultimately this officer was coached for a C</p> <p>15 level violation, correct?</p> <p>16 A. On Page 2 it says coaching for a category B</p> <p>17 violation.</p> <p>18 Q. You're correct. So it was substantiated at the</p> <p>19 C level, but as part of the settlement agreement it was</p> <p>20 downgraded to B level and coached, is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. All right. And this was a final disposition,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And this is public because it's a settlement</p>

<p style="text-align: right;">Page 238</p> <p>1 agreement, according to Carol Bachun, correct?</p> <p>2 MR. THORNTON: Object to the form, calls</p> <p>3 for a legal conclusion.</p> <p>4 A. According to the previous document we looked at,</p> <p>5 that would be Carol Bachun's opinion. As I said before,</p> <p>6 I don't know that the practice in the city aligns with</p> <p>7 that opinion and there may be different opinions that</p> <p>8 would have to be resolved by the City Attorney.</p> <p>9 Q. All right. Well, you see the city produced this</p> <p>10 to us, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And they did not designate it as confidential,</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. So presumably this is a public document,</p> <p>16 correct?</p> <p>17 MR. ENSLIN: Object to the form.</p> <p>18 A. Correct.</p> <p>19 Q. Take a look at Exhibit 14. This is a notice of</p> <p>20 coaching that looks just like notices of discipline</p> <p>21 we've seen, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And it's coaching for a B level, right?</p> <p>24 A. Yes, it is.</p> <p>25 Q. Related to how someone handled firearms,</p>	<p style="text-align: right;">Page 240</p> <p>1 and in other communications over the years to convey the</p> <p>2 message that coaching was not discipline. And that</p> <p>3 message has widely been heard and understood by</p> <p>4 department employees and when these letters were</p> <p>5 prepared and sent, I believe that it is likely that the</p> <p>6 chiefs and assistant chiefs would say that they did not</p> <p>7 intend to communicate to officers that they were being</p> <p>8 disciplined based on the communications.</p> <p>9 Q. They just couldn't be bothered to write things</p> <p>10 clearly, is that correct?</p> <p>11 MR. THORNTON: Object to the form,</p> <p>12 argumentative.</p> <p>13 A. I think that within the department we did not</p> <p>14 recognize that the language was problematic because we</p> <p>15 knew what we were intending to convey and officers</p> <p>16 generally understood what we were trying to convey.</p> <p>17 Q. Okay.</p> <p>18 MS. WALKER: Can we take a five or</p> <p>19 ten-minute break. We're getting close to done.</p> <p>20 (A break was taken at 2:56 p.m.)</p> <p>21 BY MS. WALKER:</p> <p>22 Q. I'm going to quickly revisit a few exhibits. So</p> <p>23 first, Exhibit 22, this is the notice of action to [REDACTED]</p> <p>24 [REDACTED]?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 239</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And it says, "As discipline for this incident,</p> <p>4 you will receive coaching." Did I read that correctly?</p> <p>5 A. You did.</p> <p>6 Q. And it's signed by the officer in question?</p> <p>7 A. It is.</p> <p>8 Q. It has that key language that Ms. Chernos</p> <p>9 mentioned as cluing in the officer that he's being</p> <p>10 disciplined, correct?</p> <p>11 A. It does.</p> <p>12 Q. But you don't think this is a disciplinary</p> <p>13 letter, is that your testimony today?</p> <p>14 A. Yes, it is. I do not believe that Chief</p> <p>15 Arradondo intended to communicate to the officer that he</p> <p>16 was being disciplined because Chief Arradondo likely</p> <p>17 also believed that employees widely understood that</p> <p>18 coaching was nondisciplinary.</p> <p>19 Q. So is it your testimony that whether something</p> <p>20 is disciplinary, whether a consequence is disciplinary</p> <p>21 depends entirely on intent?</p> <p>22 MR. ENSLIN: Object to the form, misstates</p> <p>23 prior testimony.</p> <p>24 A. I think in this particular matter of coaching,</p> <p>25 the department has endeavored in the discipline matrix</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. And he was coached for handling of firearms,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that is an excessive use of force misconduct</p> <p>5 violation, correct?</p> <p>6 A. No, it is typically not. I don't know the</p> <p>7 details of this particular case, but generally that is</p> <p>8 used for something like an accidental discharge.</p> <p>9 Q. Okay. And discharging a gun is not a use of</p> <p>10 force?</p> <p>11 A. It typically doesn't involve a use of force</p> <p>12 situation. In cases I have seen it might be an</p> <p>13 accidental discharge in a locker room or cleaning a gun,</p> <p>14 something like that. I don't know the details of this</p> <p>15 particular incident, but as I look at the policy</p> <p>16 description, I generally have seen those used not in a</p> <p>17 use of force law enforcement context.</p> <p>18 Q. So you view this as an unintentional discharge,</p> <p>19 not a use of force?</p> <p>20 A. That is what I suspect. Without looking up and</p> <p>21 reading the details, that would be consistent of how</p> <p>22 I've seen this policy violation used in the past.</p> <p>23 Q. All right. Why don't you take a look at</p> <p>24 Exhibit 12. This is the coaching of [REDACTED].</p> <p>25 And can you tell what he was coached for based on the</p>

<p style="text-align: right;">Page 242</p> <p>1 policy number here?</p> <p>2 A. 5-105(a)(4), I would have to look it up to be</p> <p>3 sure, but my guess is it's a code of conduct violation</p> <p>4 like language.</p> <p>5 Q. We're going to hand you what we've marked as</p> <p>6 Exhibit 121. And it looks to me that he was coached</p> <p>7 here because his dog jumped on someone, and that is or</p> <p>8 is not an excessive use of force?</p> <p>9 A. So this particular case the dog was walking in a</p> <p>10 public area and jumped on a person. It was not in a use</p> <p>11 of force or a law enforcement context at all and was not</p> <p>12 referred as a use of force incident.</p> <p>13 Q. Are you aware that the policy manual in effect</p> <p>14 today classifies any use of a canine or any discharge of</p> <p>15 a firearm, whether intentional or unintentional, as a</p> <p>16 use of force?</p> <p>17 A. I would have to look at the specific language.</p> <p>18 Q. You don't have any reason to dispute that?</p> <p>19 MR. ENSLIN: Object to the form.</p> <p>20 A. I don't. I would have to look at the specific</p> <p>21 language. I can tell you that in this particular case</p> <p>22 of [REDACTED], this was not referred out using a</p> <p>23 use of force violation. The Professional Code of</p> <p>24 Conduct citation is separate from the use of force</p> <p>25 policy, so this was not coached as a use of force.</p>	<p style="text-align: right;">Page 244</p> <p>1 supervisors.</p> <p>2 Q. So I'll refer you back to the transcript from</p> <p>3 the PCOC meeting, Exhibit 35. And on Page 43, Line 21,</p> <p>4 one of the commissioners asked a fairly direct question.</p> <p>5 She said, "So under your understanding of the matrix,</p> <p>6 something like excessive force would not be eligible for</p> <p>7 coaching?" Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And you gave her a much more succinct answer</p> <p>10 than you gave me, you said, "Yes, that's correct." Do</p> <p>11 you see that?</p> <p>12 A. I do.</p> <p>13 Q. Would it have been more accurate for you to tell</p> <p>14 Ms. Cerra that the chief can do whatever he wants?</p> <p>15 A. Yes, but in the context of all of my comments in</p> <p>16 this full conversation, I was talking about the joint</p> <p>17 supervisor process throughout, and so that is what I was</p> <p>18 referring to.</p> <p>19 Q. You know that that's not what she was referring</p> <p>20 to?</p> <p>21 MR. ENSLIN: Object to the form,</p> <p>22 foundation.</p> <p>23 A. Right, I don't know. I mean, I can guess after</p> <p>24 the fact, but obviously I didn't know at that moment.</p> <p>25 Q. Was there something in her question that</p>
<p style="text-align: right;">Page 243</p> <p>1 Q. What about Exhibit 14, which you should have,</p> <p>2 coaching for a B level violation related to handling of</p> <p>3 firearms. Is that a use of force violation, once you</p> <p>4 find it?</p> <p>5 A. I don't know the details of this case. I would</p> <p>6 have to look it up, similar to what I said in the other</p> <p>7 case with this policy violation, the coaching for</p> <p>8 [REDACTED]. I have seen this policy used in</p> <p>9 nonenforcement, nonuse of force, accidental discharge</p> <p>10 cases. I don't know if that's the case for this</p> <p>11 particular case because I don't actually know the</p> <p>12 details.</p> <p>13 Q. Would you agree with me that excessive use of</p> <p>14 force is not eligible for coaching and must be</p> <p>15 disciplined?</p> <p>16 MR. ENSLIN: Object to the form.</p> <p>17 A. So for the joint supervisors referrals,</p> <p>18 certainly use of force are not a violation for the</p> <p>19 actual use of force against another person.</p> <p>20 Ultimately a chief has the authority to make a</p> <p>21 final discipline decision using both coaching and the</p> <p>22 full range of discipline unconstrained by categories.</p> <p>23 But for the joint supervisory referral, yes, a use of</p> <p>24 force incident or the facts around the use of force</p> <p>25 itself should not be referred to coaching by the joint</p>	<p style="text-align: right;">Page 245</p> <p>1 indicated to you she was only asking about the joint</p> <p>2 supervisor process or was it just your approach to the</p> <p>3 entire meeting?</p> <p>4 A. It was my approach to the entire meeting. I was</p> <p>5 talking about the joint supervisor process, referrals</p> <p>6 specifically.</p> <p>7 Q. In retrospect, it feels like everyone was</p> <p>8 talking past each other at this meeting?</p> <p>9 A. (Nodding head.)</p> <p>10 MR. ENSLIN: Object to the form,</p> <p>11 foundation.</p> <p>12 Q. You're nodding, but do you agree?</p> <p>13 A. Yes, I do think that maybe it wasn't the best</p> <p>14 forum for a nuanced deep discussion.</p> <p>15 Q. All right. We're going to hand you Exhibit 77.</p> <p>16 So this is a document produced by the federation, you</p> <p>17 can see that in the lower right-hand corner. But at</p> <p>18 least most of this would also be a document in the</p> <p>19 possession of the city, correct, including the email</p> <p>20 from you near the top to Steve Fogarty?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And in this email chain you're</p> <p>23 dealing with grievances by two different officers,</p> <p>24 correct, if you go to the second page, [REDACTED]</p> <p>25 [REDACTED]?</p>

<p style="text-align: right;">Page 246</p> <p>1 A. Yes.</p> <p>2 Q. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Okay. And in this email chain you are emailing</p> <p>5 Steve Fogarty of the federation about [REDACTED] in</p> <p>6 particular, do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And discipline issued for three B level</p> <p>9 violations, correct, this is part of the grievance</p> <p>10 process, the email chain?</p> <p>11 A. Correct.</p> <p>12 Q. And you responded that there was just cause for</p> <p>13 discipline in this matter, correct?</p> <p>14 A. Correct.</p> <p>15 Q. But to resolve the grievance you agreed to</p> <p>16 downgrade one of the B level violations to an A level</p> <p>17 and you dropped one of the B level violations</p> <p>18 altogether, is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And then you agreed to coach the A level</p> <p>21 violation that was actually a B level violation,</p> <p>22 correct?</p> <p>23 A. So ultimately it was Chief Arradondo who</p> <p>24 approved this. And yes, we agreed to downgrade vehicle</p> <p>25 seat belt violation to an A violation with coaching and</p>	<p style="text-align: right;">Page 248</p> <p>1 A. Yes. As I've said before, I have not had any</p> <p>2 previous interactions with the federation where the</p> <p>3 federation expressed that they believed that coaching</p> <p>4 was discipline.</p> <p>5 Q. You weren't involved in the grievances we've</p> <p>6 talked about?</p> <p>7 A. No, I was not.</p> <p>8 Q. And because the city hasn't produced all</p> <p>9 relevant documents to us, we don't know if there were</p> <p>10 other grievances like that, you understand that these</p> <p>11 were produced by the federation?</p> <p>12 A. Correct. I have no personal knowledge of any</p> <p>13 grievances related to coaching.</p> <p>14 Q. We're going to hand you Exhibit 79. And you</p> <p>15 are, again this was produced by the federation, but at</p> <p>16 least most of this email string is in the possession of</p> <p>17 the city, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And there's some email correspondence you had</p> <p>20 back in 2021 over a grievance by Lieutenant Garman, is</p> <p>21 that correct?</p> <p>22 A. Correct.</p> <p>23 Q. And you found again just cause for the finding</p> <p>24 of discipline at a B level with a suspension of ten</p> <p>25 hours, correct?</p>
<p style="text-align: right;">Page 247</p> <p>1 retain one of the counts of normal and emergency</p> <p>2 violation at a B level with a suspension of 20 hours.</p> <p>3 Q. And right before -- well, I guess it would be</p> <p>4 the fourth paragraph. You say, "Lieutenant Garman and I</p> <p>5 have verbally agreed to resolve this grievance with</p> <p>6 final discipline amended as follows." Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And then you list both the coaching and the</p> <p>9 suspension, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And so you classified both of those as not only</p> <p>12 discipline, but final discipline, correct?</p> <p>13 MR. ENSLIN: Object to the form.</p> <p>14 A. So the final discipline, the discipline piece</p> <p>15 was the suspension and coaching is nondisciplinary.</p> <p>16 Q. That's not what you said though, correct?</p> <p>17 MR. ENSLIN: Object to the form,</p> <p>18 argumentative.</p> <p>19 A. But that's the message that I intended to convey</p> <p>20 because both the city side, Chief Arradondo and me, and</p> <p>21 the federation side of Lieutenant Garman and Sergeant</p> <p>22 Fogarty, would have known that coaching was</p> <p>23 nondisciplinary.</p> <p>24 Q. That's an assumption you're making today?</p> <p>25 MR. ENSLIN: Object to the form.</p>	<p style="text-align: right;">Page 249</p> <p>1 A. Correct.</p> <p>2 Q. But you agreed to downgrade it to an A level</p> <p>3 with coaching, correct?</p> <p>4 A. Correct, with the approval of Chief Arradondo.</p> <p>5 Q. And in that fourth paragraph you say,</p> <p>6 "Lieutenant Garman and I have verbally agreed to resolve</p> <p>7 this grievance with the final discipline amended as</p> <p>8 follows." Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And unlike 77 where you actually list a</p> <p>11 suspension, here the only thing you list is coaching,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you call that not only discipline, but you</p> <p>15 call it final discipline, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Let's take a look at Exhibit 81. And I'll give</p> <p>18 you a chance to look this over. But in general, this is</p> <p>19 from 2007, it involves alleged misconduct by [REDACTED],</p> <p>20 and he's being given a choice as to a consequence, and</p> <p>21 he is in this email expressing frustration with that</p> <p>22 choice. But I'll give you a minute. Just let me know</p> <p>23 when you're ready.</p> <p>24 A. There's a lot in here. Should I read all the</p> <p>25 way to the end?</p>

<p style="text-align: right;">Page 250</p> <p>1 Q. You're welcome to. You've probably gotten the 2 gist of it by now. 3 A. I think so. 4 Q. Were you aware of the incident or investigation 5 or situation at the time? 6 A. I was. I believe that there was some coverage 7 of this maybe in the City Pages or in another media 8 story. 9 Q. And at least some of these emails were sent to 10 or from city employees, so this would be a document in 11 the possession of the city, correct? 12 A. Yes. It's from 2007, so I'm not sure how easily 13 it would be retrievable on the city's side, but in 14 theory. 15 Q. And [REDACTED] [REDACTED] [REDACTED], is that correct? 19 A. Yes. 20 Q. And what sort of misconduct violation would that 21 be? 22 MR. ENSLIN: Object to the form, 23 foundation. 24 Q. If you know. 25 A. I'm not sure how it was characterized in this</p>	<p style="text-align: right;">Page 252</p> <p>1 A. I believe at one point he -- does he write in 2 here that he understands that it's nondisciplinary and 3 not public, but that he would like to release it 4 himself? 5 Q. He does threaten to release it himself, correct? 6 A. Yes, saying that he understands it's 7 nondisciplinary and therefore not public unless he 8 releases it himself. 9 Q. He does say that? 10 A. Yes. 11 Q. But he does not like the fact that he is being 12 boxed into this corner and that the two are being held 13 up as equivalent choices to him, does he? 14 MR. ENSLIN: Object to the form, 15 foundation. 16 A. I'm not sure if it says in here equivalent, and 17 I didn't get to that point, but yes, I agree with your 18 characterization that he's unhappy about both options. 19 Q. Are you aware of other instances where faced 20 with a threat of substantiated misconduct officers have 21 said either you can take the B level and get disciplined 22 or take the A level and get coached? 23 A. No. 24 Q. Prior to a grievance proceeding? 25 A. No, I'm not aware of any case that was disposed</p>
<p style="text-align: right;">Page 251</p> <p>1 case. It could be an ADH&amp;R investigation, which I 2 believe there's some correspondence with Steve Kennedy 3 who was an HR investigator, so perhaps that is how this 4 was categorized. 5 Q. And it seems here that [REDACTED] was offered one 6 of two alternatives for his misconduct here, he could 7 either meet with the chief for a coaching session, that 8 would sustain A level violation and waive the chance to 9 grieve the findings and consequences; or he could take a 10 B level violation with more severe consequences, but 11 have a chance to challenge the findings. Is that your 12 understanding of the dilemma he faced? 13 A. I didn't read all the way through to the end, 14 but it does sound like that is what he is representing 15 here at the beginning with his discussion about the 16 costs potentially for an arbitration. 17 Q. And do you understand that he was not happy 18 about the two choices he was being offered? 19 A. I do. 20 MR. ENSLIN: Object to the form, 21 foundation. 22 Q. He viewed them both as a form of discipline, 23 correct? 24 MR. ENSLIN: Object to the form, 25 foundation.</p>	<p style="text-align: right;">Page 253</p> <p>1 of that way, or in fact that this case included that 2 discussion. 3 Q. If meeting with the chief for a coaching session 4 did not feel disciplinary, why would any officer be 5 resistant to it? 6 MR. ENSLIN: Object to the form, 7 foundation. 8 A. I mean, I can only speculate of course, but as 9 we talked about before, it doesn't feel good when your 10 supervisor brings up even in a more casual meeting with 11 the chief that something you've done could have been 12 done better or wasn't done the right way. And certainly 13 a meeting with the chief could feel, you know, even, 14 even more fraught than a meeting with your direct 15 supervisor. 16 Now with that said, obviously this chief and [REDACTED] [REDACTED] had a long-term existing relationship, and so 18 that's probably less true than if you plucked any 19 officer off the street whose only interaction with the 20 chief had ever been, you know, maybe at a roll call in 21 passing and when he was sworn in as an officer. But 22 nonetheless, a meeting with the chief is not necessarily 23 going to feel punitive if you understand that it's 24 nondisciplinary, but it's still not going to feel good. 25 Q. And the reason the city would offer the A level</p>

Page 256

1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

12 Q. Okay. And the city would have documents related  
13 to that presumably?  
14 A. Yes.  
15 Q. Let's take a look at Exhibit 84. This is an  
16 email produced by the federation that would also be in  
17 the possession of the city because you were a sender and  
18 a recipient?  
19 A. Yes.  
20 Q. And do you recall this correspondence a year and  
21 a half or so ago, actually two and a half years ago?  
22 A. Yeah, I recall the discussions as part of the  
23 grievance process about this, which we talked about  
24 several documents ago.  
25 Q. Is this the same grievance that we've already

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1 referenced in another document?

2 A. It may be. The seat belt use and emergency

3 driving are the same violations that we talked about

4 related to --

5 Q. Oh, [REDACTED], correct?

6 A. [REDACTED].

7 Q. Right.

8 A. So without comparing the case numbers, I can't

9 be sure, but it's possible that this is exactly the same

10 case that we discussed.

11 Q. Okay. In any event, it looks like someone from

12 the federation is trying to negotiate discipline for

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 Q. And the federation was asking for two B level

18 findings, one addressed with a letter of reprimand, the

19 other addressed with a ten-hour suspension, correct?

20 A. Yes.

21 Q. And you pushed back, you wanted a 20-hour

22 suspension, but agreed that the other B level could be

23 addressed through coaching rather than a letter of

24 reprimand, is that right?

25 A. That's correct.

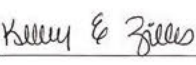
<p style="text-align: right;">Page 258</p> <p>1 Q. And so you were using coaching in lieu of 2 discipline here, correct? 3 A. Correct. 4 Q. Did you view it as equivalent to a letter of 5 reprimand? 6 A. I did not. 7 Q. I'm going to hand you Exhibit 87. You know 8 what, I think I'll actually have you set this one aside. 9 Are you aware that coaching determination 10 letters sometimes issue even for A level violations? 11 A. I'm sorry, could you repeat the question. 12 Q. That sometimes the chief would issue a 13 determination letter even for an A level violation? 14 A. For an A level violation that came out of an 15 investigation? 16 Q. Yes. 17 A. So a coaching, a notice of coaching -- 18 Q. I can give you an example. 19 A. Yeah, that would be helpful. 20 MS. WALKER: Hand her Exhibit 88. 21 Q. So here's an example of what I'm talking about. 22 I'll speculate here, and just tell me if I'm reading 23 between the lines correctly. There were a number of 24 violations alleged, presumably some beyond the A level, 25 so this went to the full administrative investigation,</p>	<p style="text-align: right;">Page 260</p> <p>1 would be read and understood broadly to be 2 nondisciplinary coaching and that that last sentence 3 would be an advisement that repeated conduct could 4 result in disciplinary action, as is our common 5 communication including on a discipline matrix about 6 repeated policy violations including at the A level. 7 Q. I'm going to hand you Exhibit 90. It's a 8 coaching memo to an [REDACTED], do you see that at 9 the top? 10 A. I do. 11 Q. And in the second paragraph he was, it says he 12 was coached for a sustained A violation of a terry stop 13 and pat frisk, do you see that? 14 A. I do. 15 Q. And what that means is he actually violated 16 someone's Fourth Amendment rights, correct? 17 MR. ENSLIN: Object to the form. 18 A. Yes. Without knowing any details, that's how I 19 would understand this. 20 Q. Okay. And that's a constitutional problem, 21 correct? 22 A. Correct. 23 Q. And yet this was coached at the A level, 24 correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 259</p> <p>1 but at the end of the day the chief decided that only 2 one was sustained and should be treated as an A level, 3 is that what happened here? 4 A. That would be my speculation. This letter, like 5 one other that I mentioned signed by the Internal 6 Affairs commander, in that case Commander Chiodo, in 7 this case Commander Granger, instead of a chief or 8 assistant chief. So I'm not sure if there were other 9 variances in the process like that. 10 But it does appear that this was a case 11 involving other potential policy violations above the A 12 level that were not sustained leaving only the category 13 A violation. And I would believe that this would be the 14 results of the full investigative process. 15 Q. And the third paragraph there tells Officer 16 [REDACTED] to be advised that any additional violations of 17 department rules and regulations may result in, "More 18 severe disciplinary action up to and including discharge 19 from employment," correct? 20 A. Correct. 21 Q. Which setting aside what anyone intended, the 22 plain language here suggests that coaching for an A 23 level is disciplinary by using the words more severe 24 disciplinary action, correct? 25 A. As I've said before, I believe that this letter</p>	<p style="text-align: right;">Page 261</p> <p>1 Q. I'm going to hand you Exhibit 91. This is 2 another coaching document arising from an illegal search 3 of a vehicle, correct? 4 A. Correct. 5 Q. That's also a Fourth Amendment violation? 6 MR. ENSLIN: Object to the form. 7 A. Correct. 8 Q. And yet this was also coached at the A level, 9 correct? 10 A. Correct. 11 Q. Are you able to tell from this whether this was 12 immediately referred to the joint supervisors? 13 A. So it says that this stemmed from an event that 14 occurred in March of 2012. I believe that that was 15 before the system that was created with OPCR and the 16 joint supervisors and might have been originally handled 17 in some CRA process and eventually finished up at this 18 later date in 2015, but I would have to look at the full 19 records to really get a sense of that. But with 20 something that's as old as March 2012 that's then being 21 finished in 2015, that's quite a significant time gap. 22 And around 2013 is when that transition from CRA to OPCR 23 occurred. 24 Q. All right. Take a look at Exhibit 92. This is 25 another A level violation resulting in a determination</p>

<p style="text-align: right;">Page 262</p> <p>1 letter issued by Lieutenant Henry Halvorson, do you see 2 that? 3 A. Yes. 4 Q. So the same caveat, since it didn't issue from 5 the chief you're not sure if it went through the full 6 administrative investigation, correct? 7 A. That's correct. I would give this one the same 8 kind of caveats that I gave to the last one. I see from 9 the case number that it was a matter opened in 2012 and 10 it was finished in 2014. There may have been 11 transitions in process that happened around that time. 12 And so without looking at the full file, I'm not sure 13 exactly that this one followed the same reliable process 14 that would have happened later. 15 Q. Okay. And you see the more severe disciplinary 16 language in that third paragraph, correct? 17 A. I do. 18 Q. And for anyone not sort of indoctrinated in what 19 you've described as the police department's culture, 20 that would certainly suggest that even coaching at the A 21 level is disciplinary, correct? 22 MR. ENSLIN: Object to the form, 23 foundation. 24 A. Yes. I would describe it the same way I have in 25 the past that inside the department I believe that this</p>	<p style="text-align: right;">Page 264</p> <p>1 also part of it? 2 A. Yes, employee perception and understanding is 3 also part of it. 4 Q. And so we couldn't rely just on the official 5 policies and public statements of the city here, we 6 would need to look at an individual officer's intent and 7 individual officer's understanding, is that your 8 testimony? 9 MR. ENSLIN: Object to the form, misstates 10 prior testimony, vague and ambiguous. 11 MS. WALKER: I'll withdraw it. We can move 12 on. 13 Q. Take a look at Exhibit 93. Here's another 14 determination letter that looks like a disciplinary 15 letter, would you agree with me? 16 A. Yes, it uses the same format as the notice of 17 discipline letter. 18 Q. And coaching is issued for a sustained A level 19 violation, correct? 20 A. Correct. 21 Q. And the officer is required to sign it on the 22 second page, do you see that? 23 A. Correct. 24 Q. All right. And this took two years, so we can 25 assume it wasn't immediately referred to the joint</p>
<p style="text-align: right;">Page 263</p> <p>1 would have been intended to communicate nondisciplinary 2 coaching and would have been understood broadly that 3 way. 4 Q. And I don't know that you really answered my 5 question on this the last time, so let me try to 6 rephrase it. But is it your position that regardless 7 what the documents say, it is the intent of the 8 department that matters in whether something is 9 disciplinary? 10 MR. ENSLIN: Object to the form, it's been 11 asked multiple times and has been answered multiple 12 times. 13 A. And I believe what I said previously is it was 14 not only the intention of the department, but the effort 15 to communicate that to employees, specifically with the 16 discipline matrix consistently over time and in other 17 communications between supervisors and employees and 18 high ranking members of the department and 19 administration that coaching was not disciplinary. 20 Q. So intent is part of it, but not all of it? 21 A. Correct. Because obviously the intention was 22 translated into the language on the discipline matrix 23 that was intended to communicate that intent to 24 employees. 25 Q. And employee perception and understanding is</p>	<p style="text-align: right;">Page 265</p> <p>1 supervisors, correct? 2 A. Correct. This appears to have come out of a 3 full investigation. 4 Q. And we don't know, but it's very possible that 5 it was sent to the joint supervisors because someone 6 thought it was something above a B level, and then by 7 the end of the day it was treated as an A level, that's 8 possible? 9 A. Correct. Ultimately the chief made the decision 10 that it was an A level and imposed an outcome of 11 coaching. 12 Q. And the sentence right below the little table 13 there says, "As discipline for this incident, you will 14 receive coaching." Did I read that correctly? 15 A. Yes, that's correct. 16 Q. Let's look at Exhibit 94. This is a notice of 17 coaching that you signed, correct? 18 A. Correct. 19 Q. And these are code of conduct violations, 20 correct? 21 A. It's a report writing violation, a code of 22 conduct violation, and a body worn camera violation. 23 Q. Okay. And code of conduct violations are not 24 actually eligible for A level coaching, correct? 25 A. Code of conduct violations typically around</p>

<p style="text-align: right;">Page 266</p> <p>1 language, the department has a practice of referring 2 those for coaching for many years. 3 Q. So even though it's code of conduct, your 4 testimony is that because it relates to language, it can 5 be treated as an A level? 6 A. That has been the department's practice to treat 7 some code of conduct violations as A level and refer for 8 coaching. 9 Q. And in the paragraph right under the redacted 10 area, you told the officer that, "As discipline for this 11 incident, you will receive coaching." Did I read that 12 correctly? 13 A. Yes. 14 Q. And he's required to sign it on the second page, 15 correct? 16 A. Correct. 17 Q. We're going to hand you Exhibit 97. We've just 18 handed you a coaching workgroup document dated 19 November 10th, 2021, correct? 20 A. Correct. 21 Q. Do you recognize this document? 22 A. I do. 23 Q. And you were deputy chief at the time this 24 document issued, correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 268</p> <p>1 our supervisors had really strong skills in supporting, 2 mentoring, coaching employees, not only for the 3 resolution of some kind of complaint, but just for 4 performance overall. 5 And, you know, knowing just where we were at and 6 what was going on in terms of MDHR investigation and 7 then a DOJ investigation, those kinds of skills for 8 supervisors I thought would become incredibly important 9 if we were looking at any kind of settlement agreement 10 or consent decree. And so bringing together a coaching 11 workgroup to get people focused on looking at our 12 current practices, how coaching was used in the rest of 13 the enterprise and in other places and to talk about 14 ways to support supervisors to increase their skills and 15 capacity and get good strong outcomes, it was important. 16 Q. Who received this report when it was issued? 17 A. So I received it and shared it with Chief 18 Arradondo. 19 Q. Is it a coincidence that you formed this group 20 right around the time of the PCOC meeting in May of 21 2021? 22 A. I don't know the date of forming the workgroup 23 off the top of my head. 24 Q. It says June of 2021 in the second paragraph. 25 A. Yeah. So it wasn't directly as a result of the</p>
<p style="text-align: right;">Page 267</p> <p>1 Q. And did you, were you involved in forming this 2 working group? 3 A. Yes, I brought this working group together. 4 Q. Okay. But you were not personally on the 5 working group? 6 A. I was not. 7 Q. How did you pick the people who were on it? 8 A. I sent out an email department wide asking for 9 participation by people who were interested. 10 Q. And so these were just volunteers? 11 A. They were volunteers. 12 Q. Did you personally ask any of them to serve? 13 A. I think I had conversations with Lieutenant Rich 14 Hand about being involved. 15 Q. Why did you form this working group? 16 A. I thought it was important for the department to 17 invest more in coaching and have thought that for a long 18 time in terms of developing better support for 19 supervisors who are doing coaching and training so that 20 they understand how to effectively support employees for 21 better performance. 22 You know, the departments under various chiefs 23 have tried different kinds of training programs focused 24 on different sorts of things, but we have not really, 25 had not really had a concerted effort to make sure that</p>	<p style="text-align: right;">Page 269</p> <p>1 PCOC meeting. And, you know, one of the things was that 2 sort of training and supervisory development that I have 3 long thought that the department should do a better job 4 of investing in and this was one expression of that. 5 And it doesn't have anything to do with whether coaching 6 is or is not discipline, that was not the focus of this 7 workgroup. 8 Q. Did it occur to you that Christopher Granger 9 might be a good person to put on this working group? 10 A. I don't remember thinking about that in 11 particular and he obviously didn't volunteer or express 12 any interest in doing that. 13 Q. On Page 4 it says, "The objective of the project 14 was to review the coaching process and evaluate current 15 practices and identify potential process improvements." 16 Do you see that on the top of Page 4? 17 A. Yes. 18 Q. Was there directive to study only the joint 19 supervisors coaching process or to study coaching across 20 the department, including coaching determination letters 21 by the chief? 22 A. So their focus was on the actual coaching 23 interaction between supervisors and officers. And that 24 was really, that was really what they were intended to 25 focus on. I mean, they certainly, and I haven't read</p>

<p style="text-align: right;">Page 270</p> <p>1 this since November 2021, so I'm not talking with fresh 2 recollection, but looked at coaching, how coaching was 3 used in the rest of the city. And as I recall, talked 4 to supervisors about how they did their coaching, how 5 they worked with employees to do coaching, and sort of 6 their overall coaching processes. 7 But this was not intended to be specifically 8 about the joint supervisors or changing the joint 9 supervisors process or the chief, it was intended to 10 look at how can we do a better job of supporting 11 performance and supporting supervisors in getting good 12 outcomes from coaching. 13 Q. Okay. I ask because a little bit farther down 14 on Page 4 they describe the current process and it seems 15 to only describe the joint supervisor process, do you 16 agree with that? 17 A. Yes. 18 Q. All right. And there's a whole aspect of 19 coaching that happens after an administrative 20 investigation that is not described in this report? 21 A. Correct, they clearly didn't focus on that. 22 Q. Did they even know about it? 23 A. I have no idea. That would be a good question 24 for any of the people from the workgroup. 25 Q. Was information about that withheld from them?</p>	<p style="text-align: right;">Page 272</p> <p>1 Q. Would you agree with me that someone who 2 reviewed the coaching process on Page 4 would have a 3 somewhat skewed view of how coaching works at the 4 Minneapolis Police Department and would have no way of 5 knowing that sometimes determination letters are issued 6 by the chief of police so that violations higher than A 7 level are coached, this doesn't describe that process? 8 A. It's correct that this doesn't describe that 9 process. I see that they have a footnote here that says 10 that they obtained this from the Internal Affairs 11 coaching PowerPoint, so that's probably, you know, 12 indicative of how they evaluated the current process and 13 where that information came from. 14 Q. And at the top of Page 4, that second paragraph, 15 it says they met biweekly for about, the committee was 16 formed in June of 2021 and the report was issued in 17 November and they met biweekly during that time frame, 18 is that your understanding? 19 A. That is what it says. 20 Q. And all their meetings were about the coaching 21 process? 22 A. As far as I know. 23 Q. Do you know if any documents were collected from 24 the individual members of the working group as part of 25 this case and produced to the plaintiff?</p>
<p style="text-align: right;">Page 271</p> <p>1 MR. ENSLIN: Object to the form, 2 foundation. 3 A. I don't know how I could possibly answer that 4 question being that they talked to a whole variety of 5 people during this workgroup and I don't know the 6 content of those conversations. But certainly to the 7 extent that I have knowledge, no one was withholding 8 information from the coaching workgroup. What would be 9 the point of creating a workgroup and then withholding 10 information from them. 11 Q. I agree. Did they talk to you about the 12 coaching process, were you interviewed by them? 13 A. I did talk to them about the coaching process 14 and went to the first meeting to talk generally and 15 answer questions. And then after that I'm not sure who 16 they talked to and I can't remember off the top of my 17 head if there's any list of people in their final 18 report. 19 Q. Do you remember telling them about the 20 administrative coaching we've been talking about? 21 MR. ENSLIN: Object to the form. 22 A. I don't remember specifically the discussion at 23 that meeting, so I'm not sure if we talked about that or 24 did not talk about that, so I can't answer that 25 question.</p>	<p style="text-align: right;">Page 273</p> <p>1 A. I do not know. 2 Q. It sounds like they researched how coaching is 3 used across other city departments in other cities, is 4 that correct? 5 A. Correct. 6 Q. Where does that data they collected reside? 7 A. I don't know. 8 Q. Do you know if it was produced to the plaintiff 9 in this case? 10 A. I don't know. 11 Q. Do you have any objection to it being produced? 12 A. I don't. 13 Q. I'm going to hand you Exhibit 40. And while 14 Isbella is passing it around, I'll tell you that it is 15 the findings of the Department of Justice that were 16 issued this summer. And I'm sure you're familiar with 17 the report, correct? 18 A. I am. 19 Q. And I think you testified that you spoke to the 20 DOJ before they issued the report, is that right? 21 A. I did. 22 Q. Do you remember how many times? 23 A. I don't know, three maybe, certainly more than 24 once. 25 Q. Did you discuss coaching with the DOJ?</p>

<p style="text-align: right;">Page 274</p> <p>1 A. I'm not sure. I mean, those were hours of 2 interview time and they were very wide ranging 3 discussions, so I can't tell you that we discussed 4 coaching or that we didn't discuss coaching. But 5 certainly we, the city provided, you know, an exhaustive 6 amount of material including about all of these manuals 7 for the discipline processes, the discipline matrix, 8 individual matters from OPCR and IA that were resolved 9 in a whole variety of ways. 10 Q. Do you know if your conversations with them were 11 recorded? 12 A. I do not believe that the DOJ recorded any of 13 the interviews. 14 Q. Could you flip to Page 73 of the report. 15 A. 73? 16 Q. Yes. Right under heading C, do you see where I 17 am? 18 A. I do. 19 Q. It says, "The Minneapolis Police Department has 20 used coaching," and then if you skip to the end it says, 21 "to address low level misconduct." You don't know if 22 you're the one that told the DOJ that coaching is used 23 for low level misconduct, you don't remember talking 24 about that? 25 A. No. I mean, that was many hours of interviews,</p>	<p style="text-align: right;">Page 276</p> <p>1 A. I'm, I don't know every incident that the DOJ 2 was referring to. To the extent that I have knowledge 3 about the individual, some of the individual cases, I 4 agree that I would not have chosen to refer some of 5 these incidents that were referred for coaching. 6 Q. Because they're far from low level? 7 A. Because they're far from low level or because 8 the primary conduct issue was they failed to identify. 9 Q. And by that you mean there was multiple forms of 10 misconduct and someone was focused on the least 11 egregious instead of the most egregious? 12 A. Correct. 13 Q. If you could flip back a few pages to Page 67. 14 In the second paragraph about six lines down there's a 15 sentence that begins, "Officers who commit." Do you see 16 where I am? 17 A. I do. 18 Q. It says, "Officers who commit serious misconduct 19 are diverted to coaching or retrained and sometimes the 20 coaching or retraining never happens." Do you agree 21 with that finding? 22 A. Yes. 23 Q. Then it says, "If MPD does investigate a 24 complaint, obvious misconduct is often overlooked or 25 excused." Do you agree with that finding?</p>
<p style="text-align: right;">Page 275</p> <p>1 they interviewed, you know, lots of people within the 2 department including chiefs, former chiefs, people who 3 had worked as Internal Affairs commanders, OPCR, and 4 reviewed all of these kinds of documents. And so, you 5 know, the findings in their report could and probably do 6 come from many sources. 7 Q. Okay. So I'll try to ask succinct questions and 8 if you just want to answer my question, then I'll ask 9 you another one, and if you need to elaborate, just tell 10 me. 11 It's not true that the MPD only uses coaching 12 for low level misconduct, correct, low level being A 13 level, we agreed at the beginning that that's what A 14 level means is low level? 15 A. Yes. So I think I'm going to elaborate. 16 Certainly the joint supervisor process for A level is 17 meant to address low level misconduct, outcomes that 18 come out of chief decisions. The chief may use his or 19 her authority to address violations as they see fit. 20 Q. Okay. Well, let's just look at the next finding 21 by the DOJ at the top of the second paragraph, "We found 22 that MPD refers for coaching many allegations that are 23 far from low level." Did I read that correctly? 24 A. Yes. 25 Q. Do you agree with that?</p>	<p style="text-align: right;">Page 277</p> <p>1 A. I do. 2 Q. Can you flip to Page 68. The last paragraph on 3 the page says, "Our review shows that MPD frequently 4 fails to address police misconduct which allows 5 officers' serious violations of people's rights to go 6 unpunished." Do you agree with that finding? 7 A. I do. 8 Q. They went on starting at Page 71 to identify 9 several examples through Page 76. And in each of these 10 the officer was either sent to training or coaching. 11 And my question for you is, do you agree that in each of 12 these scenarios the officer went unpunished? 13 A. I don't know the underlying details for every 14 one of these incidents described in the findings, but to 15 the extent that I do know, I do agree. 16 Q. Okay. So it's your position that if an officer 17 is merely coached or trained, he is not punished? 18 A. Correct. 19 Q. Even if he feels that it's punitive? 20 A. Yes. 21 Q. Were you involved in changes to the policy 22 manual at the end of December 2020? 23 A. No, I was not. 24 Q. Who was involved in that, would that have been 25 Chief Arradondo?</p>

<p style="text-align: right;">Page 278</p> <p>1 A. That would have been Chief Arradondo and I would 2 believe that he would have included Assistant Chief Kjos 3 and Deputy Chief Henry Halvorson as he was over 4 professional standards, so those would have been the 5 likely people involved in those discussions. 6 Q. I'm just going to ask you some questions and I'd 7 like you to just tell me if you believe they are true or 8 false. 9 First one is, Rule 11 of the Civil Service 10 Commission rules governs the MPD's disciplinary options, 11 is that true or false? 12 MR. ENSLIN: Object to the form. 13 A. True, with the additional information that it 14 can't be read without additional documents to include 15 the contract. 16 Q. Okay. So the Civil Service Commission rules in 17 conjunction with the collective bargaining agreement 18 govern the MPD's disciplinary process, is that your 19 position? 20 A. Yes, that's correct. 21 Q. Okay. True or false, you're not personally 22 aware of any conflicts between the Civil Service 23 Commission rules and the collective bargaining 24 agreement? 25 A. True.</p>	<p style="text-align: right;">Page 280</p> <p>1 questions. 2 Can we go off the record for a second. 3 (Discussion held off the record.) 4 (A break was taken at 4:10 p.m.) 5 MS. WALKER: So off the record counsel 6 discussed some additional documents the city will look 7 for and potentially produce, the plaintiff will provide 8 an email summarizing the specific documents or 9 categories that they believe are missing from the 10 production to date, and counsel also agreed that within 11 a week of receiving the final transcript from this 12 deposition they will designate confidential portions for 13 both the Knudsen and Ms. Huffman's transcripts. 14 MR. ENSLIN: Agreed. 15 MS. WALKER: All right. With that, thank 16 you very much, Ms. Huffman. 17 We can go off the record. 18 (Proceedings concluded for the day at 19 4:19 p.m., 11-07-2023) 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 279</p> <p>1 Q. True or false, the policy manual in effect 2 before 2021 did not exempt A level violations from 3 discipline? 4 MR. ENSLIN: Object to the form. 5 A. I don't think that's a question that can be 6 answered true or false. 7 Q. True or false, the collective bargaining 8 agreement contemplates that an officer may be 9 disciplined for certain violations of the policy manual 10 by receiving a warning? 11 MR. ENSLIN: Object to the form. 12 A. True, if you're only speaking in context of the 13 section about drug and alcohol testing and not the 14 section that contemplates discipline or grievance 15 procedures. 16 Q. And true or false, the collective bargaining 17 agreement does not actually list the forms of discipline 18 available to the MPD? 19 A. Correct. 20 MR. ENSLIN: I'm going to object to the 21 form of all these questions to the extent they refer to 22 written documents which speak for themselves. So to the 23 extent this is some sort of a quiz at the end of a long 24 day is completely inappropriate and I would like to have 25 a standing objection for all of these true or false</p>	<p style="text-align: right;">Page 281</p> <p>1 REPORTER'S CERTIFICATE 2 3 4 STATE OF MINNESOTA ) 5 ) ss. 6 COUNTY OF WASHINGTON ) 7 8 I hereby certify that I reported the deposition of 9 Amelia Huffman on the 7th day of November 2023, in 10 Minneapolis, Minnesota, and that the witness was by me 11 first duly sworn to tell the whole truth; 12 13 That the testimony was transcribed by me and is a 14 true record of the testimony of the witness; 15 That the cost of the original has been charged to 16 the party who noticed the deposition, and that all 17 parties who ordered copies have been charged at the same 18 rate for such copies; 19 20 That I am not a relative or employee or attorney or 21 counsel of any of the parties, or a relative or employee 22 of such attorney or counsel; 23 24 That I am not financially interested in the action 25 and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality; That the right to read and sign the deposition by the witness was reserved. WITNESS MY HAND AND SEAL THIS 17th day of November 2023. 21 22  23 24 Kelley E. Zilles, RPR Notary Public, Washington County, Minnesota My commission expires 1-31-2025 25</p>

<p style="text-align: right;">Page 282</p> <p>1 Veritext Legal Solutions 1100 Superior Ave 2 Suite 1820 3 Cleveland, Ohio 44114 Phone: 216-523-1313</p> <p>4 November 17, 2023</p> <p>5 To: Mark S. Enslin, Esq.</p> <p>6 Case Name: Minnesota Coalition On Government Information v. City Of 7 Minneapolis, Et Al. 8 Veritext Reference Number: 6139782 9 Witness: Amelia Huffman Deposition Date: 11/7/2023</p> <p>10 Dear Sir/Madam:</p> <p>11</p> <p>12 Enclosed please find a deposition transcript. Please have the witness 13 review the transcript and note any changes or corrections on the 14 included errata sheet, indicating the page, line number, change, and 15 the reason for the change. Have the witness' signature notarized and 16 forward the completed page(s) back to us at the Production address shown</p> <p>17 above, or email to production-midwest@veritext.com.</p> <p>18</p> <p>19 If the errata is not returned within thirty days of your receipt of 20 this letter, the reading and signing will be deemed waived.</p> <p>21 Sincerely,</p> <p>22 Production Department</p> <p>23</p> <p>24</p> <p>25 NO NOTARY REQUIRED IN CA</p>	<p style="text-align: right;">Page 284</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT REFERENCE NO: 6139782 CASE NAME: Minnesota Coalition On Government Information v. City Of Minneapolis, Et Al. DATE OF DEPOSITION: 11/7/2023 WITNESS' NAME: Amelia Huffman</p> <p>4 In accordance with the Rules of Civil 5 Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have listed my changes on the attached 8 Errata Sheet, listing page and line numbers as 9 well as the reason(s) for the change(s). 10 I request that these changes be entered as part of the record of my testimony.</p> <p>11 I have executed the Errata Sheet, as well 12 as this Certificate, and request and authorize 13 that both be appended to the transcript of my testimony and be incorporated therein.</p> <p>14 _____ Date Amelia Huffman</p> <p>15 Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that: 16 They have read the transcript; 17 They have listed all of their corrections 18 in the appended Errata Sheet; 19 They signed the foregoing Sworn Statement; and 20 Their execution of this Statement is of their free act and deed. 21 I have affixed my name and official seal 22 this _____ day of _____, 20____.</p> <p>23 _____ Notary Public</p> <p>24</p> <p>25 _____ Commission Expiration Date</p>
<p style="text-align: right;">Page 283</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT REFERENCE NO: 6139782 CASE NAME: Minnesota Coalition On Government Information v. City Of Minneapolis, Et Al. DATE OF DEPOSITION: 11/7/2023 WITNESS' NAME: Amelia Huffman</p> <p>4 In accordance with the Rules of Civil 5 Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have made no changes to the testimony as transcribed by the court reporter.</p> <p>8</p> <p>9 _____ Date Amelia Huffman</p> <p>10 Sworn to and subscribed before me, a Notary Public in and for the State and County, 11 the referenced witness did personally appear and acknowledge that:</p> <p>12 They have read the transcript; 13 They signed the foregoing Sworn Statement; and 14 Their execution of this Statement is of their free act and deed.</p> <p>15 I have affixed my name and official seal 16 this _____ day of _____, 20____.</p> <p>17 _____ Notary Public</p> <p>18 _____ Commission Expiration Date</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 285</p> <p>1 ERRATA SHEET VERITEXT LEGAL SOLUTIONS MIDWEST</p> <p>2 ASSIGNMENT NO: 6139782</p> <p>3 PAGE/LINE(S) / CHANGE /REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____ Date Amelia Huffman</p> <p>21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</p> <p>22 DAY OF _____, 20____.</p> <p>23 _____ Notary Public</p> <p>24</p> <p>25 _____ Commission Expiration Date</p>


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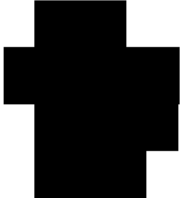
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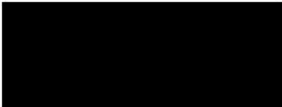

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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# EXHIBIT C

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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Minnesota Coalition On  
Government Information,  
Plaintiff,

v.

City of Minneapolis; Casey J. Carl,  
In his official capacity as Clerk for the City of  
Minneapolis; Nikki Odom, in her official  
Capacity as Chief Human Resources Officer for  
The City of Minneapolis; Minneapolis  
Police Department; and Brian  
O'Hara, in his official capacity as Chief of  
Police for the Minneapolis Police Department.  
Defendants.

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DEPOSITION OF PATIENCE FERGUSON

NOVEMBER 16, 2023

9:00 a.m.

---

File # MW 6289636

COURT REPORTER: Christina DeGrande

## APPEARANCES:

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1 BE IT REMEMBERED that the deposition upon  
2 oral examination of PATIENCE FERGUSON was taken on  
3 November 16th, 2023 at 9:00 a.m. before Christina  
4 DeGrande, Professional Stenographer, Notary Public  
5 in and for the State of Minnesota.

6 Whereupon, the following proceedings were  
7 had, to wit:

8 THE COURT REPORTER: Please raise your  
9 right hand.

10 Do you swear or affirm that the  
11 testimony you are about to provide for the  
12 cause under consideration will be the truth  
13 and the whole truth, so help you?

14 THE WITNESS: Yes.

15  
16 PATIENCE FERGUSON,  
17 a witness in the above-entitled action,  
18 after having been first duly sworn,  
19 testifies and says as follows:

20  
21 DIRECT EXAMINATION

22 BY MS. NASCIMENTO:

23 Q. All right. Good morning Ms. Ferguson. My name is  
24 Isabella Nascimento. I'm with the law firm Ballard  
25 Spahr, and I represent the plaintiff, Minnesota

1 Coalition on Government Information in this case.  
2 Also with me today are my colleagues Rita Walker,  
3 also with Ballard Spahr, and Dan Schulman of ACLU of  
4 Minnesota. Collectively, we all represent the  
5 Plaintiff MNCOGI. And our colleague Emmy Parsons  
6 may be joining virtually eventually here today.  
7 Have you ever been deposed before?

8 A. No.

9 Q. So, I'm going to take just a minute to go over a  
10 couple ground rules. So the testimony you're giving  
11 today, you understand, is for the lawsuit Minnesota  
12 Coalition on Government Information versus the City  
13 of Minneapolis, Casey Carl, Nikki Odom, Brian  
14 O'Hara, correct?

15 A. Mm-hmm.

16 Q. And that's actually going to be one of the ground  
17 rules as well. The court reporter is actually here  
18 taking down everything you say. So we can't say  
19 "mm-hmm" or "uh-huh" because it makes it difficult  
20 for the transcript. So I'm going to ask that you  
21 answer all of my questions with a "yes" or a "no,"  
22 or whatever else; does that make sense?

23 A. Yeah.

24 Q. So if I refer to "MNCOGI," I'm referring to the  
25 plaintiff today, okay?

1 A. Yes.

2 Q. If I refer to "The City defendant," I'm talking  
3 about the City of Minneapolis, the Minneapolis  
4 Police Department, Casey Carl, Nikki Odom, and Brian  
5 O'Hara, okay?

6 A. Yes.

7 Q. If I refer to "The MPD," you know I'm talking about  
8 the Minneapolis Police Department?

9 A. Yes.

10 Q. And if I talk about "The Federation," I mean the  
11 Police Officers Federation of Minneapolis.

12 A. Yes.

13 Q. Okay. And if I refer to "The MGDPA," I mean the  
14 Minnesota Government Data Practices Act.

15 A. Yes.

16 Q. Again, we have a court reporter here taking down  
17 everything we say. In traditional conversation,  
18 it's just very easy for people to talk over each  
19 other. But I'm going to do my best not to start a  
20 new question before you're done answering. And if  
21 you can do the same for me, let me finish my  
22 question before you answer, that would be great; is  
23 that agreed?

24 A. Yeah.

25 Q. Okay. If you don't understand the question, please

1 tell me, otherwise, I'm going to assume that you  
2 understood the question, okay?

3 A. Yes.

4 Q. We can take breaks, just not while a question is  
5 pending. If you'll answer my question first, we can  
6 take a break after that, okay?

7 A. Yes.

8 Q. Occasionally, opposing counsel is going to object to  
9 questions, but that's typically for the record. And  
10 once the attorney's done making their objection, you  
11 can go ahead and answer the question, okay?

12 A. Yes.

13 Q. And all of my questions are just asking about what  
14 you know and what your knowledge of events and  
15 information is. So you can only answer based on  
16 that information. I'm not asking for anyone else's  
17 knowledge, just yours; make sense?

18 A. Yes.

19 Q. And if you need a question repeated because you  
20 didn't hear it or forget the question, sometimes  
21 objections can go long, I can repeat it, or we can  
22 have it read back, okay?

23 A. Yes.

24 Q. So before we started, you were put under oath. So  
25 you understand you're testifying that you're legally

1 obligated to tell the truth, correct?

2 A. Yes.

3 Q. That your testimony today has the same force and  
4 effect as if you were testifying in court?

5 A. Yes.

6 Q. And you're aware the answers you give in your  
7 deposition today may be read to a jury or a judge at  
8 some point?

9 A. Yes.

10 Q. Are you on any medication today that would prevent  
11 you from testifying truthfully?

12 A. No.

13 Q. Is there any other reason you can't answer  
14 truthfully today?

15 A. No.

16 Q. And is there anything at all that may prevent you  
17 from being able to recall events that you would have  
18 personal knowledge of as it relates to this  
19 litigation?

20 A. No.

21 Q. Where do you currently work?

22 A. I work for the Federal Reserve Bank of Minneapolis.

23 Q. So you're no longer employed by the City of  
24 Minneapolis?

25 A. No.

1 Q. When did you leave your position with the City of  
2 Minneapolis?

3 A. I believe it was June 30th, 2022.

4 Q. Thank you. And when you left your position with the  
5 City of Minneapolis, you were chief human resources  
6 officer for the City, correct?

7 A. Yes.

8 Q. What did you do to prepare for today's deposition?

9 A. What did I do to prepare for today's deposition? I  
10 didn't do anything.

11 Q. Fair enough. Did you meet with lawyers for the City  
12 of Minneapolis?

13 A. No.

14 Q. Since you left the City in June, 30th of 2022, have  
15 you met with any lawyers for the City of  
16 Minneapolis --

17 A. No.

18 Q. -- about this case? Did you meet with your  
19 attorney, Mr. O'Brien, in preparation for today's  
20 deposition?

21 A. Yes.

22 Q. How many times did you meet with Mr. O'Brien?

23 A. I believe twice.

24 Q. Was anyone else present during those meetings?

25 A. No.

1 Q. Besides the City attorneys and your attorney,  
2 Mr. O'Brien, did you meet with anyone else to  
3 prepare for this deposition?

4 A. No.

5 Q. Did you review any documents in preparation for  
6 today?

7 A. No.

8 Q. And did you review any other deposition testimony  
9 from this case in preparation?

10 A. No.

11 Q. Have you had any role in identifying or collecting  
12 documents to be produced in this litigation?

13 A. No.

14 Q. And did you tell anyone you were being deposed  
15 today?

16 A. Someone at work, yes.

17 Q. Okay. Who was that person?

18 A. It was the general counsel for the -- for the  
19 Federal Reserve Bank. And the assistant vice  
20 President in legal for the Federal Reserve Bank.

21 Q. Did you talk about what you were being deposed  
22 about?

23 A. I didn't know at the time what I was being deposed  
24 about, so no.

25 Q. Anybody else?

1 A. Probably someone at work.

2 Q. Okay. A spouse or a significant other?

3 A. No.

4 Q. And about this lawsuit in general, have you talked  
5 to anyone about it?

6 A. No.

7 Q. When did you start your job as the chief human  
8 resources officer for the City of Minneapolis?

9 A. I believe it was July. I don't remember the exact  
10 year, but I know I was there for about nine years.

11 Q. Could it have been July of 2013?

12 A. I'm thinking. Yeah, yes.

13 Q. And you were coming from the YWCA in Minneapolis; is  
14 that right?

15 A. Yes.

16 Q. I'm just looking at your LinkedIn; otherwise, I  
17 haven't otherwise done a deep dive. When you were  
18 working as the chief human resources officer, who  
19 did you report to?

20 A. I reported to the City coordinator.

21 Q. And who was that?

22 A. At the time when I left, it was Heather Johnston.  
23 And I also reported to the Civil Service Commission.

24 Q. What were your responsibilities as the chief human  
25 resources officer for the City?

1           A.    I oversaw human capital strategies and policies that  
2                   aligned with the values of the City of Minneapolis  
3                   and worked to ensure that the enterprise human  
4                   capital practices were in line with local, state,  
5                   and federal laws and civil service rules.

6           Q.    What is human capital strategies?

7           A.    That means the areas that are traditionally  
8                   considered functional human resource areas, such as  
9                   total compensation, labor relations, learning and  
10                  development, HR operations, HR business partners,  
11                  and I think I'm missing something. And that's it.

12          Q.    What did a typical day look like for you?

13          A.    A typical day, depending upon what I had to do, was  
14                  either working with my team. I had a team of people  
15                  that oversaw the areas that I oversaw. So  
16                  typically, once a week we met to discuss what our  
17                  overall objectives were, overall work plans were.  
18                  It could be meeting with various department heads.  
19                  There were 22 department heads representing over  
20                  4,000 employees in the City of Minneapolis. It  
21                  could be meetings with the senior leadership team,  
22                  City of Minneapolis. It could be reviewing either  
23                  policies, procedures, or practices. Coaching the  
24                  employees, the directors that reported to me. So  
25                  those are some of the typical things that would go.

1 Sometimes presentations to various stakeholders and  
2 building relationships internally, as well as  
3 externally.

4 Q. I want to make sure that I got some of the main  
5 points of your answer down. So I'm just going to  
6 repeat back a couple things. One thing you  
7 mentioned was that you would meet with various  
8 department heads. There were 22 at the time; is  
9 that right?

10 A. Mm-hmm.

11 Q. And that would include department heads, for  
12 example, the MPD?

13 A. Mm-hmm.

14 Q. You would, for example, coach employees who directly  
15 reported to you?

16 A. Mm-hmm.

17 Q. And you would review policies and practices. Did I  
18 hear that right? And by "policies" -- sorry, I did  
19 not mean to speak over you. By reviewing policies  
20 and practices, that was enterprise-wide?

21 A. That was for enterprise-wide, yes.

22 Q. What were your job responsibilities with respect to  
23 the MGDPA?

24 A. Well, when there were requests, data requests, the  
25 City of Minneapolis had specific guidelines that we

1           had to follow. So my responsibility was just to  
2           ensure that if there were data practice requests  
3           that those were followed to the law.

4           Q. So the City had guidelines. So are those written  
5           down somewhere?

6           A. They should be. Yes, they are. They're on the  
7           website.

8           Q. And when you say you were in charge of making sure  
9           that they were complied with, is that for the entire  
10          HR department or for the City enterprise?

11          A. It was related to human capital related to  
12          employees.

13          Q. So was it part of your job to respond to requests  
14          for data regarding City employees?

15          A. Yes, it was. It was part of our responsibility.  
16          But we worked with the City, the City Clerk's  
17          Office.

18          Q. Were you trained on the guidelines regarding the  
19          MGDPA?

20          A. The -- the staff person that did that was trained,  
21          yes.

22          Q. So there was a particular person in your office that  
23          was assigned to that?

24          A. Yes. But we all went through the City Clerk's  
25          Office. So all the things we did had to be done in

1           accordance with the City Clerk's Office.

2           Q.   Who was the person -- while you were the chief human  
3               resources officer, who was the person that was  
4               assigned to respond to MGDPA requests?

5           A.   I remember her first name, but I don't remember her  
6               last name. Her first name was Tracy.

7           Q.   Tracy. And, so, tell me everything that you would  
8               do when a data request would come in that you -- you  
9               or someone on your team was responsible for  
10              responding to.

11          A.   So I did not respond to data requests at all.

12          Q.   Did you oversee the individual assigned in your  
13               team, their response?

14          A.   No.

15          Q.   Do you know what the process was in the HR  
16               department to identify responsive documents to data  
17               requests received?

18          A.   No.

19          Q.   As chief human resources officer for the City, what  
20               were your job responsibilities specifically with  
21               respect to the MPD?

22          A.   The responsibilities with -- were around the  
23               enterprise policies. So my interactions with the  
24               MPD were related to when we either had to revise an  
25               enterprise-wide policy and would distribute those to

1 the different -- various departments, to update  
2 those policies. For the most part, those were the  
3 only interactions that I had with MPD.

4 Q. So were you responsible for gathering MPD personnel  
5 data?

6 A. No.

7 Q. Maintaining MPD personnel data?

8 A. No.

9 Q. The HR department didn't maintain the MPD's  
10 personnel data?

11 A. I didn't.

12 Q. You didn't personally?

13 A. I did not personally.

14 Q. How about the HR department?

15 A. I'm not sure. It's been a year ago, so I don't  
16 recall.

17 Q. Were you a responsible authority for the MPD for  
18 purposes of dealing with the MGDPA?

19 A. No.

20 Q. What are some examples of enterprise-wide policies  
21 that you, for example, would have to disseminate?

22 A. EEO, equal employment opportunity, return to work,  
23 policies pertaining to compensation. Those are some  
24 examples of policies.

25 Q. Thank you. And is that because they were uniform

1 across every department for the City?

2 A. They were enterprise policies that related to  
3 everyone in the organization, yes.

4 Q. But MPD also had specific MPD policies, correct?

5 A. They would be, yes, which was consistent with all  
6 departments. There may be specific departments that  
7 had their own policies relating to their department.  
8 I didn't oversee those.

9 Q. So, Ms. Walker's going to hand you what's been  
10 previously marked as Exhibit 28.

11 (Exhibit 28 was introduced into the  
12 record.)

13 BY MS. NASCIMENTO:

14 Q. Do you recognize this document?

15 A. No.

16 Q. This is the Complaint in this case. Have you ever  
17 seen it before?

18 A. No.

19 Q. Do you see that you were originally named a  
20 defendant in this case?

21 A. Yes.

22 Q. And you've never seen it before?

23 A. No.

24 Q. All right. So, Ms. Walker's going to hand you  
25 Plaintiff's Exhibit 29.

1 (Exhibit 29 was introduced into the  
2 record.)

3 BY MS. NASCIMENTO:

4 Q. Do you recognize this document?

5 A. No.

6 Q. So this is the Answer that the City filed, in part,  
7 on your behalf, and you never saw it before today?

8 A. No.

9 Q. You didn't review it before it was filed?

10 A. No.

11 Q. You didn't review it for accuracy --

12 A. No.

13 Q. -- before they responded? And you didn't review  
14 either of these in preparation for your testimony  
15 today?

16 A. No.

17 Q. So if you will go back to Exhibit 28, which is the  
18 Complaint. At paragraph 4, which is on page 6 of  
19 the Complaint, it states that under the then  
20 operative labor agreement between the City of  
21 Minneapolis and the Police Officers Federation  
22 Section 12.03, you were considered one of the  
23 responsible authorities with regard to all personnel  
24 data gathered or maintained by the City with regard  
25 to employees of the MPD. Do you see that?

1 A. Mm-hmm.

2 Q. Were you aware that you were a responsible authority  
3 for the MPD?

4 A. No.

5 Q. Ms. Walker's going to hand you what's been  
6 previously marked as Plaintiff's Exhibit 48.

7 (Exhibit 48 was introduced into the  
8 record.)

9 BY MS. NASCIMENTO:

10 Q. And I'm realizing now that we have the copies that  
11 don't have a Bates number on them, so I apologize.  
12 But just -- I'm going to put it for the record. In  
13 our system and what's been exchanged in this case,  
14 the Bates number is Fed0001.

15 So this is the labor agreement that was in  
16 place when this case first began. Have you seen  
17 this Collective Bargaining Agreement before?

18 A. No.

19 Q. You've never read that before?

20 A. No.

21 Q. So if you'll look at Section 12.03, that section is  
22 titled, "Personnel data," and reads, "The Chief of  
23 Police and/or the human resources director or their  
24 respective designees shall be the responsible  
25 authority with regard to all personnel data gathered

1 or maintained by the City with regard to employees  
2 governed by this agreement." Did I read that  
3 correctly?

4 A. Mm-hmm.

5 Q. So you didn't know you were the responsible  
6 authority, correct?

7 MR. O'BRIEN: Just to be clear, the  
8 question assumes something that hasn't been  
9 established because it's an and/or, right?

10 MS. NASCIMENTO: Mm-hmm.

11 BY MS. NASCIMENTO:

12 Q. Do you deny that you're the responsible authority  
13 under this agreement?

14 MR. ENSLIN: Object to the form.

15 BY MS. NASCIMENTO:

16 Q. You can answer.

17 A. I can answer? It could be that I just don't  
18 remember because I've been gone for a year and a  
19 half.

20 Q. Where was personnel data for MPD employees  
21 maintained?

22 A. I don't know.

23 Q. So Ms. Walker's going to hand you what's been  
24 previously marked as Plaintiff's Exhibit 99.

25

1 (Exhibit 99 was introduced into the  
2 record.)

3 BY MS. NASCIMENTO:

4 Q. And, again, I'm realizing this is a Bates-stamped  
5 version of this, but for purposes of the record and  
6 for what's been exchanged in this case in discovery,  
7 the Bates stamp on this is Fed000129. And this is  
8 the current operative labor agreement between the  
9 City of Minneapolis and the Police Officers  
10 Federation. Do you see that?

11 A. Yes.

12 Q. Have you seen this before?

13 A. No.

14 Q. And so this bargaining agreement was in effect while  
15 you were still employed with the City, correct?

16 A. Yes.

17 Q. And, again, I'll direct you to Section 12.03. That  
18 section, again, is titled, "Personnel data," and it  
19 states, "Pursuant to applicable law, all personnel  
20 data gathered or maintained by the City with regard  
21 to all employees governed by this agreement shall be  
22 managed and maintained consistent with department  
23 guidelines."

24 Were you aware that your department was in  
25 charge of managing and maintaining -- gathering or

1 maintaining all personnel data for MPD employees  
2 covered by this Collective Bargaining Agreement?

3 MR. ENSLIN: Objection to form.

4 THE WITNESS: So I recognize that we  
5 oversaw personnel, for one. I'm -- what I'm  
6 hearing you say that -- I AM thinking you're  
7 saying words that are opaque --

8 BY MS. NASCIMENTO:

9 Q. Words that?

10 A. -- where the data is located. That's what I'm  
11 hearing when you're saying that.

12 Q. Understood. Under this agreement, based on what  
13 you're seeing today, do you deny that your  
14 department, the human resources department which you  
15 were in charge of, was tasked with gathering or  
16 maintaining all personnel data with regard to  
17 employees governed by this agreement, which would be  
18 officers for the MPD department?

19 A. I don't recall. I -- again, it's been a year and a  
20 half since I've been at the City.

21 Q. Did the HR department maintain personnel files for  
22 employee -- for other City employees for other City  
23 departments?

24 MR. ENSLIN: Object to form.

25 THE WITNESS: So the question is, did

1                   we maintain personnel files --

2                   BY MS. NASCIMENTO:

3           Q.    Yes.

4           A.    -- in general?

5           Q.    Yes.

6           A.    Is that the question?

7           Q.    Yes.

8           A.    Yes.

9           Q.    And was personnel data for City employees maintained  
10           in their employee files?

11          A.    I believe so, yes.

12          Q.    Including disciplinary history?

13          A.    That, I do not recall.

14          Q.    Okay.  Where did the HR department maintain  
15           personnel files?  And just to be very specific, was  
16           it physical copies in a -- in a file somewhere, or  
17           are they electronic copies?  That's really what I'm  
18           getting at.

19          A.    So when I left the City of Minneapolis, we were in  
20           the process of working to try to convert the  
21           electronic files -- I mean, the paper files to the  
22           electronic files.  So it may have been a combination  
23           of both.  That was a project at the City that I was  
24           working on.

25          Q.    So the physical files, were they in a file room at

1 the HR department?

2 A. Sometimes they would be in the same department,  
3 but...

4 Q. For example, MPD personnel data could be housed  
5 within MPD?

6 A. You know, I'm going to make sure that I understand  
7 the question. Could you repeat it again, please?

8 Q. Yes. So I'm trying to understand where these files  
9 are actually located. So is there an office in the  
10 HR department where all personnel files were kept?

11 A. Okay. Now I understand. The HR department did not  
12 have a central location for all the personnel files  
13 in the HR department.

14 Q. Okay. So where were all these files kept?

15 A. So in some cases, it may have been in this  
16 particular department, but not all personnel files  
17 were in the HR department.

18 Q. I see. While you were working for the City, who  
19 could access those files?

20 A. I -- I do not recall.

21 Q. Could anyone from MPD access the files?

22 A. I do not recall.

23 Q. Could anyone from the City Attorney's Office access  
24 the files?

25 A. I don't know.

1 Q. Could the Federation access the files?

2 A. I do not recall that.

3 Q. Could officers access their own personnel files?

4 A. I do not recall that.

5 Q. Did the human resources department have access to  
6 Federation documents or files?

7 A. I do not know.

8 Q. Are you aware -- do you know who on behalf of the  
9 City was assigned to respond to MNCOGI'S data  
10 requests?

11 A. Pardon me?

12 Q. Do you know who on behalf of the City of Minneapolis  
13 was assigned to respond to MNCOGI data requests in  
14 this case?

15 A. I don't know.

16 Q. At any point, were you contacted to see if the HR  
17 department had any documents responsive to MNCOGI  
18 data requests?

19 A. No.

20 Q. Do you know if anyone else in your department was  
21 contacted to see if your department had documents  
22 responsive to MNCOGI data requests?

23 A. No.

24 Q. You were never sent the requests to review?

25 A. No.

1 Q. You were never sent any documents to see if they  
2 were responsive to the requests?

3 A. No.

4 Q. You never sent anyone any documents for  
5 consideration to be produced in response to MNCOGI's  
6 requests?

7 A. No.

8 Q. You never collected any documents --

9 A. No.

10 Q. -- in response to MNCOGI requests? Before this  
11 lawsuit was filed, had you ever seen the data  
12 request that was submitted that initiated it?

13 A. No.

14 Q. Have you seen it before today?

15 A. No.

16 Q. Okay. Had you even heard about the request before  
17 today?

18 A. I don't recall.

19 Q. But you never saw it before it was denied?

20 A. No.

21 Q. Okay. You never searched for documents responsive  
22 to it?

23 A. No.

24 Q. Do you know whether any searches for documents were  
25 ever conducted in response to MNCOGI's data

1 requests?

2 A. No.

3 Q. So for all you know, it's possible no documents were  
4 ever searched for?

5 MR. ENSLIN: Object to the form.

6 BY MS. NASCIMENTO:

7 Q. You can answer.

8 MR. O'BRIEN: Just to be clear, are you  
9 asking whether --

10 MS. NASCIMENTO: Her knowledge.

11 MR. O'BRIEN: -- she searched or anyone  
12 else searched?

13 MS. NASCIMENTO: Her knowledge.

14 THE WITNESS: No.

15 BY MS. NASCIMENTO:

16 Q. You don't personally have any evidence or knowledge  
17 that anyone conducted any searches in response to  
18 MNCOGI's data request?

19 A. No.

20 Q. You don't have any evidence or personal knowledge of  
21 anyone collecting documents in response to MNCOGI's  
22 data requests?

23 A. No.

24 Q. You don't have any personal knowledge or evidence of  
25 anyone reviewing any documents for consideration for

1 production in response to MNCOGI's request?

2 A. No.

3 Q. It's possible MNCOGI's request was just summarily  
4 denied?

5 MR. ENSLIN: Object to the form.

6 THE WITNESS: I have no knowledge of  
7 that.

8 BY MS. NASCIMENTO:

9 Q. You don't have any evidence or personal knowledge to  
10 the contrary?

11 A. No.

12 Q. Do you know Katherine Knutson?

13 A. No.

14 Q. So Ms. Knutson was assigned to respond to  
15 Minnesota -- MNCOGI data requests on behalf of the  
16 City, and she testified that it's possible she took  
17 no steps to search for documents before denying it.  
18 You don't have any evidence to the contrary to that?

19 A. No.

20 MR. ENSLIN: Object to the form to the  
21 extent it misstates what Ms. Knutson  
22 testified to.

23 BY MS. NASCIMENTO:

24 Q. So let's talk about the actual data request  
25 submitted to the City back in February of 2021.

1 Ms. Walker's going to hand you what's been  
2 previously marked as Plaintiff's Exhibit 2.

3 (Exhibit 2 was introduced into the  
4 record.)

5 BY MS. NASCIMENTO:

6 Q. Do you recognize the document?

7 A. No.

8 Q. Have you ever seen it before?

9 A. No.

10 Q. This is the first time you're seeing it?

11 A. Yes.

12 Q. Can you see at the top it was submitted in February  
13 of 2021?

14 A. Yes.

15 Q. You see that the request has four parts, correct?

16 A. Yes.

17 Q. The first part asks for "All data related to the  
18 coaching of Derek Chauvin, including but not limited  
19 to any coaching documentation forms." Do you see  
20 that?

21 A. Yes.

22 Q. The second asks for "All data related to the  
23 coaching of any officer as a result of his or her  
24 involvement in any one of the 44 incidents  
25 referenced in a particular news report, and then

1 MNCOGI provided the hyperlink to the news report."

2 Do you see that?

3 A. Yes.

4 Q. The third part asks for "All data related to the  
5 coaching of any officer resulting from a sustained  
6 complaint where the complaint alleged A, B, C or  
7 D-level violation and where coaching was the only  
8 corrective action taken." Do you see that?

9 A. Yes.

10 Q. And the fourth part asks for "All data in which  
11 coaching is described as a form of discipline or  
12 acknowledged by the officer or Chief of Police to  
13 constitute a form of discipline." Do you see that  
14 as well?

15 A. Yes.

16 Q. Just to be clear, you were never contacted by anyone  
17 about this request to determine if your department  
18 had any records responsive to it?

19 A. No.

20 Q. You didn't even know it existed?

21 A. No.

22 Q. Do you know what the City of Minneapolis' response  
23 to MNCOGI's request was?

24 A. No.

25 Q. Ms. Walker's going to hand you what's been

1 previously marked as Plaintiff's Exhibit 3.

2 (Exhibit 3 was introduced into the  
3 record.)

4 BY MS. NASCIMENTO:

5 Q. Do you recognize this document?

6 A. No.

7 Q. Have you ever seen it before?

8 A. No.

9 Q. So this is the first time you're seeing it?

10 A. Yes.

11 Q. And you see that Ms. Knutson denied MNCOGI's data  
12 request, correct?

13 A. Yes.

14 Q. About a month after it was submitted?

15 A. Yes.

16 Q. And she denied all four -- all four parts of the  
17 request, correct?

18 MR. ENSLIN: Object to the form.

19 MR. O'BRIEN: The document says what it  
20 says. She hasn't seen it before. Do you  
21 want her to read it?

22 THE WITNESS: Yes. Do you want me to  
23 read this?

24 BY MS. NASCIMENTO:

25 Q. You can read it, if you'd like.

1 A. Yes. I see that it was denied.

2 Q. Thank you. And she actually said that MPD has no  
3 responsive data. Do you see that for her answer?

4 MR. O'BRIEN: Where is that, counsel?

5 MS. NASCIMENTO: It's in the top box  
6 under "Katherine Knutson."

7 THE WITNESS: The first response here?

8 BY MS. NASCIMENTO:

9 Q. The first response, yeah. Did you see that she  
10 says, "MPD has no responsive data"?

11 A. It's that "Coaching is not discipline." Is that  
12 what you're referring to is that paragraph?

13 Q. Yes, that paragraph.

14 A. Okay. Yes.

15 Q. Do you know, as you sit here today, whether  
16 responsive data did, in fact, exist at the time  
17 MNCOGI made that request?

18 A. No.

19 Q. You see her response was specific to MPD, correct?

20 A. Yes.

21 Q. Do you know whether any other City department  
22 possessed responsive data to MNCOGI requests at the  
23 time that it was made?

24 A. No.

25 Q. And I'm assuming, because you never saw this before

1           today, that you didn't have any involvement in  
2           putting together the response to MNCOGI's data  
3           request on behalf of the City, correct?

4           A.    No.

5           Q.    And you didn't discuss the data request with anyone  
6           before it was denied?

7           A.    No.

8           Q.    Are there official personnel files for City  
9           employees?

10          A.    What do you mean by "official"?  Could you clarify  
11          that question?

12          Q.    Yes.  Thank you for asking.  So is there one  
13          official personnel file where particular personnel  
14          data is maintained as opposed to, say, personnel  
15          data being maintained in other areas of the City?  
16          Is there one official personnel file for City  
17          employees?

18          A.    Yes.

19                       MR. ENSLIN:  Object to the form.

20                       THE WITNESS:  Can I answer?

21                       MR. ENSLIN:  Yes.

22                       THE WITNESS:  Yes.

23                       BY MS. NASCIMENTO:

24          Q.    Which department owns or maintains that official  
25          personnel file for the City?

1 MR. ENSLIN: Object to form.

2 BY MS. NASCIMENTO:

3 Q. You can answer.

4 A. I believe it would be -- I'm -- I'm -- part of the  
5 challenge for me is it's been a year and a half, and  
6 I honestly should just say I don't know. I honestly  
7 can't remember.

8 Q. I'm only asking for whatever your personal knowledge  
9 is.

10 A. I can't remember.

11 Q. We've seen a number of coaching determination  
12 letters produced in discovery. And on the bottom of  
13 them, they say they're cc'ed to personnel. Amelia  
14 Hoffman previously testified in this case that this  
15 means their sent to the HR department; is that  
16 correct?

17 MR. ENSLIN: Object to the form,  
18 misstates testimony to the extent it  
19 misstates what Ms. Huffman says, assumes  
20 facts not in evidence.

21 THE WITNESS: I don't know.

22 BY MS. NASCIMENTO:

23 Q. But you don't have a reason to deny that?

24 MR. ENSLIN: Excuse me. Deny what?  
25

1 BY MS. NASCIMENTO:

2 Q. That Ms. Huffman stated that at her --at her  
3 deposition, it meant that they were sending this to  
4 the HR department. You don't have any reason to  
5 doubt that?

6 MR. ENSLIN: Object to the form.

7 MR. O'BRIEN: Same objection.

8 BY MS. NASCIMENTO:

9 Q. You can answer.

10 A. Could you repeat --

11 Q. Yes.

12 A. Could you repeat the question?

13 Q. So we've seen a number of coaching denial letters  
14 produced that have -- at the bottom that say they're  
15 cc'ed to personnel and sent to the HR department.  
16 Do you know whether that is correct?

17 A. I do not know, no.

18 Q. Okay. But you don't have any reason to doubt her  
19 testimony?

20 MR. ENSLIN: Object to the form.

21 Object to the extent it misstates prior  
22 testimony. Object to the extent it assumes  
23 facts that are not in evidence.

24 BY MS. NASCIMENTO:

25 Q. You can answer.

1           A.    And that is an opinion, so I -- I can't answer that  
2                because I do not know.

3           Q.    Other than Ms. Knutson, do you know if anyone else  
4                was involved in responding to MNCOGI data request?

5           A.    No.

6           Q.    Do you know if anyone else gave input on the  
7                response that Ms. Knutson provided?

8           A.    No.

9           Q.    Is it the City of Minneapolis' policy that coaching  
10               is not discipline?

11                       MR. ENSLIN:  Object to the form.

12                       THE WITNESS:  The City does not -- I do  
13                       not recall the City having a policy for  
14                       coaching.

15                       BY MS. NASCIMENTO:

16           Q.    And when you used the word "policy," do you mean a  
17                written policy?

18           A.    A written policy.

19           Q.    Is it the City's position that coaching is not  
20                discipline?

21                       MR. ENSLIN:  Object to the form.

22                       THE WITNESS:  I'm going to answer that,  
23                       but I'm going to answer it from a learning  
24                       and development perspective.  So generally  
25                       speaking, when you look at coaching from an

1 HR practices perspective, coaching is a form  
2 of learning and development and helping an  
3 employee, giving -- helping an employee, but  
4 that is not policy.

5 BY MS. NASCIMENTO:

6 Q. Do you know if the MPD has a policy that coaching is  
7 not discipline?

8 A. No.

9 Q. Are you aware that the City was instructing its  
10 employees that coaching is not discipline?

11 MR. ENSLIN: Object to the form.

12 THE WITNESS: No.

13 BY MS. NASCIMENTO:

14 Q. While you were employed with the City, were you  
15 aware that the City employees assigned to respond to  
16 data requests were not conducting any searches for  
17 responsive data in response to requests that they  
18 unilaterally determined were seeking data they  
19 considered not to be public.

20 MR. O'BRIEN: Could you repeat the  
21 question?

22 BY MS. NASCIMENTO:

23 Q. Yes. Were you aware while you were employed with  
24 the City that City employees assigned to respond to  
25 data requests were not conducting any searches for

1 responsive data in response to requests they  
2 unilaterally determined were seeking data they  
3 considered not to be public?

4 MR. ENSLIN: Same objection.

5 THE WITNESS: No.

6 BY MS. NASCIMENTO:

7 Q. Does that concern you?

8 MR. ENSLIN: Object to the form.

9 THE WITNESS: That is an opinion. I'm  
10 not here to give opinions or concerns. I'm  
11 only interested in giving the facts as I  
12 know it.

13 BY MS. NASCIMENTO:

14 Q. At her deposition, Ms. Knutson testified that  
15 multiple people told her that coaching, as a policy,  
16 is not discipline. Do you know who set that policy?

17 MR. ENSLIN: Object to the form to the  
18 extent it misstates prior testimony.

19 THE WITNESS: I am not -- I'm not aware  
20 of a policy on coaching. I've said that  
21 before.

22 BY MS. NASCIMENTO:

23 Q. So if you'll look at the response itself, the first  
24 sentence reads, "Coaching is not discipline and has  
25 never been discipline." Do you see that?

1 A. Mm-hmm.

2 Q. Do you agree with that statement?

3 A. I agree that coaching is not discipline.

4 Q. Why?

5 A. Because that is not a standard practice within  
6 learning and development, which is a part of the  
7 learning and development function in organizations.

8 Q. Have you reviewed any documents or other information  
9 in the City's possession to reach the conclusion  
10 that coaching is not discipline and has never been  
11 discipline?

12 A. Could you repeat the question?

13 Q. Yes. Have you reviewed any documents or evidence in  
14 the City's possession to reach the conclusion that  
15 coaching is not discipline and has never been  
16 discipline?

17 A. No.

18 Q. That's based on your experience as an HR  
19 professional?

20 A. That is based on my experience as an HR  
21 professional, yes.

22 Q. And not based on any documents or information in the  
23 City's possession?

24 A. No.

25 Q. If there were documents that said coaching is a form

1 of discipline, would that make you reevaluate your  
2 position that coaching is not discipline and has  
3 never been discipline?

4 MR. ENSLIN: Object to the form, calls  
5 for speculation.

6 THE WITNESS: Can I answer?

7 BY MS. NASCIMENTO:

8 Q. You can answer.

9 A. I'm not here to give my opinion. So I -- I'm not  
10 going to take a stance. I'm just going to say what  
11 I said before.

12 Q. And I appreciate that, but I do need you to answer  
13 my question, which is, if there were documents that  
14 coaching is a form of discipline, would that make  
15 you reevaluate your position that coaching is not  
16 and never has been a form of discipline?

17 MR. ENSLIN: Same objection.

18 THE WITNESS: No.

19 BY MS. NASCIMENTO:

20 Q. Why not?

21 A. Because I am coming from the work that has been  
22 studied and evaluated over many years in human  
23 resources, and I'm going to come from that  
24 perspective and not a document from the City that  
25 I've never seen.

1 Q. Okay. So if I show you a document today that says  
2 coaching is being posed as discipline, that's not  
3 going to make you rethink your position?

4 A. No.

5 MR. ENSLIN: Object to the form.

6 BY MS. NASCIMENTO:

7 Q. To your knowledge, did MPD always follow best HR  
8 standard practices with respect to discipline?

9 MR. ENSLIN: Object to the form.

10 THE WITNESS: Could you repeat the  
11 question, please?

12 BY MS. NASCIMENTO:

13 Q. Yes. To your knowledge, did MPD always follow best  
14 HR standard practices with respect to discipline?

15 A. I do not know.

16 Q. Do you know whether the MPD considered coaching to  
17 be discipline?

18 A. I do not know.

19 Q. And so your testimony, that it is your position that  
20 coaching is not discipline, is not specific to the  
21 MPD?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: Would you repeat the  
24 question, please?

25

1 BY MS. NASCIMENTO:

2 Q. Yes. So I asked whether you know whether the MPD  
3 considered coaching to be discipline, correct?

4 A. Mm-hmm.

5 Q. And you said you don't know?

6 A. Right.

7 Q. And so I'm asking your previous testimony, that  
8 coaching is not discipline, isn't specific -- you're  
9 not answering specific to the MPD?

10 MR. ENSLIN: Object to the form.

11 THE WITNESS: No.

12 MS. NASCIMENTO: Could we go off the  
13 record?

14 (A recess was had from 9:48 a.m. until  
15 10:07 a.m.)

16 BY MS. NASCIMENTO:

17 Q. All right. Just a couple more general questions  
18 first. Are there different types of coaching?

19 MR. ENSLIN: Object to the form.

20 THE WITNESS: There are different types  
21 of scenarios, but the coaching is depending  
22 upon the particular situation.

23 BY MS. NASCIMENTO:

24 Q. What kinds of things can employees be coached for?

25 MR. ENSLIN: Object to the form.

1 THE WITNESS: I'll respond in this way:  
2 It depends on the situation with employees.  
3 So there's no -- there's no one specific  
4 kind of thing in terms of different  
5 scenarios. It's really based on the needs  
6 of the employee. So I can't just say, "It's  
7 this and this." It's really based on  
8 individual needs of the employee.

9 BY MS. NASCIMENTO:

10 Q. Who can decide on whether the employee needs to be  
11 coached?

12 MR. ENSLIN: Object to form.

13 THE WITNESS: It's usually between the  
14 employee and the supervisor.

15 BY MS. NASCIMENTO:

16 Q. What about the head of the employee's department?

17 A. I -- I don't -- it's -- it just depends.

18 Q. Depends on what?

19 A. It depends on the particular need of the employee  
20 and the need of the business.

21 Q. When does coaching happen? Is it in the moment?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: So can you be a little  
24 bit more -- explain a little bit more what  
25 you mean by that?

1 BY MS. NASCIMENTO:

2 Q. Yeah. So when an employee does something that they  
3 need to be coached for, when does that coaching  
4 actually happen relative to the behavior for which  
5 they need to be coached?

6 MR. ENSLIN: Object to the form.

7 THE WITNESS: Yeah. I can't respond to  
8 that.

9 BY MS. NASCIMENTO:

10 Q. Does it happen in the moment?

11 MR. ENSLIN: Object to form.

12 THE WITNESS: Yeah. I can't respond to  
13 that.

14 BY MS. NASCIMENTO:

15 Q. Can coaching happen up to a month later?

16 MR. ENSLIN: Object to the form.

17 THE WITNESS: I can't respond to that.

18 BY MS. NASCIMENTO:

19 Q. Why not?

20 A. Because it depends on the particular situation. So  
21 I can't -- can't give you a specific roadmap because  
22 it really does depend on the situation.

23 Q. What happens after an employee is coached?

24 MR. ENSLIN: Object to the form.

25 THE WITNESS: I can't respond to that.

1 BY MS. NASCIMENTO:

2 Q. Is there a form filled out?

3 A. I can't respond to that.

4 Q. You're the City's top HR person, correct?

5 A. That is very true, but as I've said before, it  
6 depends on the situation. I can't say whether there  
7 is going to be a form filled out or not.

8 Q. And the City uses coaching, correct?

9 A. Yes.

10 MR. ENSLIN: Objection.

11 THE WITNESS: The City uses coaching as  
12 a developmental tool, which as I've stated  
13 before, I can't say whether there's a form  
14 of -- each case is different. It's about  
15 learning and development.

16 BY MS. NASCIMENTO:

17 Q. So the City doesn't have a form that it documents  
18 the coaching of its employees?

19 MR. ENSLIN: Object to form.

20 THE WITNESS: I can't say what the City  
21 does because I no longer work for the City.

22 BY MS. NASCIMENTO:

23 Q. Well, you -- sorry. Please finish your answer.

24 A. So I can't say whether there is a form or not. I  
25 don't work for the City anymore. What I can tell

1           you is, it's a developmental tool. What I can also  
2           tell you, it depends on the particular situation  
3           with the particular employee and the supervisor.

4           Q. Okay. While you were working for the City, did the  
5           City have a form that documented the coaching of its  
6           employees?

7                       MR. ENSLIN: Object to the form.

8                       THE WITNESS: I do not recall.

9           BY MS. NASCIMENTO:

10          Q. What do you know about how the MPD uses coaching?

11          A. I have no knowledge of how MPD uses coaching.

12          Q. You don't know when the MPD decides to use coaching?

13          A. I do not know, no.

14          Q. Thank you. You don't know who decides that employee  
15          should be coached in the MPD?

16          A. No.

17          Q. You don't know whether MPD uses coaching the same  
18          way as other departments in the City of Minneapolis?

19          A. No.

20          Q. You don't have any specific knowledge about the  
21          MPD's use of coaching?

22          A. No.

23          Q. None whatsoever?

24          A. No.

25          Q. What about when you worked for the City? Are your

1           answers the same?

2           A.    Yes.

3           Q.    So just to confirm, when you worked for the City,  
4           you didn't know how the MPD was using coaching?

5           A.    Yes.

6           Q.    When you worked for the City, you didn't -- you  
7           weren't aware whether the MPD uses coaching the same  
8           way as other departments within the City?

9           A.    No.

10          Q.    You didn't know what MPD officers were being coached  
11          for?

12          A.    No.

13          Q.    You didn't know whether they were -- whether forms  
14          were being used to document the coaching?

15          A.    No.

16          Q.    You didn't know whether MPD could use coaching to  
17          increase the severity of future discipline?

18          A.    So would you repeat that again?

19          Q.    Yeah.  So while you were working for the City, did  
20          you know whether coaching could be -- coaching by  
21          the MPD could be used to increase the severity of  
22          future coaching disciplines?

23          A.    No.

24          Q.    At some point while you were employed by the City,  
25          did you learn that MPD was using coaching?

1 A. I don't recall.

2 Q. We're going to get to this, but do you recall  
3 attending a meeting for the Police Conduct Oversight  
4 Commission in May of 2021?

5 A. Yes.

6 Q. And that meeting was specific to coaching, correct?

7 A. Yes.

8 Q. And it was, in particular, specific to coaching  
9 being used at the MPD, correct?

10 A. I believe so.

11 Q. And so at some point, you learned that MPD was using  
12 coaching, correct?

13 A. What I recall is I was asked to do a presentation on  
14 coaching. What I don't recall -- because that,  
15 again, has been well over a year ago -- was if I was  
16 coming to talk about coaching related to the MPD. I  
17 don't recall that.

18 Q. Okay. And so you don't know how coaching was  
19 developed in the MPD?

20 A. No.

21 Q. Who developed it?

22 A. No.

23 Q. Who implemented it?

24 A. No.

25 Q. Why it was developed?

1 A. No.

2 Q. You don't know why coaching was created for the MPD?

3 A. No.

4 Q. And you were not involved in the development of  
5 coaching, the use of coaching within the MPD?

6 A. No.

7 Q. So Ms. Walker's going to hand you what's been  
8 previously marked as Plaintiff's Exhibit 116.

9 (Exhibit 116 introduced into the  
10 record.)

11 BY MS. NASCIMENTO:

12 Q. Do you recognize this document?

13 A. No.

14 Q. Have you ever seen it before?

15 A. No.

16 Q. You see at the top, it's an email exchange from  
17 September of 2020?

18 A. Yes.

19 Q. And it's between Casey Carl and a City Council  
20 member Andrew Johnson, correct?

21 A. Yes.

22 Q. And in his initial email, which is actually the  
23 bottom one when it's printed, Mr. Johnson asked  
24 Mr. Carl, "We chatted a couple weeks ago about the  
25 PCOC raising this question of coaching as a form of

1 discipline. I seem to remember you mentioning that  
2 there was some sort of internal work group being  
3 formed that was looking at the data practices issue  
4 related to this to further clarify or vet the issue.  
5 Is that correct? Could you share more details on  
6 that and who was involved?" Do you see that?

7 A. Yes.

8 Q. And then Mr. Carl responded, "Yes, all generally  
9 correct." And then the last line of his email says,  
10 "It hasn't left our radar. Those working would  
11 include City Attorney, City Clerk, and HR as the  
12 primary departments." Do you see that?

13 A. Yes.

14 Q. So this is in September of 2020, just under four  
15 months after George Floyd was murdered, right?

16 A. Yes.

17 Q. And Mr. Carl says that your department is going to  
18 be part of a coaching working group. Did that  
19 working group ever come to be?

20 A. I do not recall.

21 Q. You weren't part of a working group on coaching?

22 A. I do not recall being part of a working group.

23 Q. You don't remember attending any meetings for this  
24 working group?

25 A. I do not recall that.

1 Q. While you were the HR official for the City of  
2 Minneapolis, did you know whether the MPD has two  
3 tracks with respect to coaching?

4 A. No.

5 Q. So you don't know the different processes that MPD  
6 was using to impose coaching?

7 A. No.

8 Q. Are you familiar with coaching at the MPD that  
9 happens as part of the joint supervisor's referral  
10 process?

11 A. No.

12 Q. Are you familiar with coaching at the MPD that  
13 happens after an administrative investigation?

14 A. No.

15 Q. When you were the head of HR, were you familiar with  
16 the MPD policy and procedure manual?

17 A. No.

18 Q. Did you ever review the manual?

19 A. No.

20 Q. Were you ever asked to review the manual?

21 A. No.

22 Q. Were you ever asked to provide any input on the  
23 manual?

24 A. No.

25 Q. Could the HR department suggest changes to the

1 manual?

2 A. I do not know. We -- I don't recall. Back to the  
3 way that I answered before, we -- I was never asked  
4 to provide any input on the MPD's manual.

5 Q. You don't recall ever providing any input on the  
6 MPD's manual?

7 A. No.

8 Q. You don't recall being asked to provide input?

9 A. No.

10 Q. You don't recall whether anyone in your department  
11 was ever asked to provide input on the manual?

12 A. No.

13 Q. So did the HR department have to sign off on changes  
14 to the manual?

15 A. No.

16 Q. And you, as the HR official for the City, never  
17 signed off on any changes to that MPD policy manual?

18 A. No.

19 Q. How about changes to any other MPD policy documents?

20 A. No.

21 Q. So not the discipline matrix?

22 A. No.

23 Q. The discipline process manual?

24 A. No.

25 Q. The complaint process manual?

1 A. No.

2 Q. Did you have to sign off on any changes to any MPD  
3 documents such as coaching documentation forms?

4 A. No.

5 Q. Notice of coaching letters?

6 A. No.

7 Q. Otherwise known as determination letters?

8 A. No.

9 Q. So are you aware that your department was consulted  
10 on the MPD manual change that went into effect on  
11 December 1st, 2020?

12 A. No.

13 Q. So Ms. Walker's going to hand you what's been  
14 previously marked Plaintiff's Exhibit 113.

15 (Exhibit 113 was introduced into the  
16 record.)

17 BY MS. NASCIMENTO:

18 Q. Do you recognize this document?

19 A. No.

20 Q. You've never seen this before?

21 A. No.

22 Q. And you see it's a December 8th email from 2020,  
23 correct?

24 A. Yes.

25 Q. And it's sent from Daniel Boody; is that right?

1 A. Yes.

2 Q. Do you know who Dan Bootie is?

3 A. No.

4 Q. And you see that it was sent to Sarah Almquist?

5 A. Yes.

6 Q. Do you know who Sarah Almquist is?

7 A. Yes.

8 Q. Who is Sarah Almquist?

9 A. She was the former HR business partner supporting  
10 the MPD.

11 Q. And she was assigned specifically to support the  
12 MPD --

13 A. Yes.

14 Q. -- in your department?

15 A. Yes.

16 Q. And you see that Sarah was asked to review the draft  
17 of 2-112 form -- and I assume that's a typo and they  
18 meant "from" -- an HR perspective to see if it's  
19 correct. Do you see that?

20 A. Yes.

21 Q. Do you know whether she reviewed this policy change  
22 before it went into effect?

23 A. No.

24 Q. But Sarah Almquist was someone in your department?

25 A. Yes.

1 Q. She reported to you?

2 A. No.

3 Q. Who did she report to?

4 A. At the time, she reported to Bill Champa.

5 Q. What was Bill Champa's title?

6 A. Director of HR Business Partner Solutions.

7 Q. And did he report directly to you?

8 A. Yes.

9 Q. And here she was -- here, Ms. Almquist was asked to  
10 comment on a policy change for the MPD, correct?

11 A. Yes.

12 Q. And was the MPD the largest City department?

13 A. No.

14 Q. Which was the largest City department?

15 A. Public Works.

16 Q. And copied on the email is a City Attorney Trina  
17 Chernos. Do you see that?

18 A. Yes.

19 Q. And Sarah Almquist is asked to give an HR  
20 perspective on the policy change. You were the  
21 chief HR person for the City at the time. Is it odd  
22 that you were not consulted to give the HR  
23 perspective on a policy change for a City  
24 department?

25 MR. ELSON: Object to the form.

1 THE WITNESS: No.

2 BY MS. NASCIMENTO:

3 Q. Why not?

4 A. Because number one, I -- my role within the City of  
5 Minneapolis was around enterprise-related policies,  
6 not departmental policies. And so I was looking at  
7 the enterprise, those types of policies, not what's  
8 going on within the department. So no.

9 Q. Was Sarah Almquist still employed by the City when  
10 you left?

11 A. No.

12 Q. When did she leave?

13 A. I do not recall.

14 Q. You testified just a bit ago that you recall a  
15 meeting of the Police Conduct Oversight Commission  
16 in May of 2021, correct?

17 A. Yes.

18 Q. And you attended that meeting?

19 A. Yes.

20 Q. Why did you attend that meeting?

21 A. I was asked to attend.

22 Q. Asked by whom?

23 A. I do not recall.

24 Q. And you participated in that meeting along with  
25 several other individuals, including the City

1 Attorney at the time, Jim Rowader, Assistant City  
2 Attorney Trina Chernos, and Chief Medaria Arradondo  
3 and Deputy Amelia Huffman; is that correct?

4 A. Yes.

5 Q. And you listened to what your presenters had to say?

6 A. At the time, yes.

7 Q. And if you had heard them say everything was  
8 inaccurate, would you have interjected?

9 A. I don't recall.

10 Q. I'm not asking what you recall. I'm asking you,  
11 instead, if you had heard them saying something was  
12 inaccurate, would you have interjected?

13 A. I don't know. I don't recall.

14 Q. But you don't recall interjecting to correct them?

15 A. I do not recall, no.

16 Q. So, again, Ms. Walker's going to hand you what's  
17 been previously marked as Plaintiff's Exhibit 101.

18 (Exhibit 101 was introduced into the  
19 record.)

20 BY MS. NASCIMENTO:

21 Q. Do you recognize this document?

22 A. No.

23 Q. Have you ever seen it before?

24 A. I don't recall.

25 Q. You see it's a March 2021 email?

1 A. Yes.

2 Q. From Casey Carl?

3 A. Mm-hmm.

4 Q. To you?

5 A. Mm-hmm.

6 Q. And others?

7 A. Yes.

8 Q. But you don't specifically recall this email?

9 A. No.

10 Q. You see he's telling you and Jim Rowader and Medaria  
11 Arradondo, the three of you need to go to the PCOC  
12 about coaching?

13 A. Yes.

14 Q. Did Mr. Carl tell you what the presentation to you  
15 and your colleagues was?

16 A. Are you asking based on this memo?

17 Q. I'm asking about your recollection.

18 A. I don't recall.

19 Q. As you sit here today, what do you recall was the  
20 purpose for which you were there to talk about  
21 coaching?

22 A. As I recall, the purpose was to talk about the  
23 enterprise's view of coaching related to the City  
24 employees and what the enterprise was.

25 Q. Okay.

1 A. That's what I do recall.

2 Q. And it was not about coaching as used in the MPD  
3 specifically?

4 A. No.

5 Q. That was not your role?

6 A. I don't believe that, no.

7 Q. And you don't recall being told that it was about  
8 just coaching in the MPD with respect to the joint  
9 supervisor's referral process?

10 A. No.

11 Q. So if you look at Mr. Carl's initial email at the  
12 bottom of Exhibit 101 there, what did you understand  
13 Mr. Carl to mean when he said, "The confusing issue  
14 of coaching as discipline has not/will not go away  
15 until addressed."

16 MR. ENSLIN: Object to the form.

17 MR. O'BRIEN: I notice that as you've  
18 been asking questions, she's looking at the  
19 document. Why don't we pause for a minute,  
20 let her read it if you're going to be asking  
21 more questions about it, okay? Take your  
22 time.

23 THE WITNESS: Okay. I'm finished  
24 reading it.

25 BY MS. NASCIMENTO:

1 Q. What did you understand Mr. Carl to mean by, "The  
2 confusing issue of coaching as discipline has  
3 not/will not go away until addressed"?

4 MR. ENSLIN: Object to the form.

5 THE WITNESS: I took it to mean that he  
6 wanted the three of us, the MPD chief, the  
7 City Attorney, and the CHRO, to do a  
8 presentation on coaching.

9 BY MS. NASCIMENTO:

10 Q. What was confusing about coaching?

11 MR. ENSLIN: Object to the form.

12 THE WITNESS: Well, according to what  
13 he wrote in the memo, he said the confusing  
14 issue of coaching will not go away until  
15 addressed by the three people I just  
16 mentioned.

17 BY MS. NASCIMENTO:

18 Q. Why does the issue of coaching as discipline need to  
19 go away?

20 MR. ENSLIN: Object to the form.

21 THE WITNESS: I do not know.

22 BY MS. NASCIMENTO:

23 Q. And you actually responded to Mr. Carl's email. Do  
24 you see that?

25 A. Mm-hmm.

1 Q. And you said, "Casey, I have not seen the legal  
2 memo. Would you please forward?"

3 A. Yes.

4 Q. And he then sent it to you. Do you see that?

5 A. Mm-hmm.

6 Q. Did you read the memo?

7 A. At the time, yes.

8 Q. And you recall your reviewing it?

9 A. I don't recall whether -- I'm assuming I did because  
10 it says, "See attached." But that was quite awhile  
11 ago, so I don't remember.

12 Q. So don't you recall reviewing it?

13 A. I don't recall.

14 Q. So Ms. Walker's going to hand you what's been  
15 previously marked as Plaintiff's Exhibit 59.

16 (Exhibit 59 was introduced into the  
17 record.)

18 BY MS. NASCIMENTO:

19 Q. Do you recognize this document?

20 A. No.

21 Q. Have you ever seen it before?

22 A. I don't recall.

23 Q. When Mr. -- you don't recall reviewing it when  
24 Mr. Carl sent it to you?

25 A. I do not recall.

1 Q. You don't recall reviewing it when Mr. Carl sent it  
2 to you?

3 A. I do not recall.

4 MR. O'BRIEN: Do we know that this is  
5 what we sent? I'm not sure we've  
6 established that, right?

7 MR. ENSLIN: Yes.

8 MR. O'BRIEN: Maybe ask her that, you  
9 know.

10 MS. NASCIMENTO: That's fine.

11 MR. O'BRIEN: Yeah.

12 BY MS. NASCIMENTO:

13 Q. Did you have any input into the text of this memo?

14 A. No. Wait. Let me change that. I don't know.

15 Q. Did you review it for accuracy before it was sent to  
16 the Police Conduct Oversight Commission?

17 A. I do not recall. Could I have an opportunity to  
18 read the memo?

19 Q. Yep.

20 MS. NASCIMENTO: We can go off the  
21 record. Let me know when you're ready.

22 THE WITNESS: Okay.

23 BY MS. NASCIMENTO:

24 Q. Do you recall reviewing this memo when you received  
25 it from Mr. Carl in 2021?

1 A. I don't recall.

2 Q. When you reviewed it just now, did you see anything  
3 with which you disagreed?

4 A. No, I did not.

5 Q. Did you see anything that you thought was  
6 inaccurate?

7 MR. O'BRIEN: Just to be clear, we've  
8 had just a short period of time for her to  
9 review. Do you want her to review it to the  
10 end so she can answer those questions or  
11 just based on did you review -- she has  
12 given it --

13 MS. NASCIMENTO: Based on her review  
14 today.

15 THE WITNESS: So I am giving -- I did  
16 not read every single piece. I did not -- I  
17 did not review the entire manual. I did not  
18 review -- I just did a cursory review.

19 So what I would say is, the parts that  
20 I was able to review and it pertains to what  
21 coaching is as a performance or motivational  
22 participant tool, I do agree with that.

23 Now, I have not read every single piece of  
24 information on this memo that you gave me.  
25 But when you look at the general framework

1                   of coaching, I do agree with it.

2                   BY MS. NASCIMENTO:

3                   Q.    When you reviewed it just now, you didn't see  
4                   anything that you thought was inaccurate?

5                   A.    Yes, that is correct.

6                   Q.    Do you know why this memo was sent to the PCOC in  
7                   the first place?

8                   A.    I do not know why.

9                   Q.    Once Mr. Carl sent it to you in March of 2021, did  
10                  you review any documents to corroborate what was  
11                  sent in this memo?

12                  A.    I do not recall.

13                  Q.    How did you prepare for the May 2021 PCOC meeting?

14                  A.    I don't recall.

15                  Q.    Did you meet with anyone to prepare for that  
16                  meeting?

17                  A.    I don't recall.

18                  Q.    Did you meet with any lawyers prior to the  
19                  presentation?

20                  A.    I don't recall meeting with any attorneys about the  
21                  presentation.

22                  Q.    Do you recall meeting with anyone beside attorneys  
23                  for the City in preparation for that presentation?

24                  A.    I don't recall.

25                  Q.    Anyone from the City Clerk's Office?

1 A. I don't recall.

2 Q. The OPCR?

3 A. No.

4 Q. The Department of Civil Rights?

5 A. No.

6 Q. The MPD?

7 A. No.

8 Q. Do you recall taking any notes in preparation for  
9 this meeting?

10 A. I don't recall.

11 Q. If you did take any notes, would you still have  
12 those notes?

13 A. No.

14 Q. The memo from Ms. Chernos in September of 2020,  
15 Exhibit 59, do you know whether that memo accurately  
16 states how the MPD was using coaching at the time?

17 A. I don't know.

18 Q. Ms. Walker's going to hand you what's been  
19 previously marked as Exhibits 103, 104, 105, 107 and  
20 108.

21 (Exhibits 103, 104, 105, 107 and 108  
22 were introduced into the record.)

23 BY MS. NASCIMENTO:

24 Q. Have you had a chance to look at them?

25 A. No. I was waiting to see if she had any more.

1 Q. Let me know when you're ready.

2 A. Okay.

3 Q. So you testified just a moment ago that you did not  
4 recall whether you met with anyone to prepare for  
5 the May PCOC meeting.

6 A. That's correct.

7 Q. Does this refresh your recollection whether you met  
8 with anyone?

9 A. I still don't recall.

10 Q. So you don't recall having a meeting on May 6, 2021?

11 A. Does that relate to the presentation?

12 Q. The PCOC meeting.

13 A. The presentation?

14 Q. Yes.

15 A. I do recall the presentation itself.

16 Q. Sorry. What I meant was, the meeting on May 6,  
17 2021, was with respect to the meeting but was not  
18 the meeting itself.

19 A. Oh. I don't recall the meeting, no.

20 Q. You don't recall?

21 A. I don't recall.

22 Q. Did anyone instruct you on what to do at the  
23 May 2021 PCOC meeting?

24 A. No, I don't recall that.

25 Q. Besides the slide deck, did you prepare anything

1 else for the meeting?

2 A. Just related to the slide deck, that was it.

3 Q. Did you write down remarks?

4 A. I don't recall writing any remarks down, no.

5 Q. If you did write down remarks, would you still have  
6 a copy of them?

7 A. No.

8 Q. Would anyone else have a copy of remarks that you  
9 wrote down in preparation for that meeting?

10 MR. ENSLIN: Object to the form.

11 THE WITNESS: I don't believe so.

12 BY MS. NASCIMENTO:

13 Q. Did you review any documents in advance of that  
14 meeting to make sure that what you were telling the  
15 PCOC was accurate?

16 A. No. I -- the -- the PowerPoint, the presentation, I  
17 reviewed.

18 Q. Yes. Any other documents besides the presentation?

19 A. I don't recall.

20 Q. Ms. Walker's going to hand you what's been  
21 previously marked as Plaintiff's Exhibit 104. Oh,  
22 sorry. You have Plaintiff's Exhibit 104. Thank  
23 you. Do you recognize this document?

24 A. No.

25 Q. You see it's an email from Trina Chernos?

1 A. Yes.

2 Q. And you were copied on it?

3 A. Yes.

4 Q. And it contains a number of attachments, correct?

5 A. Yes.

6 Q. Now Ms. Walker's going to hand you what's been  
7 previously marked Plaintiff's Exhibits 109, 110, 111  
8 and 112.

9 (Exhibits 109, 110, 111, and 112 were  
10 introduced into the record.)

11 BY MS. NASCIMENTO:

12 Q. So Ms. Ferguson, you see in Exhibit 104 Ms. Chernos  
13 attached four different attachments, correct, to her  
14 email?

15 A. Yes.

16 Q. The first one was a 2014 presentation to PCOC, and  
17 Exhibit 109 is a PowerPoint presentation titled,  
18 "Overview of the Discipline Process Presentation to  
19 the Police Conduct Oversight Commission January  
20 14th, 2014." Would you agree that's the attachment  
21 to her email?

22 A. Yes.

23 Q. The second attachment there is, "Establishment of  
24 the Discipline Matrix." I'm sorry, the second one  
25 in the body of her email that she lists is, "HR

1 Application in the Internet City Talk Defining  
2 Coaching and Providing Guidance on Its Issue -- On  
3 Its Use." Do you see that?

4 A. I do, yes.

5 Q. And Plaintiff's Exhibit 110 is, "The Talk on City  
6 Coaching and Its Use." Would you agree that's the  
7 attachment to Ms. Chernos' email?

8 MR. O'BRIEN: Just to be clear on the  
9 question, are you asking her whether she  
10 remembers that these were the attachments  
11 that came with Exhibit 104?

12 BY MS. NASCIMENTO:

13 Q. Yeah. Do you have any reason to dispute that this  
14 is the second attachment to Ms. Chernos' email?

15 A. So are you -- so there's four different attachments,  
16 right --

17 Q. Yes.

18 A. -- that you referenced.

19 Q. Yes.

20 A. One is the presentation in 2014?

21 Q. Yes.

22 A. That's one. The second one is an HR presentation.

23 Q. Sorry. That's Plaintiff's Exhibit 110. It's a  
24 different exhibit.

25 A. Okay. Okay. So this is -- that's this one, okay.

1                   And then the administrative -- MBT administrative  
2                   announcement, is that --

3           Q.   Plaintiff's Exhibit 111.

4           A.   Okay.

5           Q.   Do you see that's entitled, "Administrative  
6                Announcement by the Minneapolis Police Department"?

7           A.   I see that. And the last one is 112.

8           Q.   The "2021 Administrative Announcements on Policy  
9                Reviews"?

10          A.   Yes.

11          Q.   Do you see the Plaintiff's Exhibit 112 is the  
12               special order on the manual revision?

13          A.   Right. Now, what was the question again?

14          Q.   So I was asking, do you have any reason to disagree  
15               these were attachments to Ms. Chernos' email?

16          A.   I don't recall. Are you asking me --

17          Q.   I'm asking if you have any reason to disagree that  
18               any of these are the attachments. Do you have any  
19               reason to dispute that?

20          A.   No, I do not.

21          Q.   Do you recall reviewing them when she sent them to  
22               you?

23          A.   I don't recall.

24          Q.   And you don't recall seeing anything in them -- at  
25               the time that she sent them, you don't recall seeing

1 anything in them with which you disagreed?

2 MR. ENSLIN: Objection to form.

3 THE WITNESS: I don't recall that.

4 BY MS. NASCIMENTO:

5 Q. Did you review any MPD policies before you went to  
6 present at the PCOC in May 2021?

7 A. I don't recall.

8 Q. Do you speak with the MPD's chief of police  
9 regarding coaching before presenting to the PCOC in  
10 May of 2021?

11 A. I don't recall.

12 Q. Did you speak with the deputy chief before  
13 presenting?

14 A. I don't recall.

15 Q. Did you ask either the chief or the deputy chief  
16 about MPD's process of coaching?

17 A. I don't recall.

18 Q. Did you ask either the chief of police or deputy  
19 chief of police what they were coaching employees  
20 for in the department?

21 A. I don't recall that.

22 Q. Did you ask the head of IAU the process of coaching  
23 being used by the MPD?

24 A. I don't recall that.

25 Q. Or what the MPD was coaching its officers for?

1 A. I don't recall that.

2 Q. Did you ask anyone those questions in the OPCR?

3 A. Could you repeat that?

4 Q. Yup. Did you ask anyone at OPCR about the process  
5 of coaching in the MPD?

6 A. I don't recall that.

7 Q. Did you ask anyone at the OPCR what the employees  
8 were being coached for?

9 A. I don't recall that.

10 Q. Did you talk to Casey Carl to make sure the data  
11 supported what you were telling the PCOC about  
12 coaching?

13 A. I do not recall that.

14 Q. Did you talk to anyone in the City Clerk's Office to  
15 make sure that the data supported what you were  
16 telling the PCOC about coaching?

17 A. I don't recall that.

18 Q. Do you remember if anyone asked you to review their  
19 remarks that they had prepared in advance of the  
20 PCOC meeting?

21 A. I don't recall that.

22 Q. Do you recall reviewing Trina Chernos' statements  
23 before she presented at the meeting?

24 A. No.

25 Q. Or Amelia Huffman's?

1 A. Do not recall that.

2 Q. Medaria Arradondo's?

3 A. I do not recall that.

4 Q. Jim Rowader's?

5 A. I do not recall that.

6 Q. Who prepared the slide deck for the presentation to  
7 the PCOC?

8 A. The slide deck that I presented on?

9 Q. Yes.

10 A. I did.

11 Q. You alone?

12 A. I don't recall if I got any input from my team or  
13 not.

14 Q. Do you recall whether drafts of the slide deck were  
15 circulated amongst the presenters before the  
16 presentation?

17 A. I don't recall.

18 Q. Do you recall anyone making edits to the slide deck  
19 before the presentation?

20 A. I don't recall.

21 Q. Do you still have any copies of that slide deck?

22 A. No.

23 Q. So we have a transcript of the May 2021 PCOC  
24 meeting. So Ms. Walker's going to hand you what's  
25 been previously marked Plaintiff's Exhibit 35, which

1 is that transcript.

2 (Exhibit 35 was introduced into the  
3 record.)

4 BY MS. NASCIMENTO:

5 Q. Have you ever seen this before?

6 A. This transcript?

7 Q. Yeah.

8 A. No.

9 Q. You didn't review it in preparation for your  
10 testimony today?

11 A. No.

12 Q. Did you review the YouTube video of the May 2021  
13 PCOC meeting in preparation for you testimony today?

14 A. No.

15 Q. Ms. Walker's going to hand you what's been  
16 previously marked Plaintiff's Exhibit 102.

17 (Exhibit 102 was introduced into the  
18 record.)

19 BY MS. NASCIMENTO:

20 Q. Do you recognize this?

21 A. Yes.

22 Q. Is this the slide deck of the presentation from the  
23 May 2021 PCOC meeting?

24 A. I believe so.

25 Q. Before you went and presented to the PCOC in May of

1                   2021, were you aware of any concern that MPD was  
2                   using coaching to avoid transparency for instances  
3                   of officer misconduct?

4           A.    I'm trying to remember.  I -- I don't know.  I don't  
5           recall.

6           Q.    Do you recall any concerns that MPD was using  
7           coaching in order to avoid scrutiny of any of its  
8           officers for misconduct?

9                   MR. ENSLIN:  Object to the form.

10                  THE WITNESS:  I don't recall.

11           BY MS. NASCIMENTO:

12           Q.    Do you recall concerns about officer misconduct  
13           really coming to the forefront in light of the  
14           murder of George Floyd by Derrick Chauvin?

15                  MR. ENSLIN:  Objection to form.

16                  THE WITNESS:  I don't recall.

17           BY MS. NASCIMENTO:

18           Q.    Ms. Walker's going to hand you what's been  
19           previously marked as Plaintiff's Exhibit 114.

20                   (Exhibit 114 introduced into the  
21           record.)

22           BY MS. NASCIMENTO:

23           Q.    Do you recognize this document?

24           A.    No.

25           Q.    You see it's an email from Jared Jeffries?

1 A. Yes.

2 Q. Do you know who that is?

3 A. Yes.

4 Q. Who is Jared Jeffries?

5 A. I believe he worked for Mayor Frey. I do not recall  
6 what his -- his title was, but it says his -- so he  
7 is a personal policy public safety officer.

8 Q. It's fine. It is good you are testifying from your  
9 personal recollection, which is we're asking you  
10 for. And you see this email is from May 10th, 2021,  
11 so the day before the PCOC meeting at which you  
12 presented on behalf of the City?

13 A. Yes.

14 Q. You do see Mr. Jeffries wrote, "As many of you know,  
15 some of the PCOC commissioners will be suspicious of  
16 this presentation and what we say, questioning even  
17 the basis of some fundamental premises." Do you see  
18 that?

19 A. Yes, I do.

20 Q. What did you understand Mr. Jeffries meant by that,  
21 "Some of the commissioners will be suspicious of  
22 this presentation"?

23 A. Are you asking me of what my train of thought was  
24 back then in May 2021, or are you talking about  
25 today?

1 Q. May of 2021, what did you understand?

2 A. You know, I don't know what I understood back then.  
3 That was two years ago, so I don't know what I  
4 thought.

5 Q. And what about today? What do you understand  
6 Mr. Jeffries meant by that?

7 MR. ENSLIN: Object to the form.

8 THE WITNESS: I'm just going to go on  
9 what he said. What he says is, is that some  
10 of the PCOC commissioners will be suspicious  
11 of his presentation and that he agreed.

12 BY MS. NASCIMENTO:

13 Q. And before Mr. Jeffries said this to you in an  
14 email, did you know that some of the PCOC  
15 commissioners would be suspicious of your  
16 presentation?

17 A. I didn't know.

18 MR. ENSLIN: Object to the form.

19 BY MS. NASCIMENTO:

20 Q. You can answer.

21 A. I didn't know.

22 Q. Did you have reason to think that?

23 A. No.

24 Q. And you see his other part of the statement there  
25 is, "Please know that there are several who will be

1           very receptive to what we're telling them and the  
2           answers that we will be providing." Do you see  
3           that?

4           A. Yes, I see that.

5           Q. And were you aware of that before Mr. Jeffries told  
6           you that?

7                       MR. ENSLIN: Object to the form.

8                       THE WITNESS: I was not aware of that.

9           BY MS. NASCIMENTO:

10          Q. Did you have reason to know that certain  
11          commissioners would be receptive to what you were  
12          telling them?

13                      MR. ENSLIN: Object to the form.

14                      THE WITNESS: Did I have reason?

15          BY MS. NASCIMENTO:

16          Q. Did you have any relationship with PCOC  
17          commissioners?

18          A. No, I did not.

19          Q. Have you ever spoken to them before?

20          A. No, I had not.

21          Q. Had you ever presented to them before?

22          A. No, I have not.

23          Q. Okay. Did you feel like it was your job at the PCOC  
24          meeting to convince the commissioners of anything?

25          A. No. I -- wait. Could you ask the question again,

1                   please?

2           Q.    Yeah. Did you feel like it was your job at that  
3                   PCOC meeting to convince the commissioners of  
4                   anything?

5           A.    No.

6           Q.    Did you feel like it was your job to convince them  
7                   that coaching was not discipline?

8           A.    No.

9           Q.    Did anyone tell you that was the point of the  
10                  presentation?

11          A.    Was -- the point of the presentation was to convince  
12                  the PCOC that coaching was not discipline --

13          Q.    Yes.

14          A.    -- was that the question?

15          Q.    Yes.

16          A.    No.

17          Q.    So if you'll look back at Exhibit 35, please, and  
18                  specifically at page 13. You'll see at Line 4 it  
19                  says, "Jared Jeffries." And you see that  
20                  Mr. Jeffries was speaking?

21          A.    Yes.

22          Q.    And here he says, "Thank you, Vice Chair Abdi, and  
23                  thank you PCOC Commissioners for inviting me and  
24                  several of the other City staff to tonight's meeting  
25                  to give a presentation on coaching." Do you see

1                   that?

2           A.    Yes.

3           Q.    Did you understand from Mr. Jeffries' introduction  
4                   that the scope of this presentation to the PCOC was  
5                   limited in any way?

6                               MR. ENSLIN:   Object to the form.

7                               THE WITNESS:   Limited to what?

8           BY MS. NASCIMENTO:

9           Q.    That the scope of your discussion on coaching was  
10                  limited in any way, that's my question.

11                              MR. ENSLIN:   Object to the form.

12           BY MS. NASCIMENTO:

13           Q.    Did you understand that the scope about your  
14                  discussion on coaching was limited in any way?

15           A.    That coaching was limited --

16           Q.    Yes.

17           A.    -- in any way?

18           Q.    Yes.

19           A.    I understood it was about coaching, if that's what  
20                  you're asking me.

21           Q.    Coaching, generally?

22           A.    Coaching, yes, generally.

23           Q.    Not any particular type of coaching, correct?

24                              MR. ENSLIN:   Object to the form.

25                              THE WITNESS:   No, just coaching.

1 BY MS. NASCIMENTO:

2 Q. If you flip to the next page, page 14. You were  
3 there to provide, "The HR perspective regarding  
4 coaching in the City of Minneapolis," correct?

5 A. Correct.

6 Q. And this was about the City enterprise, generally.  
7 Right?

8 A. Correct.

9 Q. And not the MPD, specifically?

10 A. Correct.

11 Q. If you look at Line 24. I'm going to read on to the  
12 next page until Line 6. You said, "The way coaching  
13 is done is a generally accepted process that is used  
14 not only in the for profit sector, in the nonprofit  
15 sector, it is also in the public sector. And it is  
16 used as a way to really work and provide  
17 just-in-time, one-on-one feedback with the  
18 developmental focus with regard to employee  
19 performance and employee behaviors." Did I read  
20 that correctly?

21 A. You read it correctly, yes.

22 Q. What does "just-in-time feedback" mean?

23 A. "Just-in-time feedback" means in the moment.

24 Q. Is it fair to say that coaching happens quickly?

25 A. It can happen quickly.

1 Q. It's intended to happen right after the employee's  
2 behavior?

3 MR. ENSLIN: Objection to form.

4 THE WITNESS: What it says is, it's  
5 used in a way to provide just-in-time,  
6 one-on-one feedback with a developmental  
7 focus with regard to employee performance  
8 and employee behaviors. That whole sentence  
9 is not just about immediate. It's -- it's  
10 all of what I said in this particular line  
11 and in this particular paragraph.

12 BY MS. NASCIMENTO:

13 Q. Okay. So on page 15, if you'll look at the next  
14 line, you go on to say, "It is a one-on-one  
15 developmental process. It provides immediate  
16 feedback and direction."

17 A. Mm-hmm.

18 Q. So would you agree with me that you were trying to  
19 say coaching happens quickly?

20 A. What I was saying is, it's a process, and part of it  
21 could be quickly, and part of it is developmental.  
22 So it's not a both and -- it's not an either/or.  
23 It's both, and that's what I said in this paragraph.

24 Q. Can you point me to a place in this transcript where  
25 you said what you're saying today to the PCOC? So

1 can you point me to a place where you say you're  
2 talking about the process generally and that it can  
3 happen quickly but that it doesn't always?

4 MR. O'BRIEN: That's not a fair  
5 question.

6 MR. ENSLIN: Object to form.

7 MR. O'BRIEN: We're going to stop, and  
8 the transcript is how many pages?

9 BY MS. NASCIMENTO:

10 Q. Let's stop. Let me know when you're ready.

11 A. You want me to read this entire thing?

12 Q. Yeah.

13 MR. O'BRIEN: Well, we won't don't need  
14 to stop, but if ever the transcript is going  
15 to be part of the deposition, it should be  
16 on the record.

17 MR. ENSLIN: Is there a more efficient  
18 way to do this?

19 BY MS. NASCIMENTO:

20 Q. Yes. Ms. Ferguson, if you can read pages 14 and 15.

21 MR. ENSLIN: I'll just object. Also,  
22 to the extent you're asking what is in this  
23 transcript, it speaks for itself. So we  
24 don't need to ask the witness whether  
25 something is or is not in here. If it's in

1 here, you can point to it. If it's not,  
2 it's not in here. I don't understand why we  
3 need to waste everyone's time asking whether  
4 she knows something is in here.

5 MS. WALKER: Why don't we take ten  
6 minutes? We'll see if you can distill some  
7 questions. You can take the time to look at  
8 your answers. Your name appears where you  
9 gave a statement. And we'll focus on those.

10 MS. NASCIMENTO: Let's go off the  
11 record.

12 (A recess was had from 10:59 a.m. until  
13 11:15 a.m.)

14 BY MS. NASCIMENTO:

15 Q. So Ms. Ferguson, when you were speaking to the PCOC,  
16 the substance of your remarks span from pages 14 to  
17 page 17, the middle of page 17; is that correct?

18 A. For the most part, correct.

19 MR. O'BRIEN: Just for the record, we  
20 find other comments on pages 29 and 50.

21 BY MS. NASCIMENTO:

22 Q. But the substantial part of your remarks appear on  
23 pages 14 to 17, correct?

24 A. Correct.

25 Q. And what you were describing to the PCOC was the

1 best practice for coaching from an HR perspective,  
2 right?

3 A. Yes.

4 Q. And you're talking about the City enterprise  
5 generally, correct?

6 A. Yes.

7 Q. You didn't mention the MPD in your remarks?

8 A. No.

9 Q. And you didn't mention the MPD because you didn't  
10 actually know how the MPD was using coaching  
11 specifically, right?

12 A. I mentioned because I was coming from the enterprise  
13 perspective. What I'm a little unclear on was I  
14 don't understand the second part of your question.

15 Q. Well, you didn't -- you testified earlier that you  
16 didn't know how the MPD was using coaching.

17 A. Correct.

18 Q. And you still don't?

19 A. Correct.

20 Q. So when you were giving your remarks in May of 2021  
21 to the PCOC, you weren't talking about coaching  
22 specific to the MPD?

23 A. Correct, yes.

24 Q. Because you didn't know how they were using  
25 coaching, correct?

1           A.    That's the part that I'm not quite sure what you  
2                    mean.  What I will say is that when I did the  
3                    presentation, it was based upon the entire  
4                    perspective of the coaching, period.

5           Q.    And you provide -- and you told the PCOC from an HR  
6                    perspective that coaching is a way to work and  
7                    provide just-in-time, one-on-one feedback with a  
8                    developmental focus, correct?

9           A.    Yes.  And I said more than that.

10          Q.    But you said those words --

11          A.    Yes.

12          Q.    -- to the PCOC, correct?  And that was a true  
13                   statement?

14          A.    Yes.

15          Q.    You said that it provides immediate feedback and  
16                   direction, correct?

17          A.    Yes.

18          Q.    And that was true?

19          A.    That is true.

20          Q.    So if you look at Plaintiff's Exhibit 102, which is  
21                   a slide deck.  I want to clarify a couple things  
22                   with respect to that presentation.  You testified  
23                   earlier that you put the slide deck together?

24          A.    Yes.

25          Q.    But I just want to clarify.  So for example, slide 2

1 of that slide deck, which has introductions, in your  
2 remarks to PCOC, you didn't introduce anyone,  
3 correct?

4 A. I don't believe so.

5 Q. Okay. And so you didn't actually put this slide of  
6 this presentation together, correct?

7 A. I don't recall.

8 Q. You don't recall putting it together?

9 A. Wait a minute. Are you saying this particular  
10 introductory slide, did I put it together?

11 Q. Yes.

12 A. I don't recall whether I put it together or not.

13 Q. You didn't introduce anyone at the presentation?

14 A. No, I did not.

15 Q. That wasn't your role at the presentation?

16 A. No.

17 Q. Somebody else introduced the speakers, correct?

18 A. Right. But I don't know if I put this particular  
19 slide together. I thought that was the question you  
20 asked me.

21 Q. Right.

22 A. And I said I don't recall.

23 Q. And Number 5, which says how coaching is applied in  
24 the MPD, you didn't put that slide together,  
25 correct?

1 A. No, I did not.

2 Q. You don't know who put this together?

3 A. I do not recall.

4 Q. And you have no idea if this information that's on  
5 this slide is accurate?

6 A. I do not know.

7 Q. You didn't know at the time?

8 A. The only thing that I know for sure is what I  
9 reported on in the slide and in the presentation  
10 from the CHR's perspective and the enterprise  
11 perspective.

12 Q. Okay. Not the MPD's perspective?

13 A. Correct, yes.

14 Q. So Ms. Ferguson, I have a few questions here about  
15 the MPD's policy and procedure manual, and a  
16 particular provision about it especially. But I  
17 think you testified earlier that you've never read  
18 it, correct?

19 A. That is correct.

20 Q. And so you were never consulted on it, correct?

21 A. That is correct.

22 Q. You can't speak to what it says?

23 A. That is correct.

24 Q. And you can't --

25 A. Yes.

1 Q. -- speak to what it means?

2 A. That is correct, yes.

3 Q. So I'm going to skip those questions. And just to  
4 ask you, if the MPD was using coaching in some  
5 manner contrary to how you described it to the PCOC,  
6 then your statements about coaching would not apply  
7 to the MPD, correct?

8 MR. O'BRIEN: Object to the form.

9 That's a confusing question.

10 THE WITNESS: That is confusing.

11 BY MS. NASCIMENTO:

12 Q. So if the MPD was using coaching that was contrary  
13 to how you described it, would you agree with me  
14 your statements weren't applicable to how they were  
15 using coaching?

16 MR. O'BRIEN: Same objection.

17 THE WITNESS: I'm not sure that I  
18 understand your question. So could you be  
19 more explicit?

20 BY MS. NASCIMENTO:

21 Q. That's okay. I'll withdraw the question, and I'll  
22 move on to something else. As the former chief  
23 human resources officer for the City of Minneapolis,  
24 I think you testified you reported to the Civil  
25 Service Commission, correct?

1 A. And the City coordinator.

2 Q. And so you're familiar with the Civil Service  
3 Commission rules?

4 A. I was at the time.

5 Q. You were at the time. So Ms. Walker's going to hand  
6 you what's been previously marked as Plaintiff's  
7 Exhibit 50.

8 (Exhibit 50 was introduced into the  
9 record.)

10 BY MS. NASCIMENTO:

11 Q. Do you recognize this policy?

12 A. Generally speaking, yes. But I have not seen this  
13 policy in two years.

14 Q. Sure. But you vaguely recall it?

15 A. Yes.

16 Q. Correct. And you see that this governs development  
17 and removal per the civil service rules --

18 A. Yes.

19 Q. -- for the City of Minneapolis?

20 A. Yes.

21 Q. And directing you to Section 11.04. You see this  
22 lists types of disciplinary actions?

23 A. Yes.

24 Q. And the first one there is a warning, correct?

25 A. Correct.

1 Q. And a warning is defined as, "A verbal warning  
2 includes a verbal discussion between the employee  
3 and supervisor covering the details of problem,  
4 plans for correcting the problem, and a written memo  
5 to document the event." Do you see that?

6 A. Yes.

7 Q. So it seems like, based on commission rules, that a  
8 warning has three steps. Would you agree with that?

9 MR. ENSLIN: Object to the form.

10 THE WITNESS: It says it includes.

11 BY MS. NASCIMENTO:

12 Q. Right. So the first step here lists a verbal  
13 warning by the supervisor with the employee about a  
14 problem, right?

15 A. Yes, mm-hmm.

16 Q. The second step is that the discussion involves  
17 making plans to correct the problem?

18 A. Yes.

19 Q. And the third step is that the conversation is then  
20 documented in a written memo --

21 A. Yes.

22 Q. -- correct? And so would you agree with me the  
23 discipline happens when the verbal discussion  
24 happens?

25 MR. ENSLIN: Object to form, calls for

1 legal conclusion.

2 THE WITNESS: Could you repeat the  
3 question?

4 BY MS. NASCIMENTO:

5 Q. Yes. You agree that a warning is a type of  
6 disciplinary action, correct?

7 A. A warning could be a type of disciplinary action.

8 Q. Under the Civil Service Commission rule?

9 A. Mm-hmm.

10 Q. And the discipline of a warning actually happens at  
11 the time of the conversation, not when it's  
12 documented after the fact, correct?

13 MR. ENSLIN: Object to form, calls for  
14 a legal conclusion.

15 THE WITNESS: Yes, I agree. You're  
16 asking me to give an opinion and a  
17 conclusion that I can't give.

18 BY MS. NASCIMENTO:

19 Q. I'm asking you, based on your understanding as an HR  
20 professional and given your background -- your  
21 extensive background as the HR professional, that  
22 with this type of disciplinary action, that a  
23 warning -- that the discipline actually happens when  
24 the employee is spoken to and not just when the --  
25 when the memo is documented?

1 MR. ENSLIN: Same objection.

2 THE WITNESS: I can't answer that  
3 question. It feel as if you're wanting me  
4 to come to a conclusion that I'm not  
5 comfortable with just coming up with a  
6 conclusion.

7 BY MS. NASCIMENTO:

8 Q. Do you know whether the MPD uses warnings?

9 A. I do not.

10 Q. Did you know at the time of the PCOC whether they  
11 used warnings?

12 A. I do not. I did not know.

13 Q. So you did not know at the time MPD uses warnings?

14 A. I don't know.

15 Q. And you still don't know?

16 A. I still don't know.

17 Q. All right. So if you'll look back at Exhibit 35.  
18 This is the PCOC transcript -- meeting transcript,  
19 excuse me. On page 33, you see at line 4, it says  
20 Assistant Attorney Trina Chernos is speaking?

21 A. Yes.

22 Q. And starting at Line 13, Ms. Chernos says, "There is  
23 no obligation to document coaching but that MPD uses  
24 a coaching documentation form, in part, for  
25 accountability." Do you see that?

1 A. Yes.

2 Q. So City Attorney Jeffries seems to be saying  
3 coaching is done verbally, correct?

4 MR. ENSLIN: Object to the form.

5 MR. O'BRIEN: I think she's asking  
6 you -- correct me if I'm wrong -- about  
7 independent knowledge about that rather than  
8 what's stated here?

9 BY MS. NASCIMENTO:

10 Q. Yeah. I'm asking if you understand Ms. Chernos to  
11 be saying coaching itself actually happens orally.  
12 It's a process. It happens orally?

13 MR. ENSLIN: Object to the form.

14 THE WITNESS: I can't -- I am not going  
15 to interpret what former District Attorney  
16 Trina Chernos meant. I can say what's in  
17 here, but I can't interpret what she meant  
18 by that.

19 BY MS. NASCIMENTO:

20 Q. Are you familiar with the coaching documentation  
21 form the MPD uses to document coaching?

22 A. No.

23 Q. Ms. Walker's handing you what's been previously  
24 marked as Plaintiff's Exhibit 32.

25

1 (Exhibit 32 was introduced into the  
2 record.)

3 BY MS. NASCIMENTO:

4 Q. Do you recognize this document?

5 A. No.

6 Q. Okay. You've never seen this before?

7 A. No.

8 Q. So I'll represent to you that this is one of the  
9 coaching documentation forms that the MPD uses.  
10 This particular document is three pages, correct?

11 A. Yes.

12 Q. The first box is titled, "Nature of the complaint"?

13 A. Yes.

14 Q. The second box is titled, "Details of  
15 investigation"?

16 A. Yes.

17 Q. Then, "Details of coaching session"?

18 A. Yes.

19 Q. And then, finally, "Action taken"?

20 A. Yes.

21 Q. And under the, "Details of the coaching session," do  
22 you see that it asks the individual filling out the  
23 form to input the name of the supervisor who met  
24 with the employee?

25 A. Yes.

1 Q. And do you see, then, that it asks for documentation  
2 of the coaching session to be filled in on that?

3 A. Yes.

4 Q. In the section titled, "Action taken," it has a  
5 number of checkboxes, correct?

6 A. Yes.

7 Q. And one of them was the "Officer coached," star,  
8 star?

9 A. Yes.

10 Q. And in small print, that star, star you see in that  
11 -- at the bottom of that same box says, "Supervisor  
12 may want to discuss options for handling similar  
13 situations in the future to avoid complaints." Do  
14 you see that?

15 A. Yes.

16 Q. So it sounds like it's prompting the supervisor to  
17 discuss with the employees plans on how to correct  
18 the problem going forward. Would you agree with  
19 that?

20 MR. ENSLIN: Object to form.

21 THE WITNESS: You're asking me to  
22 interpret what that means? I'm not  
23 comfortable doing that.

24 BY MS. NASCIMENTO:

25 Q. I'm asking you, based on your experience as an HR

1 professional, to tell me what you understand that  
2 that means.

3 A. But I've already mentioned to you that I do not know  
4 what happened in the -- with the police department.  
5 I wasn't involved in this particular coaching  
6 document; therefore, I am not comfortable in saying  
7 what they meant because I didn't have any role in  
8 developing it. So I cannot answer that, based on  
9 HR, based on what MPD has put in this. Because I  
10 didn't have any input into it.

11 Q. I understand your position. My question is, based  
12 on your experience as an HR professional and your  
13 excessive background as an HR professional and your  
14 experience with coaching, what does it mean that a  
15 supervisor may want to discuss options for handling  
16 situations in the MPD?

17 A. And I will repeat what I said to you a few minutes  
18 ago. I didn't have any input on this form. I  
19 cannot interpret what that form meant. And I'm not  
20 going to give my opinion or my expertise in HR  
21 pertaining to coaching when I didn't put form  
22 together. So I cannot respond to that.

23 Q. So you're refusing to answer the question?

24 A. I am not refusing to answer your question. I am --  
25 I already mentioned to you prior to, I didn't have

1 any input, and I didn't have any knowledge how  
2 coaching was done in MPD. I don't know the spirit  
3 behind why this was developed. I've already given  
4 you an overview. The transcript mentions that, and  
5 I've mentioned it, what the overall framework is of  
6 coaching. Now you're asking me to give an  
7 interpretation or opinion on the document that I  
8 didn't have any input in. So no, I am not refusing  
9 to answer your question. What I'm saying is, I  
10 don't know what was meant by this documentation  
11 because I didn't have any input on it, so I'm not  
12 comfortable giving a response to that.

13 Q. Based on familiarity with the Civil Service  
14 Commission rules and now looking at this document,  
15 what is the difference between coaching and a  
16 warning?

17 MR. ENSLIN: Object to the form.

18 THE WITNESS: Coaching -- as I've said  
19 on numerous occasions, coaching is about --  
20 it is a developmental tool. It's a process.  
21 It's about performance management. It is to  
22 try to help the employee get better. It is  
23 not about discipline, but it's about trying  
24 to help the employee improve their  
25 performance and it is done between a

1 supervisor and an employee. That is what  
2 coaching is, and that is what I stated in  
3 the presentation. That is what I've said  
4 when you've asked me questions, and that is  
5 what I will continue to say.

6 BY MS. NASCIMENTO:

7 Q. Thanks. Although my question was, based on your  
8 familiarity with the Civil Service Commission rules  
9 and now looking at this document, what is the  
10 difference between a warning based on the definition  
11 under the Civil Service Commission rules and  
12 coaching using this form? What is the difference?

13 MR. O'BRIEN: Just the ongoing  
14 challenge here that Ms. Ferguson has  
15 mentioned is that even though you've been  
16 reframing the question, you're still trying  
17 to ask her to interpret a document she  
18 doesn't want to and she really shouldn't.  
19 So asking her in the abstract, I think, is  
20 fine. But in connection with what was  
21 intended by that document, she's told you.  
22 She doesn't feel comfortable doing that, and  
23 I think that's fair.

24 MS. NASCIMENTO: I'm not asking for  
25 what was intended. I'm asking for what she

1 knows to be the difference based on  
2 knowledge of the Civil Service Commission  
3 rules and then what's actually on here, not  
4 what it's intended but, instead, what's on  
5 the document.

6 BY MS. NASCIMENTO:

7 Q. What is the difference?

8 A. And what I've also told you, it's almost two years  
9 since I've been employed by the City of Minneapolis.  
10 Along those lines, I do not recall or remember  
11 exactly everything related to the Civil Service  
12 Commission. I've not been employed by the City of  
13 Minneapolis for two years. I'm not comfortable  
14 answering the question because I've been so far  
15 removed from the Civil Service Commission, the City  
16 of Minneapolis, and any related policies. And I'm  
17 not comfortable giving you an opinion on that  
18 because I don't know at this point because I've been  
19 gone for two years.

20 Q. So you wouldn't feel comfortable giving any expert  
21 opinion about coaching in the MPD?

22 A. I wouldn't be comfortable giving an opinion about  
23 coaching in the MPD.

24 Q. And do you don't have any basis or grounds to  
25 distinguish between coaching and a warning?

1 MR. ENSLIN: Objection to form, asked  
2 and answered.

3 THE WITNESS: Could you repeat the  
4 question, please?

5 BY MS. NASCIMENTO:

6 Q. You don't have any grounds to distinguish between  
7 coaching used and a warning, correct?

8 A. I do not have any grounds to distinguish that, no, I  
9 do not.

10 Q. While you were at the City, were you aware the MPD  
11 uses the rest of the types of disciplinary action  
12 from the Civil Service Commission rules?

13 A. So one of the things -- no, I was not. Now,  
14 recognizing -- and I believe that that is in this  
15 particular document -- that the civil service rules  
16 is one piece of this, but it also would depend on  
17 what's in the labor agreement.

18 Q. Yes, I agree with you. My -- so you were -- just to  
19 clarify, your testimony was you weren't aware at the  
20 time that you were employed by the City that the  
21 MPD, in the Collective Bargaining Agreement,  
22 actually lists the rest of the discipline types as  
23 the Civil Service Commission?

24 A. I was not aware, that is correct.

25 Q. And still are not aware?

1 A. I am not aware. That is correct.

2 Q. At the time that you were working for the City of  
3 Minneapolis, were you aware of any other forms of  
4 disciplinary action used by the MPD as disciplinary  
5 action?

6 A. I was not aware.

7 Q. Do you have any grounds to distinguish between  
8 coaching and a documented oral reprimand at the MPD?

9 A. I do not.

10 Q. You weren't aware how frequently the MPD used a  
11 documented oral correction?

12 A. No.

13 Q. Or a documented oral reprimand?

14 A. No.

15 Q. While you were the chief human resource officer for  
16 the City, did you know who could document oral  
17 reprimands on officers?

18 A. No.

19 Q. Or how the oral reprimand is documented?

20 A. No.

21 Q. Did you ever have any discussions about the MPD's  
22 use of documented oral reprimands?

23 A. No.

24 Q. Were you aware that eventually the Chief of Police  
25 can impose discipline on officers at the MPD?

1 A. No.

2 Q. I think I can probably cut a number of these  
3 questions. So do you want to break for lunch and I  
4 can actually slash out stuff.

5 MR. O'BRIEN: Unless we can get  
6 finished in short order, we prefer to sit  
7 and get done.

8 THE WITNESS: I would rather sit and  
9 get done.

10 MR. O'BRIEN: How much time do you  
11 think you have?

12 MS. NASCIMENTO: We probably need 30  
13 minutes, but we can streamline a bit.

14 MR. O'BRIEN: Thirty minutes of the  
15 deposition left?

16 MS. NASCIMENTO: No, to see how much we  
17 can cut.

18 MR. O'BRIEN: Okay.

19 MS. NASCIMENTO: Let's go off the  
20 record while we discuss it.

21 (A recess was had from 11:37 a.m. until  
22 1:29 p.m.)

23 BY MS. NASCIMENTO:

24 Q. So I'm going to point you back to Plaintiff's  
25 Exhibit 35, which is the Police Conduct Oversight

1 Commission meeting transcript and specifically on  
2 page 33, and Ms. Chernos' statement starting at Line  
3 9. Let me know when you're there.

4 A. Okay.

5 Q. She says, "In the City, we have a practice of trying  
6 to always make sure that an employee leaves a  
7 conversation understanding whether discipline has  
8 occurred or not." Do you see that?

9 A. Yes, I do.

10 Q. Is that an accurate statement?

11 A. I don't know.

12 Q. While you were with the City, did the City have a  
13 practice of always trying to make sure that an  
14 employee left a conversation knowing discipline  
15 occurred?

16 A. So I wasn't involved in conversations related to  
17 discipline. I will have to assume that given the  
18 fact that the -- this was made by the Assistant City  
19 Attorney Trina Chernos that would be an accurate  
20 statement based on what she has said.

21 Q. You don't have any information or reason to disagree  
22 with her?

23 A. No.

24 Q. And would you agree it's an HR best practice to make  
25 sure your employees leave a conversation knowing

1                   whether they've been disciplined or not?

2           A.    Yes.

3           Q.    And is one way to do that by conveying that to them  
4                   in a conversation?

5           A.    As opposed to --

6           Q.    Is another way to do that in writing?

7           A.    Could you repeat the question, please?

8           Q.    Yeah.  Is one way to convey to an employee to make  
9                   sure that they leave knowing whether discipline has  
10                  occurred or not -- is one way to do that to convey  
11                  that to them in a conversation with them?

12          A.    Yes combined with some sort of documentation.

13                   MS. NASCIMENTO:  I have no further  
14                   questions.

15                   THE WITNESS:  Period?

16                   MS. NASCIMENTO:  Yeah, that's it.

17                   THE WITNESS:  Okay.

18                   MS. NASCIMENTO:  I told you it was  
19                   going to be quick.

20                   MR. ENSLIN:  Let's go off the record.  
21                   You have the right to see the transcript and  
22                   to sign it for accuracy.

23                   THE WITNESS:  Okay.

24                   MR. O'BRIEN:  And substance should be  
25                   correct and substance and completion in your

1                   answers.

2                   THE WITNESS:   Okay.

3                   MR. O'BRIEN:   Yeah.   Usually -- usually  
4                   the court reporter gets it right, but --

5                   THE WITNESS:   Okay.

6                   MR. O'BRIEN:   And I think you should do  
7                   that.

8                   THE WITNESS:   Okay.   Do we do that now?

9                   MS. NASCIMENTO:   No.

10                  THE WITNESS:   Okay.

11                  MR. O'BRIEN:   You do it under penalty  
12                  of perjury, though.

13                  THE WITNESS:   Okay.

14                  (The foregoing proceeding concluded at  
15                  1:32 p.m.)

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December 5, 2023

To: Mr. O'Brien

Case Name: Minnesota Coalition On Government Information v. City Of  
Minneapolis, Et Al.

Veritext Reference Number: 6289636

Witness: Patience Ferguson                      Deposition Date: 11/16/2023

Dear Sir/Madam:

The deposition transcript taken in the above-referenced  
matter, with the reading and signing having not been  
expressly waived, has been completed and is available  
for review and signature. Please call our office to  
make arrangements for a convenient location to  
accomplish this or if you prefer a certified transcript  
can be purchased.

If the errata is not returned within thirty days of your  
receipt of this letter, the reading and signing will be  
deemed waived.

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6289636

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 11/16/2023

WITNESS' NAME: Patience Ferguson

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date Patience Ferguson

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6289636

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 11/16/2023

WITNESS' NAME: Patience Ferguson

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have listed my changes on the attached  
Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

I request that these changes be entered  
as part of the record of my testimony.

I have executed the Errata Sheet, as well  
as this Certificate, and request and authorize  
that both be appended to the transcript of my  
testimony and be incorporated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patience Ferguson

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They have listed all of their corrections  
in the appended Errata Sheet;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
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\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

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Date

Patience Ferguson

21

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22

DAY OF \_\_\_\_\_, 20\_\_\_\_ .

23

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25

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

## VERITEXT LEGAL SOLUTIONS

## COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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# **EXHIBIT**

# **D**

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1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

3  
4 MINNESOTA COALITION ON  
GOVERNMENT INFORMATION,

5 Plaintiff, Court File No. 27-CV-21-7237

6 vs.

7 CITY OF MINNEAPOLIS; CASEY J. CARL,  
In his official capacity as Clerk for the City of  
8 Minneapolis; NIKKI ODOM, in her official  
Capacity as Chief Human Resources Officer for  
9 The City of Minneapolis; MINNEAPOLIS  
POLICE DEPARTMENT; and BRIAN  
10 O'HARA, in his official capacity as Chief of  
Police for the Minneapolis Police Department,

11 Defendants.  
12  
13

14 DEPOSITION OF  
15 SERGEANT SHERRAL SCHMIDT  
16

17  
18 DATE: February 8, 2024

19 TIME: 8:47 a.m.

20 PLACE: Ballard Spahr LLP

2000 IDS Center

21 80 South 8th

Minneapolis, Minnesota

22  
23  
24 Reported By: Christine K. Herman, RPR, CRR

25 Job #6384522

## A P P E A R A N C E S

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16 Minneapolis Police Department17 Exhibit 48 Labor Agreement, January 1, 2017 57  
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1 Exhibit 155 Article from CBS News 251  
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3 Minneapolis Response to Plaintiff's  
4 First Set of Requests for Admission

5 Exhibit 163 Police Officers' Federation of 199  
6 Minneapolis Amended Response to  
7 Plaintiff's First Set of Requests  
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9 Exhibit 168 Email string, to [REDACTED]-dated 260  
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10 FED003162 - 3163

11 Exhibit 169 October 11, 2011 email from 117  
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12 FED002735

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15  
16 REPORTER'S NOTE: All quotations from exhibits are  
17 reflected in the manner in which they were read into  
18 the record and do not necessarily indicate an exact  
19 quote from the document.

20

21

22

23

24

25

## P R O C E E D I N G S

Whereupon,

SERGEANT SHERRAL SCHMIDT,

a witness in the above-entitled matter,

after having been first duly sworn,

deposes and says as follows:

## EXAMINATION

BY MS. WALKER:

Q. Good morning, Ms. Schmidt.

A. Good morning.

Q. My name is Leita Walker. I'm an attorney with Ballard Spahr, and I represent the plaintiff in this case.

A. Okay.

Q. And with me today are my colleagues Isabella Nascimento and Matt Thornton, also with Ballard Spahr. And another associate, Emmy Parsons, is watching remotely.

So thank you for being here today. And you understand you're here testifying on behalf of the Minneapolis Police Officers Federation, correct?

A. Yes.

Q. And you are currently the president of the federation; is that right?

1 A. I am.

2 Q. And how long have you been president?

3 A. 2021. Since 2021.

4 Q. Okay. Have you ever been deposed before?

5 A. Yes, I have.

6 Q. Okay. How many times?

7 A. I think twice.

8 Q. In connection with your work for the  
9 federation or as a police officer?

10 A. As a police officer.

11 Q. Do you remember when the last time was?

12 A. Probably -- probably 2015, I think.  
13 Around there. 2014.

14 Q. Do you know what that case was about?

15 A. It was some litigation over use of DVS.  
16 There was a big case involving several -- I think it  
17 was around 2014.

18 Q. What is DVS?

19 A. Vehicle Service, like the database where  
20 we can look people up.

21 Q. All right. And the other time you were  
22 deposed, when was that?

23 A. Gosh. That was when I first came on the  
24 department, so probably 2000s. And it was in  
25 relation to a lawsuit.

1 Q. About what?

2 A. I believe it was a use of force.

3 Q. Do you know the officer who was involved?

4 A. Well, I was involved in part of it. I  
5 can't even tell you who the other ones were, it was  
6 so long ago.

7 Q. A civil lawsuit by the civilian?

8 A. Yes.

9 Q. Okay. This is just me not knowing.

10 As president of the federation, are you  
11 still a rank and file officer within the Minneapolis  
12 Police Department?

13 A. Yes. So I'm a sergeant, so yes.

14 Q. Okay. And how long have you worked for  
15 the Minneapolis Police Department?

16 A. Since 1996.

17 Q. Okay. And how long have you had a role  
18 with the federation?

19 A. I was elected to my first term on the  
20 board in 2004, as a director.

21 Q. Okay. So 10 years. Ten years ago.

22 No. Twenty years ago. Okay.

23 Time flies when you're having fun.

24 A. It does.

25 Q. And my understanding is that board members

1 are volunteers, the president is a paid position.  
2 Is that correct?

3 A. We get a stipend.

4 Q. So just a few rules for the deposition,  
5 which you may remember from the last time. You're  
6 already doing a good job of letting me ask a  
7 question and then you answering so we don't  
8 interrupt each other, which would mess up the court  
9 reporter. If you don't understand a question,  
10 please ask for clarification.

11 Please answer verbally rather than nodding  
12 your head, which of course the transcript doesn't  
13 pick up.

14 You understand today that you're under  
15 oath, correct?

16 A. Yes, I do.

17 Q. And there's no reason today, such as  
18 medication or any other reason, that you can't be  
19 truthful today, correct?

20 A. Correct.

21 Q. Beyond working for the Minneapolis Police  
22 Department, have you held any other jobs with the  
23 City of Minneapolis?

24 A. No.

25 Q. Okay. And in the years you were with the

1 Minneapolis Police Department, did you have any  
2 involvement in responding to Data Practices  
3 requests?

4 A. No.

5 Q. And you understand what a Data Practice  
6 request is?

7 A. I do.

8 Q. Okay. Did you have any involvement in  
9 your years with the Minneapolis Police Department in  
10 the disciplinary process?

11 A. No. As far as deciding discipline, no.

12 Q. Okay. I assume, as a sergeant, you are a  
13 supervisor of other officers?

14 A. Yes. I could be. I could be if I was  
15 assigned to a shift, but I'm not assigned to a  
16 shift.

17 Q. Okay. When was the last time you were  
18 assigned to a shift?

19 A. In 2014, probably.

20 Q. And at that point you were a supervisor  
21 over other officers?

22 A. Correct.

23 Q. And so in your role as a supervisor, would  
24 you have been involved in coaching officers?

25 MR. KELLY: Objection. Outside the scope.

1 MS. WALKER: She can answer?

2 MR. KELLY: Yeah. I mean --

3 MS. WALKER: I'm just trying to lay some  
4 general background about familiarity with coaching.

5 MR. KELLY: No, I understand. But she's  
6 here as the federation representative, not as a  
7 sergeant from the police department.

8 So to the extent that it's asking about  
9 Sergeant Schmidt's personal actions, we're objecting  
10 as outside the scope of the 30.02 deposition.

11 MS. WALKER: Okay. Are you instructing  
12 her not to answer?

13 MR. KELLY: No. She can answer. That's  
14 fine.

15 MS. WALKER: Can you repeat the question?

16 (Whereupon, the court reporter read back  
17 the requested portion of the record.)

18 A. I could have been if I received a coaching  
19 form on someone.

20 Q (BY MS. WALKER) Okay. Do you have any  
21 specific recollection of that?

22 A. I do not.

23 Q. And you would have -- in a supervisory  
24 role, you would have been --

25 Well, I'll withdraw that question and come

1 back to it.

2 (Premarked Deposition Exhibit Number 129  
3 introduced.)

4 Q. So we're handing you what's been premarked  
5 as Exhibit 129, which are the topics that we noticed  
6 for this corporate deposition of the Minneapolis  
7 Police Officers Federation.

8 A. Okay.

9 Q. My first question is whether you've ever  
10 seen this document before.

11 A. Yes. It looks like one of the many that I  
12 have seen relating to this.

13 Q. And you can see, if you flip several pages  
14 in, past the multiple definitions, on page 9 there's  
15 a list of topics of examination.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And as far as you know, you're the  
19 only witness the Federation has designated to  
20 testify today, correct?

21 A. Correct.

22 Q. Okay. And are you prepared to testify to  
23 all of these topics today?

24 A. I will try my best.

25 Q. You're not aware that the Court has

1       excused the Federation from testifying to any of  
2       these topics, correct?

3             A.     Correct.

4             Q.     Can you talk to me about how you prepared  
5       for today?

6             A.     I looked over these documents, and then  
7       those Bates number cases, I looked over those, and  
8       then Joe and I talked about what this process looks  
9       like.

10            Q.     Okay. And when you talk about the  
11       Bates-numbered cases, you're looking at a  
12       spreadsheet there as you talk?

13            A.     Yes.

14            Q.     Is that what you're referencing?

15            A.     Yes.

16            Q.     Okay. Do you mind if I see that?

17                   MS. WALKER: Okay. And maybe we could  
18       just clarify for the record, Joe, that this  
19       spreadsheet, the witness -- the printed spreadsheet  
20       the witness was looking at is a list of documents  
21       that we included in topics 12 through 15. Is that  
22       accurate?

23                   MR. KELLY: Yes.

24                   MS. WALKER: Okay.

25

1 MS. WALKER: Why don't we go ahead and  
2 just mark this as an exhibit.

3 MR. KELLY: Sure. It's going to be need  
4 to be marked as confidential.

5 MS. WALKER: I'm going to -- I don't have  
6 a copy of it, so I'm going to write "confidential"  
7 on it so we don't forget.

8 (Deposition Exhibit Number 180 marked.)

9 Q (BY MS. WALKER) And this will be  
10 Exhibit 180.

11 A. Okay.

12 Q. And so the documents listed in  
13 Exhibit 180, those would be the only documents you  
14 reviewed in preparation for today; is that correct?

15 A. Those, and then like these legal forms  
16 that were sent to me.

17 Q. Okay. But you didn't review, for example,  
18 the collective bargaining agreement before today?

19 A. I deal with the collective bargaining unit  
20 every day, or agreement every day, so I really  
21 wouldn't need much review of that.

22 Q. I understand. So you're very familiar  
23 with it?

24 A. Yes.

25 Q. But you didn't review it specifically to

1 prepare for today?

2 A. No.

3 Q. Just another example. You didn't review  
4 the Complaint in this case or the Federation's  
5 answer before today. Is that correct?

6 A. I've seen the Complaint. I don't -- I did  
7 not read the whole thing before coming here today.

8 Q. When was the last time you looked at the  
9 Complaint?

10 A. Probably early January, when we were  
11 starting to put together --

12 Q. Okay. What about the Federation's written  
13 responses to discovery? Did you review those in  
14 preparation for today?

15 A. Yes.

16 Q. Okay. When did you look at those?

17 A. Earlier this week.

18 Q. Any other documents that you reviewed  
19 beyond the Complaint, collective bargaining  
20 agreement, responses to discovery, and the documents  
21 listed on Exhibit 180?

22 A. Not that I can think of.

23 Q. How many times did you meet with counsel  
24 to prepare for today?

25 A. Earlier this week, and then today before

1 we came in here.

2 Q. Okay. And in January as well?

3 A. We went over -- Yeah. Probably early  
4 January.

5 Q. Okay. So you think --

6 A. Probably three times.

7 Q. -- other than this morning -- or including  
8 this morning, three times?

9 A. Three times. Yeah.

10 Q. Did you consult with anyone else in  
11 preparing for your deposition today, the  
12 Federation's deposition today?

13 A. No.

14 Q. Okay. And just so you know, I may  
15 occasionally is say "your," and when I say that  
16 today, I'm really talking about the Federation as an  
17 entity.

18 A. Okay.

19 Q. If you're confused by that, just ask me to  
20 clarify.

21 A. Okay.

22 Q. Did you speak with Bob Kroll in preparing  
23 for today?

24 A. No.

25 Q. Is he involved in any way in Federation

1 business these days?

2 A. No.

3 Q. Did you prepare any notes in preparation  
4 for today?

5 A. No.

6 Q. I'm going to hand you what's been  
7 premarked as Exhibit 2.

8 (Premarked Deposition Exhibit Number 2  
9 introduced.)

10 Q. And you could probably set Exhibit 129 and  
11 Exhibit 180 to the side, so that we can refer back  
12 to them if we need to.

13 All right. So we've just handed you  
14 Exhibit 2, which -- Let me back up.

15 You understand the plaintiff in this case  
16 is a nonprofit called the Minnesota Coalition on  
17 Government Information, correct?

18 A. Yep.

19 Q. And in February of 2021, they submitted a  
20 Data Practices request to the City. Do you  
21 understand that?

22 A. Yes.

23 Q. And Exhibit 2 is that request?

24 A. Okay.

25 Q. And my first question is whether you've

1 ever seen this before.

2 A. I believe that was part of the plethora of  
3 information that I got relating to this case. I  
4 think it was part of some of the legal stuff.

5 Q. Okay. So you think this was one of the  
6 documents you reviewed today -- to prepare for  
7 today?

8 A. Yes.

9 Q. Approximately how many hours do you think  
10 you spent preparing for today?

11 A. Probably eight to ten.

12 Q. Prior to getting documents from your  
13 attorney in preparation for today --

14 I'll withdraw that. Let me ask a  
15 different question.

16 Had you ever seen this before January of  
17 2024?

18 A. Not that I can remember.

19 Q. Okay. So you don't have any knowledge  
20 that the Federation received this document from the  
21 City back in 2021, when it was submitted?

22 A. I do not remember seeing this document.

23 Q. Okay. But on behalf of the Federation,  
24 you don't know that the Federation ever received it?

25 A. I do not know if the Federation ever

1 received it.

2 Q. Would it be unusual for the City to send a  
3 Data Practices request to the Federation?

4 A. I've never seen one come in my years on  
5 the board.

6 Q. And fair to say, then, you did not -- No  
7 one at the Federation saw this before the City  
8 responded to the Data Practices request?

9 A. Yeah. I would say that's accurate.

10 Q. Okay. And no one at the Federation would  
11 have seen this before MNCOGI sued the City; is that  
12 correct?

13 A. Correct.

14 Q. Does the Federation ever receive notice  
15 from the City about certain data that's being  
16 requested?

17 A. I would see if an officer is notified that  
18 their data has been requested and they send it to  
19 me. I would see it that way. But the City doesn't,  
20 as a matter of practice, send me that stuff.

21 Q. So the City interacts with the officer,  
22 and it's up to the officer to escalate it to the  
23 Federation?

24 A. Correct.

25 Q. Okay. And if I understand you, it does

1 occasionally happen that an officer would find out  
2 there's been a request for his information, and he  
3 would bring it to the Federation for help; is that  
4 true?

5 A. Correct.

6 Q. Okay. And the Federation, then, would, at  
7 times, insert itself into that process and  
8 potentially try to restrict the release of the  
9 information. Is that fair?

10 A. We would contact legal counsel for advice  
11 on how to proceed forward.

12 Q. Okay. And the City is generally willing  
13 to discuss with the Federation on behalf of an  
14 officer whether certain data must be disclosed? Is  
15 that accurate?

16 A. Can you rephrase that?

17 Q. Yeah. The City is willing to discuss with  
18 the Federation whether certain data is subject to  
19 disclosure?

20 MR. KELLY: Objection as to form.

21 Q (BY MS. WALKER) You can answer.

22 A. They don't discuss with us directly what's  
23 being released. They will contact -- they will talk  
24 to the officers. They don't talk directly to us  
25 about what they're releasing.

1           Q.    And if you get legal counsel involved on  
2    behalf of the officer, your legal counsel would  
3    speak with the City about whether the data is  
4    subject to disclosure?

5           A.    Yes.

6           Q.    Okay.  And the City historically has been  
7    open to those conversations?

8                   MR. KELLY:  Objection.  Speculation.

9           Q     (BY MS. WALKER) As best you know on behalf  
10   of the Federation?

11          A.    I don't know if the City's open to  
12   providing that information to our lawyers.

13          Q.    Okay.  Who would know that?

14          A.    The lawyers.

15          Q.    Mr. Kelly?

16          A.    Or Jim Michels, or any of the other  
17   lawyers that we happen to use.

18          Q.    Okay.  Can you give me the names of all  
19   the lawyers the Federation uses?

20          A.    Oh, boy.  Joe Kelly, Jim Michels.  Then  
21   there's ones that we use for legal defense fund, so  
22   that would be -- gosh, a whole list of them -- Fred  
23   Bruno, Tom Plunkett.

24                   If it was related to any type of  
25   officer-involved shooting stuff, those are the kind

1 of -- those people. But Jim and Joe are probably  
2 the two primary ones that give us legal advice on  
3 day-to-day stuff.

4 Q. And it would be Mr. Kelly or Mr. Michels  
5 who would advise on open records issues?

6 A. Correct.

7 Q. Okay. Is Ann Walther an attorney for the  
8 Federation?

9 A. She has not been for a long time.

10 Q. Okay. What was her role?

11 A. She would do some of the discipline stuff  
12 as well.

13 Q. Grievances, you mean?

14 A. Yeah.

15 Q. Okay. And what about Brian Rice?

16 A. He did more lobby work for us years ago.

17 Q. Any other role he had?

18 A. Not that I know of, no.

19 Q. Okay. And neither of them are currently  
20 actively retained by the Federation?

21 A. They are not.

22 Q. Were you involved in the decision of the  
23 Federation to intervene in this case?

24 A. Yes.

25 Q. Okay. Occasionally I'll pause, because

1 I'll be deciding I can --

2 A. Got it.

3 Q. -- eliminate questions, so just give me a  
4 minute.

5 Does the Federation have any idea how  
6 frequently coaching data is requested from the City?

7 A. I do not.

8 Q. Do you have a sense for how the City has  
9 typically responded to those requests?

10 A. I know that it's considered private data.

11 Q. How does the Federation know that?

12 A. 'Cause coaching is nondisciplinary, so  
13 it's nonpublic data.

14 Q. And has the City told you that?

15 A. It's always been, since I've been around,  
16 that coaching is not a -- is not a disciplinary  
17 process, and then it's not public.

18 Q. Has the City ever said that in writing to  
19 you?

20 A. No. I don't know.

21 Q. Okay. Who would know?

22 A. If it's been said in writing to the  
23 Federation?

24 Q. Right. At what point and how did the  
25 Federation come to understand that coaching is

1 nondisciplinary?

2 A. Well, it's not one of the discipline  
3 things that we can grieve, so discipline was  
4 something -- is something we grieve, and we can't  
5 coach -- we can't grieve in coaching.

6 Q. Is there any other basis for the  
7 Federation's belief that coaching is  
8 nondisciplinary?

9 A. It's been -- I mean, that is how it has  
10 been since I have been on, and that is -- when I  
11 came on the board, it's always been that  
12 understanding, that coaching is nondisciplinary.

13 Q. Okay. And I understand your testimony.  
14 I'm just digging deeper.

15 So let me ask, is there a written policy  
16 at the Federation that coaching is nondisciplinary?

17 A. No.

18 Q. Okay. Is there an agreement with the  
19 City, a written agreement with the City?

20 A. There's a policy. There's a policy.

21 Q. Sorry?

22 A. Sorry.

23 Q. We were talking over one another.

24 A. Yep.

25 Q. My question is, is there a written policy

1 at the Federation that coaching is nondisciplinary?

2 A. No.

3 Q. And then you said?

4 A. There's a policy manual, or there's a  
5 policy with the City that talks about coaching not  
6 being discipline.

7 Q. Okay. Is there any written agreement with  
8 the City that coaching is nondisciplinary other than  
9 this policy you just referenced?

10 A. Not that I know of.

11 Q. Okay. Is there an unspoken agreement with  
12 the City that coaching is nondisciplinary?

13 A. I would say yes.

14 Q. Okay. When do you think that spoken  
15 agreement solidified?

16 A. It's been that way the entire time I've  
17 been on, so probably well before I was here.

18 Q. So if I'm understanding your testimony,  
19 the Federation's understanding that coaching is  
20 nondisciplinary is based on some policy the City has  
21 or adopted, an unspoken agreement, and the  
22 collective bargaining agreement. Is that correct?

23 A. Past practice, the way we've done things  
24 for years, yeah.

25 Q. For how many years?

1           A.    I've been on -- coming on 27 years, so 26  
2           years, 27, something like that.

3           Q.    So you're saying, in the course of 27  
4           years, the Federation has never taken the position  
5           that coaching is disciplinary?

6           A.    Well, I've only been on the board since  
7           2004, and since I've been on the board since 2004,  
8           we've always had the position that coaching is  
9           nondisciplinary.

10          Q.    No exceptions?

11          A.    I can't think of one.

12          Q.    Okay. So back to my question.

13                Other than the unspoken agreement and the  
14           documents I referenced, there's no other basis for  
15           the Federation's belief that coaching is  
16           nondisciplinary?

17          A.    Yeah.

18          Q.    What other unspoken agreements do you all  
19           have with the City?

20          A.    I guess without any specific examples, I  
21           don't know how to answer that.

22          Q.    Okay. So as you sit here today, the only  
23           unspoken agreement with the City that you can think  
24           of relates to coaching?

25          A.    I don't know that you would call it an

1 unspoken agreement. It's a past practice. It's  
2 solidified in our policies. It has been the way we  
3 -- coaching as being nondiscipline has been around  
4 my time on the department, or my time on the board,  
5 I'll say.

6 Q. So you're withdrawing your testimony that  
7 there's an unspoken agreement?

8 A. Well, I wouldn't say -- yeah. It's not an  
9 unspoken agreement. It's established in our  
10 policies, past practice, how we've -- things have  
11 been done since I've been on the board. It's always  
12 been coaching is nondisciplinary.

13 Q. Okay.

14 A. It's a way to improve behavior or  
15 incident.

16 Q. Okay. And which policies are you talking  
17 about specifically?

18 A. It's listed in the -- I don't know  
19 specific policy number, but it's under the  
20 discipline, there's -- where it lists out the  
21 discipline, the discipline process manual or the  
22 discipline matrix, all of that kind of stuff is  
23 listed in there.

24 Q. So the discipline matrix and the  
25 discipline process manual are the two policies you

1 would point to?

2 A. There's something in the policy and  
3 procedure manual. I just don't know what policy it  
4 is.

5 Q. Okay. Do you know what year coaching  
6 would have been discussed in these documents?

7 A. I don't.

8 MS. RISKIN: Leita, sorry to interrupt,  
9 but I'm just -- For point of clarification, I think  
10 a few times she has said "our policies." And I know  
11 she's testifying on behalf of the Federation, but  
12 she is also a City employee. So maybe it's worth  
13 clarifying whose policies these are.

14 MS. WALKER: Thank you. Yes.

15 Q. (BY MS. WALKER) So the three policies  
16 you've just mentioned, the discipline matrix, the  
17 discipline manual and the policy and procedure  
18 manual, these are City policies, correct?

19 A. Yes. They are City of Minneapolis  
20 policies.

21 Q. Does the Federation have any written  
22 policies?

23 A. Referencing coaching?

24 Q. I'll get to that. But I just have a  
25 question right now about, does the Federation have

1 any written policies?

2 A. Yes, we do.

3 Q. Okay. Fewer than 10?

4 A. Probably around 10.

5 Q. Okay. In general, can you tell me what  
6 they are?

7 A. We have a policy around reimbursement for  
8 expenses, financial policy, how -- representation.  
9 I'm trying to think what else we have.

10 There's a couple different breakout ones  
11 that come with that reimbursement. There's the  
12 representation one. There's a couple around  
13 finances and how we invest in different things.

14 I know there's more. I just can't think  
15 of them right now.

16 Q. The policy on representation, that would  
17 be -- another way to say that, that would be a  
18 policy on grievances and when --

19 A. Yeah. Yep.

20 Q. Let me finish my question.

21 A. Sorry.

22 Q. It would be a policy on when -- or when  
23 the Federation would not step in to grieve  
24 something. Is that correct?

25 A. Yes.

1           Q.    Okay.  Do you have any policy at the  
2   Federation that speaks to coaching?

3           A.    No.

4           Q.    So the Federation has no written statement  
5   as to whether or not it will grieve coaching?

6           A.    Coaching is nondisciplinary, so we can't  
7   grieve it.

8           Q.    But that's not my question.

9                   MS. WALKER:  Can you repeat the question,  
10   please?

11                   (Whereupon, the court reporter read back  
12   the requested portion of the record.)

13          A.    We don't have a written policy.

14          Q.    (BY MS. WALKER) And the Federation has no  
15   written statement or policy on whether coaching is  
16   disciplinary, correct?

17          A.    Correct.

18          Q.    And are you aware that the Federation has  
19   grieved coaching on multiple occasions?

20          A.    Yes.

21          Q.    Since 2004, correct?

22          A.    Correct.

23          Q.    Okay.  So do you want to change your  
24   testimony that, since 2004, coaching has been  
25   nondisciplinary?

1           A.    It is nondisciplinary, from our point of  
2   view.  When we have grieved it is when the City has  
3   decided that they were going to put a coaching on  
4   what would be called a B level violation.

5           Q.    And that would be considered disciplinary?

6           A.    Correct.

7           Q.    So coaching of A level the Federation does  
8   not consider disciplinary?

9           A.    Correct.

10          Q.    And this is -- what you've just described  
11   has been the Federation's position since 2004?

12          A.    Since I've been on the board, yes.

13          Q.    Do you know if the Federation has -- or  
14   the Federation's lawyers have consulted with the  
15   City on how to redact personnel records before  
16   releasing them?

17          A.    I do not.

18          Q.    Okay.  Were you involved in the DOJ  
19   investigation of the Minneapolis Police Department?

20          A.    They did an interview.

21          Q.    With you?

22          A.    Correct.

23          Q.    Okay.  Did they interview anyone else at  
24   the Federation?

25          A.    I believe they talked to Anna Hedberg, but

1 I don't know if that was in her role as -- she was  
2 in charge of training at the time, or if it was in  
3 her role at the Federation.

4 And then there are other board members  
5 that are patrol officers, so they may have talked to  
6 the DOJ when the DOJ was out at the precincts. But  
7 I don't know if that was in their role as a  
8 representative or in their police officer role.

9 Q. Okay. Anna Hedberg is a board member?

10 A. Correct.

11 Q. Okay. When were you interviewed,  
12 approximately, by the DOJ?

13 A. I don't even know.

14 Q. Do you think it was in 2023?

15 A. I really don't know.

16 Q. Okay. Do you know, was it one interview?

17 A. Yes.

18 Q. Was it in person or by phone?

19 A. It was in person, and I have -- Yes. It  
20 was in person.

21 Q. Okay. Do you have any notes from that  
22 conversation?

23 A. I do not.

24 Q. Was it recorded?

25 A. I have no idea.

1           Q.    The DOJ didn't tell you they were  
2   recording it?

3           A.    No.

4           Q.    Was it under oath?

5           A.    No.

6           Q.    Do you remember, approximately, how long  
7   it took?

8           A.    It felt like it look forever, but it was  
9   probably a couple hours.

10          Q.    Okay.  And what did you discuss?

11          A.    A whole bunch of things.  We talked about,  
12   just in general, how the department is doing, how  
13   things -- we talked about what I do at the  
14   Federation.  Those kind of things.  And then they  
15   just asked general questions -- they asked me  
16   questions, and I would just answer.

17          Q.    Do you remember talking about coaching  
18   with the DOJ?

19          A.    I don't.

20          Q.    Okay.  You don't remember, or you --

21          A.    I don't remember talking to them about  
22   coaching.

23          Q.    Okay.  Slightly different question.

24                Do you actually remember that it didn't  
25   come up, or you just don't remember at all whether

1 it came up?

2 A. I don't remember at all whether it came  
3 up.

4 Q. Were you consulted either by the DOJ or by  
5 the City of Minneapolis about data the City would be  
6 disclosing to the DOJ?

7 A. I don't have any recollection of that.

8 Q. Did the Federation disclose any data to  
9 the DOJ?

10 A. No.

11 Q. Do you know, one way or another, if the  
12 City disclosed coaching data to the DOJ?

13 A. I do not.

14 Q. Would it concern you if they did?

15 A. It depends on, I guess, the data that they  
16 would have released.

17 Q. What if they released Complaint data,  
18 investigative data and disciplinary data but removed  
19 the names and identifying information of the  
20 officers? Would that concern you?

21 A. Are we just talking about coaching?

22 Q. Uh-huh.

23 A. And it's nothing to identify the officers?

24 Q. Officer names and identifying information  
25 would be removed. Would that concern you?

1           A.    If it was just statistical data? Is that  
2   kind of what we're talking about?

3           Q.    No. Let's say they disclosed a Complaint  
4   saying, unidentified officer used excessive force  
5   with me, and then they disclosed the coaching  
6   decision but the officer was not identified.

7                    If they disclosed that to the DOJ, would  
8   that concern you?

9           A.    It would, in the fact that we're under the  
10   understanding that coaching information is supposed  
11   to be private data.

12          Q.    But it wouldn't concern you for the  
13   privacy of the officer as long as his name and  
14   identifying information were removed; is that  
15   correct?

16          A.    I guess. I mean --

17          Q.    It wouldn't concern you?

18          A.    Well, I think it would have to be  
19   case-specific, right? In my mind.

20          Q.    You don't know what arrangement the City  
21   had with the DOJ over the data it disclosed,  
22   correct?

23          A.    I don't.

24          Q.    Okay. And you don't know if the City  
25   de-identified officers before giving information to

1       them about coaching decisions, correct?

2           A.     I do not know that.

3           Q.     And you don't know if the City had an  
4       arrangement with the DOJ where they would not  
5       mention officers by name in their report, correct?

6           A.     Correct.

7           Q.     And the Federation didn't intervene and  
8       try to stop the disclosure of any information to the  
9       Department of Justice?

10          A.     Not that I'm aware of.

11          Q.     Have you read the DOJ report?

12          A.     A while ago.

13          Q.     Okay. The report -- If you recall, the  
14       report describes several instances of coaching with  
15       a fair amount of specificity. Do you remember that?

16          A.     I remember a lot of cases in there. I  
17       don't remember if they were related -- or a lot of  
18       summary data on certain things. I don't remember if  
19       they were specifically related to coaching.

20          Q.     Okay. Did anything in the DOJ report  
21       strike you as a violation of the Data Practices Act?

22               MS. RISKIN: Objection. Calls for a legal  
23       conclusion.

24          Q.     (BY MS. WALKER) You can answer.

25          A.     I do feel like some of the stuff that was

1 released shouldn't have been released.

2 Q. Okay. What? Can you give me specific  
3 examples?

4 A. I can't, without having read it in a  
5 while, no.

6 Q. Do you remember reading about the  
7 instances of coaching and thinking that those  
8 disclosures were a violation of the Data Practices  
9 Act?

10 A. I don't specifically remember reading  
11 about coaching in there.

12 Q. And I'll represent to you that the  
13 instances of coaching did not name specific  
14 officers.

15 A. I don't remember specific talk about  
16 coaching in the DOJ thing.

17 Q. Okay. But as long as the officers' names  
18 were not mentioned, you would not have severe  
19 concerns about that, correct?

20 MS. RISKIN: Objection. Calls for  
21 speculation.

22 A. Like I said, I think it would depend on  
23 specific --

24 Q. (BY MS. WALKER) Did any officer whose  
25 misconduct was discussed in the DOJ report come to

1 the Federation claiming a violation of the Data  
2 Practices Act?

3 A. Not that I'm aware of.

4 Q. Is there someone else who would be aware?

5 A. Potentially the vice president, but she  
6 would normally tell me that.

7 Q. Okay. Who would that be?

8 A. That would be Anna Hedberg.

9 Q. Has the Federation considered litigation  
10 over the disclosures in the DOJ report?

11 A. No.

12 Q. Can you just -- I'm moving to a new topic  
13 now, or a new set of questions here.

14 Can you describe coaching for me in your  
15 own words?

16 A. It's a process that is used for low-level  
17 policy violations or behavioral things, to try to  
18 correct that behavior or put people on notice that,  
19 if the behavior continues, they're  
20 potentially -- they could be disciplined for.

21 Q. When you say "low level," do you mean A  
22 level?

23 A. Or maybe not even a violation at all.

24 Q. Okay.

25 A. If someone just -- trying to think of an

1 example.

2 If someone's -- An example [REDACTED]  
3 [REDACTED], someone was late  
4 consistently. Hey, you gotta show up to work on  
5 time; otherwise, if you continue, it's going to be a  
6 problem.

7 Q. Okay. I understand completely what you're  
8 saying. I want to just, for the record, dig a  
9 little deeper on this.

10 So my understanding is that, currently  
11 within the Minneapolis Police Department, there's  
12 five types of misconduct, ranging from A level to E  
13 level. Is that your understanding?

14 A. Well, the types of discipline -- or  
15 the -- the B through D would be -- or E, whatever --  
16 would be your discipline. A is not a discipline  
17 thing.

18 Q. Okay. And so when you talk about -- in  
19 your definition of coaching, when you talk about  
20 it's a process used for low-level policy violations,  
21 you're not talking about B through E, correct?

22 A. Correct.

23 Q. You're talking about A level or things  
24 that may not even be a violation. Correct?

25 A. Correct.

1 Q. When did you first become aware or hear  
2 about coaching within the Minneapolis Police  
3 Department?

4 A. I can't -- I don't remember the year. ■

■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

12 Q. Okay. There was a point at which coaching  
13 became almost a term of art within the Minneapolis  
14 Police Department.

15 Do you understand what I'm saying?

16 A. Huh-uh.

17 Q. There was a time at which coaching became  
18 formalized and defined within the Minneapolis Police  
19 Department as opposed to sort of a colloquial term  
20 that people used to describe feedback and mentoring.

21 Would you agree with that?

22 A. I think they came up with like a tracking  
23 form in the 2000s sometime, like a coaching -- I  
24 think it's called a coaching document or -- I don't  
25 remember exactly when that was.

1 Q. Okay. So [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 A. The sergeants wrote up a memo, and then it  
5 was put in your personnel file. And then after a  
6 year they were removed.

7 Q. Okay. Where is the personnel file  
8 maintained?

9 A. Well, I think there was one at the  
10 precinct, and then there's, I'm assuming, one in HR.  
11 The City maintains files on us.

12 Q. And so to the best of your knowledge, [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 A. Somewhere.

16 MS. RISKIN: Objection. Calls for  
17 speculation, beyond the scope.

18 Q (BY MS. WALKER) Does development of the  
19 tracking form, does it sound right that that might  
20 have happened around 2010 or 2011?

21 A. I know it was in the 2000s. I couldn't  
22 give you an exact year.

23 Q. Okay. So it might have been earlier?

24 A. Correct.

25 Q. Do you recall when you first became aware

1 of it?

2 A. I don't.

3 Q. Did the City develop that form  
4 unilaterally, or did the Federation have input?

5 A. We did not -- as far as I know, we did not  
6 have input. But that would have been a different  
7 president, a different board at the time, too, so I  
8 don't know.

9 Q. Okay. And do you recall the Federation's  
10 reaction when they became aware of this tracking  
11 form?

12 A. I don't.

13 Q. Do you recall how the Minneapolis Police  
14 Department described the tracking form to the  
15 Federation?

16 A. I do not.

17 Q. Do you, on behalf of the Federation,  
18 recall at any point the Minneapolis Police  
19 Department explaining coaching to your members?

20 A. I believe there was a training in  
21 in-service recently about coaching.

22 Q. Recently being how recent?

23 A. I believe it was part of in-service, but  
24 it might have just been the supervisor's in-service,  
25 for like supervisors. I don't know.

1 Q. What is in-service?

2 A. The training that we're required to do  
3 every year, to keep up on policies, procedures,  
4 legal updates. Those kind of things.

5 Q. Does that in-service happen in a  
6 particular month annually?

7 A. It's all year, 'cause we have so many  
8 hours of it. We have -- I think we have over 65  
9 hours, so they'll do blocks. They'll do it  
10 quarterly.

11 Q. Okay. So in-service is just a term for  
12 the required training your members are required to  
13 do?

14 A. Correct.

15 Q. Okay. And I think your testimony is, at a  
16 recent in-service training, the Minneapolis Police  
17 Department described coaching to your members.

18 A. Correct.

19 Q. Okay. And you think this would have been  
20 within the last 12 to 24 months?

21 A. Yeah.

22 Q. Okay. Would it have been more recent than  
23 that?

24 A. No.

25 Q. And to the best of your recollection, this

1 is the first time that Minneapolis Police Department  
2 ever described coaching to your members?

3 A. I don't recall if there's been another  
4 training where that has come up. I don't know.

5 Q. Would it have come up outside of a  
6 training?

7 A. Where everybody would get the same  
8 information?

9 Q. (Nods head.)

10 A. I don't know.

11 Q. Okay. Would it be communicated in writing  
12 to all officers by the City of Minneapolis?

13 A. It could have come out in like an AA, an  
14 administrative announcement, or something along  
15 that -- or a chief's memo, which is -- they'll push  
16 that out on emails to get information out to  
17 everyone, 'cause you're required to check your  
18 emails.

19 Q. Does the Federation get those?

20 A. I would get them to my city email. I  
21 wouldn't get them on my Federation email.

22 Q. Okay. And on behalf of the Federation,  
23 you have no knowledge of that happening; you're  
24 saying it just might have happened?

25 A. Yeah. I don't have any recollection of

1 that happening.

2 Q. Isn't it true that, when coaching began,  
3 it was only used for A level violations?

4 MS. RISKIN: Objection. Calls for  
5 speculation.

6 A. That is how I always understood coaching,  
7 is it's for A level violations.

8 Q (BY MS. WALKER) Okay. And my  
9 understanding of A level violations is that they do  
10 not go through any sort of preliminary or  
11 administrative investigation. Is that your  
12 understanding?

13 A. No. There's -- there's a degree of  
14 investigation in them.

15 Q. Okay. What sort of investigation do A  
16 levels go through?

17 A. Well, they'll review -- I'm going to guess  
18 it's going to depend on how the complaint comes in.  
19 But they'll review if there's body camera video, if  
20 there's reports, those kind of things.

21 Q. "They" being who?

22 A. I would assume either IA, internal  
23 affairs, or OPCR.

24 Q. Do you know what I mean by the joint  
25 supervisors process?

1 A. Uh-huh.

2 Q. Okay. And you would agree with me that A  
3 level violations go through the joint supervisors  
4 process, correct?

5 A. That is my understanding.

6 Q. Whereas B, C, D and E level violations go  
7 through a different process, correct?

8 MR. KELLY: Objection. Speculation,  
9 foundation.

10 Go ahead if you can answer.

11 A. My understanding is is that complaints  
12 come in, the joint supervisors look at them, and  
13 they decide where they're going to go.

14 Q (BY MS. WALKER) A level violations never  
15 go beyond the joint supervisors process, correct?

16 MR. KELLY: Objection. Speculation.

17 A. I believe they do. They can -- they can  
18 get -- Like I said, someone is going to review that,  
19 the videos, or whatever, and then they can push it  
20 out to -- if it's a street cop, they'll push it out  
21 to the street cops, or to the supervisors of the  
22 street cops.

23 Q (BY MS. WALKER) Okay.

24 A. So there is some level of investigation  
25 done.

1 Q. [REDACTED]  
[REDACTED], correct?

3 A. Correct.

4 Q. And coaching is an oral process, correct?

5 A. Well, there was a written -- When you're  
6 having the conversation about whatever's going on,  
7 yeah, that's oral. But there is a write-up about  
8 it.

9 Q. And the form -- And, actually, we can look  
10 at it.

11 (Premarked Deposition Exhibit Number 32  
12 introduced.)

13 Q. So we handed you what's been premarked as  
14 Exhibit 32. And is this the form you were just  
15 referencing?

16 A. Yes.

17 Q. Okay. And you think this is the form that  
18 was developed sometime in the 2000s?

19 A. Yes. I think there's been revisions to it  
20 over the years.

21 Q. Is this the current form?

22 MR. KELLY: Objection. Calls for  
23 speculation.

24 A. This does look like the most current form.

25 Q (BY MS. WALKER) So if I understand your

1 testimony, there's an oral discussion, that is, for  
2 lack of a better term, the coaching session, and  
3 then after that session, the supervisor would  
4 complete this form to document the discussion. Is  
5 that correct?

6 A. They would fill it out at some point. I  
7 don't know when they would do that.

8 Q. Well, they wouldn't do it before the oral  
9 discussion, correct?

10 A. I don't know, because I've -- I haven't  
11 sat down with them when they filled them out.  
12 But -- I don't know.

13 Q. Okay. Take a look at the second page --

14 A. Yep.

15 Q. -- where it says Details of Coaching  
16 Session.

17 Do you see that?

18 A. I do.

19 Q. And there's a space where they're supposed  
20 to include the employee's response.

21 Do you see that?

22 A. I do.

23 Q. It's logical they couldn't --

24 A. They could not write my response, or the  
25 officer's response.

1           Q.    I'm sorry.  Let me ask my question, just  
2   so the record's clear.

3           A.    Okay.

4           Q.    They couldn't write up the officer's  
5   response until the coaching session has occurred,  
6   correct?

7           A.    Correct.

8           Q.    Are you aware of any limitations within  
9   the Minneapolis Police Department on how coaching is  
10  used today?

11          A.    I'm sorry.  Can you clarify your question?

12          Q.    Yeah.  Let me go back to your definition  
13  that you gave me a minute ago.

14                Other than the fact that it's supposed to  
15  be used for low-level policy violations, are you  
16  aware of any limitations on the use of coaching as  
17  it's used today?

18          A.    I think it's just supposed to be used for  
19  those low-level violations.

20          Q.    So, for example, it shouldn't be used for  
21  an excessive force violation?

22                MR. KELLY:  Objection.  Calls for  
23  speculation, foundation.

24          A.    Without knowing the details of a specific  
25  case, I couldn't answer that question.

1 Q. (BY MS. WALKER) Do you know, on behalf of  
2 the Federation, are there limits on the number of  
3 times an officer can be coached before he must be  
4 disciplined?

5 A. If you get two same or similar violations  
6 at an A level in a year, that can aggregate into a  
7 higher violation.

8 Q. Okay. So let me just give you a  
9 hypothetical so I can understand how that works.

10 So let's say -- I think an A level would  
11 be like leaving your squad car running when you're  
12 not near it, correct?

13 A. I don't know what it's listed in the  
14 manual. But, okay, we'll just say that.

15 Q. Okay. I won't hold you to it, but  
16 hypothetically.

17 So if you, within the reckoning period,  
18 did that twice and got coached for that twice, then  
19 it would be the third time you did it that it might  
20 be disciplined, or is it the second time you did it  
21 that it would be disciplined?

22 Do you understand my question?

23 A. I do. And I guess I don't -- I think it's  
24 been probably handled both ways.

25 Q. But from the Federation's perspective, it

1 could happen on the second time, consistent with  
2 policy?

3 A. Well, they would -- yeah. They would just  
4 aggregate those together.

5 Q. Okay. Okay. And when it's aggregated, it  
6 then becomes a B level violation, correct?

7 A. Yes.

8 Q. Okay. Subject to discipline, correct?

9 A. Correct.

10 Q. Has the City ever told the Federation that  
11 certain types of misconduct are not eligible for  
12 coaching?

13 A. I know that truthfulness -- There's a list  
14 of them in the complaint process manual that aren't  
15 eligible.

16 Q. Okay. What about use of excessive force?

17 A. I believe that's one of them.

18 Q. What about a constitutional violation?

19 A. Yep. That's one of them.

20 Q. Illegal search and seizure?

21 A. Yeah. I believe so.

22 Q. On behalf of the Federation, what would  
23 you say the purpose of coaching is?

24 A. To correct behavior.

25 Q. What would you say the intent of coaching

1 is?

2 A. Probably the same thing. We want people  
3 to correct what they're doing wrong so that they  
4 don't do it in the future.

5 Q. Does the Federation support coaching  
6 within the Minneapolis Police Department?

7 A. Yes.

8 Q. Why?

9 A. 'Cause I think it's important, as  
10 supervisors, to be able to have conversations with  
11 people, to prevent -- to prevent things from  
12 happening. And it's a good tool for helping to  
13 manage our workforce.

14 Q. Are you aware of any instance when a  
15 member of the Federation was coached and felt like  
16 it was discipline?

17 A. I can't think of any.

18 Q. Do you agree that coaching is supposed to  
19 be punitive?

20 A. I think it's supposed to be corrective and  
21 to prevent situations that would become punitive.

22 Q. Do you agree with me that it can feel  
23 punitive?

24 A. Depending on the person, absolutely.

25 Q. [REDACTED]

1 in 1997?

2 MS. RISKIN: Objection. Outside the  
3 scope.

4 Q (BY MS. WALKER) You can answer.

5 A. I would say, as a brand new -- [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

9 Q. Okay. Other officers -- other members of  
10 the Federation may feel the same, correct?

11 MR. KELLY: Objection. Calls for  
12 speculation.

13 A. I don't know.

14 Q (BY MS. WALKER) You would agree with the  
15 City if they described coaching as corrective?

16 A. How is corrective defined for them?

17 Q. Well, you've personally, on behalf of the  
18 Federation, said that the intent of coaching is to  
19 correct, the purpose of coaching is to correct.

20 I've summarized your testimony, correct?

21 A. Uh-huh.

22 Q. Okay. And so if the City also defines  
23 coaching as corrective, you agree?

24 A. Sure.

25 Q. Are you aware that the Federation has ever

1 systematically tried to explain coaching to its  
2 members?

3 A. It has come up in probably -- I would  
4 assume it has come up in like our membership  
5 meetings, but that's a handful of people.

6 Have we ever had meetings where we sit  
7 down and discuss it with all of our members? No.

8 Q. Okay. You don't have a written definition  
9 of coaching at the Federation?

10 A. No.

11 Q. And you haven't sent a written memo to all  
12 members about coaching, correct?

13 A. No.

14 Q. And there's no firm stance on whether  
15 coaching will be grieved?

16 A. (No response.)

17 Q. It would be considered on a case-by-case  
18 basis, correct?

19 A. If it was used on a discipline level, that  
20 we can grieve, we would grieve it because it  
21 wouldn't be appropriate. So if you were given a B  
22 in a coaching, we would grieve it because B is  
23 considered discipline and coaching is not.

24 Q. So if coaching is the consequence for a B  
25 level, you would consider that coaching to be

1 disciplinary?

2 A. I would say that putting the B on that is  
3 wrong, because coaching is not disciplinary.

4 Q. Why would you grieve something that's not  
5 disciplinary?

6 A. We're saying that the assignment of  
7 putting a B level on a coaching isn't consistent.  
8 So either we're saying that discipline -- or  
9 coaching isn't discipline. But they're saying, at a  
10 B level, they're assigning coaching. So it's  
11 contrary to what the policy and procedure manual is  
12 on that.

13 Q. And that inconsistency that you just  
14 flagged happens with some frequency, correct?

15 A. I wouldn't say with some frequency, but it  
16 has happened.

17 Q. Okay. And so if they're going to  
18 substantiate at a B level, the Federation would  
19 rather see a written reprimand versus coaching  
20 because that's the appropriate -- in your view,  
21 that's the appropriate --

22 A. That would be consistent with what the  
23 policies and procedures are of the City of  
24 Minneapolis.

25 Q. Okay. If a B level is substantiated and

1 coached, there's a longer reckoning period for that,  
2 correct?

3 A. Yeah. B levels are a three-year reckoning  
4 period.

5 Q. Whereas A levels are a one-year reckoning  
6 period?

7 A. Yes.

8 Q. So fair to say the Federation reserves the  
9 right -- reserves the right to grieve coaching  
10 decisions at the B level?

11 A. We would grieve a B level coaching.

12 Q. Where does the collective bargaining  
13 agreement authorize the Federation to grieve  
14 coaching?

15 A. We are allowed to grieve things that are  
16 considered disciplinary. When they are putting  
17 coaching on a B level, which is discipline, we  
18 grieve on the grounds that coaching isn't  
19 discipline, so it can't be assigned to that B level.

20 Q. I'm going to hand you Exhibit 48.

21 (Premarked Deposition Exhibit Number 48  
22 introduced.)

23 Q. So we've handed you what's been premarked  
24 as Exhibit 48, which you'll see is the labor  
25 agreement for the period January 2017 through

1 December 31st, 2019. Correct?

2 A. Yep.

3 Q. And I believe that, because a new contract  
4 had not been negotiated on the day this one was set  
5 to end, it continued past December 31st, 2019.

6 Does that sound familiar to you?

7 A. Yep.

8 Q. And there is now a new contract?

9 A. Well, yeah. Well, we're expired again,  
10 but yes.

11 Q. Yes. When did the new contract go  
12 into -- when did the current contract go into  
13 effect?

14 Do you remember?

15 A. 2020. Well, 2019. So 2020 to 2023.

16 Q. Okay.

17 A. Or I'm sorry. 2020 -- I have to look.  
18 Can I look at my --

19 Q. Sure.

20 A. (Witness referring to phone.)

21 You would think I would know.

22 So it was through 2022, 'cause it was --

23 Q. Okay. And just so we're all on the same  
24 page, the way these contracts work, they're  
25 negotiated for a period, but if a new contract is

1 not adopted before the period ends, they continue  
2 until the new contract is adopted?

3 A. Yes.

4 Q. And so Exhibit 48 continued into 2020; is  
5 that correct?

6 A. Yes.

7 Q. All right. And the current contract,  
8 which was set to expire in 2022, is actually still  
9 in effect here in 2024; is that correct?

10 A. Uh-huh.

11 Q. And new contract negotiations are ongoing;  
12 is that right?

13 A. Yes.

14 Q. So I'd like to ask you to look at article  
15 12, which begins -- Article 12. I'm not sure which  
16 page it begins on, but I'll give you a minute to  
17 flip through it.

18 And section 12.02 governs appeals, which  
19 would include grievances and arbitration, correct?

20 A. Appeals. Yep.

21 Q. Okay. And it says that the following  
22 items -- following types of discipline may be  
23 appealed: Suspension, written reprimand, transfer,  
24 demotion or discharge.

25 Do you see that?

1           A.     I do.

2           Q.     Okay. And it does not list coaching,  
3 correct?

4           A.     It does not.

5           Q.     Okay. So can you explain to me why the  
6 Federation believes it has a right to grieve  
7 coaching?

8           A.     Because they're assigning a B level, which  
9 is discipline, to the coaching. So that is -- We  
10 grieve it because they're assigning nondiscipline to  
11 a disciplinary --

12          Q.     So the Federation's position in that  
13 instance is that coaching is discipline, correct?

14          A.     Our position is is that they're using an  
15 inappropriate -- one way or the other, either  
16 they're saying that -- they're saying this is a B  
17 level, but we're going to give you coaching, which  
18 is inappropriate because coaching isn't discipline.  
19 That's what we grieve it on, is that grounds.

20          Q.     So you would rather have them assign a  
21 more severe consequence? That's the Federation's  
22 position?

23          A.     We would like them to follow their  
24 procedures, or what their policies and procedures  
25 are. And like I said, they're assigning a

1 nondisciplinary thing to a B level violation.

2 Q. And B levels are supposed to be  
3 disciplined, correct?

4 A. Correct.

5 Q. Would you agree with me that coaching is  
6 different than mentoring?

7 A. Yes.

8 Q. How do you think it's different?

9 A. Because I think mentoring is more of a  
10 relation -- like it's a longer process, and that  
11 you're -- you might be mentoring someone for a  
12 period of time, versus coaching being a one-time  
13 deal, so to say.

14 Q. Coaching is more formal? Would you agree  
15 with that?

16 A. Yes.

17 Q. Coaching tends to be more adversarial.  
18 Would you agree with that?

19 MR. KELLY: Objection. Calls for  
20 speculation.

21 A. I wouldn't think it is. I mean, depends  
22 on your relationship with whoever's doing your  
23 coaching.

24 Q (BY MS. WALKER) Would you agree that  
25 mentoring is typically welcomed by your members?

1 A. Mentoring?

2 Q. Mentoring.

3 A. Some.

4 Q. Whereas coaching is something they seek to  
5 avoid, correct? Formalized coaching that's  
6 documented, they seek to avoid that, correct?

7 MR. KELLY: Objection. Calls for  
8 speculation.

9 A. I couldn't say whether they would want to  
10 avoid that or not. I don't know.

11 Q (BY MS. WALKER) Well, you've been an  
12 officer since '97 and on the board since 2004. Is  
13 it your impression that members of the Federation  
14 look forward to coaching?

15 A. I don't think you look forward to anything  
16 where somebody says you've done something wrong.

17 Q. It can feel punitive?

18 MS. RISKIN: Objection. Calls for  
19 speculation.

20 A. Again, I think that depends on the  
21 individual officer.

22 Q (BY MS. WALKER) So we would have to talk  
23 to every officer who's ever been coached to  
24 understand how he felt about it or she felt about  
25 it?

1 A. Yeah.

2 Q. Okay. Each officer would feel  
3 differently?

4 A. I believe so.

5 MR. KELLY: Objection. Calls for  
6 speculation.

7 Q (BY MS. WALKER) Some might think it's a  
8 punishment?

9 MR. KELLY: Objection. Calls for  
10 speculation.

11 A. I think some could.

12 MR. KELLY: Can we take like a five-minute  
13 break?

14 MS. WALKER: Yeah. We can break right  
15 now.

16 (Whereupon, the proceedings were in recess  
17 at 10:00 a.m. and subsequently reconvened at  
18 10:16 a.m., and the following proceedings were  
19 entered of record:)

20 Q. (BY MS. WALKER) The collective bargaining  
21 agreement doesn't give you an opportunity to -- an  
22 opportunity to grieve mentoring, correct?

23 A. Mentoring isn't in our disciplinary  
24 actions.

25 Q. Right. And neither is coaching, correct?

1 A. Coaching is nondisciplinary, yes.

2 Q. And yet the Federation does grieve it when  
3 it's applied to B levels?

4 A. Yes, because -- over our concerns that  
5 they're changing the disciplinary practices and  
6 making -- trying to make coaching disciplinary.

7 Q. I'm going to hand you what we've marked as  
8 Exhibit 130.

9 (Premarked Deposition Exhibit Number 130  
10 introduced.)

11 Q. Sorry for the small type.

12 I'll give you a minute to read this. Just  
13 tell me when you're done reading.

14 Have you finished reading it?

15 A. I have.

16 Q. And this is an email from [REDACTED]

17 [REDACTED] Correct?

18 A. It is.

19 Q. And it was sent February 2019, correct?

20 A. According to the document, yes.

21 Q. Okay. Bob Kroll was still president of  
22 the Federation at that point?

23 A. He was.

24 Q. And what was your role at that point?

25 A. I would have been vice president at that

1 point.

2 Q. And what was Anna's role at that point?

3 A. I believe a director. But there was a  
4 period of time that she filled in, helping with  
5 treasurer and secretary, so I just don't remember  
6 the time frame of when that was.

7 Q. She was a board member?

8 A. She was a board member.

9 Q. Okay. And this email draws a distinction  
10 between mentoring and coaching.

11 Would you agree with me?

12 A. It does talk about both of those things.  
13 Yes.

14 Q. Okay. And it distinguishes between them,  
15 correct?

16 A. It does talk about mentoring, yes.

17 Q. And it distinguishes mentoring from  
18 coaching. They're different things, right?

19 A. There's a mention of concerns over using  
20 mentoring documents as coaching.

21 Q. Okay. What are the mentoring documents  
22 that are being referenced here?

23 A. I have no idea.

24 Q. Is it a form similar to the coaching form,  
25 do you know?

1 A. I do not know.

2 Q. Who would know that at the Federation?

3 Anna?

4 A. I would assume Anna.

5 Q. And [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 A. I do not.

9 Q. [REDACTED] seems to be concerned -- There seems  
10 to be concern that informal mentoring may be treated  
11 as coaching, which is a more severe situation.

12 Would you agree with that reading of this  
13 email?

14 A. It seems like [REDACTED] concerned that they're  
15 going to take these mentoring documents, whatever  
16 they are, and call them a coaching, and then give  
17 somebody violations as a result.

18 Q. Because coaching is -- Unlike mentoring,  
19 coaching is supposed to be reserved for misconduct,  
20 correct?

21 A. Low level, either policy violations or,  
22 you know, behavioral -- whatever things that a  
23 supervisor or someone might be noticing, yes.

24 Q. And unlike mentoring, coaching can be used  
25 to enhance discipline, correct?

1 A. Correct.

2 Q. And the concern here is that mentoring  
3 will begin to be viewed as coaching, to the  
4 detriment of the officer, correct?

5 A. That is what she is expressing.

6 Q. Because coaching is a detriment to the  
7 officer, correct?

8 MR. KELLY: Objection. Misstates the  
9 evidence.

10 Q. (BY MS. WALKER) Do you agree?

11 A. That coaching is a detriment to officers?

12 Q. Correct. Because it can be used to  
13 enhance discipline?

14 A. I don't think it is.

15 Q. Okay. So what are the frustrations in  
16 this email, then?

17 A. That there's no guidance on how to  
18 use -- how mentoring is being used or the purpose or  
19 policies around using mentoring, is how I'm reading  
20 this.

21 Q. Okay. And the Federation is concerned  
22 that it could be transformed into some form of  
23 coaching; is that right?

24 A. Some form of discipline.

25 Q. Including coaching?

1 A. Coaching isn't discipline.

2 Q. Unless it's B level, right?

3 A. Our concern, when they attach coaching to  
4 a B level violation, is that they're trying to make  
5 coaching discipline. That is our concern when they  
6 do that.

7 Q. Okay. And when the Federation grieves a  
8 B level, you're not asking the City to impose more  
9 severe discipline, correct? That would be the  
10 opposite of what you're trying to do on behalf of  
11 your members?

12 A. We're trying to get clarity on whether or  
13 not they're trying -- they're changing their  
14 practice and making -- and trying to make coaching  
15 discipline.

16 Q. Do you feel like you've ever gotten that  
17 clarity?

18 A. Yes. There has -- There was an email back  
19 on a case I did a while back where D.C. Glampe, when  
20 we did file a grievance, said coaching isn't  
21 discipline, it's not grievable.

22 Q. But you have testified that, to this day,  
23 that is not the Federation's view; that's just what  
24 the City has said. Correct?

25 MR. KELLY: Objection. Misstates

1 testimony.

2 A. Can you restate your question?

3 Q. (BY MS. WALKER) I'll withdraw the  
4 question. We have the testimony.

5 [REDACTED], here, in the second  
6 paragraph, references a quasi -- I think [REDACTED] means  
7 agreement. Or [REDACTED] says, we did quasi agree with the  
8 administration about the mentoring program.

9 Do you see that?

10 A. I do see that.

11 Q. What is a quasi agreement?

12 A. I don't know what she means with that.

13 Q. Are you aware of any quasi agreements  
14 between the Federation and the City of Minneapolis?

15 A. No.

16 Q. Okay. As president of the Federation, are  
17 you comfortable with quasi agreements between the  
18 City and the Federation?

19 A. I don't know what is meant by that, so --

20 Q. As president of the Federation, you would  
21 like all agreements to be memorialized in writing,  
22 correct?

23 A. Yes.

24 Q. Quasi, unspoken agreements are not a best  
25 practice. You would agree with that?

1 A. Can you restate that again?

2 Q. I'll withdraw the question.

3 Is it your position that the collective  
4 bargaining agreement permits quasi agreements?

5 A. I don't know that it's referenced in our  
6 contract at all.

7 Q. In fact, the collective bargaining  
8 agreement says that it sets forth herein the  
9 complete and full agreement between the parties  
10 regarding the terms and conditions of employment.

11 Is that not true?

12 A. Where are you referencing?

13 Q. It's page 1 of 95 or page 8 of the PDF.

14 MS. RISKIN: Objection. Misstates the  
15 document as an incomplete quote.

16 Q. (BY MS. WALKER) Let me read it again just  
17 for clarity of the record.

18 I'm in the second paragraph on page 1 of  
19 95. And that paragraph begins, It is the purpose  
20 and intent of this agreement to achieve and maintain  
21 sound, harmonious and mutually beneficial working  
22 and economic relations between the parties hereto.

23 Did I read that correctly?

24 A. Yep.

25 Q. And then a couple of lines down from there

1     it continues, and to set forth herein the complete  
2     and full complete agreement between the parties  
3     regarding terms and conditions of employment except  
4     as the same may be established by past practices  
5     which are determined to be binding by an arbitrator  
6     and not included in this contract.

7             Did I read that correctly?

8             A.     Yes, you did.

9             Q.     So I understand that an arbitrator can  
10     look at past practices. But the collective  
11     bargaining agreement does not contemplate quasi  
12     agreements, does it?

13            A.     I can't think of a -- I can't think of a  
14     section where that term is used.

15            Q.     So that's a, no, it does not --

16                    Would you agree it does not contemplate  
17     quasi agreements between the Federation and the  
18     City?

19            A.     Our collective bargaining unit does not  
20     discuss quasi agreements.

21            Q.     And as president, you would seek to avoid  
22     quasi agreements, because they are not documented  
23     and, therefore, ambiguous?

24            A.     Can you read that again? Or restate that?

25                    MS. WALKER: Could you repeat the

1 question?

2 (Whereupon, the court reporter read back  
3 the requested portion of the record.)

4 A. I think agreements are important to have  
5 the -- what's the word I'm looking for? -- any  
6 agreements, the terms need to be clear.

7 Q. (BY MS. WALKER) And the best way to do  
8 that is in writing, correct?

9 A. It can be, for some people.

10 Q. Is it for you, as president of the  
11 Federation?

12 A. If it's something that -- Yes.

13 Q. Mentoring is not part of progressive  
14 discipline, right?

15 A. I don't know if the City uses that in  
16 progressive discipline.

17 Q. Would that be a concern to you, as  
18 president, if it did?

19 A. If it used mentoring?

20 Q. To enhance discipline?

21 A. I think it could be concerning.

22 Q. Why would it be concerning?

23 A. 'Cause mentoring, you're trying to walk  
24 alongside -- beside someone and help them get  
25 better, correct -- to get better, enhance their

1 skills, whatever that is. And if we're using that  
2 against them, I think that's not a great way to  
3 treat your employees.

4 Q. Okay. Does it concern you that coaching  
5 is used to enhance discipline?

6 A. I think a piece of coaching is also kinda  
7 that notice piece, right? Like, if you continue  
8 doing this, there's going to be discipline  
9 potentially coming out of this.

10 So I think that the use of coaching is not  
11 concerning to me, because we're trying to stop  
12 people from doing things that they're not supposed  
13 to be doing.

14 Q. And if they don't stop, they might get  
15 more severe discipline, correct?

16 A. Yes.

17 MR. KELLY: Objection. Misstates  
18 testimony and facts in the record.

19 Q. (BY MS. WALKER) Is there a difference, in  
20 your mind, between A level and B level coaching?

21 A. As I've talked about before, Bs are  
22 considered in that discipline -- the severity of a  
23 B, by the City's own definitions, is discipline. So  
24 when they -- and As are described as nondiscipline.

25 So when they put a disciplinary thing on a

1 more severe violation, that is concerning, 'cause  
2 I'm concerned, as a Federation, that they are trying  
3 to change past practice.

4 Q. So this lawsuit is mostly about B level  
5 coaching. A level I might refer to occasionally.  
6 And I'll let you know if I'm talking about A level.

7 But is there a way that you would refer to  
8 B level coaching that I can use today just sort of  
9 as a shorthand so we know what we're talking about?

10 A. It's generally not something that we do,  
11 so I don't know how you would refer to it.

12 Q. Are you comfortable if I refer to it as  
13 disciplinary coaching?

14 MR. KELLY: Objection. That's  
15 misstating -- it's vague and confusing, because it's  
16 assigning a word that clearly is not what the  
17 witness has described.

18 So to the extent that you would be wanting  
19 to call it disciplinary coaching, that misstates her  
20 testimony, all the way thus far, that coaching is  
21 not disciplinary.

22 MS. RISKIN: The City would also have a  
23 standing objection to referring to coaching as  
24 disciplinary at all. It's quite clear the position  
25 that coaching is not discipline. We would object to

1     that short form.

2           Q     (BY MS. WALKER) Ms. Schmidt, it sounds  
3     like your lawyers are objecting to word games.

4                     Do you object to word games?

5           A.     Meaning what?

6           Q.     Do you, as the Federation president,  
7     object when people play word games?

8                     MR. KELLY:  Objection as to vague and  
9     form.

10                    MS. RISKIN:  Argumentative.

11           Q     (BY MS. WALKER) If you understand the  
12     question, you can answer.

13           A.     What was the question again?

14                    MS. WALKER:  Could you read it to her?

15                    (Whereupon, the court reporter read back  
16     the requested portion of the record.)

17           A.     I don't like people playing word games.

18           Q.     (BY MS. WALKER) And would you agree with  
19     me that what is or is not disciplinary should not be  
20     a question of semantics?

21           A.     I think when you do refer to it as  
22     disciplinary coaching, it is confusing, because we  
23     don't use coaching as discipline.

24           Q.     That's not my question, so I'll move to  
25     strike that answer.

1 MS. WALKER: Could you repeat my question  
2 for her?

3 And just listen carefully so you know what  
4 I'm asking, please.

5 (Whereupon, the court reporter read back  
6 the requested portion of the record.)

7 A. I would say no.

8 Q. (BY MS. WALKER) You don't agree with me on  
9 that?

10 A. That disciplinary --

11 Q. Does the Federation agree that the City  
12 can play semantic games with what is disciplinary?

13 MR. KELLY: Objection. Argumentative.

14 Q (BY MS. WALKER) You can answer.

15 THE WITNESS: Can you repeat that again?

16 (Whereupon, the court reporter read back  
17 the requested portion of the record.)

18 A. I don't.

19 Q. (BY MS. WALKER) Okay. In fact, that's why  
20 you grieve B level coaching, right, 'cause they're  
21 using the wrong word for what they're doing?

22 MR. KELLY: Objection. Misstates  
23 testimony and the facts in the record.

24 MS. WALKER: I'm not misstating testimony.  
25 And that's coaching the witness.

1           Would you please repeat the question for  
2     her?

3           (Whereupon, the court reporter read back  
4     the requested portion of the record.)

5           A.     We grieve the B level coaching because  
6     they're assigning -- coaching is nondisciplinary.  
7     When they look at how the City lays out their matrix  
8     or their levels, A is nondisciplinary. And the  
9     severity level, A, and then B and below is  
10    considered disciplinary.

11           So when we grieve it, it's because they're  
12    putting a nondisciplinary thing onto what's  
13    considered disciplinary, and we're concerned that  
14    they're changing that practice, that they're trying  
15    to make coaching a disciplinary thing.

16           Q     (BY MS. WALKER) And you're concerned about  
17    that to this day, correct?

18           A.     Correct.

19           Q.     Bear with me for a minute.

20           All right. We're going to shift gears a  
21    bit and talk less about coaching and more about what  
22    the City considers disciplinary.

23           I think you and I can agree that certain  
24    types of actions are definitely disciplinary, and  
25    those would be a written reprimand, suspension,

1 transfer, demotion and discharge.

2 Do you agree?

3 A. Yes.

4 Q. Okay. Anything else you'd be prepared  
5 right now to include in that list of disciplinary  
6 action?

7 A. No.

8 Q. What about an oral reprimand?

9 A. That's not something that we use.

10 Q. Are you sure?

11 A. It's not in our disciplinary options.

12 Q. Okay. Where are the disciplinary options  
13 listed?

14 A. Well, we talk about in here what we can  
15 grieve, and then the department -- I'm sure it's in  
16 their policy or the matrix discipline process  
17 manual.

18 Q. Okay. Tell me where -- Can you point me  
19 exactly in Exhibit 48 where the disciplinary options  
20 are listed?

21 A. Under the grievance procedure. We talked  
22 about it earlier.

23 Q. 12.02?

24 A. That sounds about right.

25 Q. And you yourself just said, this is the

1 grievance procedure, correct?

2 A. Well, it's under discipline, and then  
3 under appeals.

4 Q. And you described this as the grievance  
5 procedure, correct?

6 A. I did say grievance procedure.

7 Q. And so 12.02 addresses what is grievable;  
8 is that right?

9 A. Yes.

10 Q. Okay. So it's not actually an exhaustive  
11 list of the disciplinary options available to the  
12 Minneapolis Police Department, is it?

13 MR. KELLY: Objection. Calls for  
14 speculation.

15 A. These are what we recognize as the  
16 disciplinary options for members.

17 Q (BY MS. WALKER) And so what you're saying  
18 to me is, if the City issued an oral  
19 reprimand -- Let me ask that. If the City issued an  
20 oral reprimand, what would be the Federation's  
21 position?

22 A. I'm sure it would be a board discussion,  
23 because I can't think of a time where it's been  
24 used.

25 Q. Okay. Do you see anything in the

1 collective bargaining agreement that says they  
2 cannot issue an oral reprimand?

3 A. I am not aware of anything in there.

4 Q. Okay. It's just not grievable, correct?

5 A. Yeah. What we just talked about in that  
6 12.02 was what's grievable.

7 Q. Correct. But that's not an exhaustive  
8 list of the disciplinary options available to the  
9 City, correct?

10 A. I don't know if they use oral reprimands.  
11 I have never seen them. Or if they have, I have not  
12 been made aware of them.

13 Q. What if they issued a warning? That's not  
14 grievable, is it?

15 A. Not according to this.

16 Q. Okay. But it is a disciplinary option  
17 available to the City, correct?

18 A. I don't know if they use warnings.

19 Q. That's not my question.

20 My question is, could they?

21 MR. KELLY: Objection. Calls for  
22 speculation.

23 Q (BY MS. WALKER) You can answer if you  
24 know.

25 A. Okay. I think that, under the civil

1 service rules, they could, but I don't know of  
2 us -- or of it being used on the police department.

3 Q. Okay. So they could, and if they did, it  
4 would not be grievable, correct?

5 A. Not under our -- under our collective  
6 bargaining.

7 Q. You haven't negotiated for the right to  
8 appeal a warning; is that correct?

9 A. Correct. It's not in our collective  
10 bargaining agreement.

11 Q. Could you flip to section 30.08 of this  
12 document, please? I think it's around page 76, if I  
13 recall.

14 A. Thirty --

15 MR. KELLY: Page 82.

16 MS. WALKER: Thank you. Eighty-two.

17 A. Okay.

18 Q. (BY MS. WALKER) 30.08 addresses direct  
19 testing, correct?

20 A. Yep.

21 Q. And if you could flip to the next page,  
22 subsection C. It says, Other Misconduct. Nothing  
23 in this article limits the right of the employer to  
24 discipline or discharge an employee on grounds other  
25 than a positive test result in a confirmatory test,

1 subject to the requirements of law, the rules of the  
2 Civil Service Commission, and the terms of this  
3 collective bargaining agreement.

4 Did I read that correctly?

5 A. Yes.

6 Q. It goes on: For example, if evidence  
7 other than a positive test result indicates that an  
8 employee engaged in the unlawful manufacture,  
9 distribution, dispensation, possession, or use of a  
10 controlled substance in the employer's workplace,  
11 the employee may receive a warning, a written  
12 reprimand, a suspension without pay, a demotion, or  
13 a discharge from employment.

14 Did I read that part correctly?

15 A. You did.

16 Q. And many of those items, a written  
17 reprimand, a suspension, a demotion, or a discharge,  
18 are grievable under section 12.02, correct?

19 A. Correct. Yes.

20 Q. And warning is not, correct?

21 A. It's not listed in 12.02.

22 Q. So you agree with me that the Minneapolis  
23 Police Department can issue a warning and there  
24 would be no grounds to grieve that, correct?

25 A. According to 12.02 of our contract, yes.

1 Q. Do you think there's some other document  
2 that would give you grounds to grieve it?

3 A. I would say potentially on a past practice  
4 argument, but we've never used warnings.

5 Q. Never?

6 A. In my recollection we have not used  
7 warnings.

8 Q. I'm going to hand you what we've marked as  
9 Exhibit 96.

10 (Premarked Deposition Exhibit Number 96  
11 introduced.)

12 Q. I'll give you a minute to look at it.  
13 Have you finished reading?

14 A. Uh-huh.

15 Q. Okay. This is a 2012 email from Tim Dolan  
16 to Sherral Miller. Is that you?

17 A. That is me.

18 Q. Your last name has changed since 2011, I  
19 take it?

20 A. Yes.

21 Q. Okay. And you were on the board at this  
22 point, in 2011, correct?

23 A. I was.

24 Q. Okay. And Tim Dolan has decided to issue  
25 a warning letter for an A level violation, correct?

1 A. That's what it says on here.

2 Q. Okay. So past practice is the Minneapolis  
3 Police Department does issue warnings, correct?

4 MR. KELLY: Objection. Calls for a legal  
5 conclusion, and misstates the testimony.

6 Q (BY MS. WALKER) You can answer.

7 A. This says warning letter. I would assume  
8 he meant a letter of reprimand.

9 Q. Why would you assume that?

10 A. Because that's what we use in our -- we  
11 can use in our -- or we use when we issue a written  
12 discipline.

13 Q. Any other basis for that assumption?

14 A. Other than it says warning letter.

15 Q. That's it?

16 A. Yeah.

17 Q. Okay. So what the chief says in an email  
18 isn't to be taken at face value?

19 A. Why do you say that?

20 Q. Because you're assuming he meant something  
21 he did not say.

22 A. I guess I don't know what you mean.

23 Q. Is it the Federation's position that we  
24 should not take communications of the Minneapolis  
25 Police Department at face value?

1 A. That is not my position.

2 Q. Okay. So we should believe the plain  
3 language of what the chief of police says?

4 A. Yes.

5 Q. I'll refer you back to that for one  
6 minute. This was for an A violation.

7 Do you see that?

8 A. Yeah. He reduced it to an A.

9 Q. And letters of reprimand aren't give for A  
10 levels, correct?

11 A. No.

12 Q. So would you agree with me he probably did  
13 mean a warning letter?

14 MR. KELLY: Objection. Calls for  
15 speculation.

16 A. I don't know what his intent was.

17 Q (BY MS. WALKER) Okay. So you would  
18 withdraw your testimony that he probably meant a  
19 letter of reprimand, because that was speculative,  
20 too, correct?

21 A. Correct.

22 Q. And you withdraw that testimony?

23 A. Yes.

24 Q. Would you agree with me that, like  
25 coaching, discipline within the Minneapolis Police

1 Department is also supposed to be corrective rather  
2 than punitive?

3 A. There's a -- discipline is, in my  
4 mind -- is punitive, so, I mean --

5 Q. Are you aware that the Federation has  
6 repeatedly taken the position that discipline cannot  
7 be punitive?

8 A. (No response.)

9 Q. Do you want to see some documents?

10 A. Yes.

11 Q. Okay. We'll hand you what's been marked  
12 as Exhibit 132.

13 (Premarked Deposition Exhibit Number 132  
14 introduced.)

15 Q. And you don't need to review all of this.  
16 It's a letter that had several exhibits. But let me  
17 ask you a few preliminary questions.

18 First of all, Jim Michels you previously  
19 identified as an attorney for the Federation,  
20 correct?

21 A. Yep.

22 Q. And this is a letter he authored  
23 October 30th, 2020, correct?

24 A. It looks like it.

25 Q. Were you on the board at that time?

1           A.     I was.

2           Q.     You were not president at that time,  
3 correct?

4           A.     I was not.

5           Q.     And the letter is a public letter,  
6 correct?

7           A.     It -- I -- public in that it went to  
8 several people, or --

9           Q.     Well, it went to Barry Clegg, who's the  
10 chair of public safety work group; is that right?

11          A.     I'm not familiar with that name.

12          Q.     Do you see it on the inside address at the  
13 top of the letter?

14          A.     Okay.

15          Q.     And if you look at the cc at the end of  
16 the letter, it went to charter commissioners.

17                 Do you see that?

18          A.     Okay.

19          Q.     So this letter went to city commissioners  
20 and the city clerk, Casey Carl, correct?

21          A.     Yeah. I believe it would be city  
22 commissioners.

23          Q.     Okay. And you don't see any designation  
24 on this letter that it's confidential, correct?

25          A.     I can't see that marked on any of these

1 pages.

2 Q. And so fair to say this is the public  
3 position of the Federation, correct?

4 A. I'd have to read the thing to --

5 Q. Do you remember reading this letter before  
6 it was sent?

7 A. I do not.

8 Q. I'm going to refer you to the bottom of  
9 page 3 of the letter.

10 Your attorney writes to the city  
11 commission, Ever since the 1920 City Charter  
12 established the Civil Service Commission, there have  
13 been two principles that have governed the  
14 discipline of all City employees.

15 Did I read that correctly?

16 A. Yep.

17 Q. At the top of the next page he says,  
18 number 1, Discipline must be for just cause, and  
19 number 2, Discipline is intended to be corrective  
20 rather than punitive.

21 Did I read that correctly?

22 A. You did.

23 Q. Okay. So as you sit here today, the  
24 Federation's position is that discipline should not  
25 be punitive, correct?

1 MR. KELLY: Objection. Misstates  
2 testimony.

3 Q (BY MS. WALKER) I'll ask the question  
4 differently.

5 Do you stand by the position your attorney  
6 took in this letter?

7 A. I think discipline is -- can be both  
8 corrective and punitive, because there's a loss to  
9 you when you're being suspended and -- or depends on  
10 where you are, if you're transferred or demoted.

11 Q. So your attorney, in writing this letter,  
12 was not representing the position of the Federation?  
13 Is that what you're telling me?

14 A. I'm saying that discipline can be both; it  
15 can be corrective and punitive.

16 Q. So you disagree with Jim Michels when he  
17 said, discipline is intended to be corrective rather  
18 than punitive. You think that's a misstatement?

19 A. I'm telling you what I think -- or what --  
20 how we look at it is, that discipline is corrective,  
21 but there is -- and then there's also the punitive  
22 piece when you are losing either an assignment or  
23 you're demoted or you're losing pay.

24 Q. So my question is --

25 MS. WALKER: If you could repeat it,

1 please.

2 (Whereupon, the court reporter read back  
3 the requested portion of the record.)

4 Q. (BY MS. WALKER) That's a yes-or-no  
5 question.

6 THE WITNESS: I'm sorry. One more time?  
7 (Whereupon, the court reporter read back  
8 the requested portion of the record.)

9 A. I think it's both.

10 Q. (BY MS. WALKER) So the answer to my  
11 question is, yes, you do disagree with the  
12 Federation's attorney?

13 A. Again, I said I think it can be both.

14 Q. Can you answer my yes-or-no question with  
15 a yes or a no, please?

16 A. How that statement is written, I would  
17 disagree with that. But like I said, I think it can  
18 be both.

19 Q. While we're in this document, could you  
20 flip to page 6 of the letter?

21 A. (Witness complies.)

22 Q. The last paragraph on page 6, Mr. Michels  
23 begins to talk about two recent Minneapolis cases  
24 illustrate this point.

25 Do you see that?

1 A. I do.

2 Q. The first incident involved officers who  
3 punched a man.

4 Do you see that?

5 A. I do.

6 Q. And if you flip to the next page, the  
7 second incident involved the somewhat infamous  
8 Christmas tree case from the 4th Precinct.

9 Do you see that?

10 A. I do.

11 Q. And Mr. Michels describes these incidents  
12 in some detail.

13 Do you see that?

14 A. Yeah. One paragraph, it looks like, to  
15 each of them.

16 Q. He doesn't identify the officers, correct?

17 MR. KELLY: Object as to misstates the  
18 evidence.

19 Q (BY MS. WALKER) He doesn't use the  
20 officers' names, correct?

21 MR. KELLY: Objection. Misstates  
22 evidence.

23 MS. WALKER: Joe, if you want to point me  
24 to my mistake, I'm happy to --

25 MR. KELLY: He attached the arbitration

1 awards, which identify the officers by name.

2 MS. WALKER: Thank you for pointing that  
3 out. I'll withdraw the question.

4 Q. (BY MS. WALKER) Let me ask this: Are you  
5 concerned that Mr. Michels' detailed recitation of  
6 these incidents violated the Data Practices Act?

7 MR. KELLY: Objection. Calls for a legal  
8 conclusion.

9 Q (BY MS. WALKER) You can answer.

10 A. You're asking -- I'm sorry.

11 Q. Are you concerned that Mr. Michels'  
12 detailed recitation of these incidents violated the  
13 Data Practices Act?

14 A. I believe they were arbitrations or  
15 hearings, so the details would have been available.

16 Q. Do you know if these officers were  
17 disciplined?

18 A. I'd have to look at the cases.

19 Q. We can come back to this one. We can move  
20 on for now.

21 A. Okay.

22 Q. I'm going to hand you Exhibit 133.

23 (Premarked Deposition Exhibit Number 133  
24 introduced.)

25 Q. And I'll represent to you that this is a

1 brief submitted by attorneys for the Federation.

2 It's called a Post-Hearing Brief at the top.

3 Do you see that?

4 A. I do.

5 Q. And it relates to some sort of  
6 arbitration.

7 Do you see that?

8 A. I do.

9 Q. And if you flip to the last page, it was  
10 signed by an attorney from Kelly & Lemmons.

11 Do you see that?

12 A. I do.

13 Q. And that's the firm of Mr. Joe Kelly,  
14 who's here with you today, correct?

15 A. Yes.

16 Q. Can we trust that this brief reflects the  
17 Federation's position on the facts of the case and  
18 the applicable law?

19 A. Having not read this in a long time, but  
20 having a long working relationship with them -- Like  
21 I said, I haven't read it all, but I trust them as  
22 our attorneys.

23 Q. Okay. Could you flip to page 6? And in  
24 the first full paragraph, three lines in, it Says,  
25 discipline is considered excessive if it is, quote,

1 out of step with the principles of progressive  
2 discipline, if it is punitive rather than  
3 corrective, or if mitigating circumstances were  
4 ignored, end quote.

5 Did I read that correctly?

6 A. You did.

7 Q. Okay. And it actually cites, then, to a  
8 matter, Elkouri.

9 Do you see that?

10 A. At the top there?

11 Q. Yes.

12 A. Okay.

13 Q. So this is a second instance of an  
14 attorney for the Federation saying that discipline  
15 should not be punitive.

16 Would you agree with that reading of this  
17 statement?

18 MR. KELLY: Objection. Misstates the  
19 evidence in the record, and calls for a legal  
20 conclusion.

21 Q (BY MS. WALKER) Do you agree?

22 A. That is what is written here.

23 Q. Okay. Is it still your position that  
24 discipline is punitive?

25 A. As I stated before, I think it's both.

1           Q.    You're speaking on behalf of the  
2   Federation, correct?

3           A.    Yes.

4           Q.    In a manner inconsistent with what two of  
5   its attorneys put in writing, correct?

6           MR. KELLY:  Objection.  Misstates  
7   testimony and evidence in the record.

8           Q     (BY MS. WALKER) You can answer.

9           A.    As I said before, I think that discipline  
10   is both corrective and has a punitive piece to it.

11          Q.    That wasn't my question.

12          MS. WALKER:  Could you repeat my question,  
13   please?

14                (Whereupon, the court reporter read back  
15   the requested portion of the record.)

16          A.    Yes.

17          Q.    (BY MS. WALKER) Is it your position that  
18   the Federation's view on discipline has changed  
19   since 2016 or since 2020?

20          A.    You're asking if our stance on discipline  
21   has changed?

22          Q.    Yes.

23          A.    No.

24          Q.    So at least in 2016 and 2020, the  
25   Federation's position was that discipline should not

1 be punitive; is that accurate?

2 MR. KELLY: Objection. Misstates evidence  
3 in the record and testimony.

4 Q (BY MS. WALKER) You can answer.

5 A. What was the question again?

6 (Whereupon, the court reporter read back  
7 the requested portion of the record.)

8 A. According to these documents, yes.

9 Q. (BY MS. WALKER) And you testified the  
10 Federation's position has not changed, correct?

11 A. (No response.)

12 MS. WALKER: I'll withdraw the question.  
13 The testimony's in the record.

14 Q. (BY MS. WALKER) Let's take a look at  
15 what's been premarked Exhibit 115.

16 THE WITNESS: Can I just step out for a  
17 restroom break?

18 MS. WALKER: Of course. Let's take  
19 another 10 minutes.

20 (Whereupon, the proceedings were in recess  
21 at 11:01 a.m. and subsequently reconvened at  
22 11:24 a.m., and the following proceedings were  
23 entered of record:)

24 Q. (BY MS. WALKER) All right. We're going  
25 hand you what's been marked as Exhibit 115.

1 (Premarked Deposition Exhibit Number 115  
2 introduced.)

3 Q. And I'll represent to you that this is an  
4 older version of the policy and procedure manual,  
5 but the language I'm going to reference was in the  
6 policy from 1993 to 2016.

7 If you could flip about eight pages in,  
8 the number at the bottom of the page will be  
9 CITY003010.

10 Are you there?

11 A. I am there.

12 Q. Okay. And the last paragraph on the page  
13 says, Effective discipline is a positive process  
14 when its perceived purpose is to train or develop by  
15 instruction.

16 Did I read that correctly?

17 A. You did.

18 Q. Okay. Do you agree with that statement?

19 A. I agree to some of it and not to others.

20 Q. Okay. Which part do you agree with?

21 A. That effective discipline will train and  
22 develop by instruction.

23 Q. That's the part you agree with?

24 A. Uh-huh.

25 Q. Okay. So in other words, you agree that

1 effective discipline is corrective. You agree with  
2 that aspect of this definition?

3 A. (No response.)

4 Q. I can withdraw the question and reask it.  
5 Which part do you disagree with?

6 A. I wouldn't say that discipline is a  
7 positive process.

8 Q. Is it a negative process?

9 A. I think it has that -- it can be for  
10 people.

11 Q. So the intent of the City doesn't matter?  
12 What matters in terms of --

13 I'll withdraw that question and rephrase  
14 it.

15 You think coaching is a positive process?

16 A. I think it can be, yes.

17 Q. Can it also be negative?

18 A. I think people -- I believe people could  
19 perceive it that way.

20 Q. Why would they perceive it as negative?

21 A. Because it comes out of a complaint  
22 against you.

23 Q. So is it your testimony that the impact on  
24 a member of the Federation, whether it's discipline  
25 or coaching, could be identical?

1           A.     That they could -- Yes. I think a member  
2     could see coaching as negative, and they  
3     could -- and discipline as negative as well.

4           Q.     And so in your view, both coaching and  
5     discipline, they're both corrective but they can  
6     also both be negative?

7           A.     They can be viewed as negative.

8           Q.     Do you agree that disciplinary action is  
9     an action imposed by a government entity to punish  
10    or penalize?

11           MR. KELLY: Objection. Calls for a legal  
12    conclusion.

13           A.     I do think there's a punitive piece to  
14    disciplinary action.

15           Q.     (BY MS. WALKER) Okay. So I asked if you  
16    agreed. And it's a yes-or-no question.

17           MS. WALKER: Could you reread the  
18    question?

19           (Whereupon, the court reporter read back  
20    the requested portion of the record.)

21           A.     Yes.

22           Q.     (BY MS. WALKER) Would you also add, to  
23    correct?

24           A.     Yes. I believe that's a piece of  
25    discipline as well.

1 Q. And you would agree that coaching can be  
2 to punish or penalize?

3 A. No. It's to correct behavior or a  
4 situation.

5 Q. But your testimony is that can feel like a  
6 penalty, correct?

7 MR. KELLY: Objection. Misstates  
8 testimony.

9 A. Some people can perceive it as -- I forget  
10 what your word was.

11 Q. (BY MS. WALKER) As a penalty?

12 A. As a penalty.

13 Q. And some officers would perceive coaching  
14 as a punishment?

15 MR. KELLY: Objection. Calls for  
16 speculation.

17 A. I could see where some people may think  
18 that.

19 Q. (BY MS. WALKER) And that's why they would  
20 grieve it?

21 MR. KELLY: Objection. Misstates the  
22 facts in the record and testimony.

23 A. You can't grieve coaching.

24 Q. (BY MS. WALKER) Say that louder.

25 A. We can't grieve coaching.

1 Q. But you have?

2 A. When it is attached to a B level, yes, we  
3 have.

4 Q. Because then it feels like penalty or  
5 punishment, correct?

6 MR. KELLY: Objection. Misstates  
7 testimony.

8 A. No. It feels like the City is trying to  
9 change practice that coaching is -- that coaching is  
10 nondisciplinary.

11 Q. (BY MS. WALKER) That's the only reason you  
12 grieve it?

13 A. Grieving discipline --

14 Q. Is that the only reason you grieve  
15 coaching of a B level, because it feels like the  
16 City is trying to change its practice? Is that the  
17 only reason you grieve it?

18 A. The practice and policies of the City has  
19 always been that coaching is nondisciplinary, and  
20 then when they attach it to a violation that's at a  
21 disciplinary level, we are concerned that they're  
22 trying to change coaching into a disciplinary.

23 Q. And is that the only reason you grieve it?

24 A. There might be other merits to the case  
25 that we grieve it.

1 Q. Isn't it true you grieve it because, when  
2 coaching is attached to a B level, the officer feels  
3 it's a punishment or a penalty?

4 A. Not all people do.

5 Q. But isn't it true that that is sometimes  
6 why you grieve B level coaching, because it feels  
7 like a punishment or a penalty?

8 A. Because they're trying to attach a  
9 disciplinary -- or coaching to a disciplinary --

10 Q. I'm asking a different question. I  
11 understand your answer there.

12 Isn't it true that one of the reasons  
13 officers grieve B level coaching is because it feels  
14 like a penalty or a punishment?

15 MR. KELLY: Objection. Misstates facts  
16 and evidence.

17 MS. WALKER: It's a question. I'm not  
18 stating anything. I'm asking a question.

19 Could you repeat it for her?

20 (Whereupon, the court reporter read back  
21 the requested portion of the record.)

22 A. No.

23 Q. (BY MS. WALKER) That's not why you grieve  
24 it?

25 A. No. As I stated before, we would grieve

1 it because it feels -- because our belief is -- or  
2 our concern is that the City is trying to make  
3 coaching discipline.

4 Q. My question is, that's the only reason  
5 you're grieving it, or are there other reasons  
6 you're grieving it?

7 A. It depends on the case.

8 Q. Would it depend how the officer feels?  
9 I'll rephrase.

10 Would it depend how the officer perceives  
11 the coaching and whether he perceives it to be a  
12 penalty?

13 A. No.

14 Q. That wouldn't be a factor?

15 A. No.

16 Q. Do you remember looking at that Exhibit  
17 96, where Chief Dolan issued a warning letter?

18 A. Was that the single piece of paper?

19 MS. NASCIMENTO: Yes.

20 Q. (BY MS. WALKER) I wanted to refresh your  
21 memory.

22 A. Yep.

23 Q. And this was in 2011 when that warning  
24 issued, correct?

25 A. Yes.

1 Q. Does 2011 strike you as around the same  
2 time that the department adopted the coaching  
3 documentation form?

4 A. I don't recall when they adopted that.

5 Q. You think it was in the 2000s?

6 A. Somewhere in the 2000s.

7 Q. Do you have any reason to dispute that it  
8 was around 2011?

9 A. I would not.

10 Q. Do you have any reason to dispute that,  
11 around the time the Minneapolis Police Department  
12 formalized coaching, they stopped giving written  
13 warnings? Sorry. They stopped giving disciplinary  
14 warnings?

15 MR. KELLY: Objection. Misstates  
16 testimony and evidence in the record.

17 Q (BY MS. WALKER) Do you have any reason to  
18 dispute that --

19 A. I'm sorry. I missed the question.

20 Q. Yeah. It was a tricky question.

21 Do you have any reason to dispute that the  
22 Minneapolis Police Department stopped giving  
23 warnings around the same time they formalized the  
24 coaching process?

25 A. I mean, obviously this says a warning

1 letter here. I don't recall situations where  
2 warnings were used.

3 Q. So the answer is, you have no basis to  
4 dispute what I said?

5 A. Correct.

6 Q. Did it concern the Federation when the  
7 Minneapolis Police Department started coaching even  
8 when there was not any violation of policy?

9 A. Yes.

10 Q. Why was that a concern to the Federation?

11 A. Because we're -- because the coaching on  
12 some of those situations, where there was no  
13 violation, it didn't seem like there was -- it  
14 didn't appear as if coaching was warranted.

15 Q. Okay. Does coaching have to be warranted?

16 A. If you're telling someone that they  
17 violated a policy, and it's shown that they did not,  
18 I think that, yeah, there should be some basis to  
19 it.

20 Q. And so the Federation's position is that  
21 coaching should only be used when there's been a  
22 violation of policy?

23 A. No. I said that -- before I talked about  
24 that they're for low-level violations or to  
25 correct -- I gave the example of someone coming --

1 you know, being late for work a couple days in a  
2 row. So those kind of things.

3 (Premarked Deposition Exhibit Number 135  
4 introduced.)

5 Q. I'm going to hand you what's been marked  
6 as Exhibit 135. And these are labor management  
7 meeting minutes from February 2020, correct?

8 A. February 25th, yes.

9 Q. And you were present at this meeting,  
10 according to the top line there, correct?

11 A. Yes.

12 Q. All right. If you could look under New  
13 Business, subsection d., there's a reference to  
14 coaching documents. Under New Business on the first  
15 page.

16 A. Oh, sorry.

17 Q. Item d., as in dog.

18 I'll let you read that paragraph.

19 The line I'm interested is in the second  
20 paragraph: Hedberg reported that there had been an  
21 ongoing issue with OPCR sending supervisors coaching  
22 documents for incidents that do not violate policy.

23 Did I read that correctly?

24 A. Yes.

25 Q. Okay. Why was that a, quote/unquote,

1 ongoing issue?

2 A. Because we were seeing situations where  
3 people were being sent -- or coaching documents were  
4 being sent to the precincts on things that weren't  
5 policy violations.

6 Q. Okay. Why was that a concern to the  
7 Federation?

8 A. Because the cops did nothing wrong.

9 Q. And coaching should only be used when  
10 there's a policy violation?

11 A. Or there's behavior that needs to be  
12 corrected, or a situation that has occurred that  
13 needs to be addressed.

14 Q. So you've said two different things. I  
15 just want to make sure I understand.

16 Is it the Federation's position that  
17 coaching must be tied to a policy violation, or can  
18 coaching be used for any concern that a supervisor  
19 has?

20 A. Yes on the policy violation piece. And I  
21 think that it can also be used when there is a  
22 behavioral concern or -- that doesn't rise to the  
23 level of a policy violation.

24 Q. Okay. So then why was a primary item of  
25 new business here in February of 2020 discussion of

1 an ongoing issue that supervisors are using coaching  
2 documents for incidents that do not violate policy?

3 MR. KELLY: Objection. Misstates the  
4 evidence in the record.

5 Q (BY MS. WALKER) Why was that a concern to  
6 the Federation?

7 A. I mean, obviously this is, what, four  
8 years ago, almost four years ago for this. So we  
9 were seeing issues where it would go to OPCR, and  
10 they would send it down with no policy violation,  
11 and so that is a concern when we're -- we're just  
12 now picking things out and saying, coach this cop,  
13 on something that there's no basis for.

14 Q. If coaching is corrective and positive and  
15 sunshine and rainbows, why is it a concern that  
16 officers are being coached when there's been no  
17 policy violation? Why does that concern the  
18 Federation?

19 A. This specifically? 'Cause it's coming  
20 from OPCR, which is supposed to coach -- or supposed  
21 to investigate misconduct. And then they're sending  
22 things down when there isn't a policy violation, it  
23 doesn't make any sense.

24 Q. I understand what they're doing. I'm  
25 asking why the Federation --

1           A.     Because you're telling --

2           Q.     Just let me finish so we don't confuse the  
3     record.

4                     Why is that a concern?

5           A.     Because you're telling -- the cops  
6     feel -- or there's the perception that they did  
7     something wrong when you're getting coached on  
8     something -- a non -- nonpolicy violation coming  
9     from the Office of Police Conduct and Review.

10          Q.     It can feel like a punishment or a penalty  
11     when you did nothing wrong.

12                     Would you agree with that?

13          MR. KELLY:   Objection.   Misstates  
14     testimony.

15          MS. WALKER:   It's a question.   Stop  
16     coaching the witness.

17          A.     What was your question?

18          MS. WALKER:   Can you repeat it?

19                     (Whereupon, the court reporter read back  
20     the requested portion of the record.)

21          A.     It could be.   It could feel that way to  
22     some of our members, yes.

23          Q.     (BY MS. WALKER) And, in fact, it did feel  
24     that way to some of your members, and that is why  
25     you discussed it in February 2020; isn't that true?

1           A.    We discussed it to try to resolve an  
2    issue.

3           Q.    Because some members were bothered by this  
4    practice, correct?

5           A.    I would assume so.

6           Q.    I'm going to hand you two exhibits, 136  
7    and 137.

8                   (Premarked Deposition Exhibit Numbers 136  
9    and 137 introduced.)

10          Q.    So 136 are labor management meeting  
11    minutes from March of 2020, correct?

12          A.    Yes.

13          Q.    And Exhibit 137 is a letter dated  
14    January 15th, 2014, correct?

15          A.    Correct.

16          Q.    Six years apart, approximately; is that  
17    right?

18          A.    Roughly.

19          Q.    If you could look at Exhibit 136, which is  
20    the meeting minutes.

21          A.    Okay.

22          Q.    Under Old Business, item c., there's a  
23    reference to OPCR investigations and coaching.

24                  Do you see that?

25          A.    I do.

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1 Q. And it says, Halvorson reported that the  
2 issues should be fixed with IAU taking over coaching  
3 and the process will be streamlined. It says, the  
4 [REDACTED] coaching document was discussed.

5 Do you see that correctly?

6 A. I do.

7 Q. And you were at this meeting, according to  
8 the notation at the top, correct?

9 A. Yes.

10 Q. So I'll represent to you that the only  
11 [REDACTED] document we received in this case is  
12 Exhibit 137, which is this letter about coaching  
13 from six years prior.

14 Do you know if the minutes here are  
15 referring to this six-year-old incident, or are they  
16 referring to something else?

17 A. I do not know.

18 Q. Okay. Do you know if [REDACTED] was  
19 coached more than once?

20 A. I do not know.

21 MS. WALKER: So I'll just make a record  
22 that the plaintiff would request that both the City  
23 and Federation go look again for [REDACTED] coaching  
24 records that might relate to this reference in the  
25 March 2020 minutes.

1 Q. (BY MS. WALKER) If you could look at  
2 Exhibit 137, which is the letter to [REDACTED],  
3 it advises [REDACTED] that an investigation has been  
4 completed.

5 You agree with that?

6 A. Uh-huh. Yes.

7 Q. Okay. And they -- there were apparently  
8 three violations at issue, and one was sustained at  
9 the category A level.

10 Do you see that?

11 A. I do.

12 Q. And it says [REDACTED] receive coaching from  
13 [REDACTED] supervisor, as the finding was sustained at  
14 category A. Correct?

15 A. I do see that.

16 Q. And the last line of this letter says  
17 that, Be advised that any additional violations of  
18 department rules and regulations may result in more  
19 severe disciplinary action up to and including  
20 discharge from employment.

21 Do you see that?

22 A. I do.

23 Q. So some form of disciplinary action more  
24 severe than coaching? Is that how you interpret  
25 this letter?

1 MR. KELLY: I'll object as to misstating  
2 the evidence.

3 Q (BY MS. WALKER) So the letter puts [REDACTED] on  
4 notice that [REDACTED] may receive some form of disciplinary  
5 action more severe than coaching if [REDACTED] continues to  
6 violate department rules and regulations.

7 Would you agree with that?

8 A. Yeah. I agree that it says, additional  
9 violations will result in more severe disciplinary  
10 action up and including discharge.

11 I would agree with that.

12 Q. Does it concern you that, in this letter,  
13 coaching is characterized as disciplinary action?

14 MR. KELLY: Objection. Misstates the  
15 evidence.

16 Q (BY MS. WALKER) Do you agree with me that,  
17 in this letter, coaching is characterized as  
18 disciplinary action?

19 A. Where does it say that?

20 Q. In the last paragraph.

21 A. I don't think it refers to this -- the  
22 category A listed in here as disciplinary. I think  
23 this is just an advisal, that, if you -- additional  
24 violations could result in disciplinary action.

25 Q. More severe disciplinary action, correct?

1 A. It does say more severe.

2 Q. Okay. You can set that document to the  
3 side.

4 Let's take a look at Exhibit 139.

5 (Premarked Deposition Exhibit Number 139  
6 introduced.)

7 Q. These are Federation executive board  
8 meeting minutes from April 2015, correct?

9 A. Yes.

10 Q. And under Members Present, I don't see  
11 your name. Correct?

12 A. I am not on there.

13 Q. Okay. Flip to the second page, under Old  
14 Business. Item c. refers to, Coaching Document  
15 Overhaul, and then it says, Schmidt stated that it  
16 has been recommended that coaching documents be  
17 nondisciplinary and stay out of the discipline  
18 process.

19 Is that a reference to you?

20 A. Yes. I would assume so. I'm the only  
21 Schmidt that's been on the board.

22 Q. Okay. So do you think you actually did  
23 attend this meeting?

24 A. No, because this is under Old Business, so  
25 until we resolved that old business, it would stay

1 under Old Business until it is either moved off for  
2 whatever reason, so --

3 Q. You would have said this at some time  
4 prior to April 2015?

5 A. That would be my assumption, but without  
6 looking through things, I don't know for sure.

7 Q. Right. And the note says, the minutes say  
8 that it has been recommended. It doesn't say who  
9 recommended it.

10 Are you recommending it, or are you  
11 passing on what's been recommended by someone else?

12 A. I don't know.

13 Q. Okay. What's the basis for that  
14 recommendation?

15 A. I don't know.

16 Q. Okay. Are you aware that coaching did not  
17 stay out of the disciplinary process?

18 A. I don't -- in my experience, it's always  
19 been out of the disciplinary process.

20 Q. Except when they coach B level, correct?

21 A. Correct.

22 Q. And coaching, of course, is part of the  
23 progressive discipline model and can be used to  
24 enhance discipline, correct?

25 MR. KELLY: Objection. Calls for a legal

1 conclusion.

2 Q (BY MS. WALKER) That's the other way that  
3 coaching is part of the disciplinary process?

4 A. Are you referring to when you can put the  
5 two of them together to make --

6 Q. Yes.

7 A. So you could take two -- two As could  
8 aggregate the same or similar conduct.

9 Q. Right.

10 A. Yes.

11 Q. So coaching is a part of the disciplinary  
12 process in that respect, correct?

13 A. I would say, no, until you have two  
14 coaching incidents, but they end up aggregating  
15 together to make it a higher one.

16 Q. And then it's part of the disciplinary  
17 process?

18 A. Once they become aggregated to make it a  
19 B, then it's part of the disciplinary process.

20 Q. Okay. Do you remember the first time an  
21 officer was coached for a B level violation?

22 A. I do not.

23 Q. I'll hand you an exhibit that might help.

24 So I'll hand you what's been premarked as  
25 Exhibit 169.

1 (Premarked Deposition Exhibit Number 169  
2 introduced.)

3 Q. I apologize again for the very small type.  
4 I'll give you a second to look at this.  
5 Tell me when you're ready for the next  
6 question.

7 A. Okay.

8 Q. So this is correspondence from  
9 October 2011, correct?

10 A. Yes.

11 Q. From Jeff Jindra to Harteau, who was in  
12 leadership at the police department at the time,  
13 correct?

14 A. Yes.

15 Q. She was not the chief at that point; is  
16 that true?

17 A. Yeah. That sounds right.

18 Q. Okay. And in the first email from  
19 October 7th, 2011, Mr. Jindra is expressing concern  
20 that [REDACTED] was found to have engaged in a B  
21 level violation and would receive coaching at the B  
22 level.

23 Do you see that?

24 A. Are you talking like the third paragraph  
25 down?

1 Q. Yeah.

2 A. So how I read that was, it was found that  
3 they sustained a use of force at a B level and a  
4 code of conduct at an A level. That's how I read  
5 that.

6 Q. Okay. And then the next paragraph says,  
7 This letter stated that [REDACTED] will receive coaching at  
8 a B level.

9 Do you see that?

10 A. I do.

11 Q. Okay. And there's discussion in the next  
12 paragraph about maybe this letter was sent in error.  
13 Correct?

14 A. Correct.

15 Q. But then four days later Mr. Jindra emails  
16 someone else at the Federation and says, I have to  
17 grieve this.

18 Do you see that?

19 A. I do see that.

20 Q. Okay. Does this help you recall when the  
21 Minneapolis Police Department may have begun  
22 coaching B level violations?

23 A. I have no recollection of this case,  
24 but -- I mean, that's what it says in here. I have  
25 no -- I don't know the details of this case and if

1 that was actually what was done with this case.

2 Q. Okay. But potentially as far back as  
3 2011, B levels were being coached, correct?

4 A. Again, like I said, I don't know the  
5 details, and I haven't seen any of the paperwork on  
6 this case, so I don't know what was actually done.

7 Q. You would agree with me that that's what  
8 this email at least suggests?

9 A. That's what it says, yes.

10 Q. Okay. And the Federation would have the  
11 additional paperwork and could produce it to us,  
12 correct?

13 MR. KELLY: Foundation.

14 MS. WALKER: I'll just make a record that  
15 any additional paperwork about this we do request.

16 Q. (BY MS. WALKER) And as far back as 2011,  
17 this email would suggest that the Federation was  
18 grieving B level coaching, correct?

19 A. I don't know if a grievance was filed. I  
20 mean, he says that he has to grieve it. I don't  
21 know if there was a grievance filed.

22 Q. But the Federation would have the  
23 grievance if one was filed?

24 A. I would assume so.

25 Q. And the Federation would have viewed B

1 level coaching as a violation of city policy back in  
2 2011, correct?

3 A. It would have been inconsistent with what  
4 the policies were at the time.

5 Q. Okay. Let's take a look at a couple more  
6 grievances.

7 The policy at the time, by the way,  
8 required that B levels be disciplined, correct?

9 A. I'd have to look at the policy manual from  
10 then.

11 Q. So you're not aware if the policy mandated  
12 discipline for B level violations?

13 A. Without specifically looking at it --

14 Q. We're going to hand you what has been  
15 marked as both Exhibit 86 and 85.

16 (Premarked Deposition Exhibit Numbers 85  
17 and 86 introduced.)

18 Q. And while my colleague's passing them out,  
19 I will just orient you a bit.

20 The grievance is Exhibit 86, and it's  
21 dated January 2014 at the top.

22 Do you see that?

23 A. The multi-page document? This guy?

24 Q. Eighty-six. Yes.

25 A. Okay.

1           Q.    I want to clarify that the date at the top  
2 appears to say 2014, when it should actually be  
3 2015, because, if you look in the body of the  
4 grievance, there's references to August 2014, which  
5 would have been prior.

6                    So I think, if I'm reading between the  
7 lines, we've all done it, new year, we write the old  
8 year instead new one.

9                    Do you generally agree with me that that's  
10 what happened here?

11           A.    You're referring to where in here?

12           Q.    I just want to make sure we're all on the  
13 same page.

14                    So although the grievance says 2014 at the  
15 top, if you look at the actual grievance, the events  
16 occurred in 2014, and I believe it should be a 2015  
17 date at the very top. And I just want to make sure  
18 you understand and agree with that.

19                    The first line of the narrative gives you  
20 a clue that the discipline was handed out in 2014.

21                    Do you see that?

22           A.    Yeah. August 28th, 2014.

23           Q.    Correct. Okay. So the step 1 grievance  
24 that you're holding should be dated January 13th,  
25 2015, correct?

1 A. It would appear that way.

2 Q. Okay. And then just to connect the dots,  
3 Exhibit 85 are meeting minutes from around that same  
4 time period, a couple weeks later in 2015.

5 A. Okay.

6 Q. And, in fact, if you look at the --  
7 Well, I'll withdraw that.

8 So if you look first at the meeting  
9 minutes, Exhibit 85, under New Business, item b. as  
10 in boy, there's discussion of the [REDACTED] case.

11 Do you see that?

12 A. Yes.

13 Q. And it says [REDACTED] was given two B violations  
14 listed as coaching, put in [REDACTED] discipline file. It  
15 said, [REDACTED] never had a Loudermill hearing and  
16 was never coached on the incident by a supervisor.  
17 This is the first known case of a violation higher  
18 than A being listed as coaching.

19 Do you see that?

20 A. I do see that.

21 Q. Okay. But it's possible the first known  
22 incident was in 2011 related to Mr. Jindra, correct?

23 A. Was that number 169?

24 Q. Yes.

25 A. Well, there's an email. I don't

1 know -- Like I said before, I don't know what the  
2 actual outcome was, if a grievance was ever filed.

3 Q. But it's possible. I mean, the face of  
4 the email suggests that 2011 was the first time a B  
5 level was imposed for -- coaching was imposed for a  
6 B level.

7 Would you agree with me?

8 MR. KELLY: Objection. Misstates the  
9 evidence in the record.

10 MS. WALKER: I'll withdraw the question.  
11 I think the documents speak for themselves.

12 Q. (BY MS. WALKER) Now looking at the  
13 grievance itself, Exhibit 86. And the grievance  
14 refers to a final discipline letter.

15 Do you see that?

16 A. You're talking about up here where it  
17 says, Discipline Letter, Coaching, right, on the top  
18 part? Or are you wanting me to read through this?

19 Q. That there, and also the first full  
20 paragraph. It says, In hand I have what appears to  
21 be a final discipline letter on MPD document  
22 letterhead.

23 A. Okay.

24 Q. What is a final discipline letter?

25 A. It's a letter saying you're being

1     disciplined -- it's similar to this -- like it's  
2     similar to this. And then it would list out the  
3     violations, and then --

4             Q.     You're holding up Exhibit 137.

5             A.     I'm sorry. 137.

6                     And then it would list the violations,  
7     whether they were sustained or unfounded, just like  
8     you see in this one. And then there would be  
9     a -- whatever the outcome of that was going to be.

10            Q.     Okay. So a discipline letter is a letter  
11     that says you're being disciplined?

12            A.     Correct.

13            Q.     Do you know what came of this grievance?

14            A.     I do not.

15            Q.     Would the Federation have records showing  
16     what became of the grievance?

17            A.     Is this one of the ones that was on that  
18     list?

19                     All we have on record is that there was a  
20     coaching memo. That's on this 180 that we had  
21     started with earlier.

22            Q.     Okay. That's the only record you would  
23     have, as far as you know?

24            A.     Yes.

25            Q.     Going back to the minutes, where it refers

1 to this [REDACTED] grievance, it says, management will  
2 discuss the issue.

3 A. Okay.

4 Q. What was the discussion?

5 A. That they're issuing As for B level  
6 violations, for -- on there.

7 Q. That they're issuing coaching for a B  
8 level violation?

9 A. Correct.

10 Q. That was a concern?

11 A. Yes.

12 Q. For all the reasons we've discussed?

13 A. Yes.

14 Q. Let's take a look at two new exhibits, 125  
15 and 76.

16 (Premarked Deposition Exhibit Numbers 125  
17 and 76 introduced.)

18 Q. So 76 is a letter from the Federation,  
19 signed by you, actually --

20 A. It was.

21 Q. -- to Deputy Chief Glampe.

22 Do you see that?

23 A. I do.

24 Q. And you're about to get Exhibit 125. And  
25 as you look at that, I will tell you that this is an

1 internal email at the Federation about the grievance  
2 that is Exhibit 76.

3 You agree with me, that we're all talking  
4 about the same thing here?

5 A. Yes.

6 Q. And looking at the grievance itself, and  
7 the cover letter, you wrote, Enclosed please find  
8 the grievance filed on behalf of [REDACTED]

9 [REDACTED] regarding [REDACTED] which  
10 resulted in a B violation and coaching.

11 Do you see that?

12 A. I do.

13 Q. Okay. So similar consequence as what  
14 [REDACTED] faced, correct? B level for coaching?

15 A. Okay.

16 Q. And this is about -- that was  
17 January 2015. This is now nine months later, in  
18 October 2015, correct?

19 A. Yes.

20 Q. So the City is still coaching B level  
21 violations?

22 A. Yes.

23 Q. Okay. And this is four years after the  
24 Jeffrey email from 2011, correct?

25 A. Yeah. I believe so. Yes.

1           Q.    And then if you look at the grievance  
2   attached to that cover email, the second page, in  
3   the statement of grievance and given your testimony  
4   here today, I just want to note that you didn't  
5   complain that they were using a nondisciplinary  
6   mechanism for a B level. That's not what you stated  
7   in the statement of grievance. Correct?

8           A.    I said, no just cause for discipline.

9           Q.    Correct. Because you believed coaching in  
10  this instance was discipline, right?

11          A.    They were attaching it to a level of  
12  severity of discipline that was a letter violation,  
13  the B, that is considered disciplinary.

14          Q.    So that's a yes?

15          A.    I was concerned that they were going to  
16  consider a coaching discipline when it does not --  
17  it is nondisciplinary.

18          Q.    And you yourself characterized coaching as  
19  discipline in this grievance, correct?

20          A.    Because they assigned it to something that  
21  was listed as a disciplinary action.

22          Q.    That's not my question. I asked a  
23  yes-or-no question.

24          A.    What was your question?

25          Q.    You yourself characterized coaching as

1 discipline in this grievance, correct?

2 A. On this -- On this statement of grievance,  
3 yes.

4 Q. Do you take care in drafting statements of  
5 grievance?

6 A. Yes.

7 Q. You wouldn't say something you don't mean  
8 in a statement of a grievance?

9 A. No.

10 Q. Do you recall that, after this was denied  
11 at step 1, the Federation felt so strongly that it  
12 requested to go to step 2 of the appeals process?

13 A. Yes. I believe that was where I got the  
14 letter from -- email back from Glampe saying that  
15 coaching is not discipline.

16 Q. Okay. But it's true that, even when you  
17 got that back, the Federation did not stop grieving  
18 B level coaching, correct?

19 A. Correct.

20 Q. So you didn't necessarily believe what the  
21 City was saying to you, correct?

22 A. We left it open until the reckoning period  
23 was over so it could not be used against [REDACTED] if [REDACTED]  
24 had anything in the future.

25 Q. In fact, even when someone told you that

1 coaching is not discipline, you continued to grieve  
2 B level coaching for officers other than [REDACTED]  
3 [REDACTED], correct?

4 A. We did file grievances on some of the  
5 ones, yes. I don't know the specific ones, I mean,  
6 until I look at the spreadsheet.

7 Q. Because in the Federation's view, the City  
8 was incorrect when they say coaching of B level is  
9 not discipline?

10 MR. KELLY: Objection. Misstates  
11 testimony.

12 A. We grieved it because we were concerned  
13 that City was trying to make coaching discipline,  
14 which is -- and coaching has always been a  
15 nondisciplinary process.

16 Q (BY MS. WALKER) Are there other documents  
17 in possession of the Federation involving what the  
18 City said in response to this [REDACTED] grievance?

19 A. None that I know of.

20 Q. Would you have emailed about it?

21 A. There was an email from -- I believe it  
22 was on this one -- from Glampe saying that coaching  
23 isn't discipline.

24 Q. Would you have had internal emails among  
25 board members about whether to believe what the City

1 was saying?

2 A. There could have been. I don't know.

3 Q. Do you know if the Federation looked for  
4 those in response to our discovery requests?

5 A. I have looked for -- I looked for coaching  
6 stuff in our databases and our emails.

7 Q. You ran a keyword search for coaching?

8 A. I don't know if I did it myself or if we  
9 had our tech guy do it.

10 Q. All right. Let's look at one more before  
11 the break, Exhibit 140.

12 (Premarked Deposition Exhibit Number 140  
13 introduced.)

14 Q. This is from April of 2016, correct? A  
15 letter?

16 A. Yes.

17 Q. And so this would have been another  
18 several months after the [REDACTED] incident,  
19 correct?

20 A. Yeah. Yes.

21 Q. Do you know whose signature is at the  
22 bottom of this?

23 A. That looks like -- Well, it says Bjork on  
24 here, and that kinda looks loosely like Bjork.

25 Q. He's a board member?

1 A. He was.

2 Q. Okay. And he signed this cover letter and  
3 then submitted a grievance for [REDACTED];  
4 is that correct?

5 A. [REDACTED]. Yes.

6 Q. [REDACTED]?

7 A. (Witness nods head.)

8 Q. Thank you.

9 And, again, this is a grievance over B  
10 level coaching, correct?

11 A. It is.

12 Q. And if you flip to the actual grievance on  
13 the second page, the statement of grievance begins,  
14 The Federation does not concur with the discipline  
15 of B level coaching.

16 Did I read that correctly?

17 A. Yes.

18 Q. So the Federation is characterizing  
19 coaching as discipline in this first sentence,  
20 correct?

21 A. That is what is written in there.

22 Q. And then in the second sentence it says,  
23 Based upon the discipline matrix, B level discipline  
24 is not coaching and has a reckoning period of 3  
25 years.

1 Did I read that correctly?

2 A. You did.

3 Q. The last sentence says, This form of  
4 discipline is holding it against the grievant for an  
5 extended period of time and can be used against [REDACTED]  
6 in enhanced discipline.

7 Did I read that correctly?

8 A. You went to the last line?

9 Q. Uh-huh.

10 A. Yes.

11 Q. And, again, this is a second example where  
12 Officer -- or this board member, I should say -- is  
13 describing coaching as, quote, a form of discipline.

14 Do you see that, in that last sentence?

15 A. He says "enhanced discipline." Is that  
16 what you're talking with?

17 Q. No. The first words of the sentence, this  
18 form of discipline.

19 Do you see that?

20 A. Yes.

21 Q. "This form of discipline" refers to  
22 coaching, correct?

23 A. Yes.

24 Q. Did the Minneapolis Police Department give  
25 you any advance notice that they were going to start

1 coaching B level misconduct?

2 A. No.

3 Q. It just started happening?

4 A. Yes.

5 Q. There was no quasi agreement about this?

6 A. There were -- there was no discussion  
7 about coaching at any level other than A.

8 Q. And so the Federation was surprised?

9 A. Yes.

10 Q. And concerned?

11 A. Yes.

12 Q. And you remain concerned to this day?

13 A. Yes.

14 Q. Okay.

15 MS. WALKER: We can go off the record,  
16 take a break.

17 (Whereupon, the proceedings were in recess  
18 at 12:14 p.m. and subsequently reconvened at  
19 1:11 p.m., and the following proceedings were  
20 entered of record:)

21 Q (BY MS. WALKER) Just to tie up a  
22 discussion we were having before lunch -- and I hope  
23 this doesn't sound too silly -- but is it fair to  
24 say that, to the best of the Federation's knowledge,  
25 coaching has never been used as a commendation?

1           A.    As far as I know.

2           Q.    So it's not meritorious; it's a negative  
3    thing in a file? Is that correct?

4           A.    I don't think it would be viewed as  
5    negative, because it's, again, a corrective or  
6    a -- meant to improve, put on notice, whatever you  
7    want to say, that, if something continues, it could  
8    be -- result in something more.

9           Q.    Okay. Let's take a look at Plaintiff's  
10   Exhibit 143.

11                   (Premarked Deposition Exhibit Number 143  
12   introduced.)

13          Q.    And I know the URL is a little hard to  
14   read, but these appear to me to be screenshots of a  
15   City website.

16                   Would you agree?

17          A.    All right. I can't read anything on  
18   there, but from --

19          Q.    I can represent to you that, when I viewed  
20   it on screen, it was a City domain in the individual  
21   squares here on the exhibit.

22          A.    It looks familiar to some of the  
23   dashboards that we use. Yes. I can't read anything  
24   on there.

25          Q.    Okay. And so even though it's a City

1 website, this document was produced by the  
2 Federation. And we know that because of the  
3 tracking number in the lower right-hand corner.

4 A. Okay.

5 Q. Do you know what this document is or why  
6 it was created?

7 A. It looks like it has complaints for one  
8 portion of time. I can't read the dates on there.  
9 And it looks like it's just the data that the City  
10 collects on -- I can see ones labeled Coaching  
11 Cases, and then Complaints by Quarter, and then a  
12 summary of some of the grievances filed between 2015  
13 and 2020.

14 Q. Okay. Could you flip to the fourth page,  
15 which is the last bar graph.

16 A. (Witness complies.)

17 Q. Yes. And it's hard to read, so if you  
18 can't read it, tell me and we'll get a better copy.

19 But the bar graph to the left has a  
20 heading that says Discipline Issued by Chief.

21 Are you able to read that?

22 A. No.

23 Q. No? Let's set this aside. I think we're  
24 going to need a better copy of this one. I'm going  
25 to mark that we're coming back to it.

1           Let's take a look instead at Exhibit 144.  
2           (Premarked Deposition Exhibit Number 144  
3 introduced.)

4           Q.    So we've just handed you what's been  
5 marked 144, which again was produced by the  
6 Federation. If you could look over it, and then my  
7 question is is just what this document is.

8           A.    I don't know where this came from or what  
9 it was used for.

10          Q.    Okay.

11          A.    I mean, it does talk about disciplinary  
12 action and a promotional process, so I'm assuming it  
13 was used in that realm.

14          Q.    Do you know if the Federation created this  
15 document?

16          A.    I don't know. I never created it. I  
17 don't know if Bob or someone prior to me created it.

18          Q.    Understanding that you don't know where it  
19 came from, as you read the information on this  
20 document, can you confirm that it is accurate?

21          A.    Accurate in what?

22          Q.    So, for example, the first sentence is,  
23 disciplinary action may render a candidate  
24 ineligible to participate in the promotional  
25 process.

1                   Is that a true statement?

2           A.     I would say no.

3           Q.     You disagree with that?

4           A.     Yes, because it's different than what is  
5 posted on the announcements with the  
6 eligibility -- that has the promotional stuff on  
7 there. This is different than what's on those.

8           Q.     Okay. And what are you referring to?

9           A.     When they post a promotion job, a  
10 sergeant's posting of -- job posting for sergeant or  
11 for lieutenant, this is not what's on there.

12          Q.     Okay. Is this something that contradicts  
13 this on the job posting, or it's just silent as to  
14 this issue of how disciplinary action may impact  
15 promotion?

16          A.     So up until the last promotional posting,  
17 it was silent when it came to discipline.

18          Q.     Okay.

19          A.     Now on the current -- on the last  
20 sergeant's one, I believe it read, if you've had a C  
21 violation within five years, you would be ineligible  
22 to promote. And then I believe -- then it says  
23 something -- and I don't know the exact words.  
24 Something to the effect that a candidate's  
25 disciplinary history may be considered in the

1 promotional process. Something to that effect.

2 Q. Is this on a website, or where --

3 A. It's on the City's --

4 Q. Job posting?

5 A. Yeah. Like on their job posting site.

6 Q. Okay. And so what it currently says is  
7 that, if you have a C violation, whether it was  
8 coached or whether you got a suspension, you would  
9 be ineligible. It doesn't matter on how it was  
10 addressed. If you were substantiated at the C level  
11 you're ineligible?

12 A. A sustained C violation within five years.

13 Q. Okay. Doesn't matter how it was  
14 addressed. What matters is that it was sustained?

15 A. Yes. Well, that's how it's worded. Yes.

16 Q. Okay. And so the numbered items here, do  
17 you know if those are accurate?

18 A. I don't.

19 Q. Okay. They might have been at some time,  
20 or --

21 A. In the promotional exams that I have  
22 taken, I don't remember seeing this.

23 Q. Okay. You would agree with me that all  
24 six of these items are characterized as disciplinary  
25 action in this document, correct?

1 A. Not the coaching.

2 Q. Well, the first sentence says,  
3 disciplinary action may render a candidate  
4 ineligible to participate in the promotional  
5 process. In each instance, the date on which the  
6 disciplinary action occurred will be used to  
7 determine eligibility.

8 And then they list six items. Correct?

9 A. They do list six items.

10 Q. And those are all described as  
11 disciplinary action. You disagree?

12 A. They are described on this document as  
13 disciplinary, and I would argue that -- or I would  
14 say that coaching is not -- is nondiscipline.

15 Q. So I understand your position. But you  
16 agree with me about how the document characterizes  
17 them?

18 A. That is what the document says.

19 Q. Okay. Do you think it's possible the City  
20 created this document?

21 MS. RISKIN: Objection. Calls for  
22 speculation.

23 Q (BY MS. WALKER) Let me ask it this way:  
24 You don't know if the Federation created it, if the  
25 City created it, or if someone else entirely created

1 this. Is that true?

2 A. I do not know who created this document.

3 Q. Is there a way to find out?

4 A. I mean, I don't know where it came from,  
5 even, so -- or how you got it. So I don't know.

6 Q. Does the current job site talk about how a  
7 B level violation might affect eligibility for a  
8 promotion?

9 A. The only specific thing, at least on the  
10 current one for lieutenants that just closed,  
11 specifically addresses C level violation.

12 Q. Can you explain to me why this document  
13 might talk about B, C and D levels but not A levels?

14 MR. KELLY: Objection. Calls for  
15 speculation.

16 (Reporter clarification.)

17 Q. (BY MS. WALKER) I can -- I can just repeat  
18 the question.

19 Can you explain to me why this document  
20 would talk about B, C and D level but not A level?

21 A. Because A levels are coaching, which are  
22 nondisciplinary would be my assumption.

23 Q. Okay. So my colleague is tipping me off  
24 that, according to background data that was produced  
25 with this document, it may have been created by

1 someone named Troy Schoenberger.

2 Do you recognize that name?

3 A. Former deputy chief.

4 Q. Former deputy chief.

5 Was he on the board of --

6 A. No.

7 Q. -- the Federation?

8 A. (Witness shakes head.)

9 Q. Okay. So if he created it, that means  
10 this is a City document that the Federation happened  
11 to possess, as best you know?

12 A. I don't know -- I don't know if we've ever  
13 possessed it. This is the first time seeing this.

14 Q. I'll represent that you produced it to us.

15 A. Okay.

16 Q. That's what that tracking number means.

17 A. Okay.

18 Q. So it was in the Federation's possession.  
19 But if Troy Schoenberger did, in fact, create it, he  
20 works for the City?

21 A. Correct.

22 Q. Not the Federation?

23 A. Correct.

24 Q. All right. I'm going to hand you two  
25 documents that we're going to have to view side by

1 side, the Complaint in this case and the  
2 Federation's answer.

3 (Premarked Deposition Exhibit Number 145  
4 introduced.)

5 Q. So the first document you just received is  
6 the Federation's answer to the Complaint. It's  
7 Exhibit 145. And I'll ask, first of all, if you've  
8 ever seen this document before.

9 A. Yes, I have.

10 Q. Did you review the answer before it was  
11 filed?

12 A. Yes.

13 Q. Were you responsible for ensuring the  
14 answer was accurate?

15 A. Yes.

16 Q. Did you draft any portion of the answer  
17 yourself or did your attorneys do that?

18 A. I don't remember drafting any of the  
19 answers.

20 Q. And the second document you've been handed  
21 is this big document, Exhibit 28, which is the  
22 Complaint in this lawsuit.

23 (Premarked Deposition Exhibit Number 28  
24 introduced.)

25 Q. You've seen this document before?

1 A. Yes.

2 Q. And the reason we have to look at them  
3 side by side is, the Complaint has the allegations,  
4 and the Answer has the answers.

5 A. Okay.

6 Q. So the paragraphs match up, and I have  
7 some questions.

8 A. Okay.

9 Q. And we'll look at them together.

10 A. Okay.

11 Q. As you sit here today, and before we do  
12 that, are you aware of anything in the Answer that  
13 is inaccurate?

14 A. No.

15 Q. So if you could flip to paragraph 15 in  
16 each document. And then flip to the corresponding  
17 paragraph 15 in the Answer. So we'll just go  
18 through these side by side.

19 Okay. So paragraph 15, the allegation in  
20 the Complaint is that, quote, the conduct of police  
21 officers is governed by the MPD policy and procedure  
22 manual and applicable state and federal law.

23 Do you agree that's a true statement?

24 A. Yes. The conduct of police officers is  
25 mandated -- or is dictated by our policy and

1 procedure manual.

2 Q. And applicable state and federal law,  
3 correct?

4 A. Correct.

5 Q. And are you aware that the conduct of  
6 police officers is governed by anything else?

7 A. Not that I'm aware of.

8 Q. Okay. And, in fact, the Federation would  
9 object if conduct were somehow governed by  
10 undocumented standards, correct?

11 A. Yeah.

12 Q. So no quasi agreements, correct, governing  
13 the conduct of police officers?

14 A. As far as I know, there are no quasi  
15 agreements dictating the conduct of our police  
16 officers.

17 Q. And the Minneapolis Police Department does  
18 not have unilateral discretion over the governance  
19 of police officer conduct, correct?

20 A. They have governance over their conduct  
21 through policy and procedure manual.

22 Q. And that would be it, correct?

23 A. Yes.

24 Q. Okay. We can go to the next paragraph,  
25 which alleges, paragraph 16, until recently, the

1 policy manual stated that, quote, any member of the  
2 department who violates the code of conduct is  
3 subject to discipline.

4 Do you have any reason to dispute that the  
5 policy manual did, in fact, state that?

6 A. I don't.

7 Q. And then it says, the imposition of  
8 discipline for a sustained violation of the MPD code  
9 of conduct was mandatory.

10 That is a true statement, correct?

11 A. I think it does say "shall."

12 Q. Right. And "shall" means mandatory,  
13 right?

14 MR. KELLY: Objection. Calls for a legal  
15 conclusion.

16 Q (BY MS. WALKER) "Shall" means mandatory,  
17 correct?

18 A. I think that's how it is defined in our  
19 definitions, I believe.

20 Q. And so I just want to make sure the answer  
21 is clear on the record.

22 The imposition of discipline for a  
23 sustained violation of the MPD code of conduct is  
24 mandatory.

25 You said you agreed with that statement,

1 correct?

2 A. It says "shall," so that is how that is  
3 interpreted in our policy manual.

4 Q. And the last sentence says --

5 So that's a yes? Sorry. That's a yes to  
6 my question?

7 A. Yes.

8 Q. Okay. The last sentence says, The MPD  
9 code of conduct did not delineate between the grades  
10 of violation severity A through D in issuing this  
11 mandate.

12 That is a true statement, correct?

13 A. No. I think it did list it as an A  
14 through D violation at one point.

15 Q. Do you know what point that was at?

16 A. I'd have to look at the different  
17 variations of our manual and the updates and  
18 whatnot.

19 Q. So can you explain to me why the  
20 Federation denied paragraph 16?

21 A. Meaning why did we answer it --

22 Q. Why didn't you admit paragraph 16? Is it  
23 just because of that last sentence?

24 A. Yes.

25 Q. There's a common refrain in the

1 Federation's Answer to various allegations in the  
2 Complaint. It begins, actually, in paragraph 15  
3 here, to the extent a response is required, deny  
4 that the cited language is inconsistent with law or  
5 policy.

6 Do you see that --

7 A. Uh-huh.

8 Q. -- sentence?

9 And it's sort of boilerplate language  
10 throughout this Answer. It goes on through at least  
11 paragraph 23.

12 Do you see that?

13 A. Yes.

14 Q. And it picks up again around paragraph 27,  
15 the same language?

16 A. Okay.

17 Q. This common refrain in the Answer does not  
18 deny that the cited language is inconsistent with  
19 department practice, does it?

20 A. Can you say that again?

21 Q. Right. I'll rephrase it to make this  
22 simpler.

23 So the Federation repeatedly denies that  
24 the cited language is inconsistent with law or  
25 policy. Correct?

1 A. Yes.

2 Q. But it doesn't deny that the cited  
3 language is inconsistent with MPD practice, does it?

4 A. I guess --

5 Q. I can ask a different type of question.

6 If you go back to paragraph 16, we talked  
7 about how the policy states that the imposition of  
8 discipline is mandatory.

9 A. Uh-huh.

10 Q. But, in fact, the Minneapolis Police  
11 Department did not actually discipline all  
12 violations, did it?

13 A. There are -- There are cases where they  
14 have not issued discipline, yes.

15 Q. Right. And so fair to say that it is not  
16 uncommon for the Minneapolis Police Department to  
17 violate its own policies. In fact, the Federation  
18 often takes that approach in arbitrations, correct?

19 A. What kind of arbitration?

20 Q. It's a compound question. Let me ask it  
21 again.

22 MS. RISKIN: Yeah. I was going to object  
23 to form.

24 Q (BY MS. WALKER) Would you agree with me  
25 that the Minneapolis Police Department often

1 violates its own policies?

2 A. There are times, yes, that they do.

3 Q. Frequently?

4 A. I wouldn't say frequently, but there are  
5 occasions where that happens.

6 Q. Do they -- Have they always disciplined  
7 misconduct?

8 A. I think --

9 MS. RISKIN: Objection. Foundation.

10 Q (BY MS. WALKER) Go ahead and answer.

11 A. Okay. There are cases where misconduct is  
12 alleged, and after the investigation, there is not a  
13 sustained finding. So they wouldn't discipline on  
14 that -- in those kind of situations.

15 Or if there's -- there have been times  
16 where a case -- it takes six or seven years to  
17 finally work its way through the process, so they  
18 wouldn't discipline -- or I've seen where they  
19 haven't disciplined.

20 Q. Let me ask it this way: We know there's  
21 instances where misconduct was substantiated.

22 A. Okay.

23 Q. And the misconduct conduct was coached.  
24 Okay?

25 A. Okay.

1 Q. We talked about some examples like that  
2 today, right?

3 A. Okay.

4 Q. Do you think that is consistent with the  
5 MPD policy that discipline for a sustained violation  
6 of the code of conduct is mandatory?

7 A. I think it depends on where they put that  
8 on the -- on the level of severity, and what  
9 the -- what circumstances there were regarding each  
10 of those cases, 'cause there's mitigating --

11 Q. What about coaching for a B level? If  
12 they coach a B level, is that consistent with the  
13 policy that the imposition of discipline for a  
14 sustained violation is mandatory?

15 A. Not consistent in the discipline piece,  
16 'cause they're saying it's a B, but they're  
17 attaching a nondisciplinary thing to it.

18 Q. So in your view, the Federation's view,  
19 that would be an example of the City violating its  
20 own policy?

21 A. Being inconsistent with their policy.

22 Q. Violating their own policy?

23 A. Sure.

24 Q. So paragraph 23 of the Complaint says, the  
25 city defendants have entered into a collective

1 bargaining agreement with the Police Officers'  
2 Federation of Minneapolis.

3 Did I read that correctly?

4 A. The City of Minneapolis has  
5 entered -- yeah. We have a collective bargaining  
6 unit agreement.

7 Q. Do you know why the Federation didn't just  
8 admit that in paragraph 23?

9 A. 'Cause it's pretty clear that we have a  
10 bargaining -- we have a collective bargaining  
11 agreement.

12 Q. Okay. So you admit paragraph 23?

13 A. When we talk about City defendants, are we  
14 talking -- Are we talking about the City of  
15 Minneapolis?

16 Q. Yes.

17 A. So, yes, we do have a collective  
18 bargaining agreement.

19 Q. So paragraph 24 --

20 MS. RISKIN: Leita, I'm sorry. That's  
21 not -- that's not how the defense is defined in the  
22 Complaint, so --

23 MS. WALKER: Okay. Your objection stands  
24 for the record. I understand what you're saying.

25 MS. RISKIN: I think the record needs to

1 be clear.

2 MS. WALKER: I think it's a  
3 noncontroversial point. But I understand.

4 Q (BY MS. WALKER) Paragraph 24 says, the  
5 police union contract does not mention coaching.

6 Do you see that in the Complaint?  
7 Twenty-four?

8 A. Yes.

9 Q. Okay. And you answered, the Federation  
10 answered by admitting that the word "coaching" is  
11 absent from the police union contract.

12 Do you see that in the corresponding  
13 answer?

14 A. I do.

15 Q. But then the Federation went on to say by  
16 way of further answer, the police union contract,  
17 consistent with PELRA, calls for grievances of  
18 suspensions, written reprimands, transfers,  
19 demotions, and discharge.

20 I actually agree with that statement.  
21 That is what the contract calls for.

22 And it's the next sentence I want to ask  
23 you about. The Federation went on to say, by  
24 excluding coaching from the grievance procedure,  
25 coaching is not discipline.

1 Do you stand by that answer, as you sit  
2 here today?

3 A. Yes. I believe coaching is not  
4 discipline.

5 Q. Okay. I know you believe that.

6 Do you think the reason for that is  
7 because it's excluded from the grievance procedure?

8 A. Coaching is nothing -- We can grieve  
9 disciplinary actions, as you can see, that are  
10 listed in here, and coaching is not listed in there.

11 Q. So you can't grieve coaching?

12 A. Correct.

13 Q. Okay. But that doesn't mean it's not  
14 discipline. You would agree with me?

15 MR. KELLY: Objection. Calls for a legal  
16 conclusion.

17 Q (BY MS. WALKER) Whether something is  
18 grievable doesn't dictate whether it's discipline.

19 Do you agree?

20 MR. KELLY: Objection. Calls for a legal  
21 conclusion.

22 Q (BY MS. WALKER) Let me ask it a different  
23 way.

24 We talked a little bit ago about how  
25 warnings can be issued in the context of drug use.

1 Do you remember that?

2 A. Under our drug policy?

3 Q. Under the collective bargaining agreement,  
4 the chief can issue a warning.

5 Do you remember that?

6 A. Correct.

7 Q. A warning's not grievable, correct?

8 A. Yeah. It's not in our list of discipline  
9 or -- discipline stuff. Yes.

10 Q. Okay. But it's still discipline. It's  
11 just not grievable, right?

12 A. It's not a recognizable discipline that we  
13 recognize in our contract, except -- well, under  
14 that -- I suppose in the drug and alcohol part it  
15 is.

16 Q. Right. So a warning can be issued as  
17 discipline under the contract, correct?

18 MR. KELLY: Objection. Misstates facts.

19 Q (BY MS. WALKER) I'll reask.

20 The collective bargaining agreement allows  
21 the chief of police to issue a warning, correct?

22 A. Under the drug and alcohol policy, that is  
23 the same for the City.

24 Q. And a warning is disciplinary, correct,  
25 under the civil service rules?

1 A. I'd have to look.

2 Q. Okay. I'll represent to you it is.

3 And a warning is not grievable under the  
4 collective bargaining agreement. Correct?

5 A. It is not one of the things that we can  
6 grieve.

7 Q. Okay. So whether something is discipline  
8 is a separate question than whether it's grievable.

9 You agree with me?

10 MR. KELLY: Objection. Calls for a legal  
11 conclusion.

12 Q (BY MS. WALKER) Let me ask this way: Do  
13 you agree that the chief of police can issue certain  
14 forms of discipline that are not grievable?

15 A. The discipline that we recognize -- or  
16 that is listed in our contract, which we have talked  
17 about already a number of times, are what the  
18 chief -- I have seen the chief issue.

19 Q. That's not my question.

20 The types of discipline listed in 12.02  
21 are the types of discipline that are grievable,  
22 correct?

23 A. Correct.

24 Q. And the current collective bargaining  
25 agreement recognizes other types of discipline,

1 including a warning, that's not grievable, correct?

2 A. Yes. There is a warning piece under the  
3 drug and alcohol.

4 Q. So you would agree that whether something  
5 is grievable does not dictate whether it's  
6 discipline, correct?

7 MR. KELLY: Objection. Calls for a legal  
8 conclusion.

9 A. I don't know.

10 Q (BY MS. WALKER) You don't know?

11 A. Yeah.

12 Q. I'm handing you what's been marked as  
13 Exhibit 50.

14 (Premarked Deposition Exhibit Number 50  
15 introduced.)

16 Q. So Exhibit 50 is a copy of Civil Service  
17 Rule 11.

18 Do you see that?

19 A. I do.

20 Q. And if you flip three pages in, to  
21 Rule 11.04, you'll see Types of Disciplinary Action.

22 Do you see that?

23 A. Yes.

24 Q. Okay. And one of the forms of  
25 disciplinary action it lists is a warning.

1 Do you see that?

2 A. Yes.

3 Q. And you don't dispute that a warning is  
4 available as a form of discipline to the Minneapolis  
5 Police Department, correct?

6 A. It is a type of discipline available to  
7 the City of Minneapolis. It is typically not one  
8 that we use in the police department.

9 Q. But it's not only listed here in the civil  
10 service rules, but it's actually included in the  
11 collective bargaining agreement as a form of  
12 discipline available, correct?

13 MR. KELLY: Asked and answered.

14 A. In most --

15 Q (BY MS. WALKER) Okay. I'll withdraw the  
16 question.

17 And a warning is not grievable, correct?

18 MR. KELLY: Asked and answered.

19 Q (BY MS. WALKER) I'll withdraw the  
20 question.

21 Rule 11 also talks about the time for  
22 filing a grievance, correct?

23 I'm sorry. I'm on the wrong document.  
24 You can set Exhibit 52 aside.

25 We're handing you what's been marked as

1 Exhibit 59.

2 (Premarked Deposition Exhibit Number 59  
3 introduced.)

4 Q. And this is a September 2020 letter from  
5 the city attorney's office to the Police Conduct  
6 Oversight Commission.

7 Have you ever seen this letter before?

8 And I have a fairly specific question, so  
9 feel free to orient yourself, but you don't need to  
10 read the whole thing, once you know whether you've  
11 seen it before.

12 A. Well, from reading the first page, it does  
13 not look familiar to me.

14 Q. As best you know, the Federation was not  
15 consulted about this letter before it was sent to  
16 the PCOC?

17 A. No.

18 Q. Okay. The letter, if you flip to the end,  
19 tracking number 1534, is signed by Trina Chernos, an  
20 assistant city attorney.

21 A. Okay.

22 Q. And if you flip back two pages to 1533,  
23 she makes two statements I want to ask you  
24 specifically about.

25 Are you on 1533?

1 A. This one?

2 Q. Yes. Three paragraphs from the bottom she  
3 writes, The lack of opportunity to grieve a case is  
4 not determinative of whether coaching is discipline.

5 Do you agree with that statement?

6 MR. KELLY: Objection. Legal conclusion.

7 Q (BY MS. WALKER) You can answer.

8 A. What was your question?

9 Q. Do you agree with that statement, that  
10 first line?

11 A. No.

12 Q. What part do you disagree with?

13 A. I think the facts of the case determine  
14 whether it's coaching, or whether it's  
15 discipline -- coaching or discipline.

16 Q. Okay. Any other reason you disagree with  
17 that?

18 A. Discipline we can grieve. Coaching is not  
19 grievable.

20 Q. Any other reason?

21 A. No.

22 Q. Skip down to the next paragraph, which is  
23 actually just one sentence. Ms. Chernos wrote,  
24 Thus, if there is no discipline, the employer's  
25 action is not subject to the grievance procedure.

1 Do you agree with that statement?

2 A. I think if there's discipline, we have the  
3 opportunity to grieve it.

4 Q. Okay. What do you base that opinion on?  
5 Are you basing it on a policy? A contract? A law?

6 A. Well, if there's no written discipline. I  
7 think when there's discipline, and there's some type  
8 of adverse impact against the employee, we have the  
9 right to -- we have the right to grieve that.

10 Q. Okay. What do you base that on?

11 A. Our contract.

12 Q. Anything else?

13 A. Under -- I think it's covered under PELRA  
14 as well.

15 Q. Okay. Do you think PELRA applies to oral  
16 discipline?

17 MR. KELLY: Objection. Calls for a legal  
18 conclusion.

19 Q (BY MS. WALKER) Do you know one way or  
20 another if PELRA applies to oral discipline?

21 A. I do not.

22 Q. Is your answer here based on anything  
23 besides the contract and PELRA?

24 A. No.

25 Q. You would agree with me that oral

1 discipline is not subject to the grievance  
2 procedure?

3 A. It's strictly -- I think it would depend  
4 on if it was considered a B or higher, right?  
5 Because the severity from A to D or E, whatever it  
6 is, on the current thing --

7 Q. Is that decision based on the contract and  
8 PELRA?

9 A. On what?

10 Q. Is your answer just now based on your  
11 reading of the contract and PELRA?

12 A. Nothing that's categorized as discipline,  
13 which is B or higher, we can discipline -- or we can  
14 grieve.

15 Q. Even if it's oral?

16 A. We don't use oral, so it would be  
17 something that we -- we don't use it. We have the  
18 written, the -- all of the other things. The  
19 written reprimands, transfers, demotions, discharge,  
20 suspensions.

21 Q. That's not my question.

22 My question is, if oral discipline is  
23 issued, do you believe you have a right to grieve  
24 it.

25 MS. RISKIN: Objection. Calls for

1 speculation.

2 A. I would say, yes, we do. If it's at a B  
3 or higher we would -- if it's categorized as  
4 discipline.

5 Q (BY MS. WALKER) Okay. And what do you  
6 base that on? Is that a contract? A statute? A  
7 written policy that forms the basis for your answer?

8 A. Like I said before, if the City is going  
9 to categorize it as a B level violation, with  
10 some -- and attaching a discipline to it, then, yes,  
11 I think we have the right to grieve it.

12 Q. Even if the City calls it coaching?

13 A. They wouldn't be -- Well, coaching is not  
14 grievable because it's not discipline.

15 Q. And yet you have tried grieve it multiple  
16 times.

17 A. Because our concern is, is that the City  
18 is trying to change policy and practice and make  
19 coaching a disciplinary avenue.

20 Q. So let me ask my question, my initial  
21 question again.

22 You've testified that you believe oral  
23 discipline is grievable. And I'm asking, can you  
24 point me to a policy or a contract or a law that  
25 says that?

1 A. No, I can't.

2 Q. I think you have Exhibit 48 in front of  
3 you, which is the collective bargaining agreement.

4 You can set the letter by Trina Chernos to  
5 the side.

6 And Exhibit 48 is this sort of big one.  
7 And I want you to look at Article 11, which talks  
8 about the grievance procedure, which is -- there's  
9 no page numbers, but it's Article 11.

10 And you may know this off the top of your  
11 head. So while you're getting there I'll just ask,  
12 it's true that a grievance must be commenced at step  
13 1 no later than 21 calendar days from the discovery  
14 of the grievable event, correct?

15 A. Yes.

16 Q. Okay. And discipline is a grievable event  
17 in your opinion, correct?

18 A. Yes.

19 Q. And how does an officer typically know  
20 he's been disciplined?

21 A. They will get a letter or -- They'll get a  
22 letter saying they're being disciplined or a  
23 sergeant will call them in and say -- present them  
24 with their discipline paperwork.

25 Q. So if they get a letter that says you're

1 being disciplined, that's when the 21-day clock  
2 starts?

3 A. Correct.

4 Q. And that's called a discipline letter or a  
5 determination letter, or are those terms used  
6 interchangeably?

7 A. They are interchangeable.

8 Q. Is there any other way an officer should  
9 know he's being disciplined?

10 A. I mean, generally it's the letter. If you  
11 get turned down for a specialty assignment, that's  
12 generally a clue that something's going on.

13 Q. Do you believe that if a chief of police  
14 provides testimony that is inconsistent or  
15 contradictory to MPD policy, that it should be given  
16 little weight?

17 MR. KELLY: Objection. Calls for a legal  
18 conclusion.

19 Q (BY MS. WALKER) Let me ask it this way:  
20 If the chief of police says one thing and a policy  
21 says another thing, who should we believe? Which  
22 one should we believe?

23 MR. KELLY: Objection as to form.

24 Q (BY MS. WALKER) You can answer.

25 A. Question: If the chief says one thing,

1 policy says another.

2 Q. Policy says another thing, which one  
3 should we believe?

4 A. I think that's dependent on what it's  
5 about.

6 Q. So the Federation doesn't take the  
7 position that the policies are the primary indicator  
8 of what misconduct is or what discipline is?

9 A. I think there's a lot of factors that play  
10 into cases and how things are interpreted or looked  
11 at.

12 Q. Take a look at -- back to the Complaint  
13 and the Answer, we're on paragraph 29. The  
14 allegation in paragraph 29 is that Rule 11 of the  
15 civil service rule establishes five levels of  
16 discipline. And it lists them. And it says, The  
17 levels of discipline are normally administered  
18 progressively in the above order.

19 Do you understand that's the allegation in  
20 paragraph 29?

21 A. Yes.

22 Q. And the Answer the Federation provided is  
23 that the civil service rule speaks for itself, and  
24 then it went on to deny that the cited language,  
25 from the civil service rule, is inconsistent with

1 law or policy.

2 Do you see that?

3 A. Yes.

4 Q. Okay. And so you stand by that answer to  
5 this day?

6 A. Yes. I think the civil service rule is  
7 clear on what their levels of discipline are.

8 Q. And you agree the civil service rule is  
9 consistent with Minneapolis Police Department  
10 policy?

11 A. With the exception of the warning piece of  
12 that.

13 Q. Okay. Well, in your answer here you  
14 denied the cited language is inconsistent with law  
15 or policy.

16 So you think it's consistent or  
17 inconsistent? Do you want to stand by your answer,  
18 the written answer?

19 A. Yes.

20 Q. Okay. How about paragraph 30? Do you  
21 want to stand by that answer?

22 A. Yeah. I stand by our answer on 30.

23 We're on 30, right?

24 Q. Correct. Can you point me to any written  
25 policy or agreement or statute that says the

1 Minneapolis Police Department may not issue a  
2 warning?

3 A. I do not have a -- I don't know if there's  
4 a policy.

5 Q. So the answer is, no, you cannot point me  
6 to anything?

7 A. I cannot point you to a policy.

8 Q. Are you aware that the collective  
9 bargaining agreement used to allow grievance of oral  
10 reprimands?

11 A. I don't -- I don't remember that  
12 specifically, no.

13 Q. I'm going to hand you what's been  
14 premarked as Exhibit 146.

15 (Premarked Deposition Exhibit Number 146  
16 introduced.)

17 Q. And this is an old collective bargaining  
18 agreement from 2009 through 2011.

19 Do you see that?

20 A. I do.

21 Q. Okay. If you could flip to page 4, after  
22 the Roman numerals of page 4 here at the bottom, and  
23 there's a section 4.2 on that page.

24 Do you see it?

25 A. 4.2?

1 Q. Section 4.2.

2 A. Okay.

3 Q. And the section is talking about what is  
4 appealable, and the first sentence recites the items  
5 we're familiar with: Suspension, written reprimand,  
6 transfer, demotion or discharge.

7 Do you see that?

8 A. Yes.

9 Q. And the second sentence says, Also, an  
10 oral reprimand imposed on an employee who has  
11 completed the required probationary period which  
12 results from a sustained finding by the Civilian  
13 Review Authority following an evidentiary hearing  
14 may be appealed through the grievance procedure.

15 Did I read that correctly?

16 A. Yes.

17 Q. So at some point, a decade or so ago, oral  
18 reprimands were grievable, correct?

19 A. According to this. Yes.

20 Q. Okay. But oral reprimands aren't listed  
21 in the current section on appeals?

22 A. They are not.

23 Q. Okay. And they weren't listed in the  
24 section on appeals in the prior collective  
25 bargaining agreement, either, are they?

1           A.     Which one?  Which collective -- Which one  
2     are we talking about?

3           Q.     So there's the current one and the one  
4     right before the current one.

5           A.     So this one that we're talking about here?

6           Q.     Forty-eight.  Yes.

7                     It's not listed -- oral reprimands are not  
8     listed there, correct?

9           A.     Yes.

10          Q.     All right.  And yet are you aware that the  
11     policy manual, to this day, contemplates oral  
12     reprimands?

13          A.     You're asking if the --

14          Q.     Are you aware that, to this day, the  
15     current policy manual contemplates oral reprimands?

16          A.     I don't know if it does.

17          Q.     Let me show you.

18                     So if you could go to the Complaint -- and  
19     you're going to flip several pages in.  Every once  
20     in a while you'll see a slip sheet marking an  
21     exhibit, so try to find Exhibit 5.  Tell me when  
22     you've found Exhibit 5.

23                     MS. NASCIMENTO:  I can give you my copy.

24                     MS. WALKER:  That might be easier, yes.

25          A.     Is it this one?

1           Q       (BY MS. WALKER) Yes. That looks to be the  
2 page.

3                   And so I misspoke. This is not the  
4 current policy manual. This is the policy manual  
5 that was in effect until December 31st of 2020.

6           A.     Okay.

7           Q.     If you look at the bottom of page 1 of 4  
8 here, you'll see disciplinary categories listed.

9                   Do you see that?

10          A.     Yep.

11          Q.     Okay. And category B allows for a  
12 documented oral reprimand.

13                  Do you see that?

14          A.     I do see that.

15          Q.     Okay. And category C allows for a  
16 documented oral reprimand.

17                  Do you see that?

18          A.     I think the top one says, oral correction.  
19 The bottom one says, oral reprimand.

20          Q.     Right. So category A is an oral  
21 correction, category B is an oral reprimand, and  
22 category C is an oral reprimand, correct?

23          A.     Yes.

24          Q.     Okay. And we just talked about how the  
25 collective bargaining agreement, at this stage,

1 December 2020, did not allow for grievance of an  
2 oral reprimand, correct?

3 A. We did.

4 Q. So this is another example of a form of  
5 discipline available to the Minneapolis Police  
6 Department that is not grievable, correct?

7 Do you agree with that?

8 MR. KELLY: Objection. Calls for a legal  
9 conclusion.

10 Q (BY MS. WALKER) Do you agree with that?

11 A. It says that it is a category or -- in our  
12 policy manual.

13 Q. Right. And so at some point the  
14 Federation negotiated away the right to grieve  
15 certain forms of oral discipline, correct? They  
16 gave that up?

17 A. It appears so.

18 Q. And it's fair to say, when the Federation  
19 wants to make something grievable, they know how to  
20 do that. They put it in section 12.02, correct?

21 A. If that's the -- if that's the section.

22 Q. Are you aware of any written statement by  
23 the Minneapolis Police Department where it committed  
24 to never issue another warning?

25 A. I am not.

1 Q. And you're not aware of anything that  
2 would stop them from issuing warnings in the future,  
3 correct?

4 A. Not that I'm aware of.

5 Q. Not that you're aware of?

6 A. I'm not aware of anything saying that they  
7 wouldn't do that.

8 Q. Okay. Can you explain to me how the  
9 coaching process is different than an oral warning?

10 MR. KELLY: Objection as to foundation.

11 Q (BY MS. WALKER) I can help with some  
12 foundation.

13 If you could look in your stack there at  
14 Exhibits 32 and 50. That's 32. Yep.

15 A. This is?

16 Q. That's 32. Well, technically you have  
17 that one twice. It might be easiest if you keep the  
18 Complaint all together and look at the document  
19 that's separately marked Exhibit 32.

20 Do you have it?

21 A. (Witness holds up document.)

22 Q. Yes. And Exhibit 50.

23 A. This guy? Okay.

24 Q. So Exhibit 32 is the coaching form on  
25 which coaching is documented after the oral session

1 happens, correct?

2 A. The contents of the coaching session, yes,  
3 are documented on the second page in the --

4 Q. Right. And I gave you Exhibit 50 so that  
5 you can look at how the Civil Service Commission  
6 defines a disciplinary warning.

7 And so looking at that definition and the  
8 coaching form side by side, can you tell me how  
9 coaching is different than a warning?

10 A. The first thing I would talk about is that  
11 there's an actual investigation, where the  
12 supervisor is going to talk with -- it says, the  
13 Complainant for details. It's going to talk to any  
14 witnesses. It's going to review any reports or any  
15 other evidence -- I assume body-worn cameras, MBR,  
16 any of those kind of things -- to make a  
17 determination on whether there's a violation. And  
18 then they would have -- if there is found to be some  
19 issues, they would have that conversation. And then  
20 they would document that in there.

21 Q. So is it your position a warning can issue  
22 without any investigation?

23 MS. RISKIN: Objection. Foundation.

24 Q (BY MS. WALKER) A warning would also  
25 require an investigation, correct?

1 MR. KELLY: Objection to foundation.

2 Q (BY MS. WALKER) Do you agree?

3 A. It doesn't -- this, to me, looks  
4 like -- when I look at coaching, there is a -- an  
5 investigation. A warning does not seem to me that  
6 they're covering all of the same things that a  
7 coaching is.

8 Q. Is the Federation's position that an oral  
9 disciplinary warning can issue even in the absence  
10 of an investigation?

11 MR. KELLY: Objection. Calls for a legal  
12 conclusion, and foundation.

13 Q (BY MS. WALKER) I'm just asking for the  
14 Federation's position.

15 A. Can you restate the question?

16 Q. Yes. I can even rephrase it.

17 You would expect that, if a disciplinary  
18 warning were to issue, it would follow on the heels  
19 of an investigation, correct?

20 A. I would hope there would be some  
21 investigation into the misconduct if they're going  
22 to do anything toward, you know, any type of  
23 disciplinary.

24 Q. Okay. So what other differences can you  
25 point to between coaching and a warning?

1           A.     This would be tracked. I believe they're  
2 still tracked through Internal Affairs.

3           Q.     Okay. Isn't it true, if you read that  
4 definition, that warnings are also documented?

5           A.     It says, a written memo to document the  
6 event.

7           Q.     Okay. Any other differences you can  
8 identify between coaching and a warning?

9           A.     No.

10          Q.     Okay. You can set those to the side.

11                 MR. KELLY: Is this a natural break for  
12 like a five-minute break?

13                 MS. WALKER: Sure.

14                 (Whereupon, the proceedings were in recess  
15 at 2:10 p.m. and subsequently reconvened at  
16 2:29 p.m., and the following proceedings were  
17 entered of record:)

18           Q     (BY MS. WALKER) If you could flip again to  
19 the list of discipline on Exhibit 50, which is the  
20 Civil Service Commission rule.

21                 Do you have it in front of you?

22           A.     This?

23           Q.     Correct. So it lists warnings,  
24 suspension, discharge, correct?

25           A.     Correct.

1 Q. Okay. And you testified earlier that, in  
2 your view, on behalf of the Federation, discipline  
3 is both corrective and punitive; it has both  
4 elements. Correct?

5 A. Yes.

6 Q. Okay. And so that would apply to all of  
7 the forms of discipline listed here, correct?

8 A. Well, I think discharge, there's not  
9 really a corrective piece to that, because you're  
10 not hearing me.

11 Q. Okay. I can ask it differently.

12 You would say that all of the discipline  
13 listed here have a punitive element to them?

14 A. B, C, D for sure. We don't typically use  
15 A, so I can't speak to that.

16 Q. Okay. Do you agree that if a warning was  
17 issued it would be both corrective and punitive,  
18 which is how you previously described discipline?

19 A. If it was considered disciplinary, it  
20 would have that effect for certain people.

21 Q. Okay. It could or it would?

22 A. I think it depends on the person --

23 Q. Okay.

24 A. -- and how they perceive it.

25 Q. Your prior testimony was that discipline

1 is not merely corrective, it is also punitive.

2 Do you remember that testimony?

3 A. Yes.

4 Q. And so is a disciplinary warning also  
5 punitive?

6 A. I think it would, again, depend on how  
7 it's viewed by the person.

8 Q. Okay.

9 A. And what the --

10 Q. So do you want to change your testimony,  
11 that discipline is punitive? And do you want to  
12 change it to say that it depends on the person?

13 A. I'm saying -- No. I stand by that  
14 discipline is punitive and corrective.

15 Q. Okay. Discipline in all its forms.  
16 Correct?

17 A. Sure.

18 Q. Okay. That's your testimony on behalf of  
19 the Federation?

20 A. Yes.

21 Q. So I want to just understand a little bit  
22 how the coaching session comes together and takes  
23 place, if you know. And so here's what I understand  
24 happens, and then I'll let you fill in the blanks.

25 So a complaint of misconduct is filed --

1 and I'm not referring to any exhibit right now, so  
2 don't worry about that.

3 A complaint would be filed. Let's say  
4 it's for a B level. So it's investigated. It gets  
5 up to the chief's desk, and the chief finds, let's  
6 say, a B level, and he issues coaching. Okay?

7 And let's say it's not grieved, so the  
8 coaching is going to happen.

9 So then what happens? Is there a meeting  
10 set up? Is it in person? Is it by phone?

11 MR. KELLY: Objection.

12 Q (BY MS. WALKER) Can you tell me to the  
13 extent you know?

14 MR. KELLY: Objection to foundation.

15 A. I don't know how they --

16 (Reporter clarification.)

17 MS. RISKIN: Compound.

18 A. I don't know how -- I think it depends on  
19 if you're a -- Generally, my understanding is  
20 they're done in person.

21 Q (BY MS. WALKER) Okay. During the  
22 officer's shift?

23 A. Generally, yes.

24 Q. Okay. Are they sometimes done after his  
25 shift ends?

1           A.     I don't know.

2           Q.     Is it possible?

3           A.     I suppose it's possible.

4           Q.     If it's done outside of his shift, do you  
5 know if he would be paid for the time he spends  
6 being coached?

7           A.     I don't know.

8           Q.     Would the Federation expect an officer to  
9 be paid for the time he's being coached?

10          A.     If they're working outside of their normal  
11 work hours, yes.

12          Q.     Do you know if officers are pulled off  
13 duty to be coached?

14          A.     I don't know.

15          Q.     Do you know if officers ever take a board  
16 member from the Federation with them to the coaching  
17 session?

18          A.     Generally they do not, because they're  
19 nondisciplinary, so they wouldn't take a  
20 representative with them.

21          Q.     So you say "generally." Do you know of  
22 exceptions to that?

23          A.     To the coaching thing?

24          Q.     Do you know of any instance where an  
25 officer has taken a union rep with them to a

1 coaching session?

2 A. Not that I know of.

3 Q. Do you know if officers typically bring a  
4 friend or a colleague along just to be a witness to  
5 what happens?

6 A. Not that I know of.

7 Q. Do you know if the officer would typically  
8 be wearing his uniform during the coaching session?

9 A. I don't know.

10 Q. I think you said 2004 is when you became a  
11 board member?

12 A. Yes.

13 Q. Okay. So 20 years?

14 A. Pretty close to it, yes.

15 Q. And you've been president since 2011?

16 A. No.

17 Q. No?

18 A. 2021.

19 Q. 2021. So three years.

20 And how long have you known Mr. Michels,  
21 the Federation's attorney?

22 A. Since I came on the board.

23 Q. So 20 years?

24 A. Roughly.

25 Q. Okay. And you've sat in dozens of

1 meetings with him, if not hundreds?

2 A. Probably, yes.

3 Q. Dozens or hundreds of phone calls?

4 A. Probably, yes.

5 Q. And you've personally been involved in  
6 labor negotiations for the upcoming contract; is  
7 that correct?

8 A. Yes.

9 Q. And you've attended those meetings with  
10 Mr. Michels?

11 A. Yes.

12 Q. Okay. Do you think you would recognize  
13 his voice?

14 A. Yeah.

15 Q. Okay. So we have a recording from a  
16 recent labor negotiation meeting where I'll  
17 represent to you that Mr. Michels is speaking, and  
18 I'll play it for you, and then we have some  
19 questions.

20 Can you wait one more minute? Sorry.

21 I just want to confirm that your position  
22 today is that coaching is not discipline. Correct?

23 A. Yes.

24 (The following is a transcription for and  
25 audio file, PLF\_000359.)

1           "For U19, that was language on coaching.  
2     As you know, there's litigation going on right now.  
3     We're not taking a position in bargaining on that.  
4     Even though the Federation is a party to that  
5     lawsuit, that's separate from bargaining. The  
6     lawsuit is going to run its own course, whatever  
7     happens with that. All we were proposing here is  
8     that, if a court determines that coaching, for  
9     purposes of the data practices act is something that  
10    is akin to discipline and therefore should be made  
11    public, that any employee -- I don't care if you're  
12    an officer or a pothole filler for public works --  
13    if there's been an allegation made against you, that  
14    now becomes part of a public record, and you  
15    disagree as to the legitimacy of that allegation,  
16    you should have the right to grieve that and have a  
17    neutral third party make a determination as to  
18    whether you've committed a policy violation. So  
19    that's why we have this proposal here. It's just a  
20    matter of simple fairness that, if the public is  
21    going to get access to something that said you did  
22    something wrong, you should have the ability to  
23    challenge whether you did something wrong or not."

24           (End of recording.)

25           MS. WALKER: Let the record reflect that

1 we just played for the witness and her attorneys a  
2 recording. It was difficult to hear. But we will  
3 separately send that recording to you so that you  
4 can transcribe it into the record, if that's  
5 acceptable to everyone.

6 MS. NASCIMENTO: Really quickly, did we  
7 start at Exhibit 180 or 181? Okay.

8 MS. WALKER: So we'll send you the  
9 recording. You can type it into the record as if  
10 you heard it. If everyone's agreeable to that,  
11 that's how we'll handle it.

12 MS. NASCIMENTO: So, yeah, we started at  
13 39 minutes and 30 seconds, and we stopped at 40  
14 minutes and 57 seconds.

15 Do you all prefer that I provide -- You  
16 all have the full recording. Are you okay with it  
17 if I just provide the court reporter with just the  
18 snippet of it?

19 MS. RISKIN: That's fine.

20 For the record, can you state the Bates  
21 number?

22 MS. NASCIMENTO: Yeah. I was going to get  
23 that as well. Give me one second.

24 It is P-L-F, for plaintiff, \_000359.

25 Q (BY MS. WALKER) Ms. Schmidt, thank you for

1 bearing with us as we played that for you.

2 My first question is, did you recognize  
3 that it was Mr. Michels speaking on that recording?

4 A. Yes.

5 Q. Were you at the meeting where he made  
6 these statements?

7 A. Yes.

8 Q. You personally recall him making those  
9 statements?

10 A. Yes.

11 Q. You believe the recording was accurate?

12 A. Yes.

13 Q. You have no reason to dispute its  
14 authenticity, correct?

15 A. No.

16 Q. And did Mr. Michels correctly state the  
17 position of the Federation?

18 A. Yes, that we wanted the ability to grieve  
19 this if coaching came public.

20 Q. Is it true that outside of this  
21 litigation, the Federation has no position on  
22 whether coaching is discipline?

23 A. We've always asserted coaching is not  
24 discipline.

25 Q. Right. And I believe Mr. Michels said

1 that, for purposes of the litigation, you're taking  
2 one position, but outside of the litigation, the  
3 Federation takes no position on whether coaching is  
4 discipline; they just want it to be grievable.

5 Do you agree?

6 MR. KELLY: Objection. Misstates the  
7 facts.

8 A. I don't think that's how -- that is not  
9 how he meant it. He doesn't take a stand -- We  
10 don't take a stance on these proceedings or how  
11 they're going to turn out. But if it turns out that  
12 coaching is considered discipline by the Court or  
13 however the Court decides it, that we should have  
14 the right to grieve that.

15 Q (BY MS. WALKER) Okay. And for purposes of  
16 bargaining, you're not taking a position on whether  
17 coaching is discipline, correct?

18 A. We didn't -- I don't think -- there's  
19 nothing in there -- All it is, is it said something  
20 to the effect of, if something is deemed public  
21 information and subject to discipline, that we get  
22 the chance to grieve it. I don't think it  
23 specifically mentions coaching. I don't remember  
24 'cause I don't remember the language.

25 Q. Okay. So what matters to the Federation

1 is whether something becomes public, not the nature  
2 of the consequence. Is that accurate?

3 A. If it becomes discipline -- disciplinary,  
4 or a discipline, we want the ability to grieve it.  
5 Discipline and public -- and made public, then, yes,  
6 we want the ability to grieve that.

7 MS. WALKER: Can you repeat my question?  
8 And it's a yes-or-no question.

9 (Whereupon, the court reporter read back  
10 the requested portion of the record.)

11 A. Yes and no. They both matter to us,  
12 whether it's discipline and whether it becomes  
13 public. Those are things that both matter -- that  
14 matter to us.

15 Q. (BY MS. WALKER) So would you agree with me  
16 that whether coaching is considered discipline or  
17 not, coaching is still going to look like coaching?  
18 You're still going to have a sit-down meeting.  
19 You're still going to talk to your supervisor.  
20 You're still going to have a form filled out.  
21 You're still going to have it put in some file.  
22 Whether it's disciplinary or not, coaching is going  
23 to look the same.

24 You would agree?

25 MR. KELLY: Objection as to form, and

1 calls for a legal conclusion.

2 MS. RISKIN: Speculation.

3 A. Do I still answer?

4 Q (BY MS. WALKER) Yes.

5 A. Can you repeat the question?

6 Q. Do you have any reason to believe that the  
7 process of being coached is going to change the  
8 actual sit-down meeting, that that is going to  
9 change based on whether coaching is designated  
10 discipline or not?

11 A. I don't know if it will.

12 Q. Okay. You don't have any reason to  
13 believe that it will?

14 A. I don't know what policies the City is  
15 going to come up.

16 Q. They've not told you they're adopting new  
17 policies, have they, on coaching?

18 A. No.

19 Q. Okay. So as you sit here today, there's  
20 no reason that what coaching looks like in terms of  
21 the interaction an officer has with his supervisor,  
22 there's no reason to believe that's going to change?

23 A. I can't make a determination whether  
24 that's going to change.

25 Q. You don't have any reason to believe -- no

1 evidence? No conversations you can tell me about?

2 No communications you can tell me about?

3 A. No.

4 Q. Okay. That's a no?

5 A. No. I have had no conversations about  
6 what this would look like if it became discipline.

7 Q. So my question is, what matters to the  
8 Federation is whether it's going to become public,  
9 not the actual impact of the coaching session on the  
10 officer.

11 Would you agree?

12 A. No. I would say that our issue is whether  
13 it becomes disciplinary and categorized as  
14 disciplinary.

15 Q. And the only distinction in whether it's  
16 disciplinary or not is whether it becomes public;  
17 isn't that true?

18 A. Well, no, 'cause discipline is held  
19 against you for a longer period of time for things  
20 like promotion, specialty assignments, all those  
21 kinds of things.

22 Q. I thought that depended on the level of  
23 misconduct, not what counts --

24 A. B and higher is discipline, and those can  
25 be used against you for a longer period of time.

1 Q. Okay. Any other reason you care about  
2 whether it's considered discipline?

3 A. That coaching remain --  
4 Can you reask your question? I'm sorry.

5 Q. I'll withdraw it.  
6 Can you flip to paragraph 41 in the  
7 Complaint and the corresponding answer?

8 The allegation is that the City defendants  
9 are intentionally withholding government data that  
10 is public under the MGDPA, which requires release of  
11 personal data of a final disposition when discipline  
12 is imposed.

13 Did I read that correctly?

14 A. Yes.

15 Q. And you denied this in the answer. And  
16 then said, by way of further answer, coaching is not  
17 written discipline, therefore it is not public.

18 Did I read that correctly?

19 A. Yes.

20 Q. Okay. And you don't have any insight into  
21 the City's state of mind. Correct?

22 A. With relation to it?

23 Q. Well, you don't know one way or the other  
24 what the City defendants' intention is, referring to  
25 the word "intentionally" in paragraph 41?

1           A.    I don't know what their intentions were,  
2   no.

3           Q.    And there could have been documents  
4   responsive to the data requests that are not  
5   personnel records, right?

6           A.    I don't know.

7           Q.    So what basis did the Federation have to  
8   deny this allegation?

9           A.    I don't know.

10          Q.    The answer to paragraph 41 also  
11   refers -- It says, coaching is not written  
12   discipline.

13                Do you see that?

14          A.    I do see that.

15          Q.    Okay. And are you aware that no one in  
16   this case has ever alleged that coaching is written  
17   discipline?

18          A.    I don't know what the allegations -- who's  
19   made allegations of what in this thing.

20          Q.    Okay. So if I told you that our position  
21   is that coaching is oral discipline, would you  
22   change your answer here? Or do you not know?

23          A.    I don't know.

24          Q.    Sorry. What did you say?

25          A.    I don't know.

1           Q.     Okay. I think you can flip to the last  
2     few pages of the Answer, page 9, where there's a  
3     list of affirmative defenses.

4                     Your attorney can certainly jump in. But  
5     my experience with affirmative defenses is that  
6     defendants often put a lot of them in the Complaint,  
7     just to hedge their bets, and may not intend to  
8     pursue all of them.

9                     So I'm just trying to figure out with my  
10    questions which, if any, of these the Federation  
11    plans to actually pursue and which of them they  
12    actually have evidence to support.

13                    Have you reviewed these affirmative  
14    defenses?

15            A.     I have.

16                    MS. WALKER: Okay. And, Joe, if you want  
17    to take any of them all off the table, I won't ask  
18    questions about them.

19            Q.     (BY MS. WALKER) Are you aware of any  
20    evidence, as you sit here today, supporting  
21    Affirmative Defense No. 1?

22                    MR. KELLY: Objection. Calls for a legal  
23    conclusion.

24            Q     (BY MS. WALKER) I'm just asking about  
25    facts in evidence that you know about, Ms. Schmidt.

1           A.     So you're asking for facts or evidence  
2     that we --

3           Q.     Yeah. Can you tell me the facts or  
4     evidence that you know about that would support this  
5     affirmative defense?

6           A.     Other than what's already been talked  
7     about? I don't.

8           Q.     Yeah. Yes. Beyond what we've discussed  
9     today.

10          A.     I cannot think of anything else.

11          Q.     Same answer for number 2?

12                 MR. KELLY: Calls for a legal conclusion.

13                 MS. WALKER: You can have a standing  
14     objection.

15                 MR. KELLY: That's fine, for all of them.

16          A.     So --

17          Q     (BY MS. WALKER) Is it the same answer for  
18     number 2, that you're not aware of any other  
19     evidence beyond what we've discussed today?

20          A.     Yes.

21          Q.     Same answer for 3 through 8?

22          A.     Yes.

23          Q.     Okay. I think you can put Exhibit 145 and  
24     Exhibit 28 to the side.

25                 I'll have you look at Exhibit 133.

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1           So Exhibit 133 we have looked at before.  
2       It is a post-hearing brief filed in an arbitration  
3       by the Kelly & Lemmons firm.

4           Do you recall that?

5           A.    I'm working on it. I found it.

6           Q.    And I think you previously testified that  
7       you have confidence in the Kelly & Lemmons firm to  
8       know the law and the facts of the case, and stand by  
9       what they put in this post-hearing brief. Correct?

10          A.    Correct.

11          Q.    Okay. So I'll have you look at page 22.  
12       And the Federation's attorneys here are discussing  
13       PELRA.

14                Do you see that three lines down from the  
15       top?

16          A.    Yes.

17          Q.    Okay. And they reference, it's  
18       requirement that, quote, All contracts must include  
19       a grievance procedure providing for compulsory  
20       binding arbitration of grievances, including all  
21       written disciplinary actions.

22                Did I read that correctly?

23          A.    You did.

24          Q.    And you're confident that they are  
25       interpreting PELRA and quoting it correctly here,

1 right?

2 A. I am.

3 Q. And does that help you understand why oral  
4 disciplinary actions are not grievable under PELRA?

5 Let me withdraw that and reask.

6 You agree with me that PELRA does not  
7 require grievances for oral disciplinary action,  
8 correct?

9 MR. KELLY: Objection. Calls for a legal  
10 conclusion.

11 A. Can I answer?

12 Q (BY MS. WALKER) You do answer.

13 A. In the part that you quoted here, it does  
14 not talk about arbitration for -- I forget what --

15 Q. Oral --

16 A. Yeah.

17 Q. -- disciplinary action?

18 A. Yeah.

19 Q. Okay. And you're not aware of anything  
20 besides PELRA that would give the Federation and its  
21 members the right to grieve oral disciplinary  
22 action, correct?

23 A. I think anything outside of what is agreed  
24 to in our collective bargaining agreement we would  
25 have -- we would be able to grieve because it's not

1 those things that are in our bargaining -- or our  
2 bargaining agreement.

3 Q. And the bargaining agreement doesn't  
4 actually include a list of discipline available to  
5 the Minneapolis Police Department. It only includes  
6 a list of what's grievable; isn't that true?

7 A. Yes.

8 Q. And do you pay attention to how other  
9 police departments across the city or state or  
10 country negotiate their own?

11 A. Contracts? Yeah.

12 Q. Is that something you kinda benchmark  
13 against?

14 A. When we are talking about certain aspects  
15 of bargaining, yes.

16 Q. Have you looked at how the Saint Paul  
17 Police Department has drafted its collective  
18 bargaining agreement?

19 A. I have not.

20 Q. We're going to hand you Exhibit 53, which  
21 is the labor agreement between the City of  
22 Saint Paul and the Saint Paul Police Officers  
23 Federation.

24 (Premarked Deposition Exhibit Number 53  
25 introduced.)

1 Q. And I'll ask you to flip to page 8.

2 MR. KELLY: This is Exhibit 53?

3 MS. WALKER: Yes.

4 MR. KELLY: Saint Paul Manual &  
5 Maintenance Supervisors?

6 MS. WALKER: Correct.

7 MR. KELLY: Okay.

8 MS. WALKER: Yes.

9 Q (BY MS. WALKER) So this is -- I misspoke  
10 as to who this contract is between, but it's evident  
11 on the face of the document. And if you flip to  
12 page 8, this union has negotiated with the City of  
13 Saint Paul to list specific kinds of discipline in  
14 section 10.1.

15 Do you see that?

16 A. I do.

17 Q. Okay. It says, The employer will  
18 discipline employees for just cause only.  
19 Discipline will be in the form of ... And it lists  
20 oral reprimand, written reprimand, suspension,  
21 reduction and discharge.

22 Do you see that?

23 A. I do.

24 Q. And there's no similar paragraph in the  
25 Federation's agreement with the Minneapolis -- City

1 of Minneapolis, is there?

2 A. No.

3 Q. No. So it's easy enough to list the forms  
4 of discipline available to a public agency if you  
5 want to.

6 You would agree with that, right?

7 A. It's never come to the table.

8 Q. But this is how you do it.

9 You would agree with that?

10 A. That's how they decided to do it.

11 Q. Right. And what the Minneapolis Police  
12 Federation decided to do is to not list the forms of  
13 discipline that are available and to just include a  
14 paragraph on what is grievable.

15 You agree with me?

16 A. I would agree that what is grievable is  
17 listed. I wouldn't agree with your assertion that  
18 we didn't make efforts to list it. I don't remember  
19 those bargaining sessions.

20 Q. Can you take a look at Exhibit 48 and tell  
21 me where there's a simple list of the forms of  
22 discipline that are available to the Minneapolis  
23 Police Department?

24 MS. WALKER: Why don't we go off the  
25 record for just a minute while you take a look.

1           (Whereupon, the court reporter read back  
2 the requested portion of the record.)

3           A.    It is not listed in the contract.  It's  
4 listed -- well, there's -- The things we can grieve  
5 are listed in there.  The kinds of discipline we can  
6 grieve are listed in here.

7           Q.    (BY MS. WALKER) And all of the types of  
8 discipline listed in 12.02 are written discipline,  
9 correct?

10          A.    Written in the sense that they would get  
11 some type of written paperwork, 'cause a transfer is  
12 a type of discipline, where I would assume they  
13 would get some paperwork on it.

14          Q.    I'm going to hand you Exhibits 161 and  
15 163.

16                   (Premarked Deposition Exhibit Number 161  
17 introduced.)

18          Q.    So Exhibit 161 is the Federation's  
19 response to a set of admissions the plaintiff served  
20 upon the Federation.  And my question is, have you  
21 seen this document before?

22          A.    Yes.

23          Q.    Did you review it before it was finalized  
24 and served on the plaintiff?

25          A.    Yes.

1 Q. Do you believe it's accurate?

2 I'll withdraw that question. Let give you  
3 one more document.

4 We're handing you what's been marked as  
5 Exhibit 163.

6 (Premarked Deposition Exhibit Number 163  
7 introduced.)

8 Q. And this -- I wanted to be fair. This is  
9 an amended response to a particular request that did  
10 correct what the Federation discovered was an  
11 inaccuracy.

12 Did you see this document before it was  
13 served?

14 A. Yes.

15 Q. Okay. And so taking 161 and 163 together,  
16 do you believe they are accurate and that they  
17 reflect the Federation's position?

18 A. I mean, I can reread them if -- to make  
19 sure they haven't changed. I know this one was just  
20 done.

21 Q. You don't have any reason to believe they  
22 contain inaccurate information?

23 A. Correct.

24 Q. So take a look at the Federation's  
25 response to Request for Admission No. 2 on

1 Exhibit 161. And the third sentence in that  
2 response says, If the MPD labels an action as  
3 something that it is not, the action may be subject  
4 to compulsory binding arbitration.

5 Do you see that?

6 A. Number 2, you said?

7 Q. Yes.

8 A. Okay. So an action imposed by an MPD?  
9 That's what you're talking about?

10 Q. If the MPD labels an action as something  
11 that it is not, the action may be subject to  
12 compulsory binding arbitration.

13 Do you see that sentence?

14 A. I do.

15 Q. Okay. So if the MPD suspends an officer  
16 without pay as a consequence for misconduct, but  
17 they call it a time-out, the Federation would take  
18 the position that that is grievable and can be  
19 arbitrated, correct?

20 A. Yes.

21 Q. So it doesn't matter what the MPD calls  
22 it. What matters is the effect of the action,  
23 correct?

24 A. I think it does matter what you call it.

25 Q. How so?

1           A.    'Cause a time-out has a very different  
2 meaning than discipline.

3           Q.    And so if an officer is suspended without  
4 pay over misconduct, but they don't call it a  
5 suspension, they call it a time-out, would it be  
6 grievable?

7           A.    I would say yes, because you are imposing  
8 a -- you're imposing discipline on someone, right?  
9 You're taking something away from them. They're  
10 losing pay as a result of the action of the  
11 employer.

12          Q.    What if they issue a letter of reprimand  
13 but they call it a friendly notice? Is that  
14 grievable?

15          A.    If it's considered discipline, it could  
16 be.

17          Q.    And a letter of reprimand is considered  
18 discipline, right?

19               MS. RISKIN: Objection. Calls for  
20 speculation.

21          Q.    (BY MS. WALKER) You would agree with me  
22 that, if they issued discipline in the form of a  
23 letter of reprimand, but they call it a friendly  
24 notice, it's still grievable?

25          A.    Yes.

1 Q. And that's because a letter of reprimand  
2 is disciplinary?

3 A. Yes.

4 Q. And we all know what it looks like and we  
5 feel the impacts of it and it feels disciplinary,  
6 punitive in your words, and it doesn't matter what  
7 they call it. You agree?

8 MR. KELLY: Objection as to form.

9 Q (BY MS. WALKER) Do you agree?

10 A. I think it does matter what they call it.

11 Q. Okay. So if they call it a friendly  
12 notice, it's not grievable?

13 A. If it is disciplinary, it is grievable.  
14 If it's considered discipline, it's grievable.

15 Q. So if they're issuing oral warnings, which  
16 are disciplinary, but they call them coaching, is  
17 that discipline or not?

18 A. Oral reprimands aren't coaching.

19 Q. I'm saying if they're issuing oral  
20 warnings under the civil service rule, they issue a  
21 warning and they call it coaching, do you agree with  
22 me that's discipline even though they call it  
23 something else?

24 A. No. Because in our collective bargaining  
25 unit we don't recognize oral reprimands.

1 Q. I'm not asking about oral reprimands.

2 A. Or oral warning?

3 Q. I'm asking about the disciplinary warning  
4 that the civil service rule permits and that section  
5 30.08 of the collective bargaining agreement  
6 contemplates. They issue one of those and they call  
7 it coaching, is it discipline?

8 A. I don't know they'd call it coaching.

9 Q. I'm asking if they did.

10 A. I don't know if they would have.

11 Q. I'm asking if they did.

12 It's a hypothetical. If they did, is that  
13 discipline?

14 A. I think it could be.

15 MS. RISKIN: Standing objection to the  
16 request for speculation.

17 Q. (BY MS. WALKER) So how the Minneapolis  
18 Police Department labels something doesn't dictate  
19 whether it's disciplinary and doesn't dictate  
20 whether it's grievable.

21 Do you agree with me?

22 MR. KELLY: Objection as to form.  
23 Compound.

24 Q (BY MS. WALKER) I can ask it in two parts.  
25 How the Minneapolis Police Department

1 labels something doesn't dictate whether it's  
2 discipline. You agree?

3 A. No. I think it matters how they label  
4 things.

5 Q. So they can just make up names for things  
6 and say, well, that's not listed anywhere as  
7 discipline, so it's not discipline, even if it looks  
8 like discipline. That's your position?

9 A. Can you -- ask that question one more  
10 time? I'm confused at what you're asking.

11 Q. Yeah. Does the label matter or does the  
12 impact of the consequence matter in deciding whether  
13 it's discipline?

14 A. I do think the label matters, and I think  
15 that the impact of the action matters.

16 Q. Does the label dictate whether it's  
17 grievable?

18 A. It can.

19 Q. Does it always?

20 A. I don't know, without a specific example.

21 Q. Let me take you back to the response here.  
22 The next sentence says, The effect of the  
23 action by the employer is determinative of whether  
24 the act is disciplinary or nondisciplinary.

25 Did I read that correctly?

1 A. Where are we at?

2 Q. Back in the response to Request for  
3 Admission No. 2, the next sentence, The effect of  
4 the action by the employer is determinative of  
5 whether the act is disciplinary or nondisciplinary.

6 Did I read that correctly?

7 A. Yes. You did.

8 Q. Do you stand by that, as you sit here  
9 today?

10 A. Yes.

11 Q. When I asked you a minute ago to tell me  
12 the difference between coaching and warning, and you  
13 looked at the Civil Service Rule next to the  
14 coaching form, you didn't identify any difference in  
15 effect. Correct? You talked about the  
16 investigation? Right?

17 A. I don't know. I don't remember if I --

18 Q. Do you think there's any difference in  
19 effect between a warning and coaching?

20 MR. KELLY: Objection. Calls for  
21 speculation.

22 A. What was the question?

23 Q (BY MS. WALKER) How is the effect of a  
24 warning different from the effect of coaching, to  
25 the extent there is a difference at all?

1 A. I don't know.

2 Q. There's no difference, right?

3 A. I'm not agreeing to that. I'm saying I  
4 don't know.

5 Q. You can't identify any difference in  
6 effect, as you sit here today?

7 A. No.

8 Q. Let me ask you this: If an officer does  
9 something wrong, and he's not coached and he's not  
10 warned, and there's none of the discipline listed in  
11 12.02, but the chief of police goes to the  
12 Star Tribune and says, you can quote me on this,  
13 he's the worst officer I've ever worked with, I  
14 don't trust him, is that grievable?

15 A. I don't know.

16 Q. Who would know?

17 A. Well, I would obviously go to -- I would  
18 ask our legal counsel what remedies there are  
19 available to that officer for the chief's statement.

20 Q. Do you think that's discipline, if the  
21 chief does that?

22 A. I think it's slanderous if that's what he  
23 does.

24 Q. That's not my question.

25 Do you think it's disciplinary?

1           A.    I think it could have -- it could have  
2   some of the effects of discipline.

3           Q.    What are the effects of discipline?

4           A.    It could prevent them from promotions,  
5   specialty assignments.

6           Q.    Coaching has those effects, too, right?

7           A.    I would say no.

8           Q.    Never?

9           A.    I couldn't say never, 'cause I don't have  
10   all of the examples of coaching out there.

11          Q.    Are there any other effects of discipline  
12   beyond the two you just listed?

13          A.    There's monetary losses, probably some  
14   impact on -- depending on what the case is or what  
15   the circumstances are, there could be effects to  
16   your reputation.

17          Q.    Okay. Any other effects?

18          A.    I'm sure there's more that I'm just not  
19   thinking of.

20          Q.    Okay. And coaching has a negative impact  
21   on reputation, correct?

22          A.    Not necessarily.

23          Q.    Well, it's not a commendation. We  
24   established that. Right?

25          A.    We did.

1 Q. It's generally viewed as a negative thing?

2 A. I wouldn't say that.

3 Q. Is it your position that people look  
4 forward to being coached?

5 A. I don't think people look forward to doing  
6 anything that's going -- I mean, when people say you  
7 do something wrong, I think that -- or there's a  
8 complaint against you, I don't think people look  
9 forward to those kinds of things.

10 Q. Okay. And those kinds of things have an  
11 impact on reputation, do they not?

12 A. They could.

13 Q. Often they do, correct?

14 A. It would depend on the officer.

15 Q. Take a look now at the response to Request  
16 for Admission No. 5. And you answered this, admit  
17 in part and deny in part. The statement speaks for  
18 itself.

19 Counsel was referring to the City and the  
20 chief's office being in the best position to  
21 determine whether discipline was imposed or not as  
22 compared to a third party.

23 Did I read that correctly?

24 A. You did read that correctly.

25 Q. Okay. As you sit here today, do you

1 believe this it is the chief's office that is in the  
2 best position to determine whether discipline was  
3 imposed or not?

4 A. Yes. They're the ones that -- The chief  
5 is the one that has the final say on discipline.

6 Q. Would you agree with me that, if the chief  
7 says it's discipline, then it's discipline?

8 A. That's how he's going to categorize it.

9 Q. So you agree with me?

10 A. Yes.

11 Q. So if there are determination letters  
12 saying -- signed by the chief that say, you're being  
13 coached as discipline, you would agree with me that  
14 that's discipline?

15 A. I think it would depend on the severity  
16 levels that were assigned to it, because there are  
17 cases where they have assigned coaching to  
18 violations at a B level where we have contested  
19 that.

20 Q. Okay. So I just asked you if the chief  
21 says it's discipline, it's discipline. Do you agree  
22 with me? And you said yes. So do you want to  
23 change your testimony?

24 A. Yes.

25 Q. Okay. What's your new testimony?

1           A.     That just because he says it's -- because  
2     he says it's discipline doesn't always mean it's  
3     discipline, depending on the circumstances of the  
4     case.

5           Q.     Okay. And that cuts both ways. So if he  
6     says it's not discipline, it might be discipline,  
7     depending on the circumstances, right?

8           A.     Yes.

9           Q.     So what the chief says -- The Federation's  
10    position is what the chief says doesn't matter at  
11    all. You have to look at individual cases?

12          A.     I think you have to look at the totality  
13    of the circumstances surrounding things, 'cause  
14    there are obviously cases we don't agree with the  
15    chief on.

16          Q.     So do you want to change the answer here  
17    to Request for Admission No. 5?

18          A.     The chief makes the determination on  
19    discipline, and then we -- depending on how  
20    it -- What's the word I'm looking for?

21                 When we look at other similar cases or  
22    past practice, that's when we decide what we're  
23    going to do. But ultimately he has the decision on  
24    discipline.

25          Q.     So you would look at the effect on the

1 action and make an independent determination on  
2 whether it's discipline?

3 A. On whether it's grievable.

4 Q. Would you first decide whether it's  
5 discipline?

6 A. Yeah. We'd have to determine if it falls  
7 into that written reprimand, the demotion, transfer.

8 Q. And if I'm understanding your testimony,  
9 that is a very case-by-case, fact-intensive  
10 determination. Is that your testimony?

11 A. Yes. That we would have to look at the  
12 totality of everything involved in that case.

13 Q. The answer to Request No. 5 here also  
14 refers to a third party, so the chief's office being  
15 in the best position to determine whether discipline  
16 was imposed or not as compared to a third party.

17 Do you see that?

18 A. Yes.

19 Q. So would the Federation be a third party?

20 A. No.

21 Q. Who would be a third party?

22 A. That would be things like the OPCR or  
23 other -- maybe city council.

24 Q. And why is it that you believe the  
25 Federation is the only one who can question the

1 chief's characterization of something as discipline?

2 A. I didn't say that we were.

3 Q. You don't consider yourself a third party?

4 A. I suppose we could be considered that.

5 For the purposes of this, I did not consider  
6 ourselves a third party.

7 Q. Take a look at your responses to Nos. 6  
8 and 7. And I'm interested in the sentences you add  
9 after the admission or the denial.

10 And in both 6 and 7 you say, if MPD's act  
11 is covered under the collective bargaining agreement  
12 or state statutes as subject to compulsory binding  
13 arbitration, then the act is subject to compulsory  
14 binding arbitration.

15 Did I read that correctly?

16 A. You did.

17 Q. And you stand by that?

18 A. I do.

19 Q. And so I'm going to ask you if the  
20 opposite is true. If the act is not covered by the  
21 collective bargaining agreement or state law, as  
22 subject to arbitration, then it's not subject to  
23 arbitration.

24 Do you agree?

25 A. Are we specifically talking related to

1 discipline or --

2 Q. Yeah. If a consequence imposed for  
3 misconduct, whether we agree it's discipline or not,  
4 because that's the issue in this case.

5 A. Okay.

6 Q. But if an act imposed for -- If a  
7 consequence imposed from misconduct is not covered  
8 under the agreement and is not subject to compulsory  
9 binding arbitration, then it's not subject to  
10 arbitration.

11 Do you agree with me?

12 MR. KELLY: Objection as to form, and  
13 calls for a legal conclusion.

14 Q (BY MS. WALKER) Let me ask it differently.  
15 For something to be subject to compulsory  
16 binding arbitration, it either has to be mentioned  
17 by state law or called out in a collective  
18 bargaining agreement; is that true?

19 MR. KELLY: Objection. Calls for a legal  
20 conclusion.

21 Q (BY MS. WALKER) Is that the Federation's  
22 position?

23 MR. KELLY: Objection. Calls for a legal  
24 conclusion.

25 A. (No response.)

1 Q (BY MS. WALKER) You can answer.

2 A. Okay.

3 Q. Do you need the question read back?

4 A. Yeah.

5 (Whereupon, the court reporter read back  
6 the requested portion of the record.)

7 A. I think there are circumstances where  
8 things are not spelled out in the collective  
9 bargaining unit that could be subjected to binding  
10 arbitration.

11 Q. On what basis?

12 A. If it's something -- If it's a form of  
13 discipline that we don't use, or it doesn't fall in  
14 line with past practices, I think we would have a  
15 basis to grieve some of that. And I don't have  
16 specific examples of that.

17 Q. So now if you could flip to No. 11 and 12.  
18 The Request for Admission No. 11 asks the Federation  
19 to admit that MPD officers are subject to the  
20 Minneapolis Civil Service Commission rules.

21 And you agree with me that they are,  
22 correct?

23 A. In here we admit and deny in part.

24 When we talk about under -- There are  
25 certain things that are in the civil service rules

1 that are covered in the collective bargaining unit,  
2 so our bargaining unit supersedes those.

3 Q. Okay. And that's what I want to get to.

4 So the last sentence in your response here  
5 says, To the extent that the Minneapolis civil  
6 service rules overlap with the Federation's  
7 collective bargaining agreement, or the Federation's  
8 collective bargaining agreement addresses the topic,  
9 the collective bargaining agreement controls.

10 A. Yes.

11 Q. All right. And so my question is, on the  
12 topic of discipline, can you tell me where the  
13 Minneapolis civil service rules overlap with the  
14 collective bargaining agreement?

15 A. In -- what is it? -- 11.02, when it talks  
16 about discipline, I think there's other -- Are you  
17 talking about the entire agreement, the entire --

18 Q. On the issue of discipline, where is the  
19 overlap between the civil service rules and the  
20 collective bargaining agreement?

21 A. I think it's under 12.02 in the civil  
22 service rules.

23 Q. Right. So those categories of discipline  
24 that the civil service rules list, warning,  
25 discharge --

1 A. Yep.

2 Q. -- transfer?

3 A. Yep.

4 Q. Okay. That's the overlap?

5 A. I mean, I gotta find my little copy of  
6 that.

7 Q. It's Exhibit 50.

8 So by "overlap," do you mean that both the  
9 collective bargaining agreement and the civil  
10 service rules talk about discipline?

11 A. Yes.

12 Q. Okay. Are you trying to say that there's  
13 a conflict between the civil service rules and the  
14 collective bargaining agreement or would you agree  
15 with me that they are actually consistent?

16 A. I don't know that there's a -- I mean,  
17 there's differences, obviously, 'cause we recognize  
18 in our collective bargaining unit the five things  
19 we've talked about over and over again, a warning is  
20 not something that's recommended -- or that's  
21 recognized in our collective bargaining.

22 Q. That's not true. 30.08 recognizes a  
23 warning, correct?

24 A. It is mentioned in that one section of the  
25 contract.

1 Q. And there's nothing in the collective  
2 bargaining agreement that says a warning cannot be  
3 issued for anything else, correct?

4 A. There is nothing that I am aware of.

5 Q. Okay. And there's no list -- Like  
6 compared to the Saint Paul contract we looked at,  
7 there's no list in the collective bargaining  
8 agreement of the forms of discipline available to  
9 the Minneapolis Police Department, correct?

10 A. There is not.

11 Q. So is it your position there's some  
12 conflict between the civil service rules and the  
13 collective bargaining agreement?

14 A. With relation to what? 'Cause I  
15 haven't --

16 Q. Well, I'm just trying to understand your  
17 answer here, that to the extent the rules overlap  
18 with the agreement --

19 A. Yes.

20 Q. -- the agreement controls. So --

21 A. I'm required to address that, the remedies  
22 for different discipline stuff, and that's where  
23 we've always reverted to.

24 Q. Okay. So let me ask it this way: Other  
25 than Rule 11, is there any other overlap you're

1 aware of?

2 A. I haven't gotten a chance to finish  
3 looking at it.

4 Q. Okay. Take your time.

5 A. And what was the question again?

6 Q. There's no conflict between Rule 11 and  
7 the collective bargaining agreement, is there?

8 A. There's differences that are addressed in  
9 our collective bargaining unit.

10 Q. I'm asking about conflicts, not  
11 differences.

12 A. So conflicts against the types of  
13 discipline?

14 Q. Yes. Are there any conflicts?

15 A. No. We have the B through -- or B through  
16 D, or actually, I think it's E on here, is the same  
17 in our contract, and then the warning is mentioned  
18 at one time in the drug and alcohol thing.

19 Q. And so the contract is completely  
20 consistent with Rule 11; isn't that true?

21 MR. KELLY: Objection. Calls for a legal  
22 conclusion.

23 Q (BY MS. WALKER) You can answer.

24 A. I don't know.

25 MR. KELLY: Can we take a break now?

1 MS. WALKER: Yes.

2 (Whereupon, the proceedings were in recess  
3 at 3:30 p.m. and subsequently reconvened at  
4 3:46 p.m., and the following proceedings were  
5 entered of record:)

6 Q. (BY MS. WALKER) Just one cleanup question.  
7 I want to make sure the record is clear on this,  
8 Ms. Schmidt. You're not aware of any written policy  
9 that addresses B level coaching, correct?

10 A. Correct.

11 Q. All the written policies on coaching talk  
12 about it at the A level as far as you're aware; is  
13 that correct?

14 A. Yes.

15 Q. All right. Could you, still looking at  
16 Exhibit 161, flip to page 6, where you'll see  
17 Request for Admission No. 13. And I'll let you read  
18 it for yourself, but I think based on the testimony  
19 today, this is an inaccurate answer. And I'm  
20 wondering if you're willing to admit No. 13 as you  
21 sit here.

22 A. I will say that warnings are not anything  
23 that I have seen issued.

24 Q. That's not the question. So we can break  
25 this down.

1 First of all, you said warnings are not  
2 addressed in the Federation's collective bargaining  
3 agreement and are not available to be issued to  
4 members of the Federation. That your testimony here  
5 today, based on your review of the collective  
6 bargaining agreement, is that they are addressed in  
7 that agreement and they are available to be issued  
8 to members of the Federation; is that correct?

9 A. Warnings are addressed in the drug and  
10 alcohol policy.

11 Q. So they are addressed in the collective  
12 bargaining agreement; is that correct?

13 A. Under one section. Yes.

14 Q. Okay. And so they are available to be  
15 issued to members of the Federation; is that  
16 correct?

17 A. I would say -- Like I said earlier, I have  
18 not seen them issued. But they are listed under the  
19 drug and alcohol policy in the contract.

20 Q. Okay. So on behalf of the Federation, are  
21 you prepared today to admit No. 13?

22 A. I would say they are not available to  
23 members of the Federation. They are not something  
24 that we use.

25 Q. That's not the question.

1           The question is whether he uses them or  
2 not. 'Cause there are many reasons the chief of  
3 police might choose not issue a warning. The  
4 question is, does the chief of police have  
5 discretion to issue a warning to an officer for a  
6 violation of the policy manual? Yes or no?

7           A. I don't know what the policy manual says  
8 regarding warnings.

9           Q. That's not the question, either.

10           Does -- Let me simplify it further.

11           Yes or no? Does the chief of police have  
12 discretion to issue a warning to an officer?

13           A. Yes.

14           Q. So will you admit No. 13?

15           I'll withdraw the question. I'll move on.

16           No. 14, will you admit that?

17           A. No, I won't admit it. I would say that  
18 this answer is accurate, that discipline is  
19 available or suspension, written reprimand,  
20 transfer, demotion and discharge.

21           Q. Okay. That's not the question. That was  
22 additional information someone from the Federation  
23 or its counsel provided.

24           The question is whether the Federation's  
25 labor agreement with the City contemplates that an

1 officer may be disciplined for certain violations of  
2 the policy manual by receiving a warning. And the  
3 answer is, it does in section 30.08. Correct?

4 A. Let's look at that section again. 30.08.

5 MR. KELLY: Object as it misstates the  
6 facts in the record.

7 Q. (BY MS. WALKER) Tell me when you're ready,  
8 and I'll reask the question. I'll just reask the  
9 question.

10 A. Okay.

11 Q. Okay. So yes or no? Does the  
12 Federation's labor agreement with the City  
13 explicitly contemplate that an officer may be  
14 disciplined for certain violations of the policy  
15 manual by receiving a warning?

16 A. It does say they can receive a warning,  
17 written reprimand, suspension without pay, demotion  
18 or discharge.

19 Q. So that's a yes?

20 A. Under 30.08 it is.

21 Q. So will you admit No. 14?

22 A. I would say reading the agreement, that  
23 under the 30.08, that certain violations, how I read  
24 this, would be related to the drug and alcohol  
25 policy, that they could be issued that warning.

1 Q. So you will admit No. 14?

2 MR. KELLY: Objection. Misstates the  
3 facts.

4 MS. WALKER: It's a question.

5 MR. KELLY: I understand.

6 MS. WALKER: It's a question.

7 MR. KELLY: Number 14 is talking about a  
8 policy manual versus the City's drug and alcohol  
9 policies. Those are two different things.

10 Q (BY MS. WALKER) You can answer.

11 A. That's where I was taking about the  
12 City -- This is the alcohol and drug policy  
13 for -- that the warning is attached to.

14 Q. Okay. Could you flip to number 20 in the  
15 request for admission. And I just was confused by  
16 the answer here, and so I want to break it apart and  
17 understand what the Federation is trying to say.

18 First of all, the Federation -- Well, the  
19 first sentence there says, The Federation admits  
20 that coaching is not discipline. Therefore, no  
21 grievance is available.

22 Did I read that correctly?

23 A. Yes.

24 Q. Okay. But actually the Federation's  
25 position is that if a B level violation is coached

1 it is grievable. Correct?

2 A. Yes.

3 Q. Okay. Will you retract that sentence from  
4 this answer?

5 A. What sentence?

6 Q. The one I just read, since it's  
7 inaccurate?

8 A. (No response.)

9 Q. I'll withdraw the question.

10 Let me ask about the next sentence.

11 The Federation denies that coaching is a  
12 consequence.

13 Did I read that correctly?

14 A. You did read it correctly.

15 Q. What is coaching if not a consequence?

16 A. It's a way to improve behavior or alert an  
17 employee that, if they continue certain conduct,  
18 that they will be subject to disciplinary action in  
19 the future.

20 Q. Okay. It follows on misconduct, correct?  
21 It arises -- coaching arises from misconduct,  
22 correct?

23 A. Not always.

24 Q. Most of the time?

25 A. I don't know.

1           When people get coached, they don't -- If  
2           they get a coaching notification, they don't always  
3           come to us, so I don't know what all the  
4           coaching --

5           Q.    I'll withdraw the question and ask it this  
6           way.   Earlier today we asked how the Federation was  
7           deeply concerned when they learned that coaching was  
8           being used for behavior that didn't even violate the  
9           policy manual.

10           Do you remember that conversation?

11           A.   Yes.

12           Q.   And the Federation's view was that  
13           coaching really should only be used to address  
14           violation of the policy manual; in other words,  
15           misconduct.

16           Do you remember that testimony?

17           A.   Violations of policy, procedure, and there  
18           are behaviors or instances where it may not be a  
19           violation.

20           Q.   And so you would agree with me that the  
21           Federation's position is that coaching does arise  
22           and should arise from misconduct?

23           A.   It can.   Yes.

24           Q.   It follows on misconduct?

25           A.   Violations of a policy.   Yes.

1 Q. Which is misconduct?

2 A. It could be.

3 Q. Okay. How is that not a consequence?

4 A. How is --

5 Q. How is the fact that coaching arises from  
6 and follows on violation of policy or misconduct not  
7 a consequence? I'm wondering what words you would  
8 use instead of consequence.

9 A. Coaching is used on those low-level things  
10 to -- like I have explained a number of times, to  
11 improve behavior, stop behavior, put them on notice  
12 that future conduct that is similar will result in  
13 discipline. So it's a tool to help improve behavior  
14 versus being punitive.

15 Q. The part of this that you admit is that,  
16 when a violation is reduced to coaching, the  
17 grievance process is terminated. That is the part  
18 you admit. Correct?

19 A. What number are we on again? I'm sorry.

20 Q. Number 20.

21 A. Once a grievant -- If we have a grievance  
22 and it starts out as a B and then the chief says,  
23 nope, it's going to be an A, yes, then we would stop  
24 the grievance process.

25 Q. And if it starts out as a C with a letter

1 of written reprimand, but the chief says, okay, I'll  
2 just coach this C violation, then it would also  
3 terminate the grievance process, correct?

4 A. Yes.

5 Q. Okay. So discipline or disciplinary level  
6 often gets negotiated down to coaching, and that is  
7 then the end of the grievance process, correct?

8 A. I would disagree with that.

9 Q. Which part do you disagree with?

10 A. That you're saying these higher levels are  
11 be reduced to coaching.

12 Q. How would you phrase it?

13 When there's a B level violation, officer  
14 commits a B level violation, and the chief of police  
15 issues a letter of reprimand, and the officer  
16 grieves it, and the chief of police says, okay,  
17 we'll just coach it, do you dispute that that has  
18 happened?

19 A. There have been level Bs that have gone  
20 down to level A. Yes.

21 Q. Well, there's still substantiated a level  
22 B and then they're coached. You know that that has  
23 happened, right?

24 A. They switch the letter down to an A.

25 Q. Always? Is it your policy that there is

1 no record of level B being coached as a final  
2 decision?

3 A. No.

4 Q. I think we're talking past each other.

5 Let me get back to the question here.

6 Will you admit that when the consequence  
7 for a violation of the policy manual is reduced to  
8 coaching, the grievance process terminates?

9 I mean, you admitted in part and denied in  
10 part. I'm just trying to figure out which part the  
11 Federation admits. And I think you're admitting the  
12 question and then you wanted to add some additional  
13 detail.

14 But do you admit that the reduction to  
15 coaching terminates the grievance process?

16 A. When they go down to a coaching and they  
17 reduce it down to an A, then the grievance process  
18 stops.

19 Q. But if they go down to a coaching and they  
20 keep it at a B, your position would be the grievance  
21 process stays open?

22 A. If it started out as a B with a coaching,  
23 we would leave the grievance process open.

24 Q. Okay. All right. We're going to hand you  
25 what we've marked as Exhibit 152.

1 (Premarked Deposition Exhibit Number 152  
2 introduced.)

3 Q. And this is a settlement agreement on  
4 behalf of [REDACTED] and the City from 2021.  
5 Correct?

6 A. That's when it was finally signed. I  
7 think the case was in 2017.

8 Q. Right. In fact, the union grievance  
9 number is 17-10, and that means the case arose in  
10 2017?

11 A. I actually think it was a 2016 case.

12 Q. Okay. I don't know that it matters all  
13 that much. But in any event, this was resolved in  
14 2021?

15 A. Five years after the fact.

16 Q. And you signed it, correct?

17 A. I did sign it.

18 Q. All right. And paragraph D. says, the  
19 Minneapolis Police Department disciplined grievant  
20 with a sustained C violation and a letter of  
21 reprimand.

22 Do you see that?

23 A. I do.

24 Q. And then the Federation grieved a letter  
25 of reprimand.

1 Do you see that?

2 A. Yep.

3 Q. And on the second page the Federation  
4 agrees to withdraw the grievance and the officer  
5 accepted coaching for a category B.

6 Do you see that?

7 A. Yes.

8 Q. All right. And so this is an example of  
9 where something was downgraded to coaching, it  
10 remained at level B, and the downgrading to coaching  
11 resolved the grievance, correct?

12 A. Yep. With the signing of this agreement.

13 Q. Okay. So they didn't even have to  
14 downgrade it to category A for the coaching to  
15 resolve it, right?

16 A. Correct.

17 Q. And this is a settlement agreement, so  
18 this should be public, correct?

19 A. Yes.

20 Q. You have no objection to this becoming  
21 public?

22 A. I think it's already on the City's  
23 discipline website.

24 Q. And the Federation understands that all  
25 settlements of grievances are public, correct?

1 MR. KELLY: Objection. Calls for a legal  
2 conclusion.

3 Q (BY MS. WALKER) Is that your  
4 understanding, based on your 20 years on the board  
5 of the Federation?

6 A. If they are categorized as discipline, and  
7 there's -- then they are public.

8 Q. Well, that's not my question.

9 A. I'm sorry. Okay. What is your question?

10 Q. My question is, regardless how the  
11 consequence is categorized, all settlements of  
12 grievances are public; isn't that true?

13 MR. KELLY: Objection. Calls for a legal  
14 conclusion.

15 A. (No response.)

16 Q (BY MS. WALKER) You can answer.

17 A. I believe that settlement agreements  
18 are -- regarding discipline are public.

19 Q. All settlement agreements are public,  
20 regardless whether discipline is imposed, correct?

21 A. I don't know that as a fact.

22 Q. All right. Well, let's take a look at  
23 Exhibit 80 here.

24 (Premarked Deposition Exhibit Number 80  
25 introduced.)

1           Q.    This was produced by the Federation.  And  
2   you'll see the email at the top eventually found its  
3   way to Bob Kroll, correct?

4           A.    Yes.

5           Q.    All right.  If you go to the second page,  
6   this is a long email.

7           A.    It is.

8           Q.    The second page is what I'm interested in,  
9   where City attorney named Carol Bachun emailed  
10  someone named Kyle MacDonald.

11                   Do you see that email in the middle of the  
12  page?

13          A.    I do.

14          Q.    And in the third paragraph she wrote,  
15  Please note that settlement agreements are public  
16  even if they result in coaching and not discipline.

17                   Did I read that correctly?

18          A.    You did.

19          Q.    Okay.  And this email went to Kyle  
20  MacDonald, and then Kyle MacDonald forwarded it to  
21  some City employees, his colleagues.  And someone  
22  copied Emily Kokx on this privileged email between  
23  Carol and her client.

24                   Do you see that?

25          A.    On the front page?

1 Q. Uh-huh.

2 A. Yes.

3 Q. And then Emily forwarded it, I take it, to  
4 Bob Kroll. That's how it got to him?

5 A. That's what it looks like.

6 Q. All right. And neither Emily nor Bob  
7 Kroll, nor to your knowledge anyone else at the  
8 Federation, objected to or contradicted the  
9 statement by the City attorney's office that all  
10 settlement agreements are public even if they result  
11 in coaching and not discipline.

12 Is that true?

13 A. I don't know if anyone -- I personally did  
14 not. I don't know if Bob did.

15 Q. Okay. But you have no reason to think he  
16 did?

17 A. I have no knowledge whether he did or did  
18 not.

19 Q. We would have to ask him?

20 A. Yes.

21 Q. All right. As you sit here today, do you  
22 have any reason to believe that the statement by the  
23 city attorney is -- assistant city attorney is  
24 wrong?

25 MR. KELLY: Objection. Calls for a legal

1 conclusion.

2 Q (BY MS. WALKER) Based on what you know,  
3 given your 20 years of experience on the board.

4 A. I thought everything coaching related was  
5 private.

6 Q. Okay. Do you have any written documents  
7 to that effect?

8 A. No, I do not.

9 Q. Are you aware that the Minneapolis Police  
10 Department has often described the downgrading of a  
11 consequence to coaching as final discipline?

12 MR. KELLY: Objection. Speculation,  
13 foundation.

14 Q (BY MS. WALKER) Are you aware of that?

15 A. Of?

16 Q. That when an officer's discipline is  
17 downgraded to coaching, the Minneapolis Police  
18 Department often refers to that as final discipline?

19 Did you know that?

20 A. I've seen it referred to as final  
21 disposition. So I don't know.

22 Q. All right. I'll show you an example.

23 A. Okay.

24 (Premarked Deposition Exhibit Number 79  
25 introduced.)

1           Q.     This is Exhibit 79. This is an email  
2     between Amelia Huffman and yourself.

3                     Well, let me back up. You were copied on  
4     this string on March 4th, 2021. Do you see that?  
5     Emily Kokx sent you the background information,  
6     correct?

7           A.     Yes.

8           Q.     All right. And take your time reviewing  
9     this. But it appears that what happened here is  
10    that an officer who was going to get a suspension  
11    for a B level violation grieved it, and, through  
12    negotiations, the City agreed to reduce it to an A  
13    level and impose coaching.

14                    Is that what you understand this to be?

15          A.     Yes. It looks like Lieutenant Garmin and  
16    the Chief Huffman, yes.

17          Q.     Okay. And then in that top email, the  
18    third paragraph that's not a bullet point says,  
19    Lieutenant Garmin and I have verbally agreed to  
20    resolve this grievance with the final discipline  
21    amended as follows. And Amelia Huffman says it's an  
22    A level with coaching.

23                    Do you see that?

24          A.     I do see that.

25          Q.     Okay. Does it concern you that she

1 describes this A level coaching as, quote, final  
2 discipline?

3 MS. RISKIN: Objection. Misstates the  
4 record.

5 Q. (BY MS. WALKER) Does it concern you?

6 A. So I think when we see discipline there  
7 and we see it attached to coaching, that using the  
8 word discipline, yes, when it's talking about  
9 coaching, is concerning, because coaching isn't  
10 discipline.

11 I just think that, over the years, that's  
12 how this has always -- it's always just -- There's  
13 either standard templates or stuff that we use for  
14 them. So I just think that that's how it ends up  
15 just being worded, even though it's not discipline.

16 Q. So we can't take what the chief of police  
17 or the interim chief of police puts in writing at  
18 face value. Is that your position?

19 A. I'm just saying that I think that the  
20 incorrect word was used in there when she said it  
21 was an A and coaching. That's what I'm saying.

22 Q. So we cannot trust that she types what she  
23 means to say.

24 A. I think you can trust Interim Chief  
25 Huffman for sure.

1 Q. Okay. So when she says it's final  
2 discipline, it's final discipline, right?

3 MR. KELLY: Objection. Mischaracterizes  
4 the evidence.

5 Q (BY MS. WALKER) You're speculating as to  
6 what she meant. All we know is what she said. Is  
7 that fair?

8 A. I know that she says in here an A in  
9 coaching. I don't know that the word discipline  
10 is -- I don't know what she meant.

11 Q. She calls it final discipline.

12 MR. KELLY: Objection. Misstates the  
13 document.

14 Q (BY MS. WALKER) Let me move to a new  
15 question.

16 This is a settlement of a grievance,  
17 correct, this decision here?

18 A. I don't see the grievance paperwork, but  
19 it says that, on the very first one, there was a  
20 grievance attached as 21-2 and 21-3. So I'm  
21 assuming there's grievance paperwork on that.

22 Q. And this is the agreement of that  
23 grievance, correct?

24 A. This is what they agreed to. Yes. At  
25 least for one of them.

1 Q. And so if Carol Bachun is correct that all  
2 settlement agreements are public, this is a public  
3 document. Would you agree?

4 MR. KELLY: Objection. Calls for a legal  
5 conclusion.

6 Q (BY MS. WALKER) You can answer.

7 A. Again, I have always been under the belief  
8 that A level or coaching things are not public, so I  
9 would say no.

10 Q. Okay. But you don't actually know?

11 A. I do not.

12 Q. Do you know if this went in a personnel  
13 file?

14 A. I do not.

15 Q. Would you assume that it did?

16 MS. RISKIN: Objection. Calls for  
17 speculation.

18 Q. (BY MS. WALKER) In your experience as a  
19 police officer since 1997, 20 years on the board,  
20 three years as president, do you have any idea where  
21 documents like this end up at the Minneapolis Police  
22 Department?

23 MS. RISKIN: Objection. Calls for  
24 speculation.

25 A. I do not know.

1 Q. (BY MS. WALKER) No idea?

2 MR. KELLY: Asked and answered.

3 Q. (BY MS. WALKER) Go ahead. You can answer.

4 A. I do not know.

5 Q. Did you think it was a one-off mistake  
6 when Ms. Huffman referred to final discipline here?

7 A. I don't know.

8 Q. Would it surprise you that she often  
9 concludes settlement agreements by calling A level  
10 coaching final discipline?

11 MS. RISKIN: Objection. Mischaracterizes  
12 the record.

13 Q. (BY MS. WALKER) Would that surprise you if  
14 that's the case?

15 A. That what?

16 Q. She has a practice or at least with some  
17 frequency describes A level coaching as final  
18 discipline?

19 A. I know in some of her -- Some of the cases  
20 that I can remember off the top of my head, there  
21 may have been three or four different things on  
22 there and she assigned something to each one of  
23 them. So I know that, in at least a few of them,  
24 she would do final discipline will be a B, B, and an  
25 A or something.

1           So I do know that that happens. I don't  
2 remember all of the agreements that she has written,  
3 to be honest with you.

4           Q. Do you recall a situation where [REDACTED]  
5 was threatened with either discipline or a coaching  
6 session over an incident involving something called  
7 the [REDACTED]?

8           A. No.

9           Q. You have no recollection of that?

10          A. I remember there was a bunch of people  
11 that were getting coaching for different email  
12 stuff. I do not remember that specifically.

13          Q. You never spoke to [REDACTED] about that?

14          A. I don't know if I did. I just don't  
15 remember it, if he was involved in that.

16          Q. Your recollection is that everyone  
17 involved in that got coached?

18          A. I know of a few that got coached, only  
19 because they told us. I don't know the rest. But  
20 if they don't bring any coaching -- if they don't  
21 bring any discipline -- if they don't bring  
22 discipline to us or coaching or anything like that,  
23 we don't know about it. The City doesn't notify us  
24 that this stuff is happening.

25          Q. Who do you know besides [REDACTED] that got

1 coached?

2 A. [REDACTED] -- [REDACTED] name is [REDACTED]. That  
3 was one person that came to me.

4 Q. Anyone else?

5 A. That's the one that comes to the top of my  
6 head right now.

7 Q. Was it A level coaching? Do you remember?

8 A. I don't.

9 Q. Could it have been B level coaching?

10 A. I don't know.

11 Q. Why did [REDACTED] come to you about  
12 this?

13 A. Probably 'cause I was at roll call that  
14 day and [REDACTED] saw me the day [REDACTED] got it.

15 Q. Was [REDACTED] upset about it?

16 A. I don't remember.

17 Q. Why would [REDACTED] have brought it up?

18 MR. KELLY: Objection. Calls for  
19 speculation.

20 Q (BY MS. WALKER) Tell me everything you  
21 remember about the conversation with [REDACTED]

22 A. [REDACTED] said [REDACTED] got a coaching for an email  
23 exchange, and I mean, that's what I remember about  
24 it.

25 Q. Did [REDACTED] seem happy about it?

1 MR. KELLY: Objection. Calls for  
2 speculation.

3 A. I don't know.

4 Q (BY MS. WALKER) Okay. Did [REDACTED] seem angry  
5 about it?

6 A. I don't know.

7 Q. How well do you know [REDACTED]?

8 A. Not very well. I mean, I know of [REDACTED]

9 Q. How long have you known [REDACTED]

10 A. Since [REDACTED] came on, which, I don't even know  
11 when [REDACTED] came on, to be honest with you. Well after  
12 my time [REDACTED] came on.

13 Q. Do you recall knowing, through  
14 communications within the Federation, that [REDACTED]  
15 was very upset about how this was being handled?

16 A. About how what was being handled?

17 Q. How [REDACTED] involvement in this [REDACTED]  
18 [REDACTED] was being handled by the Minneapolis Police  
19 Department. Do you recall knowing that [REDACTED] was upset  
20 about that?

21 A. I don't.

22 Q. Isn't it true that sometimes officers like  
23 [REDACTED] go along with coaching because it allows  
24 transparency that would arise from discipline?

25 A. Can you restate that, please?

1           Q.    Yeah.  Has the Federation ever advised an  
2   officer to accept coaching because then they avoid  
3   the public embarrassment that arises from actual  
4   discipline?

5           A.    If coaching is on the table we would -- I  
6   mean, our job is to advocate for them, so of course  
7   we would -- you know, tell them that, here's the  
8   advantages of coaching.

9           Q.    Can you tell me what the advantages of  
10  coaching are?

11          A.    That you get coached on whatever, the  
12  violation, the behavior, whatever.  And it remains  
13  private data.  And then you get to -- the chance to  
14  improve moving forward.

15          Q.    The goal of the Federation is not  
16  transparency for police misconduct, correct?  That's  
17  not part of the Federation's mission?

18          A.    Our goal --

19          Q.    I'll ask it differently.

20                Does the Federation prioritize  
21  transparency around police misconduct?

22          A.    We prioritize advocating for our members  
23  and their rights.

24          Q.    Right.

25          A.    That's what we advocate for.

1 Q. And often advocating for your members  
2 means limiting transparency around misconduct.  
3 Correct?

4 And I'm not accusatory. I understand your  
5 role.

6 A. I would say, no, we don't hide misconduct.  
7 That's not our job.

8 Q. But you might encourage an officer to  
9 agree to coaching so that his misconduct does not  
10 become public, correct?

11 A. If coaching is offered to them, I would  
12 obviously -- I would advise them to take coaching.

13 Q. Including because there would never be any  
14 publicity surrounding the misconduct?

15 A. As I stated before, because then they are  
16 given the chance to improve whatever it is they're  
17 alleged to have engaged in, and get better going  
18 forward.

19 Q. And you also stated there's this perk of  
20 not facing any publicity. Correct?

21 A. It wouldn't become public because it would  
22 be nondisciplinary.

23 Q. And at least historically, if an officer  
24 is coached, the misconduct doesn't have to be  
25 disclosed under Brady.

1 Do you agree with that?

2 MR. KELLY: Objection. Calls for a legal  
3 conclusion.

4 Q (BY MS. WALKER) Is that your understanding  
5 given your long experience on the police force and  
6 with the Federation?

7 A. I will tell you that in recent -- Like in  
8 the recent past, there have been disclosures of  
9 coaching stuff to the county attorney's office.  
10 They are issuing, we're getting these orders to  
11 produce records. Or officers are. So these -- on  
12 these coaching things, they are getting those.

13 Q. When did that start?

14 A. I don't know. At least this fall.

15 Q. What's the Federation's position on that?  
16 Do you object, or are you going along with it?

17 A. Some of them we've objected to.

18 Q. Okay. On what grounds?

19 A. There's one that they're coaching, again,  
20 nondisciplinary records that we are now releasing,  
21 so we have an issue with that. When you have told a  
22 person that, here's your coaching document, this is  
23 private, it doesn't go anywhere, and then we turn  
24 around and do something different, that --

25 Q. Okay. Any other basis for the objection?

1           A.    It all depends on the individual case,  
2   'cause there's been a ton of -- there's been several  
3   of them that have come in.

4           Q.    Do you know how many? Like are we talking  
5   less than 10, less than a hundred?

6           A.    I had five last week.

7           Q.    And you think this started this fall?

8           A.    I'm confident it started this fall. It  
9   could have been earlier and cops just weren't paying  
10   attention to it.

11          Q.    Have you been successful in withholding  
12   the coaching records under Brady?

13               MR. KELLY: Objection. Calls for a legal  
14   conclusion. Misstates testimony and the evidence.

15          A.    I don't know.

16          Q     (BY MS. WALKER) So you don't know per the  
17   five, for example, last week what the outcome was,  
18   whether you disclosed the data or not?

19          A.    I don't disclose the data. It  
20   was -- Again, I give it to legal counsel  
21   so -- They're lawyers, I'm not, so they can handle  
22   that piece of it.

23          Q.    And you don't know whether legal counsel  
24   has been successful in keeping that under lock and  
25   key?

1           A.    I have not had conversations about that.  
2    No.

3           Q.    Okay.  Who would know, other than legal  
4    counsel at the Federation?

5           A.    I don't know.

6           Q.    Individual officers would know?

7           A.    None of them have reached back out to me.

8           Q.    Let's take a look at Exhibit 82 and 83.  
9                   (Premarked Deposition Exhibit Numbers 82  
10   and 83 introduced.)

11          Q.    So 82 is an email from Bob Kroll to  
12   various members of the Federation, dated  
13   September 10th, 2018.  Correct?

14          A.    Yes.

15          Q.    And it's about an officer named [REDACTED]  
16   [REDACTED]; is that right?

17          A.    Yep.

18          Q.    [REDACTED] [REDACTED]  
19   [REDACTED]  
20   [REDACTED]; is that correct?

21          A.    I don't remember if [REDACTED].  
22   I don't remember all the specifics.  I mean, I can  
23   read this.

24          Q.    Yeah.  If you want to refresh your memory  
25   quick on what [REDACTED] were about,

1 please do.

2 A. Okay.

3 Q. All right. So just for the record, [REDACTED]

4 [REDACTED]  
5 [REDACTED] correct?

6 A. Resulting from this incident, yes.

7 Q. Yes. And the incident was where [REDACTED]

8 [REDACTED],  
9 correct?

10 A. Yes.

11 Q. Okay. Would you agree with me that that's  
12 a use of excessive force?

13 MR. KELLY: Objection. Calls for a legal  
14 conclusion.

15 Q (BY MS. WALKER) Is that excessive force?

16 A. I would say no, and the [REDACTED]  
17 [REDACTED].

18 Q. Well, they found [REDACTED]  
19 [REDACTED], which is different than whether he  
20 violated the policy manual. You understand the  
21 difference?

22 A. I do understand the difference, and I  
23 think when you take into account -- I mean, even the  
24 chief only sustained the one violation. So they  
25 looked at [REDACTED], and obviously the

1     ■■■■ -- I'm assuming they looked at the ■■■■  
2     ■■■■, and they determined that everything else  
3     besides the off duty was not sustained.

4           Q.    Okay.  The off-duty employment that was  
5     sustained, is that A level, B level?  What level is  
6     that?

7           A.    I believe it's A through D.

8           Q.    Do you know what it was sustained at here?

9           A.    Because it was coaching, I'm assuming it  
10    was at an A.

11          Q.    But you don't know for sure?

12          A.    I do not know for sure.

13          Q.    How would we find out?  Would the  
14    Federation have documents on that?

15          A.    I don't remember if ■■■■ was on their  
16    spreadsheet or not.

17                   Was he part of those cases that ■■■■ sent  
18    over?

19           MS. RISKIN:  Is there a question pending?

20          Q.    (BY MS. WALKER) Yes.  There is a question  
21    pending, which is, how would we -- Essentially my  
22    question was, how would we find out if the off-duty  
23    employment sustained finding was A, B, C, or D  
24    level?

25          A.    I do not have it listed on here, but I

1 would assume the City would have records of that  
2 since they were the ones that sustained the  
3 violation.

4 MS. WALKER: All right. So I'll just make  
5 a record, Ms. Riskin, I don't think we've seen any  
6 documents to that effect. So I may be mistaken, but  
7 we never saw them.

8 MS. RISKIN: I can look for it.

9 If I'm remembering correctly, the  
10 agreement on A, we didn't give all A levels. Wasn't  
11 there an agreement that it was only A levels of  
12 documentation, including discipline or warning? If  
13 I'm remembering correctly. I'd have to go back.

14 MS. WALKER: I understand. If it's an A  
15 level and that's why we didn't get it, clarification  
16 on that would be helpful.

17 MS. RISKIN: I'll see what I can find out.

18 MS. WALKER: Okay.

19 MR. KELLY: Can we take a few minute break  
20 for -- it's already 4:30, so --

21 MS. WALKER: Yep. Yep.

22 MR. KELLY: It's been another hour.

23 MS. WALKER: Yep, we can.

24 (Whereupon, the proceedings were in recess  
25 at 4:30 p.m. and subsequently reconvened at

1 4:37 p.m., and the following proceedings were  
2 entered of record:)

3 Q. (BY MS. WALKER) All right. We're going to  
4 hand you what's been marked as Exhibit 155.

5 (Premarked Deposition Exhibit Number 155  
6 introduced.)

7 Q. This is an article published by CBS News.  
8 Headline: Practice of Coaching Minneapolis Police  
9 Officers Questioned by Conduct Oversight Commission.  
10 Do you see that?

11 A. Uh-huh.

12 Q. It was published in August of 2020, about  
13 three months after the murder of George Floyd.

14 Do you see that date?

15 A. Yep.

16 Q. Okay. And if you flip to the second  
17 page -- Oh. And the date line mentions that it came  
18 from Minneapolis, and was reported by WCCO.

19 Do you see that on the front page?

20 A. Yes.

21 Q. And at this point in August of 2020, Bob  
22 Kroll was the president of the Federation; is that  
23 right?

24 A. Yes, he was.

25 Q. And are you aware that his wife used to

1 work at WCCO?

2 A. I'm well aware of that. Yes.

3 Q. Okay. On the second page, three  
4 paragraphs down it says, The Minneapolis Police  
5 Officers Federation told WCCO complaints can't come  
6 from outside the department and result in coaching.

7 Did I read that correctly?

8 A. You did.

9 Q. Is that true?

10 A. There are -- Complaints do come in from  
11 outside of the department.

12 Q. And they do result in coaching, correct?

13 A. Some of them can. Yes.

14 Q. Okay. So that statement is not true?

15 A. Yes. And I don't know who said that.

16 Q. And I'll get to that. I just want to  
17 confirm what's accurate.

18 The next sentence, and coaching is  
19 nondisciplinary, reserved for the most minor  
20 infractions.

21 Did I read that correctly?

22 A. Yes.

23 Q. Is that true?

24 A. I would say yes.

25 Q. Okay. Is coaching reserved for the most

1 minor infractions?

2 A. That is its intention, yes.

3 Q. But is it actually reserved for the most  
4 minor infractions?

5 MS. RISKIN: Objection. Foundation.

6 MR. KELLY: And speculation.

7 Q. (BY MS. WALKER) You're aware that  
8 coaching -- sometimes B level misconduct is coached,  
9 correct?

10 A. There have been incidences of that, yes.

11 Q. Okay. Do you consider B level minor  
12 infraction?

13 A. Yes.

14 Q. You do?

15 A. Uh-huh.

16 Q. You consider B to be low-level misconduct?

17 A. Some of them. Yeah.

18 Q. Examples given -- I'm continuing to  
19 read -- were grammatical errors in a written report,  
20 being late for roll call and missing part of the  
21 uniform.

22 Did I read that correctly?

23 A. Yes.

24 Q. Those are all A level, correct?

25 A. Yes.

1 Q. Okay. No one gave WCCO an example of a B  
2 level misconduct that would be coached, did they?

3 MR. KELLY: Objection. Speculation.

4 Q. (BY MS. WALKER) It's not here in the  
5 story, is it?

6 A. I haven't read the whole story, but I can  
7 if you give me a few minutes.

8 Q. It's not in this paragraph, is it?

9 A. No.

10 Q. Do you have any reason to dispute that  
11 someone at the Minneapolis Police Officers'  
12 Federation spoke to WCCO?

13 A. They say they spoke to someone. I don't  
14 know who they spoke to.

15 Q. Would it likely have been Bob Kroll as the  
16 president?

17 MR. KELLY: Objection. Speculation.

18 A. I don't know who it would have been.

19 Q. (BY MS. WALKER) Who at the Federation  
20 typically is authorized to speak to the media?

21 A. Usually it would be -- I don't know that  
22 we have just one person that's designated that can  
23 talk to the media. I know that there's a couple of  
24 us that have and have done media interviews, so I  
25 don't know who this would have been.

1 Q. All right. Who would know besides WCCO?

2 A. I don't know.

3 Q. In the raw aftermath of George Floyd's  
4 murder in August 2020, was there a point person to  
5 speak to the media about topics like this or was any  
6 board member free to speak to the media?

7 A. I would say it was Bob. And he  
8 would -- If there were certain topics that someone  
9 might be better talking on, then he would have  
10 someone else do it. Or could have someone else do  
11 it.

12 Q. Concerns that B level coaching is  
13 disciplinary have continued through at least 2022,  
14 correct?

15 A. I think there were some in 2022  
16 that -- but I can't without looking -- without  
17 having specific cases I couldn't tell you. But I  
18 feel like there was maybe one or two in 2022.

19 Q. And so concerns about B level coaching  
20 have continued at the Federation even though the  
21 City told you that coaching is not disciplinary. Is  
22 that accurate?

23 A. Yes.

24 Q. And why do you remain concerned?

25 A. Because we are concerned that they are

1     trying to change coaching into disciplinary -- to  
2     one of their disciplinary options.

3           Q.     Has any of it gone to arbitration, or does  
4     it just remain at the step 1, step 2 stage?

5           A.     For which specific ones?

6           Q.     Appeals of B level coaching.

7           A.     It depends on the case.

8           Q.     Have any of them gone to arbitration?

9           A.     No.

10          Q.     And so you grieve it and then your  
11     practice is --

12                    Let me get this right. Tell me where I'm  
13     wrong.

14                    There's a B level coaching, you file a  
15     grievance, they say you can't grieve it, coaching is  
16     not discipline. And you say, well, we're going to  
17     leave it open for the reckoning period.

18          A.     Yes.

19          Q.     And that's how you've been addressing  
20     this?

21          A.     On some of them, yes.

22                    (Premarked Deposition Exhibit Number 151  
23     introduced.)

24          Q.     Could you look at the third page of the  
25     document -- it says page 2 at the bottom -- under

1 the Grievance Roundtable heading.

2 Do you see it?

3 A. I'm sorry. Page 3 or 2?

4 Q. Page 2.

5 A. Okay. I'm on page 2.

6 Q. Under Grievance Roundtable, it says.

7 [REDACTED] got coaching for not giving name and badge  
8 number.

9 A. Yep.

10 Q. Who's Reed?

11 A. Reed is one of our board members.

12 Q. So this is him giving a report?

13 A. Yep. Yes. So he represented [REDACTED]  
14 [REDACTED], and it looks like he got a coaching for not  
15 providing his name and badge number.

16 Q. Is that A level, B level? Which level is  
17 that?

18 A. I think it's listed as an A through D in  
19 the policy manual.

20 Q. Do you know what it was found to be here?

21 A. I do not.

22 Q. And then Reed reports that [REDACTED]  
23 [REDACTED] got a second coaching for a pursuit issue  
24 and a truthfulness allegation.

25 Do you see that?

1 A. I do.

2 Q. Okay. And I think you testified earlier  
3 the City had told you that truthfulness allegations  
4 are not eligible for coaching. Correct?

5 A. Correct.

6 Q. Truthfulness allegations exceed an A  
7 level? Is that your understanding?

8 A. Yes.

9 Q. Do you know if its -- what level of  
10 truthfulness issue is?

11 A. I believe a D.

12 Q. What about the pursuit issue? Do you know  
13 what level that was?

14 A. I think it depends on what part of the  
15 pursuit policy is violated.

16 Q. Okay. Is it more than an A level or could  
17 it be an A level?

18 A. It could be an A level, if it's something  
19 like didn't initially call out your speed.  
20 Something like that.

21 Q. Okay. And these are being discussed at  
22 what's called the grievance roundtable. Does that  
23 mean there's a grievance pending or that a grievance  
24 is being considered?

25 A. No. So we have the grievance committee

1 and we talk about active grievances. And then  
2 during a roundtable -- and it's just under the  
3 heading of Grievance Roundtable -- people talk about  
4 the cases that they are either representing on or  
5 are waiting decisions on, or upcoming statements  
6 that they're going to.

7 Q. Okay. So we can assume that [REDACTED]  
8 [REDACTED] all filed grievances?

9 A. No. [REDACTED] did not because I'm assuming it  
10 was an A in coaching, so we never filed a grievance  
11 on that.

12 [REDACTED], I didn't think that  
13 case was done. So that is one I'd have to check on.  
14 I thought that one was still awaiting an outcome.

15 Q. Okay. Would you be able to confirm one  
16 way or another for us after today?

17 A. Can I just take a picture of this so I  
18 remember to?

19 Q. Yes. Might be confidential.

20 A. Okay.

21 MR. KELLY: About the status of the case?  
22 The City would be able to tell you.

23 MS. WALKER: We can follow up with them as  
24 well.

25 MS. RISKIN: I thought we looked for them.

1 Didn't we just respond about that?

2 MR. KELLY: Yes.

3 Q (BY MS. WALKER) Have you ever heard anyone  
4 with the City or the Federation refer to A level  
5 discipline?

6 A. I'm sure it's been called that.

7 Q. Okay. What is A level discipline?

8 A. I think it's just how people describe the  
9 coaching, because it comes out of allegations  
10 of -- that you would be investigated on.

11 Q. Do they describe it that way because it  
12 feels disciplinary?

13 A. I don't know why they describe it that  
14 way.

15 Q. It's possible that's why it's referred to  
16 as A level discipline?

17 MR. KELLY: Objection. Calls for  
18 speculation.

19 A. I don't know.

20 Q (BY MS. WALKER) Are you aware that there  
21 was a time where even Federation members considered  
22 A level coaching to be disciplinary?

23 A. Am I aware of a time when that happened?

24 Q. Let me show you a document.

25 A. Okay.

1 (Premarked Deposition Exhibit Number 168  
2 introduced.)

3 Q. So we're handing you what's been marked as  
4 Exhibit 168. And this is correspondence involving  
5 an officer with the last name [REDACTED]

6 Do you see that?

7 A. That is correct.

8 Q. And this is coming about in 2014, at which  
9 point you had been on the board for about 10 years,  
10 right?

11 A. Correct.

12 Q. Do you remember this situation?

13 A. I don't specifically remember the incident  
14 or -- I mean, I can see that this was for  
15 professional -- or use of force and professional  
16 code of conduct, a language violation. But the  
17 specifics of the case, I do not know.

18 Q. You don't recall talking to [REDACTED]  
[REDACTED] about it?

20 A. I don't.

21 Q. And if you look at the second page, which  
22 is the first email in the chain, the fourth bullet  
23 says, the use of force allegation was not sustained.  
24 Correct?

25 A. Okay. Yep.

1 Q. And then the next bullet says, the  
2 professional code of violation was sustained at the  
3 A level.

4 You see that?

5 A. Yes.

6 Q. And then the next bullet says, the  
7 recommendation was for coaching.

8 You see that?

9 A. I do see that.

10 Q. And [REDACTED] says, it occurred  
11 right then and there. Correct?

12 A. It does say that.

13 Q. And so there was this oral discussion  
14 between [REDACTED] and a supervisor, I take it.

15 Is that your understanding?

16 A. Yes. It sounds like [REDACTED] and [REDACTED]  
17 [REDACTED] talked about the professional code of  
18 conduct.

19 Q. Okay. Three bullets from the bottom  
20 [REDACTED] says that [REDACTED] was advised that [REDACTED]  
21 [REDACTED], would then submit his  
22 recommendation forward and that this would conclude  
23 any reprimand or discipline for this case.

24 Do you see that?

25 A. I do see that.

1 Q. All right. So as of this email [REDACTED]  
2 thought things were resolved. Correct?

3 A. That is how it appears, yes.

4 Q. Okay. And that was March 11th, 2014,  
5 right?

6 A. Yes.

7 Q. And then the next day [REDACTED] sends another  
8 email -- it's at the bottom of the first page --  
9 that said [REDACTED] just got off the phone with [REDACTED]  
[REDACTED].

11 Do you see that?

12 A. I do see that.

13 Q. And [REDACTED] stated upon giving me my suspension  
14 notification, that [REDACTED] would call me before the  
15 night's end to clarify my inquiry of already being  
16 disciplined for this case.

17 Did I read that correctly?

18 A. Yes.

19 Q. So if I'm reading this correctly, sometime  
20 after the coaching session [REDACTED] learned  
21 that [REDACTED] was also going to be suspended. Correct?

22 A. That's what it sounds like.

23 Q. And [REDACTED] must have said, hold up, I thought  
24 I was -- I thought this was resolved. And [REDACTED]  
[REDACTED] said he would follow up. Correct? That's your

1 understanding of --

2 A. That's what it looks like --

3 Q. -- what's happening here?

4 A. -- from the email.

5 Q. And it's true, is it not, that [REDACTED]

6 [REDACTED] refers to his coaching session as the  
7 discipline he had previously received, correct? [REDACTED]  
8 said, clarify my inquiry of already being  
9 disciplined for this case.

10 A. I'm sorry. Where is that?

11 Q. In that -- I'm just reading from the  
12 bottom of the page. The second sentence, [REDACTED] would  
13 call me about the night's end to clarify my inquiry  
14 of already being disciplined for this case.

15 A. Okay.

16 Q. So you would agree with me that [REDACTED]  
17 [REDACTED] viewed [REDACTED] coaching session as discipline,  
18 correct?

19 MR. KELLY: Objection. Calls for  
20 speculation.

21 A. I don't know how he viewed it.

22 Q (BY MS. WALKER) At this point, in 2014,  
23 the code of conduct manual required, mandated  
24 discipline for any policy violation, correct?

25 A. I don't know, without looking at the

1 policy manual. It's ultimately up to the chief to  
2 decide discipline.

3 Q. And actually, [REDACTED] -- or [REDACTED]  
4 [REDACTED] says that. In this last line at the bottom  
5 of page 1, [REDACTED] says that [REDACTED] mentioned  
6 that [REDACTED] should have advised me at  
7 the time of my coaching that [REDACTED]  
8 recommendations/discipline are [REDACTED] and that  
9 discipline is ultimately up to the chief.

10 Correct?

11 A. That is what it says.

12 Q. Does this email change your view on  
13 whether A level coaching was considered to be  
14 disciplinary by rank and file officers in 2014?

15 A. I can't -- I don't think I can speak to  
16 how our members, back in 2014, thought of  
17 coaching --

18 Q. Okay.

19 A. -- and what they thought it was.

20 Q. The Federation -- as far as the Federation  
21 knows, they might have thought coaching was  
22 disciplinary, they might not have. That's your  
23 testimony?

24 A. From the Federation's point of view is  
25 that coaching is nondisciplinary, back in 2014, as

1 it is today.

2 Q. But you don't know if your members  
3 understood coaching in the same way as Federation  
4 leadership does?

5 A. I think that they do.

6 Q. Okay. Why did [REDACTED] call [REDACTED]  
7 coaching session discipline, then?

8 MR. KELLY: Objection. Calls for  
9 speculation.

10 Q (BY MS. WALKER) So you don't know?

11 A. Why [REDACTED] would think that?

12 Q. You don't know.

13 A. I don't know why [REDACTED] would think that.

14 Q. And you don't know what officers thought  
15 of coaching back in 2014? You would be speculating  
16 on that, correct?

17 A. Yes.

18 Q. As far as you know, they might have  
19 considered coaching to be disciplinary?

20 A. I think that they probably call  
21 disciplinary because it falls -- It's listed on the  
22 discipline matrix under a nondisciplinary thing, and  
23 then everything else is listed below it. So I think  
24 that that's probably why they call it discipline,  
25 even though it's not, because it falls under that

1 process.

2 Q. But you're speculating?

3 A. I am.

4 Q. Do you want to withdraw your speculation?

5 A. No.

6 Q. Do you know what happened with the  
7 situation with [REDACTED] here?

8 A. I do not. But I'll look on our little  
9 chart here.

10 That is one we don't have listed on here,  
11 on this number 180.

12 Q. Okay. Would the City know?

13 A. I would assume so, since they handed out  
14 the documents.

15 Q. So before I forget, I want to make a  
16 record on a series of topics noticed for today.

17 So I'm going to be referring to  
18 Exhibit 129 for just a moment.

19 A. Is that the one we've already had?

20 Q. Yeah. And you don't even need to find it.  
21 This is more for the attorneys.

22 MS. WALKER: And Joe, you can feel free to  
23 chime in here if you disagree with anything I'm  
24 about to say.

25 But during a break, the attorneys

1 discussed noticed topics 12, 13, 14, and 15, and  
2 agreed that we would postpone questions on those  
3 topics and keep the deposition open because there is  
4 hope that a stipulation can be signed that  
5 eliminates the need to ask very tedious questions to  
6 this witness.

7 So we'll be negotiating that stipulation  
8 in good faith. And all parties agree that if we  
9 can't negotiate a stipulation, we can come back and  
10 ask the witness these questions.

11 MR. KELLY: The exhibit that you have  
12 that's marked as confidential addresses all of those  
13 documents and those topics and lists all of the  
14 processes.

15 MS. WALKER: And I don't have anything to  
16 disbelieve you. I just haven't had a chance to  
17 study it.

18 MR. KELLY: Okay.

19 MS. WALKER: Anything else for the record  
20 before I move on?

21 MR. KELLY: No.

22 Q (BY MS. WALKER) Does the Federation have  
23 access to its members' personnel files, or do you  
24 have to -- do members have to give you things from  
25 them?

1           A.     They have to give us things, and then if  
2     we want a copy of a case file, like if we were going  
3     to go to -- then we would have to cc them on an  
4     email requesting that case file.

5           Q.     When Minneapolis Police Department  
6     policies such as the policy and procedure manual,  
7     the discipline manual, the discipline matrix are  
8     undergoing change, is the Federation consulted?

9           A.     By contract they're supposed to send a  
10    policy concurrence out on the policy and procedure  
11    manual.

12          Q.     And what is a policy concurrence?

13          A.     Basically it is a draft of the policy, and  
14    then it shows whatever changes, what they're taking  
15    out, adding, that kind of stuff. So they send that,  
16    and then they send a form with that that says, are  
17    there issues -- Well, they used to say, are there  
18    issues that you see with this policy? And then we  
19    had a spot to write it.

20                 Now it just says, is there -- is this -- I  
21    don't remember their exact words, but is the way  
22    this policy is written clear. So they don't really  
23    ask for input anymore.

24          Q.     Okay. And have you ever had a chance to  
25    essentially veto a policy change or is it just a

1       courtesy request for feedback?

2           A.     I think it's just to follow the contract  
3       is they all do.

4           Q.     Okay.   So the Federation cannot  
5       unilaterally block a policy change?

6           A.     No.

7           Q.     Okay.   Let's take a look at Exhibit 40,  
8       which is the report by the Department of Justice.

9                   (Premarked Deposition Exhibit Number 40  
10      introduced.)

11          Q.     I don't think this has a sticker on it.  
12      But this is Exhibit 40?

13                  That's what I have.   We'll double-check.  
14      Let's assume this is Exhibit 40.

15          A.     Okay.

16          Q.     And I believe you testified you were  
17      interviewed by the DOJ, correct?

18          A.     Correct.

19          Q.     And you reviewed this report sometime  
20      around its public release; is that correct?

21          A.     Yeah.

22          Q.     Back in June of 2023?

23          A.     That sounds about right.

24          Q.     Okay.   Could you flip to page 73?   And I'm  
25      looking at the first paragraph under the heading c.

1 Do you see that?

2 A. This one.

3 Q. Yeah. The first paragraph. It begins,  
4 MPD has used coaching as a nondisciplinary  
5 corrective action tool to address low-level  
6 misconduct.

7 Did I read that correctly?

8 A. You did.

9 Q. Did you tell the DOJ that coaching is used  
10 to address low-level misconduct?

11 A. I do not recall the content of our  
12 conversations.

13 Q. Do you remember if you told the DOJ that  
14 coaching is used to address B level misconduct?

15 A. I don't.

16 Q. And it's not actually true that coaching  
17 is used to address only low-level misconduct,  
18 correct?

19 A. There are instances where coaching has  
20 been -- what's the word I'm looking  
21 for? -- some -- something has been downward  
22 departed -- I don't know if that would be the right  
23 word -- to an A.

24 Q. Well, coaching has been used for B level  
25 misconduct, correct?

1 A. Yes.

2 Q. Okay. And at the very beginning of today,  
3 I think we agreed that low level means A level,  
4 correct?

5 A. Yes.

6 Q. Okay. So this statement on page 73 of the  
7 DOJ report is not accurate, or at least it's not  
8 complete.

9 Would you agree with me?

10 A. Which part are we talking about?

11 Q. Well, it should say the MPD has used  
12 coaching as a nondisciplinary corrective action tool  
13 to address all levels of misconduct.

14 Would you agree?

15 A. It has low-level misconduct.

16 Q. Okay. You would agree with me that it  
17 would be more accurate to say low-level misconduct  
18 and B level misconduct?

19 A. It has been assigned to B level  
20 misconduct.

21 Q. And is it possible it's been assigned to C  
22 level misconduct?

23 A. I think you cited a case earlier. But I  
24 don't know all the facts.

25 Q. So this statement is not complete.

1                   You would agree?

2           A.    I didn't write it, so I don't know what  
3 they took into account when they wrote that.

4           Q.    I know. I'm not accusing you of making  
5 the mistake. I'm just trying to clarify whether  
6 this is an accurate statement.

7           A.    I would say that coaching is a  
8 nondisciplinary corrective tool to address low-level  
9 misconduct.

10          Q.    The truthfulness is a D level misconduct,  
11 correct?

12          A.    I believe on the matrix that's where it  
13 falls.

14          Q.    Okay. So that's not low level, is it?

15          A.    It is not.

16          Q.    All right. And if coaching were used to  
17 address a D level form of misconduct, it wouldn't be  
18 accurate to say it's used for exclusively low-level  
19 misconduct.

20                   Would you agree?

21           MR. KELLY: Objection. Misstates the  
22 evidence in the document.

23          Q     (BY MS. WALKER) Would you agree?

24          A.    Can you rephrase the question, please?

25          Q.    I'll withdraw it.

1           Could you flip back a few pages to page  
2   67? In the second paragraph, about midway through,  
3   there's a sentence that begins, Officers who commit  
4   serious misconduct are diverted to coaching or  
5   retraining.

6           Do you see where I'm at?

7           A. I do see where you're at.

8           Q. And sometimes the coaching or retraining  
9   never happens.

10          Did I read that correctly?

11          A. You did read that correctly.

12          Q. Okay. Do you believe this is an accurate  
13   statement?

14          MS. RISKIN: Objection. Foundation.

15          A. I don't believe it's an accurate  
16   statement. I don't know what they're basing this  
17   on.

18          Q. (BY MS. WALKER) Okay. Which part do you  
19   think is inaccurate?

20          A. That the officers who commit serious  
21   misconduct are diverted to coaching or retraining.

22          Q. So if an officer who has a truthfulness  
23   misconduct is diverted to coaching or retraining,  
24   would you agree that's a serious conduct violation?

25          A. I would agree that it's a violation, but

1 without having a specific case to look at -- 'cause  
2 somebody can be accused of truthfulness, is what you  
3 brought up, and through the investigation, it is  
4 shown that the truthfulness is not valid. Or was  
5 not sustained. But they might have sustained  
6 something else.

7 Q. What about the second half of this  
8 sentence? Do you know whether coaching or  
9 retraining always happens when it's recommended?

10 A. I don't know, because that's not in my  
11 wheelhouse to make sure it happens.

12 Q. The next sentence says, If MPD does  
13 investigate a complaint, obvious misconduct is often  
14 overlooked or excused.

15 Do you think that's an accurate statement?

16 A. I do not.

17 Q. Why is it not accurate, in your view?

18 A. 'Cause I don't believe that we do  
19 investigations and ignore obvious misconduct.

20 Q. "We" being the Federation or the  
21 Minneapolis Police Department?

22 A. The Minneapolis Police Department.

23 Q. If you could flip to the next page. The  
24 last paragraph there says, Our review shows that MPD  
25 frequently fails to address police misconduct, which

1 allows officers' serious violations of people's  
2 rights to be unpunished.

3 Do you think that's an accurate statement?

4 A. No.

5 Q. Okay. How is it not accurate?

6 A. I think that there are -- We do address  
7 misconduct. I think that there are  
8 some -- Sometimes the process takes so long. Like  
9 it shouldn't, in my mind, take seven years to  
10 investigate a case, and then you want to discipline  
11 someone for something that happened seven years  
12 after the fact, I think that that isn't right.  
13 So -- And I think that it's super hard to go back  
14 and discipline somebody after seven years if there's  
15 a -- Most of those would be the reckoning period is  
16 even over.

17 Q. Okay. So I want to look at a few examples  
18 to test -- to kinda test this notion that serious  
19 that violations go unpunished.

20 A. Okay.

21 Q. 'Cause I think your testimony is that's  
22 not true, that serious violations do get punished.  
23 That's your testimony?

24 A. Yes.

25 Q. Okay. So if you could flip to page 71.

1 And the second paragraph from the bottom is where  
2 I'm at. Okay?

3 And in the second sentence it says, When  
4 an unarmed black man said he was planning to file a  
5 complaint, an MPD officer pushed him backwards so  
6 hard his head struck the sidewalk. The officer  
7 searched and handcuffed the man, who remained  
8 compliant and seated as he waited for EMS to  
9 respond.

10 MPD did not investigate whether the use of  
11 force was retaliatory or excessive. Rather MPD  
12 referred the officer for nondisciplinary training.

13 Did I read that correctly?

14 A. You did read it correctly.

15 MR. KELLY: Objection. That actually  
16 mischaracterized the statement. You said an unarmed  
17 black man. It says when an armed man --

18 MS. WALKER: I don't know why I inserted  
19 that. I'm sorry about that. Thanks for correcting  
20 me.

21 MR. KELLY: It's all right.

22 Q (BY MS. WALKER) Is it your position that  
23 the misconduct described here was punished or not  
24 punished?

25 A. I'm not familiar with the case, so I can't

1 remark on it.

2 Q. Okay. Well, the outcome of the case is  
3 stated right here. It says, the MPD referred the  
4 officer for nondisciplinary training.

5 So my question is, was the officer  
6 punished or not punished?

7 MR. KELLY: Objection. Foundation. And  
8 she already testified she's not familiar with the  
9 case.

10 Q (BY MS. WALKER) You can answer.

11 A. It says that they referred training -- to  
12 training.

13 Q. Is that punishment?

14 A. It says nondisciplinary training.

15 Q. So is your answer that he was not  
16 punished?

17 A. He was not disciplined it appears, but I'm  
18 not familiar with the facts of the case.

19 Q. Okay. My question is, was he punished?

20 A. It says right here, nondisciplinary  
21 training.

22 Q. And that's not punishment?

23 A. No.

24 Q. Okay. Flip to page 72, please. I'm  
25 looking at the last paragraph on the page. And so

1 at least that example -- just going back to page  
2 71 -- that example you agree supports the conclusion  
3 of the DOJ that MPD frequently fails to address  
4 police misconduct, which allows officers' serious  
5 violation of people's rights to go unpunished.

6 MR. KELLY: Objection. Calls for  
7 speculation.

8 Q. (BY MS. WALKER) You agree that that  
9 example would support that statement?

10 MR. KELLY: Restate the objection. She's  
11 the Federation representative.

12 Q (BY MS. WALKER) You can answer.

13 A. I don't know the facts of the case, so I  
14 would say, not knowing this case or the  
15 circumstances surrounding it, I would disagree  
16 with -- I forget -- What was the question again?

17 Q. Does this example support the DOJ's  
18 conclusion that serious violations go unpunished?

19 A. There's not enough information here for me  
20 to make that conclusion.

21 Q. Are you concerned that that discussion of  
22 this officer who pushed an unarmed man so hard he  
23 struck his head, do those facts, the disclosure of  
24 those facts violate the Data Practices Act?

25 MR. KELLY: Objection. Calls for a legal

1 conclusion.

2 Q (BY MS. WALKER) Are you concerned that  
3 disclosure of those facts violates the officer's  
4 privacy rights?

5 MS. RISKIN: Objection. Calls for a legal  
6 conclusion.

7 A. I don't know if it would violate their  
8 rights. It doesn't seem like they were identified  
9 in here, but I don't know.

10 Q. (BY MS. WALKER) All right. Now you can  
11 flip to page 72.

12 A. Okay.

13 Q. And, again, I'm reading from the last  
14 paragraph where they say, For example, in 2020,  
15 after a black woman called 911 seeking help for her  
16 white partner who was experiencing a mental health  
17 crisis, officers forced entry into the house,  
18 arrested the black woman on suspicion of domestic  
19 abuse, and transported the white woman for a mental  
20 health examination.

21 It goes on to talk about how the officers  
22 held the black woman overnight. And how the black  
23 woman later filed a complaint alleging  
24 discrimination and unlawful detention.

25 Then it says, the City and MPD did not

1 process, let alone investigate her allegations of  
2 discriminatory policing and unlawful detention.

3 Instead, eight months later, it was  
4 handled as relating only to body camera usage and  
5 professional policing, and the officers were  
6 referred to coaching.

7 Did I read that correctly and summarize it  
8 accurately?

9 A. You did read it correctly.

10 Q. Okay. So were these officers punished or  
11 not punished?

12 MR. KELLY: Objection. Foundation,  
13 speculation.

14 A. According to this they were referred for  
15 coaching, which is nondisciplinary.

16 Q (BY MS. WALKER) So this is another  
17 paragraph, in your view, that would support the  
18 DOJ's conclusion that serious police misconduct  
19 often goes unpunished? Is that your testimony?

20 A. That is not my testimony.

21 My testimony is is that this says in here  
22 it was referred to coaching. I don't know the facts  
23 of this case or anything around it, so I can't make  
24 a conclusion as to whether it supports that  
25 statement or not.

1 Q. Well, based on what you know here, do you  
2 think the referral to coaching was punishment?

3 MS. RISKIN: Objection. Calls for  
4 speculation, foundation.

5 Q. (BY MS. WALKER) You can answer.

6 MS. RISKIN: Not if she doesn't know.

7 Q. (BY MS. WALKER) I'm asking, based on your  
8 experience as a police officer and your experience  
9 on the board and as the president --

10 MS. WALKER: Can you repeat my question?

11 MR. KELLY: You're asking the Federation  
12 representative a question, and now you're asking her  
13 to use her years of experience as a police sergeant  
14 as well and police officer. She's already testified  
15 she doesn't know the facts of the case.

16 MS. WALKER: I'm asking her, do you think  
17 that the referral to coaching was punishment for the  
18 facts described in that paragraph?

19 A. And I'll just restate that I don't know  
20 the facts -- I don't know everything that went into  
21 this case, and if there were circumstances  
22 that -- that we don't know about from here, that  
23 made it appropriate for coaching, I don't know.

24 Q. (BY MS. WALKER) That's not my question.

25 Can a referral to coaching ever be

1 punishment?

2 A. We've said a number of times that coaching  
3 in the Federation's opinion is not discipline.

4 Q. Okay. So your answer is, no, referral to  
5 coaching is never punishment?

6 A. Until it's put on to a discipline level,  
7 higher than --

8 Q. A referral to coaching for a B level is  
9 punishment?

10 A. It could be deemed that way.

11 Q. All right. Let's go to page 73. And I'm  
12 at the top of the page, where we're talking now  
13 about a different black woman who alleged in 2019  
14 that she and her fiancé experienced an unlawful  
15 search.

16 Do you see where I'm at?

17 A. Yes.

18 Q. Okay. And I won't read it. You should.  
19 But the actions of the officers involved are  
20 described in some detail.

21 Do you see that?

22 A. I'm reading it.

23 Okay. I'm done reading.

24 Q. Okay. And the next paragraph talks about  
25 how this was addressed. And the last sentence of

1 that next paragraph says, after a preliminary  
2 investigation, MPD found no violation of the MPD  
3 domestic abuse policy and referred one officer for  
4 coaching for use of profanity.

5 My question is the same. Was the referral  
6 to coaching punishment or not?

7 A. And again, not knowing the facts of the  
8 case, I would say I can't answer that.

9 Q. Okay. Your answer, I believe on the prior  
10 one, was it could be. Is that your answer here?

11 A. There's not enough information for me to  
12 determine whether this is -- Your question was  
13 disciplinary?

14 Q. No. Was the referral to coaching a  
15 punishment?

16 A. It sounds like the referral to coaching  
17 was based on all the facts that --

18 Q. That's not my question.

19 A. Okay.

20 Q. Was the referral to coaching a form of  
21 punishment? Whether it was justified or not.  
22 Whether the facts are right or not. Is it your view  
23 that a referral to coaching, based on what you read  
24 here, is a form of punishment?

25 A. No.

1           Q.    Okay.  Let's skip to page 76.  And I'm in  
2   the third paragraph on the page that begins,  
3   investigators also tend to draw inferences in favor  
4   of officers.

5                   Do you see that?

6           A.    I do see that.

7           Q.    And the DOJ report goes on to describe how  
8   an officer scaled a 6-foot privacy fence and shot  
9   the resident's two dogs.

10                  Do you see that?

11          A.    Yes.

12          Q.    All right.  And the next paragraph, at the  
13   end describes the outcome of this incident.  It  
14   says, MPD referred the shooting officer for  
15   nondisciplinary training and paid \$150,000 to settle  
16   the lawsuit.

17                  Is the referral to nondisciplinary  
18   training punishment?

19          A.    I would say no.

20          Q.    Okay.  So I want to ask you again, based  
21   on your answers to those examples, do you agree with  
22   the DOJ's finding that the MPD frequently fails to  
23   address police misconduct which allows officers'  
24   serious violations of people's rights to go  
25   unpunished?

1 MS. RISKIN: Objection to form. Calls for  
2 speculation.

3 A. What page was that on again?

4 Q (BY MS. WALKER) Sixty-eight.

5 A. I would disagree. I don't know that we  
6 failed to address misconduct on our department.

7 Q. Do you think you allow it to go  
8 unpunished?

9 There's a difference, right, between  
10 addressing it versus punishing it. Would you agree?

11 MS. RISKIN: Objection. This is the  
12 corporate rep of the Federation.

13 Q. (BY MS. WALKER) Does the Federation think  
14 there's a difference between addressing versus  
15 punishing?

16 A. I think address -- Well, addressing it was  
17 in whatever investigative stuff happened.

18 Q. So it was addressed?

19 A. Okay.

20 Q. You agree that these examples we went  
21 through, misconduct was addressed?

22 A. Yes.

23 Q. Do you agree that it went unpunished?

24 A. Well, it sounds like they were coached  
25 for -- I think all three of them, right?

1 Q. Does that mean they were punished?

2 MR. KELLY: Objection. Asked and  
3 answered.

4 A. It's the view of the Federation that  
5 coaching is nondisciplinary.

6 Q (BY MS. WALKER) Okay. So I'll ask one  
7 more time, because I feel like you're dodging the  
8 question.

9 Do you agree, based on how you responded  
10 to my questions on these examples, that the MPD  
11 frequently fails to address police misconduct, which  
12 allows officers' serious violations of people's  
13 rights to go unpunished?

14 A. I do not agree with that statement.

15 Q. And just to ask you again about these very  
16 detailed examples, does the public disclosure of  
17 those cause you any concern for the officers'  
18 privacy rights?

19 MR. KELLY: Objection. Calls for a legal  
20 conclusion.

21 MS. RISKIN: Asked and answered.

22 Q (BY MS. WALKER) And you can answer.

23 A. And the question about --

24 Q. The detailed discussion of these various  
25 instances that don't mention the officers' names,

1 does it cause you concern for their privacy rights?

2 A. It causes me concern 'cause we don't know  
3 all the factual basis of the --

4 Q. That's not my question.

5 Are you concerned about violation of their  
6 privacy rights, based on the discussion of what they  
7 did, even though their names are not used?

8 A. So am I concerned for their --

9 Q. Privacy.

10 A. If their names aren't disclosed anywhere  
11 in there, no.

12 Q. Are you comfortable releasing complaint  
13 data if officer names are redacted and they're not  
14 identifiable?

15 MR. KELLY: Objection. Calls for a legal  
16 conclusion.

17 Q (BY MS. WALKER) Would the Federation  
18 object to that?

19 A. Releasing their data?

20 Q. Releasing complaint data so long as  
21 officer names and other identifying information are  
22 redacted. Would the Federation have an objection?

23 A. I think that if they are not sustained  
24 complaints.

25 Q. Okay. How is that different than all

1 these examples we just talked about?

2 These weren't disciplined complaints,  
3 according to you. They were just coached, and  
4 that's not discipline. And yet you have no problem  
5 with all that detail being publicly disseminated.

6 A. I do actually have problems with the  
7 details in there, because, like I said before --

8 Q. You're not concerned about the officers'  
9 privacy --

10 MS. RISKIN: Let her finish.

11 Q (BY MS. WALKER) I'll move on.

12 Did you meet with the Minnesota Department  
13 of Human Rights when they did their investigation?

14 A. Yes.

15 Q. How many times?

16 A. I couldn't tell you.

17 Q. Okay. Who did you meet with?

18 A. I don't know their names.

19 Q. Do you remember when?

20 A. I could probably figure it out, but I  
21 don't know dates.

22 Q. Did anyone else from the Federation meet  
23 with MDHR?

24 A. I am sure that Anna did in her role as the  
25 FTO coordinator, and when she was the training

1 person. I feel like Bob probably met with them.  
2 And then obviously I've got other board members that  
3 are 911 responders, so they have also met with them.

4 Q. Do you remember discussing coaching with  
5 MDHR?

6 A. I don't remember the specifics of our  
7 conversation.

8 Q. Do you have any notes from the  
9 conversation?

10 A. Nope.

11 Q. Do you know if anyone at the Federation  
12 has notes on conversations they had?

13 A. I do not.

14 Q. Did you search for them in response to our  
15 discovery requests?

16 A. I searched through -- I don't know if it  
17 was me or if I had our techie guy do it. We  
18 searched for the word "coaching."

19 Q. You don't know if those interviews were  
20 recorded?

21 A. I do not.

22 Q. Do you know if the Federation turned over  
23 any documents to MDHR?

24 A. I personally did not.

25 Q. What about speaking for the Federation?

1           A.    As far as I know, we did not.

2           Q.    Okay.  And were you consulted about what  
3   the City might be disclosing to the Department of  
4   Human Rights?

5           A.    Other than what was made public as to what  
6   they were -- there was in the -- or in the lawsuit  
7   thing, there was a list of things that they were  
8   going to --

9           Q.    Yeah.  Other than that?

10          A.    (No response.)

11          Q.    You don't know of any conditions the City  
12   put on the disclosure of personnel data?  You're not  
13   aware of any?

14          A.    No.

15                MS. RISKIN:  Can we have the time?

16                MS. WALKER:  Let's go off the record.

17                (Discussion held off the record.)

18          Q.    (BY MS. WALKER) Does any member of the  
19   Federation regularly attend meetings of the PCOC?

20          A.    No.

21          Q.    Okay.  Have you ever -- Has any member  
22   ever attended, any board member ever attended PCOC  
23   meetings?

24          A.    I had one meeting with Abigail -- I can't  
25   think of her name.  And then whoever the vice chair

1 of that committee was.

2 Q. Do you remember when?

3 A. I remember it was cold outside.

4 Q. After George Floyd's murder or before?

5 A. Had to have been after.

6 Q. Okay. Do you follow the goings-on of the  
7 PCOC?

8 A. No.

9 Q. Does the PCOC activities come up in  
10 discussion among the Federation board members?

11 A. No.

12 Q. So safe to say the Federation doesn't pay  
13 much attention to the PCOC?

14 A. Nope.

15 Q. What about a meeting of the PCOC in  
16 May 2021? Does that ring a bell?

17 A. Huh-uh.

18 Q. Amelia Huffman spoke at it. Jim Rowader  
19 spoke at it. Chief Arradondo spoke at it. Does  
20 that ring a bell?

21 A. No.

22 Q. You didn't attend that meeting?

23 A. Not to my recollection.

24 MS. WALKER: All right. Why don't we go  
25 off the record.

1 (Whereupon, the proceedings were in recess  
2 at 5:29 p.m. and subsequently reconvened at  
3 5:35 p.m., and the following proceedings were  
4 entered of record:)

5 MS. WALKER: So subject to what I put on  
6 the record earlier, which is the deposition will be  
7 held open for the limited purpose of topics 12  
8 through 15, to the extent the parties cannot  
9 stipulate to the necessary facts, I have no further  
10 questions. And I think we can go off the --

11 MS. RISKIN: I'm not going to ask any. Do  
12 you?

13 MR. KELLY: No. Not at this time.

14 MS. WALKER: We can go off the record.

15 (Whereupon, at 5:35 p.m., Thursday,  
16 February 8, 2024, the taking of the Deposition of  
17 SERGEANT SHERRAL SCHMIDT was adjourned.)

18 \* \* \*  
19  
20  
21  
22  
23  
24  
25

1 STATE OF MINNESOTA: )

) ss.

CERTIFICATE

2 COUNTY OF ANOKA: )

3 Be it known that I took the deposition of  
4 SERGEANT SHERRAL SCHMIDT on the 8th day of February,  
2024;

5 That I was then and there a Notary Public  
6 in and for the County of Anoka, State of  
Minnesota, and that by virtue thereof, I was duly  
authorized to administer an oath;

7  
8 That the witness, before testifying, was  
by me first duly sworn to testify the whole truth  
and nothing but the truth relative to said cause;

9  
10 That the testimony of said witness was  
recorded in shorthand by me and was reduced to  
typewriting under my direction;

11  
12 That the cost of the original transcript  
has been charged to the party noticing the  
deposition, unless otherwise agreed upon by Counsel,  
13 and that copies have been made available to all  
parties at the same cost, unless otherwise agreed  
upon by Counsel;

14  
15 That I am not related to any of the parties  
hereto nor interested in the outcome of the action;

16  
17 That the reading and signing of the  
deposition by the witness and the Notice of Filing  
were reserved.

18  
19 WITNESS MY HAND AND SEAL this 22nd day of  
February, 2024.

20  
21 

22 Christine K. Herman, RPR, CRR  
23  
24  
25

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February 22, 2024

To: Mr. Kelly

Case Name: Minnesota Coalition On Government Information v. City Of  
Minneapolis, Et Al.

Veritext Reference Number: 6384522

Witness: Sergeant Sherral Schmidt                      Deposition Date: 2/8/2024

Dear Sir:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown

above, or email to [production-midwest@veritext.com](mailto:production-midwest@veritext.com).

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6384522

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/8/2024

WITNESS' NAME: Sergeant Sherral Schmidt

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date Sergeant Sherral Schmidt

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6384522

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/8/2024

WITNESS' NAME: Sergeant Sherral Schmidt

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have listed my changes on the attached  
Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

I request that these changes be entered  
as part of the record of my testimony.

I have executed the Errata Sheet, as well  
as this Certificate, and request and authorize  
that both be appended to the transcript of my  
testimony and be incorporated therein.

\_\_\_\_\_  
Date Sergeant Sherral Schmidt

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;  
They have listed all of their corrections  
in the appended Errata Sheet;  
They signed the foregoing Sworn  
Statement; and  
Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

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\_\_\_\_\_

20 Date Sergeant Sherral Schmidt

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22 DAY OF \_\_\_\_\_, 20\_\_\_\_\_ .

\_\_\_\_\_

Notary Public

\_\_\_\_\_

Commission Expiration Date


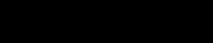
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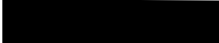
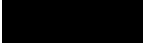
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[turned - unpunished]

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[withdraw - yeah]

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[yeah - zoom]

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

## VERITEXT LEGAL SOLUTIONS

## COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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# EXHIBIT E

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STATE OF MINNESOTA DISTRICT COURT  
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

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Minnesota Coalition On  
Government Information,

Plaintiff,

v.

City of Minneapolis; Casey J. Carl,  
in his official capacity as Clerk for  
the City of Minneapolis; Nikki Odom,  
in her official capacity as Chief Human  
Resources Officer for the City of  
Minneapolis; Minneapolis Police Department;  
and Brian O'Hara, in his official capacity as  
Chief of Police for the Minneapolis Police  
Department.

Defendants.

---

DEPOSITION OF MARY ZENZEN

February 20, 2024

8:30 a.m.

---

File # 6384526

COURT REPORTER: Christina DeGrande

## APPEARANCES:

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## E X H I B I T S

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1 BE IT REMEMBERED that the deposition upon  
2 oral examination of Mary Zenzen was taken on  
3 February 20, 2024, at 8:30 a.m., 80 South 8th  
4 Street, Suite 2000, Minneapolis, Minnesota, before  
5 Christina DeGrande, Professional Stenographer,  
6 Notary Public in and for the State of Minnesota.

7 Whereupon, the following proceedings were  
8 had, to wit:

9 THE COURT REPORTER: Please raise your  
10 right hand.

11 Do you swear or affirm that the  
12 testimony you are about to provide for the  
13 cause under consideration will be the truth  
14 and the whole truth, so help you?

15 THE WITNESS: Yes, I do.

16  
17 MARY ZENZEN,  
18 a witness in the above-entitled action,  
19 after having been first duly sworn,  
20 testifies and says as follows:

21  
22 DIRECT EXAMINATION

23 BY MS. WALKER:

24 Q. Good morning, Ms. Zenzen. My name Leita Walker. I  
25 represent the plaintiff in this case. You and I

1           have met before, correct?

2           A.    Yes.   I'm surprised you remember.

3           Q.    Yeah.   You use to work at the Business Journal.

4           A.    Yes.

5           Q.    Ironically, I would come giving trainings on the  
6                Data Practices Act?

7           A.    Yes, uh-huh.

8           Q.    When did you start working at the City?

9           A.    October of 2015.

10          Q.    I didn't realize it had been that long.

11          A.    Yeah.

12          Q.    And what was your initial role when you joined, when  
13                you came to the City?

14          A.    Sure.   I was a records management specialist in the  
15                police department.

16          Q.    Is that Ms. Knutson's current role?

17          A.    No.

18          Q.    What does that job entail?

19          A.    My first job at the City?

20          Q.    Mm-hmm.

21          A.    It was -- I was actually the first one hired in the  
22                police department, and so I'm not sure what the full  
23                intent was necessarily supposed to be other than  
24                that they needed a higher level of review for public  
25                and nonpublic data than they currently had, and so I

1           went into and physically worked in the internal  
2           affairs unit in the police department, and I spent a  
3           fair amount doing work for that team but then also  
4           fulfilling public data requests that were coming in  
5           through the records department of the police  
6           department, so it was kind of a hybrid environment.

7           Q.    Okay.   How long were you in that role?

8           A.    About a year.

9           Q.    And then what was your next role?

10          A.    Then I was detailed to the manager of the police  
11          records department.

12          Q.    And how long were you in that role?

13          A.    Let's see.   So that would have been about four, five  
14          years-ish, five -- between five and six years.

15          Q.    So until 2021, 2022?

16          A.    Yes, yes.

17          Q.    Was that the first role where you had people  
18          reporting to you?

19          A.    Yes.

20          Q.    And who reported to you during that time period?

21          A.    At any given point, it was between 10 and 15 people.

22          Q.    All working within the police department?

23          A.    Yes.

24          Q.    And you would have been in this role in the spring  
25          or summer of 2021 when the data practices request

1           that is at issue in this case was submitted to the  
2           City?

3           A.    Yes.   Sorry.   Yes.

4           Q.    Okay.   And what is your current role?

5           A.    Currently, I am manager of data access and privacy  
6           in the City Clerk's Office of Minneapolis.

7           Q.    So you're no longer within the police department?

8           A.    Correct.

9           Q.    I should have asked, was there something between  
10          manager of police records department and your  
11          current role?

12          A.    No.

13          Q.    So you've been in your current role since about  
14          2022, you think?

15          A.    Yes, mid-2022, and then the merger between our two  
16          groups became official in January of 2023.

17          Q.    Which two groups?

18          A.    I took four positions with me including Katie  
19          Knutson's over from the police records department  
20          unit to the City Clerk's Office to handles data  
21          practices requests.

22          Q.    You took four positions from the police  
23          department --

24          A.    Yes.

25          Q.    -- with you to the City Clerks's Office?

1 A. Yes.

2 Q. Meaning you took four --

3 A. MPD positions that were --

4 Q. Filled by other people?

5 A. They're -- I think one was vacate, but yes.

6 Q. Okay.

7 A. To the City Clerk's Office to -- we were -- I -- I  
8 want to say merging but it wasn't fully merging, but  
9 we were taking work from -- a section of work from  
10 MPD records into the City Clerk's Office. And so we  
11 took four people plus myself over there.

12 Q. What was the section of work you were taking over?

13 A. We call it complex or managed data practices. These  
14 are things like requests that are for multiple  
15 pieces of data or complicated in some way,  
16 potentially, from the media or from law firms making  
17 kind of larger, more expansive requests, things like  
18 that.

19 Q. And that actually is a helpful description because I  
20 assume a lot of things are for things like, I want  
21 to report or disciplinary record --

22 A. Correct.

23 Q. -- things that are discrete and live in a specific  
24 place and it's easy to go and find, correct?

25 A. Correct.

1 MR. ENSLIN: Can you just make sure and  
2 let her finish her question --

3 THE WITNESS: Sure, yeah.

4 MR. ENSLIN: -- even if you know where  
5 she's going, because the court reporter is  
6 trying to take it down, so we want to make  
7 sure the record is clean.

8 THE WITNESS: Sure.

9 BY MS. WALKER:

10 Q. And then there are requests that are more complex,  
11 to use your word, that might be for any document on  
12 a specific topic --

13 A. Correct.

14 Q. -- is that correct? And so the complex or managed  
15 data practices division or section would handle  
16 those kind of requests?

17 A. Correct.

18 Q. Let me back up. Given your counsel's remark that  
19 there's a few ground rules for the deposition. Have  
20 you ever been deposed before?

21 A. No.

22 Q. Okay. So try to let me finish my question before  
23 you start your answer so we have a clear record, and  
24 I'll try not to interrupt you. Try not to just nod.  
25 Answer verbally, if you could. If you don't

1 understand the question, please ask me to clarify.  
2 Otherwise, I'll assume you understand it. Make  
3 sense?

4 A. Yes.

5 Q. And you understand you're under oath, correct?

6 A. Yes.

7 Q. And you understand you're giving testimony today on  
8 behalf of the City, correct?

9 A. Yes.

10 Q. So even if I slip into saying, "you," I mean the  
11 City, do you understand that?

12 A. Yes.

13 Q. If you don't understand at any point, just ask me.

14 How does the complex -- let me ask this in two  
15 pieces. Did the complex or managed data practice  
16 responsibilities, did that exist in 2021?

17 A. Yes.

18 Q. Okay. So in 2021, if a request came in that was  
19 considered to fall within -- can I call it a  
20 department, or what's the best word for that?  
21 Section?

22 A. If you're saying it was, quote-unquote, about police  
23 issues would it come to the police department?

24 Q. Let me back up.

25 A. Okay.

1 Q. The folks who handled complex or managed data  
2 practices requests back in 2021 --

3 A. Yes.

4 Q. -- can I call them a section? If I call them a  
5 section, does that work for you?

6 A. Yes, yes, yes.

7 Q. So that section existed in 2021 within the police  
8 department?

9 A. Yes.

10 Q. And now that section exists within the City Clerk's  
11 office?

12 A. Yes.

13 Q. So in 2021, if a complex request came in, how was it  
14 handled?

15 A. I'll do my best to recall. So at the specific time  
16 of this request in question, we utilized an online  
17 portal, we call it, to send data requests that are  
18 submitted typically, and then those are routed, and  
19 then they would have ended up with -- they would  
20 have been passed to our team in police records, like  
21 in a queue system, and then someone would have read  
22 over the -- the queued requests and assigned them to  
23 specific processors they would call them. We call  
24 the agents processors, people assigned to  
25 communicate with the requester, acknowledge the

1 receipt of the request, follow the -- you know,  
2 determine what's being asked for and how to respond  
3 and then do the ultimate responding in closing.

4 Q. And you said that was -- the section was comprised  
5 of four people?

6 A. Let's see. So at the time, it would have been -- I  
7 -- either four or five people. Three who would have  
8 kind of managed the request, meaning processed it,  
9 and then we had a person that was specifically  
10 designated to -- not to kind of process the request  
11 but to review the data specifically.

12 Q. Okay. Can you give me the names of the three who  
13 managed the request?

14 A. Sure. It would have been Katie Knutson, Genevieve  
15 Case. Let me know if you need me to spell anything.  
16 Noah Inthichack. Those were our main processors.  
17 You could -- I had an assistant supervisor who may  
18 -- dabbled in it, we'll say, and her name was Caresa  
19 Maveson (phonetic). And then the kind of full-time  
20 reviewer we would call them -- person that's  
21 classifying the data was Kyle McDonald.

22 Q. So that was a higher level, more sophisticated  
23 position --

24 A. Yes.

25 Q. -- that Kyle had?

1 A. Sorry. Yes.

2 Q. And so you understand that this case is about a  
3 particular data practices request, correct?

4 A. Yes.

5 Q. Maybe we'll go ahead and hand it to you so we can  
6 refer to it. It's previously been marked as  
7 Exhibit 2.

8 (Exhibit 2 was introduced into the  
9 record.)

10 BY MS. WALKER:

11 Q. And let me back up a minute. Have you seen this  
12 before today?

13 A. I don't recall seeing this actual letter, but I've  
14 seen the data request as it existed in our online  
15 portal.

16 Q. Okay. When did you see it for the very first time?

17 A. I don't recall the first -- I don't recall, I guess,  
18 the first time I saw it. I did recently look it up  
19 for purposes of reminding myself what it was for  
20 this -- for today's meeting.

21 Q. Okay. So you don't know one way or the other if you  
22 saw it back in 2021?

23 MR. ENSLIN: I'm going to object  
24 because we're getting into a line between  
25 whether you're asking her personally or as

1 the City.

2 BY MS. WALKER:

3 Q. Sure. I can rephrase the question. On behalf of  
4 the City, can you testify as to who would have seen  
5 this in February 2021?

6 A. Well, certainly Katie Knutson because she was  
7 assigned to it. Other than that, I can't say for  
8 certain.

9 Q. So you don't have any knowledge that Mr. McDonald  
10 saw it?

11 A. No.

12 Q. Do you have knowledge that he did not see it?

13 A. No.

14 Q. And you don't have any recollection as to whether  
15 you saw it as the supervisor for this department?

16 A. I don't recall seeing it at the time. I've seen an  
17 email exchange which tells me that I did see it then  
18 in a minimal way.

19 Q. What's that email exchange?

20 A. Either on or around the date that it was received,  
21 Katie Knutson emailed me and said, "This refers to  
22 coaching." How -- or should I -- I don't recall the  
23 exact wording of the email, but should I discuss  
24 this or how should we respond, something along those  
25 lines. But then that same day, she sent me another

1 message that said something like, never mind. I  
2 responded because it's coaching. And I don't recall  
3 if I saw though messages one at a time or if I later  
4 in the day saw both of them at -- in the same  
5 sitting.

6 Q. Did you respond to either of her messages?

7 A. I don't believe so. I'm -- don't recall.

8 Q. When did you see those emails most recently?

9 A. When I was looking for anything about this request  
10 in my own correspondence.

11 Q. Okay. When was that?

12 A. Last week.

13 Q. Was that the first you looked through your own  
14 correspondence for documents that might be relevant  
15 to this lawsuit?

16 A. Yes.

17 MR. ENSLIN: Object to the form.

18 MS. WALKER: So for the record, we'd  
19 request those documents and any others in  
20 Ms. Knutson's custodianship related to this  
21 lawsuit or the data practices request.

22 MR. ENSLIN: Yeah. And if -- my  
23 response will be just put it in an email and  
24 if you can put it in an email after this  
25 deposition, it will be helpful if you also

1 reference the request that it's responsive  
2 to. That would be much appreciated, and we  
3 will respond in due course.

4 BY MS. WALKER:

5 Q. So you testified that you looked through your  
6 documents for the first time about a week ago; is  
7 that right?

8 A. Yes.

9 Q. Okay. And you did so solely for the purpose of  
10 preparing for today?

11 A. Correct.

12 Q. And you were never asked to go through your  
13 documents and collect them for purposes of discovery  
14 in this case?

15 MR. ENSLIN: Object to the form.

16 BY MS. WALKER:

17 Q. I'll rephrase. Did you ever go through your  
18 documents and collect documents for the purposes of  
19 discovery in this case?

20 A. No.

21 Q. Other than the emails with Ms. Knutson, do you have  
22 any evidence that you would have seen the document  
23 in front of you prior to a week ago?

24 A. Can you clarify? Or -- I'll say, I don't recall  
25 seeing it at the time, but I -- I'm sure that I did

1           because she did message me about it twice, like I  
2           said, the two times, so I -- if I know myself, I  
3           would say that I read it then, and then because she  
4           had said, "Never mind. I've responded to it," I  
5           stopped thinking about it and over time, have  
6           forgotten about it until this issue arose.

7           Q.   Okay. And so you don't think you saw it again until  
8           about a week ago when you were preparing for today?

9           A.   Correct.

10          Q.   As you look at it sitting here today, do you agree  
11          that this is a complex request?

12          A.   I do.

13          Q.   So when Ms. Knutson testified that she had handled  
14          it, did that cause you any concern given the  
15          complexity here?

16          A.   No.

17          Q.   Why not?

18          A.   She mentioned -- and I -- again, I don't recall what  
19          I was thinking at that time, but if I read it now,  
20          it covers, you know, four points that all relate to  
21          the same issue of coaching, which the City and our  
22          office has always considered to be private data.  
23          And so in reading those four pieces all relating to  
24          coaching, I would have agreed with Katie that there  
25          would be no public data and it could be closed

1 without further discussion.

2 Q. Without doing any searching?

3 A. Yes.

4 Q. And as far as you know, no searching for documents  
5 was done in response to this request?

6 A. As far as I know.

7 Q. It was summarily closed, yes?

8 A. Yes.

9 Q. Okay. What makes this request complex?

10 A. The fact that there are four different parts of it  
11 and each part is ask -- discussing a slightly  
12 different piece and also things that have to do with  
13 officer conduct and such would always be considered  
14 complex to -- in our data practices world. It  
15 wouldn't be something that -- it wouldn't be, like,  
16 a police report, for example, where you kind of know  
17 what's in the four corners of the document and  
18 you're used to seeing it all the time and you can --  
19 you know what to expect every time from those  
20 documents. So -- sorry. I lost my train of  
21 thought, but we would consider this complex because  
22 of its nature about officer conduct.

23 Q. So putting this request aside and going back to how  
24 complex or managed data practices requests was  
25 typically handled in 2021, you walked me through

1 sort of up to the point it would be assigned to a  
2 processer. But can you go beyond that? And let's  
3 say it's a request for all emails on a particular  
4 topic. What would have been the process in 2021 for  
5 identifying, reviewing, and releasing those emails?

6 MR. ENSLIN: Objection, calls for  
7 speculation.

8 BY MS. WALKER:

9 Q. On behalf of the City?

10 A. At that point in 2021, our -- I described earlier  
11 how we had merged our offices that -- or merged the  
12 complex side of data practices. That didn't occur  
13 until informally June or so of 2022 and then  
14 formally January of 2023. So in 2021, if we --  
15 let's see. I'm not positive about if it would have  
16 been assigned directly to the police department or  
17 if the processors in the City Clerk's Office would  
18 have held it but discussed it with us. I'm not sure  
19 which route that would have taken, but if it was for  
20 email, we did not have that function in police  
21 records, and so it would have been the job of the  
22 City Clerk's Office to collect that email and also  
23 do the review of it. They have their own team of  
24 reviewers with knowledge of the Data Practices Act  
25 where police would have come in. If it was for

1 emails regarding a police related subject or asking  
2 for emails from MPD personnel, the Clerk's Office  
3 most likely would have contacted me or Katie to  
4 determine, you know, who the email custodians might  
5 be, what keywords they should maybe look for, help  
6 them create the -- the email search, but we wouldn't  
7 have done it.

8 Q. The City Clerk's Office would have done it?

9 A. The City Clerk's Office would have done it.

10 Q. And I used email as an easy example --

11 A. Sure.

12 Q. -- but say there would have been a request for data  
13 on a topic. The data could be emailed. Could be  
14 internal memos, content on public websites. Could  
15 be grievance proceedings, communications with the  
16 Federation. The list -- imagine all the types of  
17 data.

18 A. Okay.

19 Q. Is the process you just described of turning it over  
20 the City Clerk's Office that would apply whether it  
21 was email or any other kind of data?

22 MR. ENSLIN: Objection, compound, calls  
23 for speculation.

24 BY MS. WALKER:

25 Q. Do you understand what I'm asking?

1 A. I believe so.

2 Q. You may answer.

3 A. Yes. The process, then, would have been -- well,  
4 actually, I can't say. I -- I think it would depend  
5 on the specific type of data request. Things that  
6 we were capable of doing in police records, we would  
7 have done. Things that we could not have done or  
8 collected or involved other City departments would  
9 have been primarily managed through the City Clerk's  
10 Office, and we would have been in communication  
11 about who was doing which part and how to combine it  
12 collectively to release it, et cetera.

13 Q. Do you know if the data practices request in front  
14 of you was ever sent to the City Clerk's Office so  
15 you could obtain that sort of assistance?

16 A. No. It would have gone into the system in a way  
17 that if I remember correctly, staff from the City  
18 Clerk's Office would have been the first to see it,  
19 and they would have routed it. So I believe they  
20 saw this and said, "This is about police data. I'm  
21 going to send it to police records," and followed  
22 its process, but they weren't secondarily invoked to  
23 help, we'll say, with the response.

24 Q. Are you speculating that the City Clerk's Office saw  
25 it first, or do you know that to be a fact?

1 A. I don't know that to be a fact.

2 Q. You're assuming that to be a case because of how it  
3 was routed?

4 A. I'm assuming.

5 Q. Who at the City Clerk's Office would have seen it  
6 before it came to the police department?

7 A. I really can't say who would have been looking  
8 through them in that way in 2021. I'm not sure.

9 Q. Not -- would it be Casey Karl?

10 A. I highly doubt it.

11 Q. Someone else was looking at the day-to-day incoming  
12 requests?

13 A. Correct.

14 Q. Going back to the sort of complex request we were  
15 talking about where an effort was made to identify  
16 responsive documents, I think you testified that  
17 there would be an effort to identify custodians who  
18 might have responsive documents; is that correct?

19 MR. ENSLIN: Object to the form.

20 Again, calls for speculation, outside of the  
21 scope of the 30.02(f) notice.

22 BY MS. WALKER:

23 Q. So in 2021 --

24 MR. ENSLIN: Can you just let me finish  
25 my -- make sure I can get that lodged?

1 BY MS. WALKER:

2 Q. Did you understand my question?

3 A. Could you repeat it?

4 Q. Can you read it back.

5 (The requested testimony was read.)

6 THE WITNESS: Are you checking that  
7 that -- are you asking if that's accurate?

8 BY MS. WALKER:

9 Q. Yes. The first step with a complex request for all  
10 data on a particular topic would be to identify  
11 custodians who might have responsive documents; is  
12 that true?

13 A. Correct.

14 Q. How would that be done?

15 A. In 2021?

16 MR. ENSLIN: Object to the form, calls  
17 for speculation, outside the scope of the  
18 30.02(f) notice.

19 THE WITNESS: If it was assigned solely  
20 to police records, meaning no one in the  
21 City Clerk's Office was going to assist or  
22 fulfill any part of the request, I would  
23 have met with the processor of the request  
24 or, perhaps, a few of us to kind of  
25 collaborate and share ideas, and we would

1           have looked over what specifically was asked  
2           for and come up with a plan. It -- it works  
3           -- so if the request was shared between the  
4           City Clerk's Office and our police records  
5           office, most likely the City Clerk processor  
6           was who we would consider to be the lead,  
7           the one that's going to communicate with the  
8           requester and ensure all the data points are  
9           answered and fulfill the request. So that  
10          person as the kind of lead would have  
11          reached out to me, and perhaps Katie, as  
12          kind of subject matter experts in MPD, the  
13          police department, to assist with, like I  
14          said, finding custodians, asking where  
15          certain kinds of data might exist or if --  
16          or how to find it, that kind of thing. So  
17          it -- it depends on whether it was shared or  
18          solely in one or the other.

19           BY MS. WALKER:

20           Q.   The process you just described, none of that  
21                happened in response to this request, correct?

22           A.   Correct.

23           Q.   Okay. Typically in 2022, once you identified  
24                custodians, would you then interview the custodians  
25                about whether they had responsive data?

1 MR. ENSLIN: Objection, calls for  
2 speculation, outside the scope of the  
3 30.02(f) notice.

4 THE WITNESS: It could go a few  
5 different ways. If we as the -- the  
6 processors were familiar with the type of  
7 data, it might be mostly just reaching out  
8 to ask that it be sent to us for the  
9 purposes of the request. If it was for a  
10 subject that we were unfamiliar with, we  
11 might have a preliminary meeting with  
12 someone in MPD to determine, you know, what  
13 data might exist in regards to a specific  
14 request.

15 BY MS. WALKER:

16 Q. None of that happened in response to this request,  
17 correct?

18 A. To my knowledge, no.

19 Q. Okay. And then at some point, if you couldn't  
20 identify responsive data through the process you  
21 just described, would the MPD run searches for key  
22 terms?

23 MR. ENSLIN: Object to form, calls for  
24 speculation, outside the scope of the  
25 30.02(f) notice.

1 THE WITNESS: It depends on the data  
2 type.

3 BY MS. WALKER:

4 Q. Okay. In any of the roles you've had, are you aware  
5 that the Minneapolis Police Department has the  
6 capability to run search terms across data sets to  
7 identify responsive documents? Is that a  
8 capability, is my question?

9 MR. ENSLIN: Object to form, calls for  
10 speculation, outside the scope of the  
11 30.02(f) notice.

12 THE WITNESS: I -- I could only -- I  
13 don't know about every kind of data. I  
14 would need to have an idea of what specific  
15 kind of data you're talking about. Some  
16 things I think are query-able and some  
17 things I would think are not.

18 BY MS. WALKER:

19 Q. Can you run a search for all documents that contain  
20 the word "coaching" and "discipline"?

21 A. No.

22 Q. Why not?

23 A. It's too vague of a -- and we -- there -- there's no  
24 signifier that would say where that data is held.  
25 In order to really search for something, we would

1                   need to have an idea of what --

2           Q.     Can I stop you and --

3           A.     Sure.

4           Q.     I just want to ask, is it impossible, or it just  
5                   cumbersome?

6                   MR. ENSLIN:   Object to the form, calls  
7                   for speculation, outside the scope of the  
8                   30.02(f) notice.

9                   THE WITNESS:   Can you repeat the  
10                  question?

11           BY MS. WALKER:

12           Q.     Is it impossible to run a search for all documents  
13                   that contain the word "coaching" and "discipline,"  
14                   or is it just cumbersome?

15                   MR. ENSLIN:   Same objection.

16                   THE WITNESS:   I would say with what I  
17                   know, I would say it's impossible.

18           BY MS. WALKER:

19           Q.     What if you want to search all emails of a discreet  
20                   set of custodians that contain those two words?  
21                   Would that be possible?

22                   MR. ENSLIN:   Same objection.

23                   THE WITNESS:   It would be possible to  
24                   search the words "coaching" or other  
25                   keywords and -- within a certain subset of

1 individuals' emails, correct.

2 BY MS. WALKER:

3 Q. And was that done here?

4 A. Not to my knowledge.

5 Q. And outside of emails, I assume there's some sort of  
6 -- well, let me ask, is there some sort of central  
7 repository of documents such as internal memos or  
8 policies or drafts, and what is that called with the  
9 City?

10 MR. ENSLIN: Objection, calls for  
11 speculation, outside the scope of the  
12 30.02(f), foundation.

13 THE WITNESS: For some things, I think  
14 there may be a repository. For other  
15 things, I would say it's probably dependent  
16 on how it was created, who is responsible  
17 for it, where it's maintained. So I would  
18 say in -- in -- collectively, I would say  
19 that no, there's no -- there's no central  
20 repository for all those types of documents.

21 BY MS. WALKER:

22 Q. You said for some, there's a central repository.  
23 What is it called?

24 A. I would be speculating, but I believe that those  
25 types of documents, things about policy, would be

1           housed in -- at least they used to have --  
2           Minneapolis Police had a policy and research  
3           division, which was responsible for creating and  
4           maintaining and updating the policy and procedure  
5           manual.

6           Q.    Okay.  So a keyword search could be run across their  
7           documents, true?

8                       MR. ENSLIN:  Object to the form,  
9                       foundation, calls for speculation, outside  
10                      the scope of the 30.02(f) notice.

11                     THE WITNESS:  I don't know how they  
12                     would -- I've never worked with their data,  
13                     so I don't know how they would look through  
14                     it.

15           BY MS. WALKER:

16           Q.    Who would know?

17           A.    Potentially, at that time, if I had a policy and  
18           research question, I would have gone to Dan Boody is  
19           his name, and I don't recall his official title or  
20           if he's doing that job currently.  I believe he's  
21           still employed with the City but may have been  
22           reassigned.

23           Q.    Do you know if the City gave the Police Officers  
24           Federation any notice about this data practices  
25           request?

1 A. I don't know.

2 Q. Does that typically happen? If a request for  
3 officer personnel data is received, would you notify  
4 the Federation?

5 A. In 2021, I'm not sure. I don't know.

6 Q. Who would know?

7 A. I don't know. I suppose Katie Knutson, if she  
8 recalled that specific time frame, she would know.

9 Q. Of the three people you mentioned who manage data  
10 practices requests, do they -- are they routing  
11 things randomly, or do they specialize such that any  
12 request on coaching would always go to Ms. Knutson?

13 MR. ENSLIN: Object to the form, calls  
14 for speculation, outside the 30.02(f).

15 THE WITNESS: As manager, I allowed  
16 them to -- to kind of set their own  
17 decision-making process, so I don't know for  
18 sure how they divided them up, but I believe  
19 there was some kind of group decision-making  
20 about, you know, depending on how busy  
21 someone was, if they were familiar with that  
22 type of request. I believe they -- it -- I  
23 don't believe there was a specific way of  
24 determining, but I think there were factors  
25 that helped people route between the three

1 of them.

2 BY MS. WALKER:

3 Q. Fair to say this is not the only request that the  
4 City has received in recent years about coaching; is  
5 that true?

6 MR. ENSLIN: Object to the form,  
7 foundation, outside the 30.02(f) notice.

8 THE WITNESS: True.

9 BY MS. WALKER:

10 Q. Do you know if Ms. Knutson tended to handle most of  
11 those?

12 A. I don't know specifically. Yeah. I can't say for  
13 certain.

14 Q. So I'm going to ask you to look pretty closely now  
15 at Exhibit 2, and I want to try to categorize  
16 together here the four parts of the request and see  
17 if we can see eye to eye. Take your time to read  
18 it, but I believe the first three parts, those seek  
19 personnel data. Would you agree with that?

20 A. I agree.

21 Q. Okay. And that personnel data would have been in  
22 the possession of the police department, correct?

23 A. Correct.

24 Q. So the City Clerk's -- City Clerk's Office would not  
25 have needed to be involved in the helping the City

1           respond to those three aspects of the request; is  
2           that true?

3           A.    Correct.

4           Q.    Ms. Knutson knew how to find that data and review it  
5           if she wanted to, correct?

6           A.    Correct.

7           Q.    And where would she have gone looking for that data?  
8           Where does it exist within the police department?

9           A.    We would have -- she would have and I would have --  
10          would have gone to the administrative team of the  
11          internal affairs unit and asked them for the -- for  
12          them to provide it to us and then based on their  
13          response would have continued to -- to process. I  
14          -- I can't say whether they would have had every  
15          piece of data or not or if -- if there would have  
16          been other places it might have been, I don't know.

17          Q.    Would they have gathered it for you, or would they  
18          have just told you where to go look on some  
19          electronic system or some file drawer?

20                   MR. ENSLIN: Object to the form, calls  
21                   for speculation.

22                   THE WITNESS: In 2021, I can't say for  
23                   certain how we would have handled it. It's  
24                   possible that we would have asked them to  
25                   compile a spreadsheet and based on the

1 spreadsheet made a collection plan, whether  
2 it was them providing it to us in batches or  
3 all at once or what have you. I don't know  
4 how it would have been collected outside  
5 because we didn't do it.

6 BY MS. WALKER:

7 Q. When you get a request for an actual disciplinary  
8 action, say, a letter of reprimand, do you still  
9 have to go to that department and ask for their help  
10 in collecting, or in that situation, would  
11 Ms. Knutson know, I just go to some file and grab  
12 it?

13 MR. ENSLIN: Objection, calls for  
14 speculation, outside the scope of 30.02(f)  
15 notice.

16 THE WITNESS: We would need to ask the  
17 division or unit department to provide it to  
18 us.

19 BY MS. WALKER:

20 Q. So whether it's coaching or disciplinary data,  
21 Ms. Knutson would need to go to this division and  
22 ask for their help collecting it?

23 A. Correct.

24 Q. Do the three people who manage requests in 2021, did  
25 they have access to police officer personnel files

1 so that they could independently go and look at  
2 potentially responsive records?

3 MR. ENSLIN: Object to the form, calls  
4 for speculation, outside the scope of the  
5 30.02(f) notice.

6 THE WITNESS: I know that Katie Knutson  
7 did because she had come from, I guess, the  
8 team that was digitizing the personnel files  
9 that had previously existed on paper. So I  
10 know that she and -- and so I do know that  
11 we worked with the HR department on requests  
12 that involved a personnel file and would  
13 discuss how to collect it. Katie would have  
14 the capability of collecting it, but she  
15 wouldn't have collected it and reviewed it,  
16 released it, without discussing it with  
17 someone in HR.

18 BY MS. WALKER:

19 Q. The process you just described, going to talk to the  
20 division and getting their help finding responsive  
21 records, none of that happened in response to this  
22 request, correct?

23 A. Not to my knowledge.

24 Q. I'm going to -- we're going to hand you what's been  
25 previously marked as Exhibit 12.

1 (Exhibit 12 was introduced into the  
2 record.)

3 BY MS. WALKER:

4 Q. Have you ever seen this document before?

5 A. This exact document, I am not sure.

6 Q. You've seen a document that looks like this before?

7 A. Yes.

8 Q. This is what's called a determination letter,  
9 correct?

10 MR. ENSLIN: Object to the form, calls  
11 for speculation, foundation.

12 THE WITNESS: Correct. That's what I  
13 would know it to be.

14 BY MS. WALKER:

15 Q. Okay. And these are typically kept in personnel  
16 files; is that your understanding?

17 MR. ENSLIN: Object to form,  
18 foundation, outside the scope of 30.02(f).

19 THE WITNESS: I know some of them are.  
20 I don't know how it's determined which ones  
21 go into a personnel file.

22 BY MS. WALKER:

23 Q. So I'll represent to you that we have a number of  
24 documents like this, and my question for you is, do  
25 you have any evidence that documents like this were

1 not kept in personnel files?

2 MR. ENSLIN: Object to the form,  
3 foundation, outside the scope of the  
4 30.02(f).

5 THE WITNESS: I don't any evidence of  
6 that, no.

7 BY MS. WALKER:

8 Q. Who would know if documents like this were kept in  
9 personnel files?

10 MR. ENSLIN: Object to form,  
11 foundation, outside the scope of the  
12 30,02(f).

13 THE WITNESS: I believe HR. MPD HR  
14 would at least be familiar with the process  
15 of -- of how these get into those files.  
16 I'm not sure the process by which they do,  
17 so I'm not sure who else would know.

18 BY MS. WALKER:

19 Q. Are you -- do you know that coaching data is, with  
20 some regularity, maintained in personnel files?

21 MR. ENSLIN: Object to the form,  
22 misstates evidence, foundation, outside the  
23 scope of the 30.02(f).

24 BY MS. WALKER:

25 Q. Do you know one way or another whether coaching data

1 is kept in personnel files?

2 MR. ENSLIN: Same objection.

3 THE WITNESS: I don't know.

4 BY MS. WALKER:

5 Q. Do you have any evidence that it's not?

6 MR. ENSLIN: Same objection.

7 THE WITNESS: Because I don't know, no,  
8 I don't have any evidence.

9 BY MS. WALKER:

10 Q. And who would know within the City of Minneapolis if  
11 coaching data is kept in personnel files? HR?

12 A. That would be my belief, but I'm not certain.

13 Q. Do you know a particular person who might know?

14 A. No.

15 Q. Okay. So now look at request number 4, if you  
16 would. And my question is, if you -- take your time  
17 to read it, but would you agree there might be data  
18 responsive to that request that's not personnel  
19 data?

20 A. I have -- sorry. Can you said it again, please?

21 Q. Right. So request number 1 through 3 are all for  
22 personnel data; we agree, correct?

23 A. Correct.

24 Q. Request number 4 is not necessarily for personnel  
25 data; do you agree?

1 A. Correct.

2 Q. And there might be documents responsive to Number 4  
3 that is not personnel data?

4 A. It's --

5 MR. ENSLIN: Object -- object to the  
6 form, calls for speculation.

7 THE WITNESS: It's possible.

8 BY MS. WALKER:

9 Q. Such as letters or emails in which coaching is  
10 described as a form of discipline? That's possible?

11 MR. ENSLIN: Object to the form, calls  
12 for speculation. Object to the extent it  
13 misstates what's stated in number 4.

14 BY MS. WALKER:

15 Q. Is that possible? Let me -- let me reask the  
16 question. There might be letters or emails in which  
17 coaching is describe as a form of discipline; is  
18 that possible?

19 MR. ENSLIN: Same objections.

20 THE WITNESS: I don't know, but I would  
21 say no -- or I don't know how to describe  
22 this. I think they -- I think it's possible  
23 that the word would have been used, but I  
24 don't believe the intent would have.

25 BY MS. WALKER:

1 Q. That's not my question.

2 A. Okay. Correct. Or say it again, please.

3 Q. My question -- yeah. My question is, there might be  
4 letters or emails in which coaching is described as  
5 a form of discipline. That's possible, right?

6 MR. ENSLIN: Object to the --

7 MS. WALKER: You can have your standing  
8 objection.

9 MR. ENSLIN: Same objection. Thank  
10 you.

11 THE WITNESS: It's possible.

12 BY MS. WALKER:

13 Q. We're going to hand you what's been marked as  
14 Exhibit 5.

15 (Exhibit 5 was introduced into the  
16 record.)

17 BY MS. WALKER:

18 Q. So Exhibit 5 is a copy of the Office of Police  
19 Conduct Review Q4 2013 Data Report, correct?

20 A. That's what it says.

21 Q. Is this personnel data?

22 A. I don't know without looking at it.

23 Q. Go ahead and look at it.

24 A. I would say no, it is not.

25 Q. Okay. So this would not be governed by the data

1 practices provision on personnel data, correct?

2 A. Correct.

3 Q. This document would be presumptively public,  
4 correct?

5 A. Correct.

6 Q. And, in fact, the City produced this and it did not  
7 mark it confidential, correct?

8 A. I don't see that designation anywhere.

9 Q. And it was previously produced to Tony Webster,  
10 correct?

11 MR. ENSLIN: Object to the form,  
12 foundation.

13 BY MS. WALKER:

14 Q. Do you agree that to be the case?

15 A. I don't know that.

16 Q. I'll represent to you that it was, and we know that  
17 because it's marked with a Webster stamp at the  
18 bottom. Could you flip to page 17?

19 A. Okay.

20 Q. And do you see the second bar graph is entitled  
21 "Discipline Types Issued by Chief"?

22 A. Yes.

23 Q. And then the blue bar is labeled, "Training or  
24 Coaching." Do you see that?

25 A. I see it.

1 Q. And so this is a document in which coaching is  
2 described as a form of discipline, correct?

3 A. That's the label of the graph. I don't know -- I  
4 don't know if that's what it's saying.

5 Q. Okay. Well, is this a document that if anyone had  
6 gone looking for you would have produced in response  
7 to Number 4?

8 MR. ENSLIN: Object to form, calls for  
9 speculation.

10 THE WITNESS: If -- if any -- could you  
11 restate the question?

12 BY MS. WALKER:

13 Q. Yeah. If anyone had bothered to look for this  
14 document, would you have produced it in response to  
15 number 4?

16 A. No.

17 Q. Why not?

18 A. So this says coaching is described as a form of  
19 discipline or acknowledge by supervisor or the chief  
20 of police to constitute a form of discipline. This  
21 isn't necessarily from a supervisor or the chief of  
22 police.

23 Q. When did you come up with that rationale?

24 MR. ENSLIN: Object to the form,  
25 argumentative.

1 THE WITNESS: When did I come up with  
2 that rationale? I suppose in -- in  
3 discussions about --

4 MR. ENSLIN: Object to the form.

5 BY MS. WALKER:

6 Q. Did you come up with that rationale last week?

7 MR. ENSLIN: Object to the form. You  
8 are not answer any questions about the  
9 discussions we had. To the extent you can  
10 answer the question without disclosing any  
11 discussions, you may answer.

12 BY MS. WALKER:

13 Q. I'm asking about an approximate time frame. That's  
14 all. Don't tell me what your counsel told you.  
15 When did you come up with that rationale?

16 A. I would say upon my re-review of this request that I  
17 had forgotten about, so last week, correct.

18 Q. Did you come up with it on your own?

19 A. No.

20 Q. Does the City support the notion of transparency and  
21 the right of the press and public to understand how  
22 it operates?

23 MR. ENSLIN: Objection, foundation  
24 outside of the scope of the 30.02(f).

25 THE WITNESS: In my knowledge of the

1 City in the capacity that I work in, I  
2 believe that's true.

3 BY MS. WALKER:

4 Q. Are you aware that the City said in its joint answer  
5 in this lawsuit that it affirmatively states that  
6 defendants are committed to transparency and  
7 upholding their legal obligations?

8 A. Am I aware of that?

9 Q. Do you have any reason to dispute the City has said  
10 that?

11 A. I don't have a reason to dispute it, no.

12 Q. Is that your understanding of the City's position on  
13 Data Practices Act requests?

14 MR. ENSLIN: Object to the form,  
15 argumentative, outside the scope of the  
16 30.02(f).

17 THE WITNESS: Could you repeat the  
18 quotation?

19 BY MS. WALKER:

20 Q. Do you believe that the City is committed to  
21 transparency and upholding their legal obligations?

22 A. Yes.

23 Q. Do you believe the City wants the press and public  
24 to have the information, good, bad, or ugly, and  
25 then we want to be able to act on it?

1 MR. ENSLIN: Object to the form. Can  
2 you repeat that one more time? I'm sorry.

3 BY MS. WALKER:

4 Q. Do you believe the City wants the press and public  
5 to have the information, good, bad, or ugly, and  
6 then we want to be able it act on it?

7 MR. ENSLIN: Object. That statement  
8 makes no sense. I don't know what  
9 information you're talking about or who you  
10 want to act on it.

11 I also object as outside the scope of  
12 the 30.02(f). Also object that it calls for  
13 speculation.

14 BY MS. WALKER:

15 Q. We're going to hand you a -- do you understand my  
16 question?

17 A. Could you repeat it?

18 Q. I'll even simplify it. Do believe the City wants  
19 the press and public to have the information, good,  
20 bad, or ugly?

21 MR. ENSLIN: Object -- same objection.

22 THE WITNESS: I believe the City wants  
23 the -- anyone to have data that is  
24 classified as public or data that they are  
25 legally allowed to receive.

1 BY MS. WALKER:

2 Q. Okay. We're going to hand you what's been marked as  
3 Exhibit 171.

4 (Exhibit 171 was introduced into the  
5 record.)

6 BY MS. WALKER:

7 Q. This is a public news article. I'll give you a  
8 minute to look at it. I'm going to point your  
9 direction to -- point your attention to the second  
10 page, but first, could you confirm that this is a Q  
11 and A published by the Star Tribune between the  
12 reporter and -- and the mayor?

13 MR. ENSLIN: Object, foundation.

14 THE WITNESS: That's what it seems to  
15 be.

16 BY MS. WALKER:

17 Q. And you're a former journalist. You know what these  
18 reports look like, correct?

19 A. Correct.

20 Q. Do you know who Susan Jude is of the Star Tribune?

21 A. I know her by name.

22 Q. The second page, the first question is asking about  
23 police community relations. Do you see that?

24 A. Yes.

25 Q. And the mayor has a fairly lengthy answer, and near

1 the bottom of that paragraph, he says, "We want the  
2 people to have the information, good, bad, or ugly,  
3 and then we want to be able to act on it." Did I  
4 read that correctly?

5 A. Yes.

6 Q. Do you believe the mayor speaks for the City?

7 MR. ENSLIN: Object to the form,  
8 foundation, outside the scope of the  
9 30.02(f).

10 THE WITNESS: Yes.

11 BY MS. WALKER:

12 Q. When the Data Practices Act comes in, does the City  
13 try to twist it into the most narrow construction  
14 possible?

15 MR. ENSLIN: Object to the form,  
16 argumentative, calls for speculation,  
17 outside the scope of the 30.02(f).

18 THE WITNESS: No.

19 BY MS. WALKER:

20 Q. You take the broadest interpretation possible,  
21 correct?

22 MR. ENSLIN: Same objection.

23 THE WITNESS: I don't know for certain,  
24 but I would say generally, yes.

25

1 BY MS. WALKER:

2 Q. You interpret them to be inclusive of more data, not  
3 less?

4 MR. ENSLIN: Same objection.

5 THE WITNESS: Yes.

6 BY MS. WALKER:

7 Q. Because that's consistent with the commitment to  
8 transparency, correct?

9 A. Yes.

10 Q. And at the very least, if the Data Practices Act  
11 request is confusing or ambiguous, the City's policy  
12 is to reach out to the requesters for clarification;  
13 isn't that true?

14 A. Correct.

15 Q. We're going to hand you what's been marked as  
16 Exhibit 172.

17 (Exhibit 172 was introduced into the  
18 record.)

19 BY MS. WALKER:

20 Q. And this is a City website, correct, a printout of a  
21 City website?

22 MR. ENSLIN: Object to form,  
23 foundation.

24 THE WITNESS: I believe so. I believe  
25 so, yes.

1 BY MS. WALKER:

2 Q. And the website, the heading on this printout is,  
3 "Data Practices Public Access Procedure." Do you  
4 see that?

5 A. Yes.

6 Q. And the synopsis of this procedure is, "To ensure  
7 that requests for government data are received and  
8 complied with in an appropriate and prompt manner in  
9 compliance with statutory obligations set forth in  
10 the Minnesota Government Data Practices Act,"  
11 correct?

12 A. Correct.

13 Q. And that's the City's policy?

14 A. As far as I know, yes.

15 Q. And has been since 2004, correct?

16 A. As far as I know.

17 Q. And it remains the policy today, correct?

18 A. Correct.

19 Q. We're also going to hand you 173.

20 (Exhibit 173 was introduced into the  
21 record.)

22 BY MS. WALKER:

23 Q. This is a City website with the heading, "How We  
24 Respond to Data Practices -- How We Respond to Data  
25 Requests." Do you see that?

1 A. Yes.

2 Q. And it says, right under that heading, "We may need  
3 to clarify your request." Do you see that?

4 A. Yes.

5 Q. And that's what the City does if it doesn't  
6 understand a request, correct? It contacts someone  
7 to clarify what they're asking for?

8 A. Correct.

9 Q. Near the bottom of that page, it says, "We may  
10 contact you about your request as we work on your  
11 response. We may need your reply to continue  
12 working on your request." Does that reflect the  
13 City's policy?

14 A. Yes.

15 Q. So again, if it's confused about what a requester is  
16 asking, it calls the requester and asks for  
17 clarification, correct?

18 A. Correct.

19 Q. And that didn't happen here, correct?

20 A. As far as I know.

21 Q. And that's because no one, at the time of this  
22 request, misunderstood what MNCOGI was asking for,  
23 correct?

24 A. I believe so. I believe we understand it and didn't  
25 feel the need to clarify it.

1 Q. And that's because you saw a reference to "coaching"  
2 and you summarily closed the request, correct?

3 A. I -- Katie did it, so I don't know for certain, but  
4 I -- I would guess that's what happened, yes.

5 Q. And there was no analysis of what was actually being  
6 asked for in question 4? It was just summarily  
7 closed?

8 A. By "analysis," I'm -- I'm not sure. I mean, I know  
9 that it was read and -- read for content but nothing  
10 was done with it, correct. There were no follow-up  
11 steps.

12 Q. You're not aware of any policy or practice within  
13 the City supporting the notion that if a request is  
14 ambiguous or subject to multiple interpretations,  
15 the City can just guess?

16 MR. ENSLIN: Object to form, calls for  
17 speculation, outside the scope of the  
18 30.02(f).

19 THE WITNESS: You're saying is -- is  
20 that a -- are you asking if that was a  
21 policy?

22 BY MS. WALKER:

23 Q. Yeah.

24 A. No, it was not.

25 Q. And there's a couple different ways, according to

1           you, to interpret request number 4. You seem to be  
2           saying that the reference to the chief of police --  
3           let me back up. You seem to be saying that the  
4           reference to a supervisor or the chief of police  
5           applies to everything requested in number 4; is that  
6           your testimony?

7           A. Yes.

8           Q. But you would acknowledge there's other ways to  
9           interpret -- there's a broader way to interpret this  
10          request, correct?

11                   MR. ENSLIN: Object to form, calls for  
12                   speculation.

13                   THE WITNESS: No. I would interpret it  
14                   the same.

15           BY MS. WALKER:

16           Q. You don't think this request could be interpreted as  
17           one for any document in which coaching is described  
18           as a form of discipline?

19                   MR. ENSLIN: Object to form, asked and  
20                   answered.

21                   THE WITNESS: No.

22           BY MS. WALKER:

23           Q. And you reached that conclusion last week?

24           A. Yes.

25           Q. And you don't know if Ms. Knutson ever even

1 entertained that possibility?

2 A. I don't know.

3 Q. You're not aware of any policy that allows the City  
4 to unilaterally adopt the most narrow interpretation  
5 possible, no questions asked, are you?

6 A. No.

7 Q. In fact, the City is supposed to ask questions?

8 MR. ENSLIN: Object to the form, calls  
9 for speculation.

10 THE WITNESS: I think it depends on the  
11 topic.

12 BY MS. WALKER:

13 Q. What about on this topic? Should the City have  
14 asked questions?

15 A. I don't believe so.

16 Q. Why not?

17 A. In reading it, we would believe it to be about  
18 coaching, which as a City, we've determined is not  
19 public data, and we would have -- we would have just  
20 determined that it was about coaching, which is  
21 nonpublic, and we wouldn't be able to respond to  
22 that.

23 Q. Okay. Let's take a look at Exhibit Number 3.

24 (Exhibit 3 was introduced into the  
25 record.)

1 BY MS. WALKER:

2 Q. This is Ms. Knutson's response to the Data Practices  
3 Act request. Do you see that?

4 A. I do.

5 Q. And she says, "Coaching is not discipline and has  
6 never been discipline. The data you are requesting  
7 is private under MN Statute 13.43. MPD has no  
8 responsive data. Your request is now closed." Did  
9 I read that correctly?

10 A. You did.

11 Q. 13.43 is for personnel data, correct?

12 A. Correct.

13 Q. So Ms. Knutson didn't even recognize that this  
14 request for data beyond personnel data, did she?

15 MR. ENSLIN: Object to the form.

16 THE WITNESS: I would say she did not  
17 interpret it to be for anything other than  
18 personnel data.

19 BY MS. WALKER:

20 Q. And that was an erroneous interpretation; do you  
21 agree with that?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: I don't agree with that.

24 BY MS. WALKER:

25 Q. You think request number 4 is limited to personnel

1 data?

2 A. Yes.

3 Q. Tell me which part makes you think that.

4 A. Again, I would say that when they refer to coaching  
5 -- in 2021, when they refer to coaching, we, as a  
6 practice in our department in police records, would  
7 have interpreted anything referring to coaching to  
8 be private data.

9 Q. Okay. But that's not really my question.

10 A. Okay.

11 Q. My question is, what part of number 4 makes you  
12 think all MNCOGI wanted was personnel data?

13 A. Let me go back to that.

14 MR. ENSLIN: Let me try to find the  
15 request.

16 THE WITNESS: Yeah. Oh, here it is.  
17 Again, because they invoked the term  
18 "coaching," which we define as private data.

19 BY MS. WALKER:

20 Q. That's the only reason?

21 A. Yes.

22 Q. So any request in the past or in the future that  
23 references the word "coaching," you're going to  
24 summarily deny because that's about personnel data?

25 MR. ENSLIN: Object to the form,

1 speculation.

2 BY MS. WALKER:

3 Q. That's your testimony?

4 MR. ENSLIN: Object to the form,  
5 speculation, outside the scope of the  
6 30.02(f).

7 THE WITNESS: No. I would not  
8 summarily deny every request that mentions  
9 the word "coaching."

10 BY MS. WALKER:

11 Q. Why was this one summarily denied?

12 A. I -- I think you would need to ask Katie Knutson to  
13 be a hundred percent sure because --

14 Q. Let me stop you. I'm asking you as the designee for  
15 the City, why did the City summarily deny number 4?

16 A. It determined that it was asking for private  
17 personnel data.

18 Q. And if I'm understanding your testimony, the only  
19 reason for that is because the word "coaching"  
20 appears in number 4?

21 A. Correct.

22 Q. Any other reason?

23 A. Not that I can think of right now.

24 Q. We're going to hand you what's been marked as  
25 Exhibit 80.

1 (Exhibit 80 was introduced into the  
2 record.)

3 BY MS. WALKER:

4 Q. I'll give you a chance to look at this, but this is  
5 email correspondence over a data practices request  
6 by Tony Webster. Do you know who Tony Webster is?

7 A. I do.

8 Q. Who is?

9 A. I know him as a person that's made multiple data  
10 requests to the City of Minneapolis.

11 Q. The first email in the chain at the bottom, Tony  
12 Webster makes a data request to the data practices  
13 office. Do you see that?

14 A. Yes.

15 Q. Okay. And the same day, actually, Kyle McDonald  
16 responds with a question on the request seeking  
17 clarification. Do you see that?

18 A. Yes.

19 Q. And this is what's supposed to happen when the City  
20 doesn't understand the scope of a request, correct?

21 A. Correct.

22 Q. And Tony responded again that same day to clarify  
23 his request, correct?

24 A. Correct.

25 Q. And, again, this is what's supposed to happen under

1 the City's own policies? If a request is not clear,  
2 there's supposed to be communication back and forth  
3 to get clarity, correct?

4 A. Correct.

5 Q. And that didn't happen here, correct?

6 A. Correct.

7 Q. And that's because you decided that the request was  
8 unclear only last week. Is that why?

9 MR. ENSLIN: Object to the form,  
10 misstates prior testimony.

11 BY MS. WALKER:

12 Q. It's a question. Is that why?

13 A. Did I -- I'm asking for point of clarification. Did  
14 I testify that it was unclear, or...

15 Q. Did you think it was an unclear request?

16 A. No.

17 Q. There was no attempt to clarify back in 2021 because  
18 no one actually read the request beyond the  
19 reference to coaching; isn't that true?

20 A. I don't know that -- I don't know what everyone else  
21 interpreted when they read it.

22 Q. Do you have any evidence that anyone working for the  
23 City of Minneapolis actually parsed the pieces of  
24 request number 4 and made a deliberate decision  
25 about what it was asking for, or did they just see

1 the word "coaching" and summarily deny it?

2 A. I don't know the answer to that.

3 Q. You don't have any evidence to the contrary, do you?

4 A. No.

5 Q. While we're on Exhibit 80, let me point you to a  
6 different aspect of it. After the back and forth  
7 with Mr. Webster, Kyle McDonald emailed Carol  
8 Bachun. This is on the second page. Do you see  
9 that?

10 A. Mm-hmm, yes.

11 Q. And she's an assistant City attorney, correct?

12 A. She was.

13 Q. She responded to him on January 9th, 2020. Do you  
14 see that?

15 A. Yes.

16 Q. And the third paragraph, she said, "Please note that  
17 settlement agreements are public even if they result  
18 in coaching and not discipline." Did I read that  
19 correctly?

20 A. Correct.

21 Q. Does the City stand by that statement by its  
22 attorney?

23 MR. ENSLIN: Object to the form,  
24 outside the scope of the 30.02(f).

25 THE WITNESS: I don't know.

1 BY MS. WALKER:

2 Q. Is that your understanding, that settlement  
3 agreements are public even if they result in  
4 coaching and not discipline?

5 MR. ENSLIN: Are you asking for her  
6 personal understanding?

7 MS. WALKER: No, on behalf the City.

8 MR. ENSLIN: Objection, outside the  
9 scope of 30.02(f), asked and answered.

10 THE WITNESS: I can only answer for  
11 myself in that regard.

12 BY MS. WALKER:

13 Q. Okay. You can do that.

14 A. I know that settlement agreements are public, yes.

15 Q. Have you made sure that all the people who report to  
16 you know that settlements are public?

17 A. All of the people? No.

18 Q. Have you made sure that Ms. Knutson knows that  
19 settlement agreements are public?

20 A. Specifically, no.

21 Q. Do you know if Ms. Knutson knows that settlement  
22 agreement are public?

23 MR. ENSLIN: Objection to form,  
24 speculation.

25 THE WITNESS: I don't know.

1 BY MS. WALKER:

2 Q. Would it concern you if she didn't know that?

3 MR. ENSLIN: Objection, outside the  
4 scope of the 30.02(f).

5 THE WITNESS: No because I know that  
6 she would look into it before making a  
7 determination.

8 BY MS. WALKER:

9 Q. She didn't here, did she?

10 A. No.

11 MR. ENSLIN: Can we take five minutes  
12 whenever?

13 MS. WALKER: Yeah. Let me get to a  
14 stopping point.

15 BY MS. WALKER:

16 Q. This is a the agreement between the City of  
17 Minneapolis and the Police Officer's Federation of  
18 Minneapolis. Do you see that?

19 A. I do.

20 Q. All right. As a settlement agreement, it is public,  
21 correct?

22 A. Correct.

23 Q. And you don't see any basis for the confidential  
24 designation at the top of this page; is that true?

25 A. Where is that?

1 MR. ENSLIN: Objection to form,  
2 foundation.

3 THE WITNESS: Where does it say,  
4 "Confidential"?

5 BY MS. WALKER:

6 Q. At the very top left-hand corner.

7 A. Oh, do i see any basis for that?

8 Q. Correct.

9 A. No.

10 Q. This is signed by the chief of police, correct?

11 A. Yes.

12 Q. All right. And the agreement on the second page,  
13 enumerated item number 2 says, "The City shall  
14 impose and the Federation, on behalf of the  
15 agreement, shall accept coaching for a Category B  
16 violation of MPD's Policy and Procedure Manual  
17 Section 4-505 Confidential Records." Did I read  
18 that correctly?

19 A. Yes.

20 Q. So even under your narrow interpretation of item  
21 number 4, would you agree this is responsive?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: I'd have to think about  
24 that for a minute because I do see -- I'd  
25 have to read this in its entirety, but from

1                   what I see specifically in number 2, it's --  
2                   it's called "coaching," but it's not called  
3                   discipline. It's just called "coaching," so  
4                   I -- based on number 2 alone, I would not  
5                   call it...

6                   BY MS. WALKER:

7                   Q. Well, it's a two-page document. Go ahead and read  
8                   it, and then you can answer.

9                   A. I would say that no, it isn't responsive. The  
10                  intent of -- in my interpretation, the intent of  
11                  coaching was not to be called or be known as  
12                  discipline.

13                 Q. So that analysis took you about 60 seconds, right?

14                 A. Sure, yes.

15                 Q. No one took 60 seconds in February 2021 to do any  
16                  analysis like that, correct?

17                 A. Correct.

18                 Q. Let's look at Exhibit 77 and 79.

19                                 (Exhibits 77 and 79 were introduced  
20                                 into the record.)

21                   BY MS. WALKER:

22                 Q. Go ahead and look at these for a minute. I'm going  
23                  to draw your attention to statements by Amelia  
24                  Huffman. In both documents where she says, "There's  
25                  been a verbal agreement to resolve the grievance

1 with the final discipline amended as follows," and  
2 in both situations, she refers to coaching. So just  
3 keep an eye out for that as you review.

4 A. Okay.

5 Q. So these emails settle a grievance, correct?

6 A. Yes.

7 Q. So they're public, according to Carol Bachun,  
8 correct?

9 A. Yes.

10 Q. No basis for the confidential designation at the top  
11 of either document, as far as you know, correct?

12 MR. ENSLIN: Object to the form,  
13 foundation.

14 THE WITNESS: As far as I know, no.

15 BY MS. WALKER:

16 Q. All right. And Amelia Huffman describes coaching as  
17 final discipline, correct?

18 A. She -- yes.

19 Q. Okay. So this is responsive to number 4. We can at  
20 least agree on that?

21 MS. RISKIN: Objection,  
22 mischaracterizes the evidence.

23 THE WITNESS: In my interpretation in  
24 reading these --

25 BY MS. WALKER:

1 Q. It's just a yes-or-no question.

2 MR. ENSLIN: Object. That's  
3 argumentative. She's permitted to answer  
4 the question fully as she has for the last  
5 hour and a half.

6 THE WITNESS: I see them to be  
7 conflating and mixing and matching terms  
8 between discipline and coaching as kind of a  
9 short -- shortcut to stating the final  
10 outcome.

11 BY MS. WALKER:

12 Q. Did Ms. Huffman tell you that?

13 A. No.

14 Q. All right. So the request was for all data in which  
15 coaching is described -- described as a form of  
16 discipline or acknowledge by a supervisor or the  
17 chief of police to constitute a form of discipline.  
18 Are you saying Ms. Huffman is not describing  
19 coaching as a form of discipline here?

20 A. I don't believe so. I don't know what she intended.

21 Q. Are you saying she's not acknowledging that coaching  
22 is a form of discipline?

23 A. I'm saying that she uses the word "coaching" and the  
24 word "discipline." I think it's the position of the  
25 City and well know that coaching is not discipline,

1 and so to use the term "discipline," I believe, was  
2 a poor word choice.

3 Q. That's not my question.

4 A. Okay.

5 Q. My question is, is this responsive to number 4,  
6 whether she meant what she said or not?

7 MR. ENSLIN: Object to the form. That  
8 wasn't your question. She was answering  
9 your question, and she gave the answer.

10 BY MS. WALKER:

11 Q. I have a new question. Is this responsive? I'm not  
12 asking you to read her mind or what she might have  
13 meant. I'm just asking, is this responsive?

14 MR. ENSLIN: Objection, argumentative,  
15 asked and answered.

16 THE WITNESS: No.

17 BY MS. WALKER:

18 Q. Do you and your employees always work so hard to  
19 keep documents out of the hands of the press and  
20 public?

21 MR. ENSLIN: Objection, argumentative.

22 You do not need to answer that question.

23 BY MS. WALKER:

24 Q. Does this parsing of words and speculation as to  
25 what someone meant always happen when responding to

1 a data practices request, or is this atypical?

2 MR. ENSLIN: Objection, argumentative,  
3 speculative, outside the scope of the  
4 30.02(f).

5 BY MS. WALKER:

6 Q. Please answer the question.

7 A. No.

8 Q. All right. Let's take a break.

9 (A recess was had from 10:02 a.m. until  
10 10:25 a.m.)

11 BY MS. WALKER:

12 Q. I wanted to clarify one issue, and so I'm going to  
13 ask the court reporter to read some testimony back  
14 to you, and then I have a question. So just listen  
15 to what she says.

16 (The requested testimony was read.)

17 BY MS. WALKER:

18 Q. Do you stand by that testimony?

19 A. Yes.

20 Q. Referring to Exhibit Number 2 and request number 4,  
21 you would agree that some of the data potentially  
22 responsive to that might be in the possession of the  
23 police department, correct?

24 A. Let me pull it up.

25 MR. ENSLIN: Can you say that one more

1                   time? Can you read that one more time? I  
2                   heard "exhibit" --

3                   MS. WALKER: I will. I'm waiting for  
4                   her to find it so she can follow along.

5                   THE WITNESS: Okay.

6                   BY MS. WALKER:

7                   Q. You would agree that data potentially responsive to  
8                   this request might be in the possession of the  
9                   police department, correct?

10                  A. Correct.

11                  Q. It might be in the possession of a different City  
12                  department; do you agree with that?

13                  A. Yes.

14                  Q. Possibly the HR department?

15                  A. Possibly.

16                  Q. Possibly the City Attorney's Office?

17                  A. Possibly.

18                  Q. Possibly the mayor's office?

19                  A. Possibly.

20                  Q. Lots of possibilities as to where responsive data  
21                  could be maintained, correct?

22                  A. Correct.

23                  Q. And so to the best of -- I'll rephrase. To  
24                  adequately respond to this request, it was necessary  
25                  for defendants to look beyond personnel records,

1 correct?

2 MR. ENSLIN: Object to the form, calls  
3 for speculation.

4 THE WITNESS: So, again, I would  
5 interpret 4 to be about private data, so...

6 BY MS. WALKER:

7 Q. Well, you just testified -- I had her read your  
8 testimony to you, and I said, "Do you stand by it?"  
9 And you said, "I do." So you're on the record twice  
10 now saying number 4 goes beyond personnel records.  
11 Do you understand that?

12 A. Yes.

13 Q. So in order to adequately respond, it would be  
14 necessary to go beyond personnel records, correct?

15 MR. ENSLIN: Object to the form, calls  
16 for speculation.

17 BY MS. WALKER:

18 Q. If the request is for more than personnel records,  
19 then you have to look beyond personnel records to  
20 respond. That's my question.

21 MR. ENSLIN: Same objection.

22 THE WITNESS: Yes.

23 BY MS. WALKER:

24 Q. And you have to look beyond the police department,  
25 correct?

1 A. Yes.

2 Q. Neither of those things was done, correct?

3 A. Correct.

4 Q. Also, before the break, you talked about reviewing  
5 documents and emails in preparation for today and  
6 finding correspondence from February 2021 with  
7 Ms. Knutson; do you remember that?

8 A. Yes.

9 Q. Did you find any other emails or documents that  
10 relate to this lawsuit or the records request that  
11 it is based upon?

12 A. Other than communications with attorneys, no.

13 Q. Okay. So all you recall seeing is the one or two  
14 email exchanges with Ms. Knutson from the same day?

15 A. Correct.

16 Q. Did you talk to Ms. Knutson in preparation for  
17 today?

18 A. Yes. Not in preparation for. She mentioned that  
19 she had been -- or she told me she was going to be  
20 deposed and that she had been deposed and that my  
21 name had come up, and she thought it possible that I  
22 would be deposed. That's the full extent of it.

23 Q. Did you review the transcript of her deposition in  
24 preparation for today?

25 A. I did.

1 Q. You did?

2 A. I did.

3 Q. Last week?

4 A. Yes, yes.

5 Q. Okay. Do you recall seeing anything that you  
6 believed was inaccurate?

7 A. In hers?

8 Q. Yes.

9 A. I don't recall.

10 Q. Nothing jumped out at you as an extreme misstatement  
11 of the facts?

12 A. No.

13 Q. We handed you before the break Exhibit 12. Could  
14 you take a look at that, please? And I'll ask you  
15 to look at it in connection with request number 4.

16 A. Okay.

17 Q. This is signed by the chief of police, correct?

18 A. Correct.

19 Q. And in the first paragraph, he says, "As discipline  
20 for this incident, you will receive coaching." Did  
21 I read that correctly?

22 A. You did.

23 Q. Would you agree that this is responsive to number 4?

24 A. I would not.

25 Q. Okay. Why not?

1           A.    My interpretation is that this is a form letter.  
2                   I've seen many over the years.  And I believe that  
3                   they left the word "discipline" as -- because it was  
4                   part of the template language that they used but  
5                   that no one reading this that has knowledge of  
6                   coaching or the discipline process would consider  
7                   this coaching document discipline.

8           Q.    And you testified before the break that that  
9                   analysis you just engaged in is a very atypical way  
10                  for the City to respond to data requests; do you  
11                  recall that?

12                         MR. ENSLIN:  Objection to the form.

13                         THE WITNESS:  I don't recall my exact  
14                         answer.

15                         BY MS. WALKER:

16           Q.    It's not very typical for the City to try to  
17                   interpret and read the mind of what someone meant  
18                   when responding to data practices requests, is it?

19           A.    Correct.

20           Q.    In fact, what you usually do is you look at the face  
21                   of the document and decide if it's responsive and  
22                   then you produce it?

23                         MR. ENSLIN:  Object to the form, calls  
24                         for speculation, outside the scope of the  
25                         30.02(f).

1 THE WITNESS: We often read the  
2 request, see if we understand what its  
3 asking for. If we feel we do understand,  
4 then we'll make our collection plan based on  
5 our understanding. So in instances where we  
6 don't believe something is public, we would  
7 not then go and collect that data.

8 BY MS. WALKER:

9 Q. Can you think of any instance prior to today where  
10 in responding to a data practices request, the City  
11 ignored the plain language on the face of a document  
12 and justified withholding it based on its unilateral  
13 interpretation of what the author meant?

14 MR. ENSLIN: Object to the form, calls  
15 for speculation, outside of the scope of  
16 30.02(f).

17 BY MS. WALKER:

18 Q. Do you need the request repeated?

19 A. No. I don't recall a specific instance.

20 Q. That's being done just for the purpose of this case?

21 MR. ENSLIN: Object to the form,  
22 misstates prior testimony.

23 BY MS. WALKER:

24 Q. Is that being done just for the purpose of this  
25 case?

1 A. No.

2 Q. Why is it being done here?

3 A. Because when it's read to be about coaching and the  
4 subject is coaching, our interpretation was that  
5 coaching is always private data, and there would be  
6 no public data to provide.

7 Q. Any other reason you're second-guessing the plain  
8 meaning of these documents?

9 MR. ENSLIN: Object to the form.

10 THE WITNESS: No.

11 BY MS. WALKER:

12 Q. That's the only reason?

13 A. Can you repeat the question?

14 Q. Is there any other reason you're second-guessing the  
15 plain language of these documents I'm putting in  
16 front of you?

17 MR. ENSLIN: Object to the form.

18 THE WITNESS: When you say,

19 "second-guessing," what do you mean?

20 BY MS. WALKER:

21 Q. Interpreting in a way that serves the City's  
22 interest.

23 MR. ENSLIN: Object to the form,  
24 argumentative.

25 THE WITNESS: I'm -- can you -- I'm

1                   sorry. Could you please repeat the question  
2                   in full?

3                   BY MS. WALKER:

4                   Q. Is there any other reason you are ignoring the plain  
5                   language of these documents and interpreting them in  
6                   a way that serves the City's interests other than  
7                   the one you just gave me?

8                   MR. ENSLIN: Objection -- object to the  
9                   form, argumentative, outside the scope of  
10                  the 30.02 (f) calls for speculation.

11                  THE WITNESS: No.

12                  BY MS. WALKER:

13                  Q. Did you ask former Chief Arradondo what he meant  
14                  when he said, "As discipline for this incident, you  
15                  will receive coaching"?

16                  A. No.

17                  Q. Have you ever talked to Interim Chief Amelia Huffman  
18                  about what she meant?

19                  A. No.

20                  Q. Have you ever talked to Former Chief Janee Harteau  
21                  about what she meant?

22                  A. No.

23                  Q. Have you ever talked to any supervisor within the  
24                  Minneapolis Police Department about what they meant  
25                  when they described coaching as discipline?

1 A. No.

2 Q. So you're engaged in rampant speculation; is that  
3 true?

4 MR. ENSLIN: Object to the form,  
5 argumentative. You don't have to answer.

6 BY MS. WALKER:

7 Q. Are you speculating about what they meant?

8 A. I don't believe so.

9 Q. Can you read their mind?

10 MR. ENSLIN: Object to the form,  
11 argumentative, asked and answered.

12 THE WITNESS: No.

13 BY MS. WALKER:

14 Q. So we talked a little bit a minute ago about how to  
15 respond to request number 4. You would need to look  
16 beyond personnel records and beyond the police  
17 department. My understanding from Ms. Knutson was  
18 that was not her job. That was someone else's job;  
19 is that right?

20 A. I don't recall exactly how she would have phrased  
21 it, but in my understanding, it would be the job of  
22 the processor to read and interpret the meaning of  
23 the request and then reach out to the appropriate  
24 department to collect it if -- if there was going to  
25 be a collection done.

1 Q. But no one did that?

2 A. No.

3 Q. So my understanding -- and I'm going to ask you  
4 clarifying questions to confirm I'm right, because  
5 I'm sure your counsel's going to object, but my  
6 understanding based on your testimony is that the  
7 request came in. Ms. Knutson and maybe someone else  
8 saw the word "coaching," and the request was  
9 summarily closed; is that true?

10 A. I don't know exactly what they thought when they  
11 closed it, but factually, yes.

12 Q. Okay. So it is true that zero steps were taken in  
13 this request to identify responsive data?

14 A. I believe so.

15 Q. And it is true that zero steps were taken in  
16 response to this request to review data?

17 MR. ENSLIN: Object to the form to the  
18 extent it misstates prior testimony.

19 BY MS. WALKER:

20 Q. It's a question. I'm not restating testimony.

21 A. No. There was no review done.

22 Q. And zero steps were taken to redact potentially  
23 responsive data?

24 A. Correct.

25 Q. And zero steps were taken to disclose data

1 responsive to the request?

2 A. Correct.

3 Q. And zero steps were taken to comply with the Data  
4 Practices Act.

5 MR. ENSLIN: Object to the form to the  
6 extent it misstates prior testimony.

7 THE WITNESS: I believe we fulfilled  
8 our obligation under the Data Practices Act.

9 BY MS. WALKER:

10 Q. Tell me the steps you took to do that.

11 A. Received the request. It was acknowledged. It was  
12 read. It was determined that there was no  
13 responsive data. And it was responded to. That's  
14 my understand -- that's at least the City's  
15 understanding of how to respond to a data request in  
16 this -- like this one.

17 Q. And those are all the steps that were taken?

18 A. I believe so.

19 Q. But zero steps were taken to look for data?

20 A. Correct.

21 Q. As you sit here today, do you want to identify any  
22 exemption beyond 13.43 that might apply to data  
23 that's responsive to this request?

24 MR. ENSLIN: Object to the form, calls  
25 for a legal conclusion.

1 THE WITNESS: I'm not aware of any. I  
2 haven't thought about it.

3 BY MS. WALKER:

4 Q. Do you think it was accurate to say that Minneapolis  
5 Police Department had no responsive data?

6 A. Yes.

7 Q. You do not have any idea whether departments beyond  
8 the police department might have responsive data; is  
9 that true?

10 MR. ENSLIN: Object to the form.

11 THE WITNESS: I don't know it for a  
12 fact.

13 BY MS. WALKER:

14 Q. If there's data responsive to request number 4, it's  
15 not personnel data? 13.43 would not govern,  
16 correct?

17 MR. ENSLIN: Objection, calls for a  
18 legal conclusion.

19 BY MS. WALKER:

20 Q. I'll withdraw the question. The City's position is  
21 that coaching is not discipline; is that your  
22 testimony today?

23 A. Yes.

24 Q. When did you first hear that?

25 A. I can't say specifically when I first heard that, as

1 I testified earlier. My first position in the City  
2 was working within the internal affairs unit in  
3 which I -- part of my duties were to review cases  
4 and case data, and so I was trained with that  
5 knowledge. I can't say the specific moment in time  
6 in which it was given to me.

7 Q. Who told you?

8 A. I can't be certain, but I was trained in by a former  
9 precinct attorney named Jodi Lindskog. She hasn't  
10 worked for the City for many years, and I don't know  
11 where she is currently.

12 Q. Did you take that statement at face value, or do you  
13 have any personal knowledge -- let me ask two  
14 questions. Do you have any personal knowledge of  
15 whether that statement is true?

16 MR. ENSLIN: Object to the form.

17 THE WITNESS: Do I have personal  
18 knowledge -- could you repeat it?

19 BY MS. WALKER:

20 Q. The statement that coaching is not discipline is a  
21 conclusion, you agree?

22 A. Yes.

23 Q. Do you know whether it's an accurate conclusion?

24 MR. ENSLIN: Object to the form. The  
25 way you're phrasing it calls for an ultimate

1 legal conclusion in this case.

2 BY MS. WALKER:

3 Q. Do you know if it's based on any evidence?

4 A. I don't know.

5 Q. As far as you know, it's just a position the City  
6 has taken that may or may not be based on evidence?

7 MR. ENSLIN: Object to the form.

8 THE WITNESS: I know it's a -- I don't  
9 know -- I can't respond to the evidence  
10 piece. I don't know. I don't understand  
11 that piece. I know it's a position that the  
12 City has taken.

13 BY MS. WALKER:

14 Q. You're not aware of any evidence that supports it?

15 MR. ENSLIN: Object to the form.

16 THE WITNESS: Correct.

17 BY MS. WALKER:

18 Q. In arriving at this position, do you have any  
19 evidence that the City looked at, determination  
20 letters like Exhibit Number 12?

21 A. Do I -- I'm sorry. Could you repeat it?

22 Q. In arriving at the position that coaching is not  
23 discipline, do you have any evidence that anyone at  
24 the City looked at documents like Exhibit Number 12?

25 MR. ENSLIN: Object to the form,

1 outside the scope of the 30.02(f).

2 THE WITNESS: I don't know the answer.

3 BY MS. WALKER:

4 Q. You have no evidence?

5 A. I have no evidence.

6 Q. Do you have any evidence that anyone at the City  
7 looked at settlement agreements like Exhibit 152,  
8 Exhibit 77, or Exhibit 79?

9 MR. ENSLIN: Same objection.

10 THE WITNESS: No.

11 BY MS. WALKER:

12 Q. You have no evidence?

13 A. No.

14 Q. In arriving at the conclusion and position that  
15 coaching is not discipline, do you have any evidence  
16 that anyone at the City ever looked at grievances of  
17 coaching?

18 MR. ENSLIN: Same objections.

19 THE WITNESS: I have no evidence of  
20 that.

21 BY MS. WALKER:

22 Q. Who would have evidence of these things?

23 MR. ENSLIN: Objection, foundation,  
24 outside the scope of the 30.02(f).

25 THE WITNESS: I -- I don't know the

1                   particulars of the grievance process  
2                   specifically. I would assume that the union  
3                   is involved and that our City HR attorneys  
4                   are involved.

5                   BY MS. WALKER:

6                   Q. So you think the City Attorney's Office would know  
7                   what evidence was looked at in arriving at the  
8                   conclusion that coaching is not discipline?

9                   A. I don't know what they would --

10                  Q. That's your --

11                  A. -- have done.

12                  Q. -- best guess?

13                  A. I -- can you repeat the question? Does the City  
14                  attorney...

15                  Q. Who would know --

16                  A. Okay.

17                  Q. -- what actual documentary evidence City employees  
18                  looked at before arriving at the conclusion that  
19                  coaching is not discipline?

20                         MR. ENSLIN: Object to the form, calls  
21                         for speculation, outside the scope of the  
22                         30.02(f).

23                         THE WITNESS: I don't know what would  
24                         have been looked at.

25                   BY MS. WALKER:

1 Q. Do you have any evidence that anyone looked at  
2 documents like Exhibit Number 5 in arriving at the  
3 conclusion that coaching is not discipline?

4 MR. ENSLIN: Same objection.

5 THE WITNESS: I don't know.

6 BY MS. WALKER:

7 Q. Do you have any evidence that when the City adopted  
8 this position, it was consistent with what documents  
9 of the Minneapolis Police Department actually said?

10 MR. ENSLIN: Same objections.

11 THE WITNESS: I don't know the origin  
12 of when or how the policy was made.

13 BY MS. WALKER:

14 Q. Who would?

15 A. I would imagine that someone in police  
16 administration would have some sort of historical  
17 document about when and how that decision was made.

18 Q. Someone like Amelia Huffman?

19 A. I don't know.

20 Q. You do not actually have personal knowledge of  
21 whether coaching is discipline? You just repeat  
22 what you've been told; is that right?

23 MR. ENSLIN: Object to the form,  
24 argumentative, outside the scope of the  
25 30.02(f).

1 THE WITNESS: I have personal knowledge  
2 in that it's how I was trained. It was a  
3 fact that was presented to me when I was  
4 trained, and I always adhered to it.

5 BY MS. WALKER:

6 Q. Is the position that coaching not discipline  
7 documented somewhere?

8 MR. ENSLIN: Object to the form,  
9 foundation, outside the scope of the  
10 30.02(f).

11 THE WITNESS: I can't -- I don't know.

12 BY MS. WALKER:

13 Q. Who would know?

14 MR. ENSLIN: Same objections.

15 THE WITNESS: Again, I would be  
16 speculating that it would be MPD  
17 administration, MPD's internal affairs unit,  
18 one of those.

19 BY MS. WALKER:

20 Q. So when you and your staff summarily closed any  
21 requests that asked for coaching data, you're just  
22 going off what you've been verbally told?

23 A. Yes.

24 Q. Could you look back for a minute at Exhibit 5?

25 A. Okay.

1 Q. Would you agree with me that if someone had run a  
2 search for documents containing the words "coaching"  
3 and "discipline," this document would have been  
4 identified and reviewed in response to MNCOGI's  
5 request?

6 MR. ENSLIN: Object to the form, calls  
7 for speculation.

8 THE WITNESS: If someone had searched  
9 the key word "coaching" and "discipline,"  
10 yes, this would most likely have come up.

11 BY MS. WALKER:

12 Q. Where would a document like this be maintained  
13 within the City?

14 MR. ENSLIN: Objection, foundation,  
15 outside the cope of the 30.02(f).

16 THE WITNESS: I don't know for certain.  
17 I believe it would be with the Office of  
18 Police Conduct Review.

19 BY MS. WALKER:

20 Q. And so the process for that when a complex request  
21 comes in would be to go to the them, talk to  
22 custodians, ask for keyword searches to be run. Is  
23 that -- do I have it right? Or please elaborate.

24 A. Yes. We would --

25 MR. ENSLIN: Object to the form, calls

1                   for speculation, outside the scope of the  
2                   30.02(f).

3                   THE WITNESS: Yes. We would go to the  
4                   department and ask them how they would  
5                   respond to this or to a request.

6                   BY MS. WALKER:

7                   Q. And they might say, we would run a search -- we  
8                   would run keyword searches?

9                   A. They may say that.

10                  Q. And that would be done?

11                  A. Yeah.

12                  MR. ENSLIN: Object to form, calls for  
13                  speculation.

14                  THE WITNESS: Yes.

15                  BY MS. WALKER:

16                  Q. And that has been done in the past?

17                  A. Yes.

18                  Q. With some regularity?

19                  A. Yes.

20                  Q. Everyone at the City knows how to do that?

21                  A. I don't know about everybody, but...

22                  Q. Everyone whose job is to respond to data practices  
23                  request knows how to do that?

24                  MR. ENSLIN: Object to form, calls for  
25                  speculation.

1 THE WITNESS: I would say that people  
2 that are familiar with responding to data  
3 practices requests do know what the process  
4 and expectation is, yes.

5 BY MS. WALKER:

6 Q. And running searches like that is an obligation  
7 under the Data Practices Act, correct?

8 MR. ENSLIN: Object to the form, calls  
9 for a legal conclusion.

10 THE WITNESS: Correct.

11 BY MS. WALKER:

12 Q. Why don't we take a look at Exhibit 7?

13 (Exhibit 7 was introduced into the  
14 record.)

15 BY MS. WALKER:

16 Q. This is a document introduced by the City. At the  
17 top it, says, "Memorandum of Agreement" and it's  
18 from 2003. Do you see that?

19 A. I do.

20 Q. I'll represent to you that it was attached to an  
21 email from 2020. Do you have any reason to doubt  
22 that?

23 A. No.

24 Q. Can you flip to page 20?

25 A. Okay. Yes.

1 Q. Section 7.3.2 says, "Disciplinary options. Pursuant  
2 to the Minneapolis Civil Service Rules and the MPD  
3 discipline manual, discipline options is coaching,  
4 oral reprimand, written reprimand, suspension,  
5 demotion, termination." Did I read that correctly?

6 A. Yes.

7 Q. And it says, "Both documents provides that  
8 discipline is to be corrective and not punitive."  
9 Did I read that correctly?

10 A. Yes.

11 Q. Where would a document like this live?

12 MR. ENSLIN: Object to the form,  
13 speculation, outside the scope of the  
14 30.02(f).

15 THE WITNESS: I don't know, actually,  
16 where this would be.

17 BY MS. WALKER:

18 Q. Who would know?

19 A. Since it references the department, I would begin by  
20 asking MPD administration.

21 Q. And they could run a search for documents that  
22 contain the words "coaching" and "discipline,"  
23 correct?

24 MR. ENSLIN: Object to form, calls for  
25 speculation.

1 THE WITNESS: I don't know that they  
2 could, but -- I don't know if they could run  
3 a search, but I would imagine they could  
4 search in some capacity.

5 BY MS. WALKER:

6 Q. There's a reasonable way to find document likes this  
7 within the Minneapolis department, correct?

8 MR. ENSLIN: Object to the form, calls  
9 for speculation, foundation, outside the  
10 scope of the 30.02(f).

11 THE WITNESS: I don't know the answer  
12 to that.

13 BY MS. WALKER:

14 Q. Who would?

15 MR. ENSLIN: Same objection.

16 THE WITNESS: Again, I would say that  
17 that would be a question for MPD  
18 administration.

19 BY MS. WALKER:

20 Q. Any particular person within the administration?

21 A. No.

22 Q. Let's take a look at Exhibit 9.

23 (Exhibit 9 was introduced into the  
24 record.)

25 BY MS. WALKER:

1 Q. I'll represent to you this was produced by the City  
2 and it is a Minneapolis Police Department Body-Worn  
3 Camera Policy. Is there a central repository where  
4 policies are kept?

5 MR. ENSLIN: Same objection.

6 THE WITNESS: I don't know for a fact.

7 BY MS. WALKER:

8 Q. Who would know?

9 A. There is a -- or was when I was in the department, a  
10 policy and research division, and any time there is  
11 questions about the wording of policies or anything,  
12 we would consider them to be the repository and  
13 would ask them to collect it, find it, and collect  
14 it.

15 Q. So I would hope that if a data requester asks for a  
16 policy, there's a pretty straightforward way to go  
17 and pull policies. Would you agree that that's  
18 true?

19 MR. ENSLIN: Object to the form.

20 THE WITNESS: I don't -- I'm not sure  
21 about easy, but there would be a definitive  
22 method that we would go about doing that.

23 BY MS. WALKER:

24 Q. Could you turn to page 5? There's a heading, "Per  
25 disciplinary consequences for violating the BWC

1 policy." Do you see that heading?

2 A. Yes.

3 Q. And then in the third paragraph, it says, "Depending  
4 on the circumstances, a violation of a policy  
5 provision may constitute an offense warranting  
6 suspension or termination whereas for other  
7 violations, only coaching or written warning may be  
8 warranted." Did I read that correctly?

9 A. I'm sorry. Could you point out which paragraph it  
10 is again?

11 Q. Under "City Considerations."

12 A. Okay.

13 Q. Did I read the first sentence correctly?

14 MR. ENSLIN: Can you read it again?

15 THE WITNESS: Yes, could you, please?

16 BY MS. WALKER:

17 Q. I'll let you read it to yourself, actually.

18 A. Okay.

19 Q. It's fairly straightforward to run a search for  
20 words like "coaching" and "discipline" across City  
21 policies, correct?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: I don't have -- I don't  
24 know.

25 BY MS. WALKER:

1 Q. It's not too much to ask if I were to request  
2 policies that equate coaching and discipline, is it?

3 MR. ENSLIN: Object.

4 BY MS. WALKER:

5 Q. Across the search, that can be done?

6 MR. ENSLIN: Object to the form, asked  
7 and answered.

8 THE WITNESS: I don't believe it could  
9 be done, no.

10 BY MS. WALKER:

11 Q. Why not?

12 A. I don't think there would be -- I don't think there  
13 would be clear policy that says -- that equate the  
14 two or uses the wording that -- I'm sorry -- that  
15 you used in your question.

16 Q. Let me back up 10,000 feet. This is a policy and --

17 A. Correct.

18 Q. -- the request was, as you can read it for yourself  
19 in request number 4, and as a requester and citizen  
20 and attorney, I would expect when a request like  
21 that comes in, potentially responsive documents are  
22 identified, and then a keyword search is run. Let's  
23 find documents that mention "coaching" and  
24 "discipline." And I'm asking you, is that too much  
25 to ask? Is that reasonable to ask? Is that

1 possible to do?

2 MR. ENSLIN: Object to the form,  
3 compound question, calls for speculation,  
4 assumes facts not in evidence.

5 THE WITNESS: I would say that it is  
6 not that simple. Those are two very, I  
7 would say, pervasive words that are used in  
8 the City, especially over the past few years  
9 as this has been an issue. I -- I would  
10 consider it to be vague in that I would want  
11 more -- I believe as it is, is too vague to  
12 know how to go about collecting it.

13 BY MS. WALKER:

14 Q. So you might ask the requester for clarification?

15 MR. ENSLIN: Object to the form, calls  
16 for speculation.

17 THE WITNESS: We wouldn't in this  
18 instance because it's about coaching, which  
19 we had a determination was private data.

20 BY MS. WALKER:

21 Q. It's about coaching, so it's summarily closed;  
22 that's your testimony?

23 A. Yes.

24 Q. Did the City ever disclose personnel data after  
25 redacting personally identifying information?

1 A. Yes.

2 MR. ENSLIN: Objection, calls for  
3 speculation, outside the scope of the  
4 30.02(f).

5 BY MS. WALKER:

6 Q. Did you say yes?

7 A. Could you repeat the question?

8 Q. Does the City ever disclose personnel data after  
9 disclosing personally identifying information?

10 A. It would release data that would be public under  
11 13.43, the Minnesota statute.

12 Q. Isn't it true the City disclosed coaching data to  
13 the Department of Justice?

14 MR. ENSLIN: Object to form,  
15 foundation, outside the scope.

16 THE WITNESS: I don't have any personal  
17 knowledge of that.

18 BY MS. WALKER:

19 Q. Who was involved in disclosing disciplinary coaching  
20 data to the Department of Justice?

21 MR. ENSLIN: Objection to form.

22 THE WITNESS: I don't -- I don't know  
23 specifically.

24 BY MS. WALKER:

25 Q. Have you read the Department of Justice report?

1 MR. ENSLIN: Object to the form. Are  
2 you asking her personal capacity?

3 MS. WALKER: Just trying to lay  
4 foundation before I ask questions of her as  
5 a designee.

6 MR. ENSLIN: So are you asking her  
7 personally whether she's read the DOJ  
8 report?

9 MS. WALKER: Yes.

10 MR. ENSLIN: Okay.

11 THE WITNESS: Yes, but I don't have a  
12 thorough knowledge of everything that's in  
13 that.

14 BY MS. WALKER:

15 Q. Well, let's take a look at it. And my first  
16 question is whether anyone who deals day in and day  
17 out -- well, let me rephrase the question. Was  
18 anyone on your team involved in the disclosure of  
19 data to the Department of Justice?

20 MR. ENSLIN: Objection, outside the  
21 scope of the 30.02(f).

22 THE WITNESS: Not to my knowledge.

23 BY MS. WALKER:

24 Q. Was anyone who was with the City Clerk's Office  
25 involved in the disclosure of data to the Department

1 of Justice?

2 MR. ENSLIN: Objection, foundation,  
3 outside of the scope of the 3002F.

4 THE WITNESS: I don't know.

5 BY MS. WALKER:

6 Q. I'm going to have you flip to around page 71. And  
7 I'll give you a minute. There's a series of  
8 incidents described from pages 71 to 76. Take your  
9 time and just skim through those, if you would.

10 A. Okay.

11 Q. So if you look at the instance -- incidents  
12 described on those pages, one officer was required  
13 to go to training. Several were referred to  
14 coaching. Three officers were referred to training  
15 and the others were referred to coaching. Is that  
16 consistent with what you just read?

17 MR. ENSLIN: I'll object to the extent  
18 it misstates what's in the written document.

19 MS. WALKER: It doesn't, but your  
20 objection is noted.

21 MR. ENSLIN: Then why are you asking  
22 her to confirm it? We all agree it says  
23 what it says.

24 MS. WALKER: I just want her to  
25 understand where I'm headed with the next

1 question, but if you don't want me to lay  
2 foundation for questions, I don't have to.

3 MR. ENSLIN: I don't know how you could  
4 lay foundation for a report that's outside  
5 the scope of what she's even here to testify  
6 about.

7 MS. WALKER: Data was disclosed to the  
8 DOJ. It was coaching data, which the City  
9 takes the position is not public. It was  
10 publicly reported on, and I have questions  
11 about how that happened and why other  
12 citizens can't get the same access.

13 MR. ENSLIN: Which -- which topic does  
14 that refer to?

15 MS. WALKER: 1 for which you --

16 MR. ENSLIN: Could you read that,  
17 please? Read topic 1.

18 MS. WALKER: "The steps, if any,  
19 deponent took to identify, review, redact,  
20 and disclose data responsive to plaintiff's  
21 MPD data request without limiting the  
22 foregoing. This topic includes how  
23 deponent's current policy that coaching is  
24 not discipline impacted data collection  
25 efforts and how, as a result, responsive

1 public data may not have been identified or  
2 disclosed as a result of the -- as required  
3 by the MGDPA."

4 MR. ENSLIN: So how does a report from  
5 June 16th, 2003, that postdates the data  
6 request by two years and what we did or did  
7 not give to the DOJ relate to whether we  
8 fulfilled our obligations in this case?

9 MS. NASCIMENTO: It also relates topic  
10 13 which is findings of the United States  
11 Department of justice and/or the United  
12 States Attorney's Office for the District of  
13 Minnesota as part of the pattern and  
14 practice investigation which deponent has  
15 announced on or about April 21st, 2012,  
16 related to coaching and other consequences  
17 for officer misconducted.

18 MR. ENSLIN: So two things: I don't  
19 know that I agree with that. That's talking  
20 about findings, not what data we did or did  
21 not give to the DOJ and what basis we did or  
22 did not have, number one.

23 Number two, she is not designated as a  
24 witness for that topic.

25 BY MS. WALKER:

1 Q. Under the Data Practices Act, if data could be  
2 redacted, it must be, and then the not private data  
3 must be released. And shortly after our request was  
4 summarily denied, all kinds of personnel data that,  
5 according to the City, did not constitute final  
6 disposition of discipline was released to the DOJ  
7 and the DOJ published a blockbuster report that  
8 mention very specific incidents, very specific  
9 personnel data, and simply omits the names of  
10 officers, and, apparently, everyone's okay with  
11 that. And I'm trying to figure out why MNCOGI  
12 couldn't get similar redacted data. And this is  
13 your designee on issues related to the Data  
14 Practices Act and redaction, and if you want to  
15 argue about this further, we're going to go off the  
16 record because we're wasting time, and I have a  
17 question pending. Do you want to go off the record?

18 MR. ENSLIN: What is the question?

19 MS. WALKER: Can you read back the  
20 question?

21 (The requested testimony was read.)

22 MS. WALKER: I can rephrase the  
23 question. This objection started when you  
24 objected to how I was characterizing what  
25 happened to the officers who were discussed

1 at pages 71 through 76.

2 MR. ENSLIN: No. I objected because  
3 you asked her if what you read is confirmed  
4 in here. And I objected because this says  
5 whatever it says. So if you misstate it, it  
6 doesn't matter whether she says yes that's  
7 what it says. It just says, what it says.

8 BY MS. WALKER:

9 Q. Ms. Knutson [sic], on behalf of the City, do you  
10 know how it same to be that the DOJ received  
11 personnel data on a handful of officers who never  
12 received final disposition of discipline?

13 MR. ENSLIN: Objection, foundation,  
14 outside the scope of the 30.02(f), assumes  
15 facts not in evidence.

16 BY MS. WALKER:

17 Q. You can answer the question.

18 A. I'm sorry. Could you repeat it?

19 Q. Yes. Do you know how coaching data came into the  
20 hands of DOJ?

21 A. I do not.

22 Q. Who would know?

23 A. I would be speculating that it was whoever was  
24 tasked with providing them with data, which I'm not  
25 certain who that was.

1 Q. Okay. You don't know who that was?

2 A. Correct.

3 Q. And do you know if any agreements were reached or  
4 negotiations were had about how the DOJ would  
5 identify the data or whether the DOJ would receive  
6 it in redacted form?

7 MR. ENSLIN: Same objections. Object  
8 to the form. Object to the extent it's  
9 outside the 30.02(f). Object as to  
10 foundation.

11 THE WITNESS: I don't have any  
12 knowledge of how data was gathered and any  
13 sense for the -- for this report.

14 BY MS. WALKER:

15 Q. So I'm speaking to your attorney now. And I don't  
16 mean for you to take this personally.

17 MS. WALKER: But I hope you have a  
18 witness prepared to testify to these things  
19 because it's directly relevant, and I  
20 adequately noticed it.

21 Let's go off the record and I'll decide  
22 if I have any more questions for this  
23 witness.

24 (A recess was had from 11:10 a.m. until  
25 11:21 a.m.)

1 BY MS. WALKER:

2 Q. You mentioned the emails you found between you and  
3 Ms. Knutson. Do you remember that?

4 A. Yes.

5 Q. And you remembered -- or you also testified that you  
6 saw some correspondence with your attorneys,  
7 correct?

8 A. Yes.

9 Q. And I don't want to know the contents of those  
10 emails, but were they from the past couple months,  
11 or were they from back when the request came in?

12 A. Recent.

13 Q. Okay. After the lawsuit was filed?

14 A. Correct.

15 Q. And in connection with preparation for today?

16 A. Correct.

17 Q. Ms. Zenzen, if you were to receive the request that  
18 is Exhibit Number 2 today, would you do anything  
19 differently?

20 A. I would probably, with my team, if they came to me  
21 with a question about it, I would likely sit down  
22 with the person and probably a couple others we  
23 frequently work in kind of a collaborative way to  
24 pass ideas about how to process things. So most  
25 likely, we would sit down and make determinations

1           about what we were going to do with each point and  
2           how we were going to respond.

3           Q.   Why would you handle it differently?

4           A.   That is the way that we have taken to doing it in  
5           the City Clerk's Office. I can't say for certain,  
6           but I believe that's how they often handled things  
7           prior to me joining there, and when I did join that  
8           team, we just found that it was a good way of  
9           addressing requests.

10          Q.   So would you do anything beyond discussing it with  
11          the team if you got it today?

12          A.   I'm not sure. Yeah. I'm not sure.

13          Q.   Would you recommend summarily closing it if you got  
14          it today?

15          A.   No.

16          Q.   Why not?

17          A.   I would want interpretation of especially the fourth  
18          question -- this is speculation because it didn't  
19          happen, but I would likely confer with my team, MPD,  
20          and then most likely one of -- somebody from the  
21          City Attorney's Office to ask what we as a City  
22          should do with it.

23          Q.   Would you reach out to MNCOGI for clarification of  
24          what they were asking for?

25          A.   Possibly.

1 Q. Would you search for documents?

2 A. If those that I was consulting with thought that  
3 that would be -- would result in public data.

4 Q. Do you think it was a mistake in 2021 to summarily  
5 close it?

6 MR. ENSLIN: Object to the form, asked  
7 and answered.

8 THE WITNESS: I don't because that is  
9 how we did things in that department and at  
10 that time.

11 BY MS. WALKER:

12 Q. So it was consistent with practice, but it could  
13 still be a mistake. Do you think it was a mistake?

14 MR. ENSLIN: Object to the form, asked  
15 and answered.

16 THE WITNESS: No, I don't think it was  
17 a mistake.

18 BY MS. WALKER:

19 Q. But as you sit here today, you wouldn't see the word  
20 "coaching" and summarily close it?

21 A. No.

22 Q. You agree that would be inappropriate?

23 A. I don't know. I would have to do some research  
24 about it, and like I said, most likely collaborate  
25 with the group of people.

1 Q. Would you be the final decider?

2 MR. ENSLIN: Object to the form, calls  
3 for speculation.

4 THE WITNESS: I don't know.

5 BY MS. WALKER:

6 Q. Who would be?

7 MR. ENSLIN: Object to the form, asked  
8 and answered.

9 THE WITNESS: It could be me if whoever  
10 was assigned to it really had no idea.  
11 Often if people on my team have a plan and  
12 can kind of articulate their plan and it  
13 seems reasonable to me, I will allow them to  
14 make their own determinations if -- if,  
15 indeed, we had consulted with one of the  
16 City attorneys, that would have weighed  
17 pretty heavily depending on what they said.  
18 So I can't say for certain who would have  
19 been the person to ultimately decide.

20 BY MS. WALKER:

21 Q. What kind of research would you do?

22 MR. ENSLIN: Object to the form, asked  
23 and answered.

24 THE WITNESS: I would have most likely  
25 -- I first would have gone to our City

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1 attorney to simply help us determine whether  
2 they were going to respond to it or not and  
3 then if we were, then we -- then I would  
4 have to think about what entity around the  
5 City might have something responsive.

6 MS. WALKER: I have no further  
7 questions. Unless anyone does, I think we  
8 can close off topic 1 and go off the record.

9 MR. ENSLIN: Read and sign.

10 (The foregoing proceeding concluded at  
11 11:27 a.m.)

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CHRISTINA M. DE GRANDE  
Professional Stenographic Court Reporter  
And Notary Public  
Commission expires January 31, 2027

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March 6, 2024

To: Mr. Enslin

Case Name: Minnesota Coalition On Government Information v. City Of  
Minneapolis, Et Al.

Veritext Reference Number: 6384526

Witness: Mary Zenzen                      Deposition Date: 2/20/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown

above, or email to [production-midwest@veritext.com](mailto:production-midwest@veritext.com).

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

NO NOTARY REQUIRED IN CA

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6384526

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/20/2024

WITNESS' NAME: Mary Zenzen

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Zenzen

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6384526

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/20/2024

WITNESS' NAME: Mary Zenzen

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have listed my changes on the attached  
Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

I request that these changes be entered  
as part of the record of my testimony.

I have executed the Errata Sheet, as well  
as this Certificate, and request and authorize  
that both be appended to the transcript of my  
testimony and be incorporated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Zenzen

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They have listed all of their corrections  
in the appended Errata Sheet;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

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Date Mary Zenzen

21

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22

DAY OF \_\_\_\_\_, 20\_\_\_\_\_ .

23

\_\_\_\_\_  
Notary Public

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25

\_\_\_\_\_  
Commission Expiration Date

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[ballard - checking]

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[collecting - correct]

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

## VERITEXT LEGAL SOLUTIONS

## COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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# EXHIBIT

# F

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STATE OF MINNESOTA DISTRICT COURT  
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

---

Minnesota Coalition On  
Government Information,

Plaintiff,

v.

City of Minneapolis; Casey J. Carl,  
in his official capacity as Clerk for  
the City of Minneapolis; Nikki Odom,  
in her official capacity as Chief Human  
Resources Officer for the City of  
Minneapolis; Minneapolis Police Department;  
and Brian O'Hara, in his official capacity as  
Chief of Police for the Minneapolis Police  
Department.

Defendants.

---

DEPOSITION OF TROY SCHOENBERGER

February 20, 2024

12:30 p.m.

---

File # 6384526

COURT REPORTER: Christina DeGrande

## APPEARANCES:

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1                   Whereupon, the following proceedings were  
2                   had, to wit:

3                   THE COURT REPORTER: Please raise your  
4                   right hand.

5                   Do you swear or affirm that the  
6                   testimony you are about to provide for the  
7                   cause under consideration will be the truth  
8                   and the whole truth, so help you?

9                   THE WITNESS: Yes.

10  
11                   TROY SCHOENBERGER,  
12                   a witness in the above-entitled action,  
13                   after having been first duly sworn,  
14                   testifies and says as follows:

15  
16                   DIRECT EXAMINATION

17                   BY MS. WALKER:

18                   Q. Good afternoon, Lieutenant Schoenberger. My name is  
19                   Leita Walker. I'm with Ballard Spahr, and I  
20                   represent the plaintiff in this case, the Minnesota  
21                   Coalition on Government Information. Thank you for  
22                   being here. My understanding is you are the deputy  
23                   chief of professional standards; is that correct?

24                   A. No. I was the deputy chief of professional  
25                   standards. I'm now lieutenant of the Strategic

1 Information Center.

2 Q. When did you take on that role?

3 A. August of 2023.

4 Q. The Strategic Information Center?

5 A. Correct.

6 Q. What is that?

7 A. I oversee a group of mostly civilian intelligence  
8 analyst who essentially assist investigators in  
9 tracking down violent criminals. They oversee  
10 milestone cameras, do a lot of research into trying  
11 to find criminals.

12 Q. Okay. And you said August 2023?

13 A. Correct.

14 Q. Prior to that, were you the deputy chief of  
15 professional standards?

16 A. Yes, I was.

17 Q. How long did you hold that role?

18 A. From January of 2022 until August of 2023.

19 Q. How long have you been with the Minneapolis Police  
20 Department?

21 A. I just had my 26th anniversary so started in  
22 February of 20 -- or 1998.

23 Q. So your entire career?

24 A. Yes.

25 Q. I assume you've been deposed before?

1 A. Yes.

2 Q. Okay. Do you know how many times?

3 A. No.

4 Q. Have you testified in court --

5 A. Yes.

6 Q. -- before?

7 MR. ENSLIN: Just make sure she  
8 finishes.

9 THE WITNESS: I know.

10 BY MS. WALKER:

11 Q. I was just about to go into that. I'll try to not  
12 interrupt you if you would do the same for the sake  
13 of the record.

14 A. Yes.

15 Q. And you're doing a good job answering verbally.  
16 Obviously, she can't pick up nonverbal body  
17 language. You understand you're under oath?

18 A. Yes.

19 Q. And nothing would prevent you from testifying  
20 truthfully today, correct?

21 A. Correct.

22 Q. If you ask for a clarification, I'll give you one,  
23 but if you answer a question, I'll assume you  
24 understood it. Do you understand that?

25 A. Yes.

1 Q. All right. In your years at the Minneapolis Police  
2 Department, have you ever been involved in  
3 responding to data practices requests?

4 A. Yes.

5 Q. Okay. In what capacity?

6 A. As a supervisor of units that may be -- that may  
7 have responsive data, I've helped provide that to  
8 the record informations unit or whoever is  
9 requesting.

10 Q. Okay. And I assume you've been involved in some  
11 capacity in the disciplinary process over the years?

12 A. Yes.

13 Q. And how so?

14 A. From 2007 to 2009, I was an investigator in the  
15 internal affairs unit, so I investigated misconduct  
16 allegations. In June of 2021, I was transferred  
17 back to internal affairs as the lieutenant of the  
18 unit. And then in December of 2021, I was appointed  
19 as commander of the internal affairs unit just prior  
20 to being appointed as deputy chief of professional  
21 standards.

22 Q. So if I caught it, in 2021, you quickly went from  
23 lieutenant of IAU to commander of IAU, and then in  
24 2022, deputy chief of professional standards?

25 A. Correct.

1 Q. Is deputy chief of professional standards also  
2 within internal affairs?

3 A. The deputy chief of professional standards oversees  
4 internal affairs among other divisions.

5 Q. What were the other divisions?

6 A. Training, administrative services division, and  
7 support services division.

8 Q. What has been your involvement with the practice of  
9 coaching over the years?

10 A. As a supervisor, I would have coaching documents  
11 sent to me so that I could coach my employees. As  
12 an internal affairs investigator, I would prepare  
13 coaching documents to send to supervisors to  
14 perform. And then as a deputy chief of professional  
15 standards, I would review completed coaching  
16 documents to ensure that they're completed fully and  
17 appropriately.

18 Q. Okay. So I know about one kind of coaching  
19 document, at the very least, and we're going to put  
20 that in front of you. It's Exhibit 32. And there's  
21 copies for your counsel.

22 (Exhibit 32 was introduced into the  
23 record.)

24 BY MS. WALKER:

25 Q. So I think you testified, as the supervisor, you

1           were sent coaching documents. With internal  
2           affairs, you would prepare coaching documents. And  
3           then you said one other thing. You would review  
4           completed forms?

5           A. Correct.

6           Q. In which role would you review the complete forms?

7           A. Both as the commander of internal affairs and the  
8           deputy chief of professional standards, I may review  
9           coaching documents to make sure that they're  
10          appropriately completed.

11          Q. So for that last role where you would review the  
12          completed forms, is it this form that's Exhibit 32  
13          that you're talking about?

14          A. Yes.

15          Q. So when you said as supervisor, you would be sent  
16          coaching documentation forms, I don't know what kind  
17          of form you're talking about. Can you describe it  
18          for me?

19          A. Yes. So this would be the form, although it would  
20          potentially have been created by either the Office  
21          of Police Conduct Review or internal affairs,  
22          depending on where the Complaint came from, when it  
23          was generated. So OPCR or internal affairs may  
24          populate the top part of this form, including the  
25          name of the complainant, their address, the name of

1 the employee involved, if known. There are times  
2 when the employee wouldn't be known, and so -- and  
3 then we may actually add the nature of the Complaint  
4 based on whatever the complainant may have submitted  
5 to OPCR or internal affairs.

6 Q. So as the supervisor, that form would come to you  
7 partially completed with the instruction that you  
8 should do the coaching session and fill out the rest  
9 of the form?

10 A. Correct.

11 Q. Okay. And then you said when you were in IAU, you  
12 would prepare the coaching documentation, and I  
13 think you mean you would partially fill it out  
14 before sending it to the supervisor?

15 A. Correct.

16 Q. And are there other coaching documentation forms you  
17 were referencing, or is this the only one?

18 A. This is the standard coaching documentation form.

19 Q. You can set that to the side. We might come back to  
20 it but not right now. Can you talk about to me  
21 about what you did to prepare yourself to testify  
22 today?

23 A. I have 26 years of experience with the police  
24 department. Much of my time has been within the  
25 professional standards bureau, so I'm very familiar

1 with a lot of the materials, including coaching,  
2 internal affairs investigative processes, chiefs'  
3 disciplinary process. So I have a lot of experience  
4 in that world. I did meet with the City attorneys  
5 to better understand what --

6 Q. I'll pause. I can tell your counsel is about to  
7 object, so you don't have to tell me and shouldn't  
8 tell me what you talked about with them.

9 A. Sure.

10 Q. So let me ask you another question. When did you  
11 meet with them to prepare for today?

12 A. I met with them several times over the past week or  
13 two.

14 Q. Can you estimate approximately how many total hours  
15 you spent preparing with your attorneys for today?

16 A. With my attorneys, approximately six hours. On  
17 reviewing additional documentation, perhaps another  
18 20.

19 Q. What documents do you recall reviewing?

20 A. The Complaint, the Interrogatories, some other  
21 supporting documentation.

22 Q. Had you seen any of those documents prior to, say, a  
23 month ago?

24 A. No.

25 Q. Did you talk to anyone else who has testified to

1                   this case?

2           A.    Yes.

3           Q.    Who?

4           A.    Amelia Huffman.

5           Q.    Tell me about that conversation.

6           A.    We had lunch, and she told me that she was deposed  
7                   and that it went approximately seven hours, and  
8                   that's about it.

9           Q.    Did she talk to you about any particular documents  
10                  that were put in front of her?

11          A.    Not that I recall.

12          Q.    Did she tell you any particular questions she was  
13                  asked?

14          A.    No.

15          Q.    Did she talk to you about the way the City is  
16                  defending this case or any themes it has in how it's  
17                  defending this case?

18          A.    I don't believe so.

19          Q.    Do you know what I mean by that?

20          A.    I think so.

21          Q.    Okay.

22          A.    You can expand on that, if you'd like.

23          Q.    Sure. Did she talk to you about how certain  
24                  documents explain coaching as discipline?

25          A.    I don't remember her talking about that, but that's

1 something that I already stood -- understood from  
2 the Complaint.

3 Q. Did you prepare any notes in preparation for today?

4 A. No.

5 Q. You didn't bring any notes with you?

6 A. I didn't make any notes.

7 Q. I'm going to skip several pages ahead because we had  
8 a different witness this morning. All right. So  
9 we're going to put in front of you the Complaint in  
10 this case as well as the defendant's joint answers  
11 to the Complaint, Exhibits 28 and 29.

12 (Exhibits 28 and 29 were introduced  
13 into the record.)

14 BY MS. WALKER:

15 Q. So the Complaint is Exhibit 28, and the Defendant's  
16 Answer is Exhibit 29. Had -- you testified you saw  
17 the Complaint within the last few weeks. Have you  
18 ever seen the Answer, which is Exhibit 29?

19 A. Yes.

20 Q. Okay. And so you reviewed the Answer in preparation  
21 for today?

22 A. Yes.

23 Q. But you weren't involved in drafting the Answer?

24 A. No.

25 Q. And you didn't really have any awareness of this

1 lawsuit prior to, say, a month ago?

2 A. I was aware of the lawsuit but not any detail beyond  
3 coaching.

4 Q. How were you aware of the lawsuit?

5 A. As the deputy chief of professional standards, I was  
6 aware of the ongoing litigation about coaching.

7 Q. Had you been consulted about the litigation prior to  
8 today?

9 A. No.

10 Q. So as you sit here today and before we walk through  
11 the various responses and the answers, is there  
12 anything as you reviewed that you thought was  
13 inaccurate or should be changed?

14 A. No.

15 Q. So if you could -- and we're going to have to flip  
16 to paragraph 15 in the Complaint and then paragraph  
17 15 in the Answer so we can read these things side by  
18 side. So paragraph 15 in the Complaint alleges that  
19 "The conduct of police officers is governed by the  
20 MPD Policy and Procedure Manual and applicable state  
21 and federal law." And that's actually a quote from  
22 the policy manual that was in existence at the time  
23 we filed the Complaint. That's a true statement,  
24 correct?

25 A. Correct.

1 Q. And the conduct of police officers isn't governed by  
2 anything other than the MPD Policy and Procedure  
3 Manual and applicable state and federal law,  
4 correct?

5 A. I believe there's other documents that would guide  
6 their behavior.

7 Q. Perhaps the Collective Bargaining Agreement?

8 A. Correct.

9 Q. The Collective Bargaining Agreement -- I'm happy to  
10 put this front of you if you would like to see it,  
11 but it says in the very first part that "The  
12 agreement sets forth herein complete and full  
13 agreement between the parties regarding the terms  
14 and conditions of employment, except as the same may  
15 be established by past practices which are  
16 determined to be binding by an arbitrator and not  
17 included in this contract." Are you generally  
18 familiar with the Collective Bargaining Agreement  
19 and that language?

20 A. Yes.

21 Q. So you understand that there's no side agreements or  
22 oral agreements or unspoken agreements? The  
23 Collective Bargaining Agreement is what governs the  
24 relationship between the Federation and the City,  
25 correct?

1 A. Yes.

2 MR. ENSLIN: Object to the form. Make  
3 sure you --

4 THE WITNESS: Sorry.

5 BY MS. WALKER:

6 Q. And fair to say the Minneapolis Police Department  
7 doesn't have unilateral discretion over the  
8 governance of police officer misconduct?

9 A. Can you please repeat the question?

10 Q. The Minneapolis Police Department doesn't have  
11 unilateral discretion over governance of police  
12 officer conduct? I can clarify what I mean, which  
13 is, it would be bound by the contract, by the policy  
14 manual, and by state law?

15 MR. ENSLIN: Object to the form, calls  
16 for a legal conclusion.

17 BY MS. WALKER:

18 Q. Do you agree?

19 A. I'm not sure I completely understand the question.

20 Q. I can move on. We'll come back to it. So now if  
21 you could flip to the -- you don't have to flip, but  
22 the next paragraph of the Complaint and Answer,  
23 question 15. I'll just let you read it to yourself,  
24 as well as the answer.

25 A. Okay.

1 Q. So as you can see, the City stated that "The Policy  
2 and Procedure Manual provision speaks for itself and  
3 deny the allegations in paragraph 16 of the  
4 Complaint to the extent they are inconsistent with  
5 the cited provisions." Did I read that correctly,  
6 and do you understand that's the denial?

7 A. Yes.

8 Q. Okay. So I wanted to understand if there is  
9 anything that's inconsistent from the view of the  
10 City. So let me ask you this question: The  
11 sentence in the Complaint, "The imposition of  
12 discipline for a sustained violation of the MPD Code  
13 of Conduct was mandatory." Again, this is a  
14 reference to the pre-January 2021 policy manual.  
15 Pre-January 2021, was that an accurate statement?

16 A. It's stating that discipline is mandatory, and I --  
17 I'm not sure that that can -- that this policy can  
18 force the chief of police to make a disciplinary  
19 decision for a violation of the Code of Conduct.

20 Q. I just want to understand what the policy manual  
21 said and whether you agree this is an accurate  
22 interpretation of the policy manual. So let me  
23 point you -- if you flip further into the Complaint,  
24 there's a series of exhibits, and if you could look  
25 at Exhibit 5.

1 (Exhibit 5 was introduced into the  
2 record.)

3 MR. ENSLIN: Do you have a page?

4 MS. WALKER: You can look for the slip  
5 sheet. That's the best way to do it.

6 BY MS. WALKER:

7 Q. Okay. And then if you could flip to Section  
8 5-101.02. It's page -- well, that's not going to  
9 help you. You just have to look at the section  
10 number. All right. So the first paragraph under  
11 that section says, "Any member of the department who  
12 violates the Code of Conduct is subject to  
13 discipline. Discipline may range from a written  
14 reprimand to termination." And then this is the key  
15 sentence I want to ask you about. "Discipline shall  
16 be imposed following a sustained violation." Did I  
17 read all that correctly?

18 A. Yes.

19 Q. And so my question for you is, isn't it true that  
20 under this version of the policy manual, discipline  
21 for a sustained violation of the Code of Conduct was  
22 mandatory?

23 A. I stand by the statement that despite what's in the  
24 policy, the policy cannot force the chief to sustain  
25 discipline on this policy.

1 Q. So is your testimony that the policy does not  
2 reflect reality?

3 A. It appears so.

4 Q. And is that fairly common within the Minneapolis  
5 Police Department that policies don't reflect  
6 reality or actual practice?

7 A. It's not common.

8 Q. But it's true in this case?

9 A. There are times that policy is inconsistent with  
10 either state law or changes in the Collective  
11 Bargaining Agreement, and policies have to be  
12 updated from time to time.

13 Q. And sometimes policies just don't reflect practice;  
14 is that true?

15 A. That is possible -- that is true, yes.

16 Q. And so we can't really rely on any policy language  
17 as reflecting what actually happens within the  
18 Minneapolis Police Department, correct?

19 A. No.

20 MR. ENSLIN: Object to the form.

21 BY MS. WALKER:

22 Q. You agree with me?

23 A. I do not.

24 Q. Well, we can't rely on it in this instance?

25 A. We can generally rely on the policy.

1 Q. But not always?

2 A. There are times like here where we cannot.

3 Q. How are we supposed to know when a policy is  
4 accurate and when it's not?

5 A. Policy is generally accurate. This is an example of  
6 where it wasn't.

7 Q. I'm going to hand you what we've previously marked  
8 as Exhibit 67, and if you could flip to the third  
9 page of Exhibit 67, which is a copy of the  
10 Minneapolis Police Department Policy and Procedure  
11 Manual.

12 (Exhibit 67 was introduced into the  
13 record.)

14 BY MS. WALKER:

15 Q. If you could flip to the third page. You'll see  
16 that there's Section 1-202, and the second line  
17 says, "The use of the verb 'shall' or 'will' means  
18 that the specified course of action is mandatory."  
19 Did I read that correctly?

20 A. Yes.

21 Q. And you agree that that is the definition that has  
22 long been used by the Minneapolis Police Department?

23 A. Yes.

24 Q. So at least according to the policy manual we were  
25 just looking at, discipline was mandatory, and your

1 testimony is that's not what actually happened?

2 MR. ENSLIN: Object to the form, object  
3 to the extent it misstates what he said.

4 BY MS. WALKER:

5 Q. You can answer.

6 A. Despite what's written in this policy, the chief is  
7 not compelled to issue discipline for a violation as  
8 described here.

9 Q. But you agree with me that the policy mandates  
10 discipline even though the chief -- let me ask the  
11 first part. Do you agree with me that the policy  
12 mandates discipline?

13 MR. ENSLIN: Object to the form, asked  
14 and answered.

15 THE WITNESS: The policy can't force  
16 the chief to make a disciplinary decision.

17 BY MS. WALKER:

18 Q. The chief can do whatever he wants?

19 A. Correct.

20 Q. Why would the City adopt a policy that doesn't  
21 reflect what the chief can actually do?

22 A. I don't know who wrote the policy or when or what  
23 their understanding was of what the chief can be and  
24 cannot be forced to do, so I can't really answer  
25 that question.

1 Q. Who would know?

2 A. The current policy writer is Dan Boody. He does  
3 have the history of policy revisions. Whether that  
4 shows who wrote this current -- or the policy as  
5 displayed here, I don't know.

6 Q. So I asked this a minute ago, but I think you -- you  
7 didn't answer it. How do we know if a policy  
8 reflects what's actually happening?

9 A. We should assume that it does until we identify  
10 discrepancies.

11 Q. Why should we assume that?

12 A. Because in almost all cases, it does.

13 Q. Okay. You think this is rare that a policy doesn't  
14 reflect what's actually happening?

15 A. I think it's very rare.

16 Q. Is there any other basis for your testimony that we  
17 should assume that the policy reflects reality,  
18 other than it usually does?

19 A. I'm not sure how to answer that question.

20 Q. You're not sure how to answer it?

21 A. Yes.

22 Q. Let me ask it this way: When looking at a statement  
23 by the City, whether it's a policy or something a  
24 official says in a public meeting or a public  
25 hearing, is there any indication from the policy or

1 the statement itself that it's accurate?

2 A. I think we would generally assume that it is  
3 accurate.

4 Q. I understand that's your testimony that we should  
5 assume until proven otherwise, but is there any  
6 indication on the face of the document that what the  
7 City is saying is accurate? Other than the  
8 assumption, is there anything else you can point me  
9 to that would indicate that what the City says is  
10 accurate?

11 A. No.

12 Q. So I'm going to hand you what we previously marked  
13 as Exhibit 30A.

14 (Exhibit 30A was introduced into the  
15 record.)

16 BY MS. WALKER:

17 Q. And these are the Defendant's Responses to  
18 Plaintiff's Request for Admission, and it sounds  
19 like you reviewed these at some point prior to  
20 today?

21 A. Yes.

22 Q. And could you flip to page 3 and look at Request for  
23 Admission Number 4? We asked the City to admit that  
24 prior to December 31st, 2020, the policy manual  
25 required discipline for a sustained violation of the

1 policy manual. And I'll represent to you that that  
2 was the policy we just looked at, and the City  
3 denied this. Can you agree with me that it's one  
4 thing to ask what the policy manual says, and it's  
5 another thing to ask if the policy manual is being  
6 followed. Those are two different lines of  
7 questioning. Do you understand the difference?

8 A. Yes.

9 Q. I want to focus on the first one. I want to ask you  
10 what the policy manual said. And my question is,  
11 isn't it true the policy manual we just looked at  
12 required discipline for a sustained violation of the  
13 policy manual?

14 MR. ENSLIN: Object to the form, asked  
15 and answered.

16 THE WITNESS: Can you ask the question  
17 again?

18 BY MS. WALKER:

19 Q. Isn't it true that the policy manual we just looked  
20 at required discipline for a sustained violation of  
21 the policy manual?

22 A. That is what the policy said.

23 Q. Okay. And then your testimony is that's not what  
24 was actually happening?

25 A. I think my testimony was that's not what can force

1 the chief -- the chief's hand. The policy can't  
2 force the chief to make a disciplinary decision.

3 Q. So the policy manual is unenforceable?

4 MR. ENSLIN: Object to the form, calls  
5 for a legal conclusion.

6 BY MS. WALKER:

7 Q. Is that your testimony?

8 A. Can you ask the question again?

9 Q. Is the policy manual unenforceable?

10 A. Are you asking about the entire policy manual or  
11 this specific section of the policy manual?

12 Q. Both.

13 A. Policy manual is enforceable. This particular  
14 section is not.

15 Q. It's possible other sections are not enforceable  
16 either?

17 A. It's possible.

18 Q. Any come to mind?

19 A. No.

20 Q. And in fact, even though the policy manual mandated  
21 discipline, it is true that often, policy violations  
22 went undisciplined during this time period; is that  
23 your testimony?

24 MR. ENSLIN: Object to the form.

25 THE WITNESS: That is not my testimony.

1 BY MS. WALKER:

2 Q. Do you know if policy violations went undisciplined  
3 under the policy manual we just reviewed?

4 MR. ENSLIN: Object to the form.

5 THE WITNESS: I'm not aware of what was  
6 disciplined and what wasn't during this  
7 entire time period.

8 BY MS. WALKER:

9 Q. All right. I can show you some examples in a  
10 minute. We're going to hand you what's been marked  
11 as Exhibit 59.

12 (Exhibit 59 was introduced into the  
13 record.)

14 BY MS. WALKER:

15 Q. This is a letter that an assistant City attorney  
16 authored in September of 2020, an attorney named  
17 Trina Chernos. Have you ever seen Exhibit 59 before  
18 today?

19 A. Yes.

20 Q. Did you review it in preparation for today?

21 A. Yes.

22 Q. Is there anything in it that you would like to  
23 correct?

24 A. No.

25 Q. You -- the City stands by everything Ms. Chernos

1           said in this letter?

2           A.    Yes.

3           Q.    Can you flip to page 5 of the letter?  And again,  
4                this was in September of 2020.  And so she is  
5                referencing in this letter the policy manual we just  
6                looked at that said, "Discipline shall be imposed."  
7                So you can flip back to that language if you need to  
8                see it.  And in the paragraph on page 5 that begins  
9                with Section 5-101.02, do you see where I am?

10          A.    Yes.

11          Q.    She says that "This manual supports the conclusion  
12                that coaching is not discipline."  And if you skip a  
13                sentence ahead, she starts talking about the  
14                reference that, "All violations will result in  
15                discipline."  And she says, "That's, apparently,  
16                being construed as a requirement that every single  
17                violation, including low-level violations, must  
18                result in discipline."  And then she says, "To avoid  
19                confusion, this sentence could be clarified to read  
20                that violations above an A-level could result in  
21                discipline."  Do you agree with how she would  
22                clarify the policy manual to reflect reality?

23          A.    I think the words "will result in discipline" is  
24                difficult for this particular memo because the chief  
25                still cannot be required to impose discipline.

1 Q. So you don't stand by everything Ms. Chernos says in  
2 this letter?

3 MR. ENSLIN: Object to the form.

4 THE WITNESS: No.

5 BY MS. WALKER:

6 Q. So you reject what she's saying here?

7 A. Yes.

8 Q. So the policy manual's not accurate, and what  
9 Ms. Chernos is saying in a letter to the PCOC is not  
10 accurate?

11 MR. ENSLIN: Object to the form.

12 BY MS. WALKER:

13 Q. Is that correct?

14 A. It looks like it could have been worded differently.

15 Q. It's not accurate?

16 A. Correct.

17 Q. Okay. So this is two instances of very public  
18 statements by the City that are inaccurate, correct?

19 A. It appears so.

20 Q. So should we still assume that everything the City  
21 says is accurate?

22 A. We should generally assume that what the City says  
23 is accurate.

24 Q. I'm going to keep a tally of how many examples. You  
25 tell me when we get to the right amount that we

1                   should stop making that assumption.

2                   And so even under Ms. Chernos's narrowed  
3                   interpretation, you're saying the police department  
4                   was not in compliance with what the policy manual  
5                   said at the time?

6                   MR. ENSLIN: Object to the form.

7                   THE WITNESS: Can you repeat the  
8                   question?

9                   (The requested testimony was read.)

10                  MR. ENSLIN: Object to the form, calls  
11                  for speculation.

12                  BY MS. WALKER:

13                  Q. You can answer.

14                  A. The question is whether the police department was in  
15                  compliance with the policy, and my testimony is that  
16                  the policy can't require the chief to impose  
17                  discipline.

18                  Q. Policy should reflect practice. Practice should not  
19                  reflect policy. Is that your position?

20                  MR. ENSLIN: Object to the form.

21                  THE WITNESS: Policy and practice  
22                  should be the same.

23                  BY MS. WALKER:

24                  Q. And my question was, even under Ms. Chernos'  
25                  narrowed interpretation of this policy, they

1                   weren't?

2                   MR. ENSLIN: Object to the form, object  
3                   to the extent it misstates the entirety of  
4                   the document.

5                   BY MS. WALKER:

6                   Q. You can answer.

7                   A. I'm not sure how to answer that question.

8                   Q. She's saying that anything above an A-level, the  
9                   policy requires to be disciplined, and I'm asking  
10                  you if that was happening.

11                  A. That was not happening.

12                  Q. So even under her narrowed interpretation of the  
13                  policy, the policy was not being followed, correct?

14                  MR. ENSLIN: Object to the form.  
15                  Object to the extent it misstates prior  
16                  testimony.

17                  MS. WALKER: Let me pause you for just  
18                  a minute. None of my questions are  
19                  misstating prior testimony.

20                  MR. ENSLIN: They are --

21                  MS. WALKER: It's a question.

22                  MR. ENSLIN: They are misstating prior  
23                  testimony. If you testify before you say  
24                  it, that's not a fair question. It's also  
25                  asked and answered the same question like

1 ten times.

2 MS. WALKER: Can you repeat my question  
3 to the witness, please?

4 (The requested testimony was read.)

5 THE WITNESS: The policy cannot require  
6 the chief to impose discipline.

7 BY MS. WALKER:

8 Q. Is that a "yes" or a "no" to my question?

9 MR. ENSLIN: Objection, asked and  
10 answered.

11 BY MS. WALKER:

12 Q. You can answer.

13 A. The policy was not being followed.

14 Q. Thank you. What's the basis for your testimony that  
15 the chief doesn't have to follow City policy?

16 A. It's not that he doesn't have to follow City policy.  
17 It's that state law, I believe, gives the chief the  
18 sole authority in decision-making about discipline.

19 Q. Which state law?

20 A. I don't know it off the top of my head.

21 Q. Is that the only basis you have for your testimony  
22 that the chief doesn't have to follow City policy?

23 A. In terms -- I did not say that.

24 MR. ENSLIN: Object to the -- object to  
25 the form.

1 BY MS. WALKER:

2 Q. Other than state law, do you have any other basis  
3 for your testimony?

4 A. As far as the chief imposing discipline?

5 Q. As far as the chief not having to follow what the  
6 policy manual says?

7 A. The chief --

8 MR. ENSLIN: Object to the form.

9 THE WITNESS: The chief does have to  
10 follow what the policy manual says, except  
11 in this case, as one example, because it  
12 can't require him to impose discipline.

13 BY MS. WALKER:

14 Q. And you said because of state law?

15 A. I believe it's state law.

16 Q. Okay. Any other basis?

17 A. No.

18 Q. What's a documented oral correction?

19 A. I don't know.

20 Q. You've never heard that term?

21 A. I don't recall that term ever being used in a  
22 discipline or other type of case.

23 Q. I'll represent to you that it's a term that's used  
24 in Minneapolis Police Department documents. Doesn't  
25 ring a bell?

1 A. Not as an outcome that I've seen, that I can recall.

2 Q. What's it sound like to you?

3 MR. ENSLIN: Object to the form, calls  
4 for speculation.

5 BY MS. WALKER:

6 Q. I mean, just given your 26 years in the police  
7 department, what's a documented oral correction  
8 sound like? Is there -- is there a way you would  
9 characterize it?

10 MR. ENSLIN: Object to the form, calls  
11 for speculation, outside the scope of the  
12 30.02(f).

13 BY MS. WALKER:

14 Q. You can answer.

15 A. It's difficult to say what that would be, but it's  
16 not something that I've ever used or that I've heard  
17 of anyone else using.

18 Q. Is a warning a documented oral correction?

19 A. I don't know what a warning is.

20 Q. You don't know what a disciplinary warning is under  
21 the Civil Service Rules?

22 A. I've seen it listed in the Civil Service Rules. I  
23 don't know what it is.

24 Q. Is coaching a documented oral correction? You know  
25 what coaching is?

1 A. I know what coaching is. I would not call coaching  
2 a documented oral correction.

3 Q. Why not?

4 A. Because we call it coaching.

5 Q. Is it a correction?

6 A. It's a performance tool.

7 Q. Do you disagree that coaching is intended to be  
8 corrective?

9 A. It is intended to be corrective.

10 Q. So coaching is a correction?

11 A. We're making the assumption that there's behavior  
12 that needs to be corrected, and that's not always  
13 the case in coaching.

14 Q. Is coaching ever used to commend an officer?

15 A. There could be commending --

16 Q. Not "could be." Has it ever been?

17 MR. ENSLIN: Object to the form, also  
18 object to you interrupting him when he's  
19 speaking. Please let him finish. He's  
20 going to let you finish your questions.

21 THE WITNESS: I'm unable to answer that  
22 question as I've not reviewed every coaching  
23 document that's ever been submitted at the  
24 police department.

25 BY MS. WALKER:

1 Q. You don't have any evidence as you sit here today  
2 that coaching has ever been used for positive  
3 behavior?

4 A. I'm saying that within a coaching document, a  
5 supervisor is able to describe their conversation  
6 with an employee, which could include indicating  
7 that they've done positive things and, therefore,  
8 commending what -- what they've done. I'm just  
9 saying it's within the realm of possibility.

10 Q. I'm going to move to strike. And please listen to  
11 my questions carefully. I asked you whether you  
12 have any evidence that coaching has ever been used  
13 to commend positive behavior.

14 MR. ENSLIN: Object to the form, calls  
15 for a legal conclusion.

16 THE WITNESS: No.

17 BY MS. WALKER:

18 Q. So coaching is a correction, correct?

19 MR. ENSLIN: Objection, asked and  
20 answered.

21 THE WITNESS: Coaching can be used as a  
22 correction but isn't always.

23 BY MS. WALKER:

24 Q. Okay. And coaching is oral, correct?

25 A. No.

1 Q. Coaching is not an oral process?

2 A. Parts of the process are oral. It's not exclusively  
3 oral.

4 Q. Because it's documented in that form we just looked  
5 at, correct?

6 A. Yes.

7 Q. Okay. So it's an oral sit-down meeting with the  
8 supervisor where the issue is discussed, and then  
9 it's documented for accountability after the fact,  
10 correct?

11 MR. ENSLIN: Object to the form.

12 THE WITNESS: Yes.

13 BY MS. WALKER:

14 Q. Are you aware that Ms. Huffman testified it doesn't  
15 have to be documented?

16 A. Your question is am I aware?

17 Q. Did you know that?

18 A. I don't recall that that's the case.

19 Q. If she said it doesn't have to be documented, would  
20 you disagree with her?

21 MR. ENSLIN: Object to the form.

22 THE WITNESS: Coaching can take many  
23 forms. If a coaching document were  
24 presented to a supervisor, it would have to  
25 be documented on the form. If a supervisor

1 is doing coaching, which is general  
2 performance management, it may not be  
3 documented on this form or any other.

4 BY MS. WALKER:

5 Q. So coaching can be oral? That's your testimony?

6 A. Coaching, as a concept, can be oral.

7 Q. Okay. And coaching can be documented?

8 A. Coaching, as a concept, can be documented.

9 Q. And coaching is a correction?

10 A. Coaching can be a correction.

11 Q. So at least sometimes, coaching can be a documented  
12 oral correction, correct?

13 MR. ENSLIN: Object to the form.

14 BY MS. WALKER:

15 Q. You can answer.

16 A. The City doesn't use the term "documented oral  
17 correction," to my knowledge, so I think the answer  
18 is no.

19 Q. Just because the City doesn't use the term, you're  
20 not willing, as you sit here today, to define it as  
21 a documented oral correction?

22 A. I am not.

23 Q. Well, the City does use the term. Let's go back to  
24 Exhibit 5 of the Complaint. And I'm going to point  
25 you to Section 1-102.2.

1 MR. ENSLIN: Say that one more time.

2 MS. WALKER: 1-102.2 -- sorry, .01.

3 BY MS. WALKER:

4 Q. So under 1-102.1 at the very bottom of the page, you  
5 see there's a reference to a documented oral  
6 correction? Do you see that?

7 MR. ENSLIN: He's not there yet.

8 THE WITNESS: I have to make sure that  
9 I'm in the right exhibit because I don't see  
10 "Documented oral correction."

11 BY MS. WALKER:

12 Q. So I'm in Exhibit 28 of Exhibit 5 to the Complaint.

13 A. I see it.

14 Q. Okay. Is coaching a documented oral correction?

15 A. It does appear that based on the policy manual, a  
16 document oral correction could be part of coaching.

17 Q. The next line under Category B talks about a  
18 documented oral reprimand. How is that different  
19 than a documented oral correction?

20 A. It appears that one would be corrective and one  
21 would be a reprimand.

22 Q. What's the difference?

23 A. Well, one is punishment, and one is not.

24 Q. Any other difference?

25 A. No.

1 Q. Which one's punishment?

2 A. The Category B, oral reprimand.

3 Q. Why is that punishment?

4 A. Because the City generally determines Category B  
5 violations that are sustained to be discipline or  
6 punishment.

7 Q. Oral corrections and oral reprimand have never been  
8 grievable, correct?

9 MR. ENSLIN: Object to the form.

10 THE WITNESS: Did you say oral  
11 corrections and oral reprimands have not  
12 been grievable?

13 BY MS. WALKER:

14 Q. Neither one has ever been grievable, correct?

15 A. An oral correction would likely not be grievable  
16 because it's Category A. An oral reprimand, I'm not  
17 aware of those occurring. An oral reprimand did not  
18 occur at any point when I was in internal affairs or  
19 the deputy chief of professional standards, so if it  
20 were a sustained Category B oral reprimand, it would  
21 be grievable.

22 Q. Because it's Category B?

23 A. Yes.

24 Q. And anything Category B is discipline?

25 A. Generally.

1 Q. What do you mean "generally"?

2 A. A sustained Category B violation is generally  
3 understood to be discipline.

4 Q. Regardless of the consequence imposed?

5 A. Can you repeat the last part?

6 Q. Regardless of the consequence imposed?

7 A. No. If the consequence imposed is effectively an  
8 A-level violation, then it wouldn't be discipline as  
9 in, if it were --

10 Q. Go ahead.

11 A. -- if -- if the discipline imposed or the outcome is  
12 nondisciplinary, then it wouldn't be discipline.

13 Q. Anything further on that?

14 A. No.

15 Q. So then a disciplinary warning, as described by the  
16 Civil Service Rules, is that a documented oral  
17 correction, a documented oral reprimand, or  
18 something different entirely?

19 MR. ENSLIN: Object to form, calls for  
20 speculation.

21 THE WITNESS: I'm not sure what it is  
22 because we've never used it, that I'm aware  
23 of.

24 BY MS. WALKER:

25 Q. Never?

1 A. I'm not aware of a warning actually being imposed.

2 Q. All right. We're going to hand you Exhibit 96.

3 (Exhibit 96 was introduced into the  
4 record.)

5 BY MS. WALKER:

6 Q. This is an email from, I believe, Chief Dolan at the  
7 time in 2011 to a woman who's named Cheryl Miller,  
8 now named Cheryl Schmidt, and now president of  
9 Minneapolis Police Federation. Do I have all that  
10 right?

11 A. Yes.

12 Q. So Chief Dolan here gave someone an A-level  
13 violation with a warning letter in 2011; is that  
14 right?

15 MR. ENSLIN: Object to the form,  
16 foundation.

17 BY MS. WALKER:

18 Q. That's what this email says, right?

19 A. Yes.

20 Q. Okay. And you had been on the force for a good ten  
21 years at this point?

22 A. Yes.

23 Q. So the Minneapolis Police Department does issue  
24 warnings, correct?

25 MR. ENSLIN: Object to the form.

1 THE WITNESS: I don't know what the  
2 intent of Chief Dolan was with this  
3 language, but other than having seen this  
4 memo before, I'm not sure what his intention  
5 was or what the ultimate outcome of this  
6 case was.

7 BY MS. WALKER:

8 Q. And I just want to clarify at the outset. I don't  
9 want -- I'm not going to ask you to speculate about  
10 anyone's intention today. I'm going to ask you  
11 about what is the plain meaning of the document in  
12 front of you. So it will save us both a lot of time  
13 if we don't speculate about other people's states of  
14 mind.

15 So at least in 2011, it looks from this  
16 document that he issued a warning letter for an  
17 A-level violation, correct?

18 A. I don't know what his intention was.

19 Q. I'm not asking that. I'm asking, what do you take  
20 from this document? Did he or did he not issue a  
21 warning for an A-level violation in January of 2011?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: I don't know what the  
24 ultimate outcome of this case was.

25 BY MS. WALKER:

1 Q. Okay. But you don't have any reason to dispute that  
2 a warning was issued to these two officers --

3 MR. ENSLIN: Object to the form.

4 BY MS. WALKER:

5 Q. -- back in 2011? Do you have any evidence to the  
6 contrary?

7 A. I don't have --

8 MR. ENSLIN: Object to the form.

9 THE WITNESS: I don't have any evidence  
10 either way.

11 BY MS. WALKER:

12 Q. Okay. And so now that you know that warnings are on  
13 the table, would you call that a documented oral  
14 correction or a documented oral reprimand?

15 MR. ENSLIN: Object to the form.

16 THE WITNESS: This memo is not enough  
17 evidence for me to answer -- it's not enough  
18 information for me to answer the question.

19 BY MS. WALKER:

20 Q. So you're refusing to try to categorize a warning?

21 MR. ENSLIN: Object to the form, asked  
22 and answered.

23 THE WITNESS: I don't know what a  
24 warning is because I have not seen a final  
25 disposition listing a warning.

1 BY MS. WALKER:

2 Q. Let's look at Exhibit 50.

3 (Exhibit 50 was introduced into the  
4 record.)

5 BY MS. WALKER:

6 Q. As you start to look at this, I'll represent to you  
7 that it's a copy of Rule 11 of the Civil Service  
8 Rules. And I'm going to be asking you about 11.04,  
9 which are the types of disciplinary actions. And  
10 I'd specifically ask you to carefully read the  
11 definition of a warning. Does that definition help  
12 you categorize it as a documented oral correction or  
13 a documented oral reprimand?

14 MR. ENSLIN: Object to the form.

15 THE WITNESS: It does not.

16 BY MS. WALKER:

17 Q. What did you do to ascertain whether the Minneapolis  
18 Police Department has ever issued a warning in  
19 preparation for today?

20 A. I've looked at the Discipline Process Manual. I've  
21 looked at the Discipline Matrix. I've looked at the  
22 Collective Bargaining Agreement. And it doesn't  
23 appear to me that we've ever used warnings as an  
24 outcome that is issued by the chief.

25 Q. How far back do those documents go?

1           A.    During my time in internal affairs from 2007 to 2009  
2                moving forward, I've never seen warning listed as an  
3                outcome.

4           Q.    Are you aware that that's around the time that  
5                coaching became a popular corrective tool within the  
6                Minneapolis Police Department?

7                       MR. ENSLIN:   Object to the form.

8                       THE WITNESS:   I think coaching has been  
9                       a tool that's gone -- that predates that to  
10                      include my entire career, but that is about  
11                      the time that it became -- called coaching.

12           BY MS. WALKER:

13           Q.    It might be why warnings stopped around the same  
14                time?

15                       MR. ENSLIN:   Object to the form.

16           BY MS. WALKER:

17           Q.    Could be?

18           A.    I don't believe so.

19           Q.    Could be?

20           A.    I don't believe so.

21           Q.    Why not?

22           A.    Because I've never seen it in any case that I've  
23                read predating my time in the internal affairs.

24           Q.    You're aware that the City's position is that the  
25                chief does have discretion to issue a warning if he

1 wants to? Did you know that?

2 A. Yes.

3 Q. And you're aware that the Collective Bargaining  
4 Agreement contemplates the use of warnings, correct?

5 MR. ENSLIN: Object to the form, calls  
6 for a legal conclusion.

7 THE WITNESS: It addresses it in a  
8 different part of the Collective Bargaining  
9 Agreement than discipline.

10 BY MS. WALKER:

11 Q. So is that a "yes" or a "no"?

12 MR. ENSLIN: Object to the form, asked  
13 and answered.

14 THE WITNESS: I don't believe it  
15 contemplates it for the purpose of  
16 discipline.

17 BY MS. WALKER:

18 Q. Why not?

19 A. Because it's not listed in the section of  
20 discipline.

21 Q. What's the section on discipline?

22 A. Section -- Article 11.

23 Q. Isn't that just the section on what's grievable?

24 A. Yes.

25 Q. There's no comprehensive list of the disciplinary

1 options available to the chief of police in the  
2 Collective Bargaining Agreement; isn't that true?

3 MR. ENSLIN: Object to the form.

4 THE WITNESS: I don't believe it's  
5 true. It appears to me that it lists the  
6 acceptable options for discipline.

7 BY MS. WALKER:

8 Q. In the section on what's grievable?

9 A. Yes.

10 Q. So is this the third instance of where the plain  
11 meaning of the document should be discounted?

12 MR. ENSLIN: Object to the form.

13 THE WITNESS: Can you ask the question  
14 again?

15 BY MS. WALKER:

16 Q. Is this the third instance where the plain meaning  
17 of a document should be discounted?

18 MR. ENSLIN: Object to the form.

19 THE WITNESS: I don't know how to  
20 answer that question.

21 BY MS. WALKER:

22 Q. You're unwilling to answer it, or you don't know  
23 how?

24 A. I don't know how.

25 Q. Do you want to see the Collective Bargaining

1 Agreement? Do you think that would help?

2 A. I don't.

3 Q. You don't want to see it?

4 A. I am familiar with that section, so I don't know  
5 that it's necessary, but can you restate the  
6 question differently?

7 Q. I think I got the testimony I needed. We're going  
8 to hand you what's been marked as Exhibit 35.

9 (Exhibit 35 was introduced into the  
10 record.)

11 BY MS. WALKER:

12 Q. So this is a transcript from a May 2021 meeting of  
13 the Police Conduct Oversight Commission. Have you  
14 ever seen this before?

15 A. I don't believe so.

16 Q. You didn't review it in preparation for today?

17 A. I don't recall seeing it.

18 Q. Did you know that around this time, the PCOC became  
19 very interested in coaching?

20 A. Yes.

21 Q. What was your involvement in -- if any, in  
22 addressing questions the PCOC had about coaching?

23 MR. ENSLIN: Object to the form.

24 THE WITNESS: I didn't have any  
25 involvement.

1 BY MS. WALKER:

2 Q. A number of City officials, including  
3 representatives from the City Attorney's Office,  
4 spoke at this meeting. I can give you a list, but  
5 it included Amelia Huffman, Trina Chernos, Jim  
6 Rowader, Chief Arradondo, Patience Ferguson. Do you  
7 stand by what the City officials said at this  
8 meeting?

9 A. I don't know what all the City officials said at  
10 this meeting.

11 Q. Did you know that that was a noticed topic for this  
12 deposition?

13 A. Yes.

14 Q. Are you aware of the Court excluding the City from  
15 producing a witness on all of the noticed topics?

16 A. No.

17 MR. ENSLIN: Object to the form. This  
18 is argumentative. It's between you and I.  
19 We can discuss that. If you want him to  
20 review the transcript, he can sit here and  
21 review the transcript.

22 MS. WALKER: Not on the clock, Mark.

23 MR. ENSLIN: That's how it works. So  
24 if you want him to agree or disagree with  
25 the things in the transcript, he's happy to

1 sit here and do it. You cannot dictate that  
2 he spend however many hours reviewing a  
3 transcript. So if you want to show him  
4 stuff, you can show him stuff. He does not  
5 have an obligation to review the entire  
6 transcript beforehand.

7 MS. WALKER: Let me make my record, and  
8 then you can answer the question as you see  
9 fit.

10 We noticed a topic on various PCOC  
11 meetings, including this one. The defendant  
12 did not move for a protective order. Topic  
13 16 remains on the table. It was very clear  
14 that this transcript would be part of our  
15 questioning. The testimony is the witness  
16 has never seen this document before, and  
17 correct me if I'm wrong, is not prepared to  
18 testify as to the what -- whether the City  
19 stands behind things that high-ranking city  
20 officials said. Is that an accurate  
21 statement of the record?

22 MR. ENSLIN: No, it is not an accurate  
23 statement of the record. It is incomplete.  
24 You noticed your topics. We lodged  
25 objections in October. We have never

1                   withdrawn those objections. One of the  
2                   topics we objected to is this particular  
3                   topic. Having said that and without  
4                   waiving -- or in any way waiving our  
5                   objections, you can ask him about statements  
6                   in this document. He still does not have an  
7                   obligation to read the entire document so  
8                   that you can ask him whether the City stands  
9                   by every statement in this  
10                  however-many-pages-long document.

11                  MS. WALKER: I believe he does have an  
12                  obligation to prepare for this deposition,  
13                  or at least some witness for the City has an  
14                  obligation.

15                  BY MS. WALKER:

16                  Q. I take it you are not prepared today to testify as  
17                  to whether the City stands behind the statement of  
18                  high-ranking City officials based on what they said  
19                  at this meeting? You're not prepared; is that  
20                  correct?

21                  MR. ENSLIN: Object to the form.

22                  Again, that's a question for us. We have --

23                  MS. WALKER: I'm making my record,  
24                  Mark.

25                  MR. ENSLIN: Don't interrupt me.

1 MS. WALKER: I'm asking him a direct  
2 question.

3 MR. ENSLIN: Don't interrupt me. I  
4 don't interrupt you. Please don't interrupt  
5 me until I'm finished. So --

6 MS. WALKER: Go ahead.

7 MR. ENSLIN: -- you made your record.  
8 And we have said you may ask him about this  
9 document, but he needs an opportunity to  
10 review it. He did not have an obligation  
11 before the deposition to review the entire  
12 document.

13 MS. WALKER: Done?

14 MR. ENSLIN: Yes.

15 BY MS. WALKER:

16 Q. Are you prepared, as you sit here today, to testify  
17 on behalf of the City that it stands behind the  
18 statements that City officials made at this meeting?

19 A. I'm able to answer any questions that you have about  
20 this meeting.

21 Q. That's my question. Are you prepared?

22 MR. ENSLIN: Objection, asked and  
23 answered.

24 BY MS. WALKER:

25 Q. Are you prepared, as you sit here today, to testify

1 as to whether the City stands behind statements by  
2 ranking City officials made at this meeting?

3 A. If you ask questions, I will attempt to answer them.

4 Q. No. I'm asking a general question. Are you  
5 prepared, based on a review of this, to answer that  
6 general question?

7 A. I have not reviewed this document.

8 Q. Does the City stand behind the statements that City  
9 officials made at this meeting? Yes or no?

10 MR. ENSLIN: Object to the form,  
11 improper question. He hasn't been given  
12 time to review the transcript.

13 BY MS. WALKER:

14 Q. You can also say, "I haven't prepared to answer that  
15 question."

16 MR. ENSLIN: You do not need to direct  
17 him how to answer. I have lodged my  
18 objection.

19 BY MS. WALKER:

20 Q. So my question is -- answer it as best you see fit  
21 without listening to the coaching by your attorney.

22 MR. ENSLIN: Objection to the use of  
23 the word "coaching" also.

24 BY MS. WALKER:

25 Q. Does the City stand behind statements that its

1 high-ranking officials made at this meeting?

2 A. I'm not able to answer that question.

3 Q. Why aren't you able to answer it?

4 A. Because I have not reviewed this document.

5 Q. You've never seen it until today, correct?

6 A. I don't recall seeing it prior to today.

7 MS. WALKER: So we're going to leave  
8 the deposition open to address Topic 16.

9 MR. ENSLIN: I'll object to that, and  
10 we do not agree to that. So you may leave  
11 it open, and we will disagree.

12 BY MS. WALKER:

13 Q. Go to page 33, please. Trina Chernos is speaking  
14 here. She's an assistant City attorney. Line 12  
15 says, "I want to really emphasize, and I think this  
16 is really important to understand, is there's no  
17 obligation to document coaching." Does the City  
18 stand behind that?

19 MR. ENSLIN: Object to the form.  
20 Object to the fact that you're reading one  
21 sentence and not giving context to the rest  
22 of the statement.

23 BY MS. WALKER:

24 Q. Go ahead and answer.

25 A. Because coaching is a larger concept than coaching

1           for performance, coaching generally wouldn't need to  
2           be documented. However, if a coaching document were  
3           generated, it would be documented.

4           Q.    So does the City have an obligation to document  
5           coaching or not?

6           A.    No.

7                       MR. ENSLIN: Object to the form, calls  
8           for speculation.

9           BY MS. WALKER:

10          Q.    Thank you. Let's go off the record for a minute.

11                       (A recess was had from 1:39 p.m. until  
12          2:00 p.m.)

13                       MR. ENSLIN: Just to clarify, as just  
14          occurred, we are prepared to let you ask  
15          questions about the PCOC meeting and the  
16          transcript, including if it includes  
17          specific statements within the transcript.  
18          He has not read the entire transcript and  
19          has not prepared to affirm or deny  
20          everything across all two hours, but he is  
21          willing to entertain questions, as he just  
22          did, the way to specific statements within  
23          the two-hour meeting.

24          BY MS. WALKER:

25          Q.    Okay. So I guess, just to clarify the record, let

1 me ask you a question, and then we'll move on. Do  
2 you stand by what City officials said at that  
3 meeting?

4 A. I would have --

5 MR. ENSLIN: Object to the form.

6 THE WITNESS: I would have to look at  
7 specific statements, not the meeting in its  
8 entirety.

9 BY MS. WALKER:

10 Q. Because you haven't done that yet?

11 MR. ENSLIN: Object to the form.

12 THE WITNESS: Correct.

13 BY MS. WALKER:

14 Q. Before the break, you mentioned you thought state  
15 statute required that the police have absolute  
16 discretion to discipline officers. And I think you  
17 were probably talking about the Peace Officer  
18 Discipline Procedures Act. Is that the statute you  
19 had in mind?

20 A. It could be the Peace Officer Discipline Procedures  
21 Act or POST Board rules. I apologize, I forgot --  
22 or I don't recall right now exactly where that  
23 authority lies, but I know that only the chief law  
24 enforcement officer can impose discipline on police  
25 officers.

1 Q. But you don't know what statute it is other than  
2 POST Board or possibly PODPA?

3 A. I just don't recall at this time.

4 Q. We're going to hand you what's been marked as  
5 Exhibit 30A.

6 MR. ENSLIN: 30A is already --

7 BY MS. WALKER:

8 Q. Perfect. Take a look at that. I'm going to direct  
9 you to the response to number 51. And the last  
10 sentence of that response reads, "Defendants deny  
11 that a warning is always disciplinary." Did I read  
12 that correctly?

13 A. Yes.

14 Q. So it sounds like whoever drafted these responses  
15 understood what a warning is, but your testimony  
16 here today is you don't know what a warning is?

17 MR. ENSLIN: Object to the form.

18 BY MS. WALKER:

19 Q. Do you know what a warning is?

20 A. I see "warning" referenced in the Civil Service  
21 Rules. I'm saying that we haven't used it, to my  
22 knowledge, so I don't know exactly how it would be  
23 used.

24 Q. Okay. So they deny that a warning is always  
25 disciplinary. So my question for you is, when is a

1 warning not disciplinary?

2 A. When it's not intended to be discipline.

3 Q. So discipline -- whether something is disciplinary  
4 depends on intent?

5 A. Yes.

6 Q. Can you think in your history with the police  
7 department of a nondisciplinary warning? Can you  
8 give me an example of one?

9 A. A supervisor telling an employee not to do something  
10 again or they could be disciplined would be a  
11 warning.

12 Q. Is that a disciplinary or a nondisciplinary one?

13 A. Nondisciplinary.

14 Q. What's a disciplinary one?

15 MR. ENSLIN: Objection, asked and  
16 answered.

17 THE WITNESS: I don't know what a  
18 disciplinary warning is because I'm not  
19 aware of us ever having done it.

20 BY MS. WALKER:

21 Q. You don't have any reason to dispute that the  
22 Minneapolis Civil Service Rules are what govern a  
23 warning in the Minneapolis Police Department?

24 A. I agree that they are.

25 Q. They do govern warnings within the Minneapolis

1 Police Department?

2 A. Within the City enterprise.

3 Q. Within the Minneapolis Police Department as well?

4 A. Including the police department.

5 Q. Request for Admission Number 53 asks the City to  
6 admit that the labor agreement explicitly  
7 contemplates that an officer may be disciplined for  
8 certain violations of the policy manual by receiving  
9 a warning. Why was that denied?

10 A. I believe it's because we don't use it, and so it's  
11 not clear how it would be used for -- whether the  
12 Federation would potentially grieve it because it's  
13 a new -- it would be -- it would be a new use of  
14 discipline that isn't currently being used.

15 Q. Well, the actual discovery request asks for an  
16 admission that the labor agreement explicitly  
17 contemplates an officer may be disciplined by  
18 receiving a warning. And you previously  
19 acknowledged that the Collective Bargaining  
20 Agreement in Section 30.08 does reference a warning  
21 as discipline, correct? Can you see it?

22 A. Yes.

23 Q. We're going to hand you what's been marked as  
24 Exhibit 38 and ask you to flip to Section 30.08, and  
25 specifically Section C of 30.08.

1 (Exhibit 38 was introduced into the  
2 record.)

3 BY MS. WALKER:

4 Q. Are you there?

5 A. I am.

6 Q. Okay. And it says -- talking about a positive test  
7 result. And it says, "The employee may receive a  
8 warning, a written reprimand, a suspension without  
9 pay, a demotion, or a discharge from employment  
10 depending upon the circumstances and subject to the  
11 above requirements." Did I read that part  
12 correctly?

13 A. Yes.

14 Q. The City's labor agreement, then, does  
15 specifically -- explicitly contemplate that an  
16 officer may be disciplined for certain violations of  
17 policy manual by receiving a warning?

18 MR. ENSLIN: Object to the form.

19 THE WITNESS: It appears that it's  
20 within the context of drug and alcohol  
21 testing policy, not discipline broadly.

22 BY MS. WALKER:

23 Q. That's why it said, "for certain violations."  
24 That's a true statement, right?

25 A. Yes.

1 Q. Why did the City deny it?

2 A. I believe it's because we don't routinely use it.

3 Q. Do you have any idea, or are you guessing?

4 A. I believe that it's because it's not something that  
5 we normally use. It's outside standard practice, so  
6 we don't know what would happen if we did use it.

7 Q. And I know that's your answer, but is that a guess,  
8 or do you actually know that's why the City answered  
9 it that way?

10 A. That's what I believe is the reason the City  
11 answered it that way.

12 Q. Do you know if anyone at the City actually looked at  
13 the Collective Bargaining Agreement before they  
14 answered that Request for Admission?

15 MR. ENSLIN: Object to the form,  
16 foundation, argumentative.

17 BY MS. WALKER:

18 Q. Do you know?

19 A. Yes, they did.

20 Q. You know that for sure?

21 A. I'm sure they did.

22 Q. So now we're going to go back to Exhibit 28,  
23 paragraph 33. And we alleged -- when you get there.

24 A. Which exhibit?

25 Q. Exhibit 28. Are you there?

1 A. Yes.

2 Q. "We alleged the coaching process used by the MPD is  
3 identical to a warning, which is a form of  
4 discipline under the Civil Service Commission Rules.  
5 Both involve a verbal discussion between the  
6 employee and supervisor covering the details of the  
7 problem, plans for correcting the problem, and a  
8 written memo to document the event." Did I read  
9 that that correctly?

10 A. Yes.

11 Q. And the City flatly denied that saying, "Deny the  
12 allegations in paragraph 33 of the Complaint," okay?

13 A. Yes.

14 Q. So now I'm going to hand you a new exhibit that is a  
15 discovery response. Bear with us for just a minute.  
16 All right. So this is a big exhibit, and so you're  
17 going to have to flip several pages in to a document  
18 that looks like this (indicating) and has a date at  
19 the top of May 8th, 2023. Flip halfway in. Do you  
20 mind if I help you come find it?

21 A. Not at all.

22 Q. Okay. So I'd ask you to turn to the Supplemental  
23 Answer to Interrogatory Number 2, which is on page  
24 6. And in the request, we have asked the defendants  
25 to explain in detail their denial of that paragraph

1 we just looked at in the Complaint. Are you  
2 tracking?

3 A. Yes.

4 Q. Okay. And my question for you is: -go ahead and  
5 read the answer here and read the supplemental  
6 response, and I wonder if you have anything to add.

7 A. I don't have anything to add.

8 Q. One of the things it says here is that, "Among other  
9 differences, coaching is not discipline and cannot  
10 be appealed through the grievance process under the  
11 City's labor agreement with the Police Officers  
12 Federation of Minneapolis or under the Civil Service  
13 Rules." Did I read that correctly?

14 A. I wasn't following along, but that sounds correct.

15 Q. Okay. A disciplinary warning can't be grieved  
16 either; isn't that true?

17 MR. ENSLIN: Object to the form, calls  
18 for speculation.

19 THE WITNESS: I'm not aware of having  
20 used one, but it appears to me that the  
21 Civil Service Rules refer to a warning as  
22 discipline and that would be grievable.

23 BY MS. WALKER:

24 Q. Well, not if it's oral, right?

25 MR. ENSLIN: Object to the form.

1 BY MS. WALKER:

2 Q. Oral discipline doesn't have to be grievable,  
3 correct?

4 A. Discipline would be grievable.

5 Q. Only written discipline must be grievable under  
6 state law. Did you know that?

7 A. No.

8 Q. You're not aware of that?

9 MR. ENSLIN: Object to the form.

10 BY MS. WALKER:

11 Q. Do you know one way or another whether state law  
12 requires oral discipline to be grievable?

13 A. I do not.

14 MR. ENSLIN: Object to form, calls for  
15 a legal conclusion.

16 BY MS. WALKER:

17 Q. So you don't know one way or another whether a  
18 disciplinary warning would be grievable?

19 MR. ENSLIN: Object to a form, calls  
20 for legal conclusion.

21 THE WITNESS: A disciplinary warning  
22 would be grievable.

23 BY MS. WALKER:

24 Q. On what basis?

25 A. The Collective Bargaining Agreement.

1 Q. Okay. Do you believe it's listed among the items  
2 that are grievable in the Collective Bargaining  
3 Agreement?

4 A. Discipline is grievable. So if it were considered  
5 discipline, it would be grievable.

6 Q. I think you have it in front of you Exhibit 48. I  
7 think it's Section 12 that talks about what's  
8 grievable. If we haven't give it to you yet, we  
9 sure can.

10 A. It's here.

11 (Exhibit 48 was introduced into the  
12 record.)

13 BY MS. WALKER:

14 Q. Why don't you look at that section on grievances and  
15 tell me where it says that all discipline is  
16 grievable?

17 A. I don't see it here in Article 11, but it's  
18 generally understood that discipline is grievable,  
19 and past practice would show that.

20 Q. Is there a past practice of issuing warnings?

21 A. Not that I'm aware of.

22 MR. ENSLIN: Object to form.

23 BY MS. WALKER:

24 Q. So then there's no past practice of making them  
25 grievable, right?

1 A. Discipline is grievable.

2 Q. According to what?

3 A. Past practice.

4 Q. Anything else?

5 A. The Collective Bargaining Agreement lists things  
6 that are discipline, which includes demotion,  
7 termination, suspension, written reprimand.

8 Q. Let me pause you. Does it list things that are  
9 discipline, or does it list things that are  
10 grievable?

11 A. I believe it lists things that are discipline.

12 Q. Okay. Where?

13 A. Section 12.102 talks about suspensions, written  
14 reprimands, transfers, and demotions.

15 Q. Anywhere else?

16 A. Not that I can think of.

17 Q. It doesn't list warnings, does it?

18 A. It does not.

19 Q. They're not grievable, right?

20 MR. ENSLIN: Object to the form, calls  
21 for a legal conclusion, asked and answered.

22 THE WITNESS: It's not something that  
23 we normally use, but if a warning were  
24 considered discipline, it would be  
25 grievable.

1 BY MS. WALKER:

2 Q. Can you explain to me how, if you don't have a past  
3 practice of issuing a warning, you can have a past  
4 practice of a warning being grievable?

5 MR. ENSLIN: Object to form, calls for  
6 speculation, calls for a legal conclusion.

7 THE WITNESS: Can you repeat the  
8 question?

9 BY MS. WALKER:

10 Q. If you don't have a past practice of issuing a  
11 warning, how can you have a past practice of a  
12 warning being grievable?

13 A. If a warning is considered discipline as it is  
14 listed in the Civil Service Rules, discipline is  
15 grievable.

16 Q. According to what?

17 A. Past practice.

18 Q. Is that it? Anything else?

19 A. I mean, the Collective Bargaining Agreement talks  
20 about discipline being grievable.

21 Q. I've asked you to point me to where, and you've  
22 pointed me to that one section. Any other section  
23 you want to point me to?

24 A. Not at this time.

25 Q. Do you know, in that September 2020 letter, Trina

1 Chernos said that all that section really lists is  
2 what's grievable. It doesn't actually list  
3 everything that's disciplinary. Did you read that  
4 letter?

5 A. Yes.

6 Q. You don't have any reason to dispute what the City  
7 attorney said, do you?

8 MR. ENSLIN: Object to the form.

9 BY MS. WALKER:

10 Q. I mean, you previously testified you stood by that  
11 letter and didn't have anything to change, correct?

12 A. I would have to know the full context of what she  
13 was referring to.

14 Q. Why don't you pull up Exhibit 35 again. Let's flip  
15 to page 30. Starting at line 22, I'll represent to  
16 you she was asked the question, essentially, "What  
17 is discipline?" And she's talking about how we can  
18 ascertain that. And on line 22, she says a second  
19 place to look would be the Federation Labor  
20 Agreement. And on the next page, line 1, she says,  
21 "It does not lay out what is discipline, at least  
22 the way you framed your question, but it does  
23 indicate that the following actions by the police  
24 chief would be subject to the grievance procedure  
25 that have I mentioned is mandated under state law."

1 Do you stand by what she said at this public meeting  
2 by the PCOC?

3 A. Yes.

4 Q. So warnings aren't grievable, right?

5 MR. ENSLIN: Object to the form.

6 THE WITNESS: If a warning is  
7 discipline, it's grievable.

8 BY MS. WALKER:

9 Q. And that's based on past practice?

10 A. It's based on discipline is grievable.

11 Q. Anything else?

12 A. No.

13 Q. Can you point me to any document that says all  
14 discipline is grievable?

15 A. It's understood that if an officer is disciplined,  
16 that discipline can be grieved.

17 Q. So that wasn't my question. Can you point me to any  
18 document that says all discipline is grievable?

19 A. No.

20 Q. And at the very beginning, we talked about how the  
21 Collective Bargaining Agreement represents the  
22 entire agreement between the Federation and the  
23 City, correct? There are no side agreements, no  
24 gentlemen's handshakes, no quasi agreements, no  
25 winks and nods; isn't that true?

1 MR. ENSLIN: Object to the form, calls  
2 for a legal conclusion, misstates the  
3 document.

4 THE WITNESS: Yes.

5 BY MS. WALKER:

6 Q. Remember that provision?

7 A. Yes.

8 Q. You agree? You agree?

9 A. Yes.

10 Q. All right. You're aware the Minneapolis Police  
11 Department has addressed sustained B-level  
12 violations exclusively through coaching, correct?

13 A. Yes.

14 Q. You're aware that the Minneapolis Police Department  
15 has addressed excessive force violations exclusively  
16 through coaching, correct?

17 MR. ENSLIN: Object to the form.

18 THE WITNESS: I would have to see --

19 BY MS. WALKER:

20 Q. Do you know?

21 A. -- the discipline to -- or the document that lists  
22 coaching for excessive force.

23 Q. Do you have any reason to dispute that it did?

24 MR. ENSLIN: Object to the form.

25 THE WITNESS: No.

1 BY MS. WALKER:

2 Q. Do you have any reason to dispute that it has  
3 addressed constitutional violations exclusively  
4 through coaching?

5 MR. ENSLIN: Object to the form.

6 THE WITNESS: I would have to see the  
7 document and the case investigation to know  
8 that that's true.

9 BY MS. WALKER:

10 Q. But you don't have any reason to dispute it as you  
11 sit here today?

12 A. No.

13 Q. Go back to Exhibit 28 for a minute, if you could.  
14 It's the Complaint. I think you said -- you  
15 testified earlier today that B levels are  
16 disciplinary. Do I remember that correctly?

17 MR. ENSLIN: Object to the form.  
18 Object to the extent it misstates prior  
19 testimony.

20 BY MS. WALKER:

21 Q. Do you remember that testimony?

22 A. If a B-level is intended to be discipline, then yes.

23 Q. So intent matters?

24 A. Yes.

25 Q. How do we ascertain intent?

1           A.    Generally, we'd have to look at the outcome or the  
2                   intention of the chief.

3           Q.    Does he, like, explicitly state his intent?  Is  
4                   there some document, or would we have to talk to  
5                   him --

6                         MR. ENSLIN:  Object to form, calls for  
7                         speculation.

8           BY MS. WALKER:

9           Q.    -- for his intent?

10          A.    You may have to talk to the chief, but generally, we  
11                  should see in the outcome whether it was intended to  
12                  be discipline or not.

13          Q.    So he would write it down, or she would write it  
14                  down?

15                        MR. ENSLIN:  Object to the form, calls  
16                        for speculation.

17                        THE WITNESS:  There should be a case  
18                        disposition at the end of every case, and it  
19                        would show whether it was discipline or not.

20          BY MS. WALKER:

21          Q.    Is a case disposition a determination letter?

22          A.    A case disposition is a final disposition, but a  
23                  determination letter would generally accompany that  
24                  and be used to guide us in whether or not -- how to  
25                  determine the case disposition.

1 Q. Would it guide us in deciding intent? Would a  
2 determination letter help us ascertain intent?

3 MR. ENSLIN: Object to the form, calls  
4 for speculation.

5 THE WITNESS: It should help, but if  
6 there were confusion, the chief would be  
7 asked for clarification.

8 BY MS. WALKER:

9 Q. Can you think of examples where there might be  
10 confusion?

11 A. No.

12 Q. Are you aware that the chief's ever been asked what  
13 he meant based on what he said in a determination  
14 letter?

15 A. I'm not sure whether that's occurred.

16 Q. You don't have evidence that it has?

17 A. Or hasn't.

18 Q. If the chief says in a determination letter, "I'm  
19 disciplining you," should we assume his intent is to  
20 discipline?

21 MR. ENSLIN: Object to the form, calls  
22 for speculation, incomplete hypothetical.

23 THE WITNESS: It would depend on what  
24 the outcome is.

25 BY MS. WALKER:

1 Q. What do you mean by "outcome"?

2 A. Well, if the outcome is coaching, it's not  
3 disciplinary. If the outcome is suspension, a  
4 written reprimand, a demotion, termination, then it  
5 would be disciplinary.

6 Q. Even if the chief says, "I'm coaching you as  
7 discipline"?

8 MR. ENSLIN: Object to form.

9 BY MS. WALKER:

10 Q. That's not discipline?

11 A. It's not discipline.

12 Q. Is that another example to add to the list of where  
13 we shouldn't trust what a City official is saying?

14 MR. ENSLIN: Object to the form.

15 BY MS. WALKER:

16 Q. Let's look at Exhibit 12, which we showed a witness  
17 earlier today.

18 (Exhibit 12 was introduced into the  
19 record.)

20 THE WITNESS: I don't know if I have  
21 Exhibit 12.

22 MR. ENSLIN: It should be in that pile.

23 BY MS. WALKER:

24 Q. So this is a Notice of Coaching that Chief Arradondo  
25 signed, correct?

1 A. Yes.

2 Q. All right. And in the first sentence, it says, "As  
3 discipline from this incident, you will receive  
4 coaching from your supervisor." Do you see that?

5 A. Yes.

6 Q. So the chief is saying, "I'm imposing discipline,"  
7 correct?

8 MR. ENSLIN: Object to the form.

9 THE WITNESS: He's also issuing  
10 coaching, which is not disciplinary.

11 BY MS. WALKER:

12 Q. He called it "discipline"?

13 A. He misspoke.

14 Q. How do you know?

15 A. Because he imposed coaching, which is not  
16 disciplinary.

17 Q. I'll represent to you this is not the only document  
18 where the chief calls coaching to be discipline. Is  
19 it your position that each and every time the chief  
20 misspoke?

21 A. Essentially. This is a form document, and if they  
22 don't remove the word "discipline" but they do  
23 impose coaching, then it should be understood that  
24 the outcome is coaching, and that's not  
25 disciplinary.

1 Q. Understood by who?

2 A. Everyone involved, including the chief, internal  
3 affairs, the officer that's receiving the coaching,  
4 the Federation.

5 Q. How are we supposed to understand that?

6 MR. ENSLIN: Object to the form.

7 THE WITNESS: Because everyone in the  
8 Minneapolis Police Department should know  
9 that coaching is not disciplinary.

10 BY MS. WALKER:

11 Q. Well, did you happen to review the testimony of  
12 Cheryl Schmidt from last week?

13 A. I did not.

14 Q. She testified that to this day, the Federation's  
15 policy is to grieve B-level coaching. Are you aware  
16 that that's the Federation's policy?

17 MR. ENSLIN: Object to the form to the  
18 extent it misstates prior testimony.

19 THE WITNESS: I have -- I'm aware that  
20 the Federation has grieved B-level coaching.

21 BY MS. WALKER:

22 Q. And they keep those grievances open during the  
23 reckoning period, correct?

24 MR. ENSLIN: Object to form,  
25 foundation.

1 THE WITNESS: That, I'm not aware of.

2 BY MS. WALKER:

3 Q. You don't have any reason to dispute that, right?

4 A. I don't.

5 Q. So I think your testimony is when you look at these  
6 Notice of Coaching letters, we should not take them  
7 at face value, and we should second guess the  
8 chief's intent. Is that your testimony?

9 MR. ENSLIN: Object to the form, calls  
10 for speculation, misstates prior testimony.

11 THE WITNESS: It is not my testimony.

12 BY MS. WALKER:

13 Q. So we shouldn't believe what the letter says when it  
14 calls coaching discipline? Is that your testimony?

15 MR. ENSLIN: Object to the form, asked  
16 and answered.

17 THE WITNESS: If it says, "coaching,"  
18 we should trust that it's coaching, which is  
19 nondisciplinary.

20 BY MS. WALKER:

21 Q. And we should just ignore the reference to  
22 "discipline"?

23 A. Yes.

24 Q. So all these letters that call coaching discipline  
25 I'm going to add to the list of documents where we

1           can't put any faith in what high-ranking City  
2           officials are saying. Do you object to me making  
3           that part of this list?

4                   MR. ENSLIN: Object to the form,  
5                   argumentative, calls for speculation.

6           BY MS. WALKER:

7           Q. Do you think that is an inaccurate interpretation of  
8           your testimony?

9                   MR. ENSLIN: I'll object to the form.  
10                  You don't have to answer that. You don't  
11                  have to re-answer the question about --

12           BY MS. WALKER:

13           Q. Your testimony?

14                   MR. ENSLIN: -- she may or may not be  
15                  making.

16           BY MS. WALKER:

17           Q. Tell me what's wrong with this statement: Your  
18           testimony is that when the chief calls something  
19           discipline, we shouldn't take that at face value?

20                   MR. ENSLIN: Object to the form,  
21                  misstates prior testimony.

22                   THE WITNESS: We should be looking at  
23                  the outcome, which is coaching, which is not  
24                  disciplinary.

25           BY MS. WALKER:

1 Q. Is your testimony that we should ignore the plain  
2 language of the document signed by chief of police?

3 MR. ENSLIN: Object to the form, asked  
4 and answered.

5 THE WITNESS: In this particular  
6 document, we should be focused on the part  
7 that says, "coaching" and not the part that  
8 says, "discipline."

9 BY MS. WALKER:

10 Q. Why?

11 A. Because coaching is the outcome, and coaching is  
12 nondisciplinary.

13 Q. Have you talked to Chief Arradondo about whether he  
14 meant "discipline" when he said it?

15 A. No.

16 Q. So you're speculating?

17 A. Yes.

18 Q. We started to look at paragraph 52 in the Complaint,  
19 which is Exhibit 28. And I can say -- tell you at  
20 the outset, the City flatly denied everything in  
21 this paragraph. They responded, "Deny the  
22 allegations in paragraph 52 of the Complaint." I  
23 want to have you read the last sentence, which says,  
24 "As is clear from the PCOC data, however, MPD is  
25 imposing coaching for sustained violations above the

1 A-level." Did I read that last sentence correctly?

2 A. Yes.

3 Q. And that statement's true, correct?

4 A. Yes.

5 Q. So the City shouldn't have denied paragraph 52,  
6 correct?

7 A. Can you ask the question again?

8 Q. The City shouldn't have denied paragraph 52,  
9 correct?

10 A. It appears to me that the City should have denied  
11 the request, which, as I'm reading it, was for  
12 coaching data, and coaching is nonpublic because  
13 it's nondisciplinary.

14 Q. I'm not talking about the Data Practices Act  
15 request. I'm talking about the allegations of the  
16 Complaint. And you testified that the last sentence  
17 of paragraph 52 is accurate, and so I'm asking why  
18 the City denied it.

19 A. Because it's a request for coaching documentation.

20 Q. No. This is the Complaint.

21 MR. ENSLIN: I think he's speaking  
22 about the entire paragraph.

23 BY MS. WALKER:

24 Q. Why did the City deny the last sentence?

25 A. Can I look at the denial?

1 Q. Sure. I'll just hand you my version. It's right  
2 here, paragraph 52.

3 A. I don't have any additional information, but I stand  
4 by the denial.

5 Q. Do you know if anyone at the City bothered to look  
6 at coaching of B-level violations before they  
7 answered the Complaint?

8 A. I believe they did.

9 Q. Are you hoping they did, or do you have actual  
10 knowledge that they did?

11 A. I didn't prepare the response, but I believe that  
12 they did.

13 Q. Do you have any knowledge that they did?

14 MR. ENSLIN: Object to the form. He's  
15 here as a 30.02 (f) witness, and he's  
16 testifying on behalf of the City. His  
17 answer was proper.

18 BY MS. WALKER:

19 Q. Do you have any knowledge beyond belief that the  
20 City actually reviewed coaching of B-level  
21 violations before they answered the Complaint?

22 MR. ENSLIN: Same objection, asked and  
23 answered.

24 BY MS. WALKER:

25 Q. You can answer.

1           A.    I believe they did their due diligence in  
2                responding.

3           Q.    What's your belief based on?

4           A.    Trust that the City attorneys are good at what they  
5                do.

6           Q.    Anything else?

7           A.    No.

8           Q.    Did you review the testimony by Amelia Huffman that  
9                was designated by your counsel as reflecting the  
10              City's position in this case?

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

12                   MR. ENSLIN:  He has not reviewed,  
13                   specifically, the highlighted portions.

14                   MS. WALKER:  Okay.

15                   MR. ENSLIN:  I think he already  
16                   testified he has reviewed her testimony in  
17                   its entirety.

18           BY MS. WALKER:

19          Q.    So you reviewed Ms. Huffman's testimony in its  
20                entirety, just for the record?

21          A.    Yes.

22          Q.    Do you believe there's anything she testified to  
23                that's inaccurate?

24                   MR. ENSLIN:  Object to form.

25                   THE WITNESS:  No.

1 BY MS. WALKER:

2 Q. You stand by her testimony?

3 A. Yes.

4 Q. On behalf of the City?

5 A. Yes.

6 Q. All of it?

7 MR. ENSLIN: Object to the form.

8 You're asking about a seven-hour or  
9 six-and-a-half hour deposition. You're  
10 asking general questions without going  
11 through specifics. He can't possibly say  
12 whether he agrees with every single thing  
13 that was said over six-and-a-half hours.

14 MS. WALKER: Please stop coaching the  
15 witness.

16 BY MS. WALKER:

17 Q. And please answer the question.

18 A. It was an extensive document that I read, and it's  
19 possible there's something in there that I wouldn't  
20 agree with. And if you have specific questions  
21 about specific items, I'm happy to answer them.

22 Q. Do you recall whether there was anything you would  
23 add to her testimony?

24 MR. ENSLIN: Same objection.

25 THE WITNESS: No.

1 BY MS. WALKER:

2 Q. Why don't we hand you her testimony. It will be  
3 Exhibit 178, I believe.

4 (Exhibit 178 was introduced into the  
5 record.)

6 BY MS. WALKER:

7 Q. I'm going to have you flip to page 25 when you get  
8 the document. Is your version highlighted?

9 A. No, not on this page.

10 Q. So your counsel designated page 25, line 23 to page  
11 26, line 9. Could you review that?

12 A. Sorry. Page 25 --

13 Q. Line 23.

14 A. Yep.

15 Q. Up through page 26, line 9.

16 A. Okay. Okay.

17 Q. Anything there you disagree with?

18 A. Only that it wasn't initially called coaching. It  
19 was called PPI -- or we called it policy and  
20 procedure inquiry prior to, I'll say, 1990 -- no,  
21 2008.

22 Q. Why was it changed to be called coaching?

23 A. I was only involved in some of the conversations,  
24 but I believe the intent was to better clarify  
25 coaching as a process of performance management,

1 managing low-level policy violations, and to make it  
2 clear that coaching was nondisciplinary.

3 Q. By "low-level," you mean A-level?

4 A. Generally, A-level.

5 Q. But that's not how coaching is used today, right?  
6 Today, it's used for claims above A-level in  
7 addition to A-level?

8 A. If the chief chooses to impose coaching for  
9 something other than an A-level, that would be his  
10 -- his decision.

11 Q. It would be his decision to impose coaching for  
12 murder if he wanted to, right?

13 MR. ENSLIN: Object to the form, calls  
14 for speculation.

15 THE WITNESS: Well, murder is criminal  
16 offense. So to the extent it was a policy  
17 violation, I guess that's true.

18 BY MS. WALKER:

19 Q. Why don't you flip to page 44. Your counsel  
20 designated Ms. Huffman's testimony beginning at line  
21 18 up through page 45 at line 6. I'll read -- I'll  
22 give you a chance to read that.

23 A. Okay.

24 Q. Do you agree with what Ms. Huffman said?

25 A. Yes.

1 Q. Do you have anything to add?

2 A. Coaching can be used in a variety of ways. This  
3 certainly is -- is part of that.

4 Q. Is coaching the same thing as mentoring?

5 MR. ENSLIN: Object to the form, calls  
6 for speculation.

7 THE WITNESS: You could use coaching as  
8 a tool for mentoring.

9 BY MS. WALKER:

10 Q. Are they different?

11 MR. ENSLIN: Same objections.

12 THE WITNESS: We sometimes refer to  
13 coaching or performance mentoring together,  
14 and so coaching is more clearly defined than  
15 -- than mentoring. You can mentor without  
16 coaching, and you can do coaching without  
17 mentoring, so it's a difficult question to  
18 answer.

19 BY MS. WALKER:

20 Q. So how are they different?

21 A. Well, they're not mutually exclusive. As I just  
22 said, you can -- you can use mentoring as part of  
23 the coaching process, but you wouldn't have to.

24 Q. Can you give me an example of something that would  
25 be mentoring but wouldn't be coaching?

1 A. Not offhand.

2 Q. Can you give me an example of something that would  
3 be coaching but not mentoring?

4 A. Sure. A coaching for an officer that drove in the  
5 bus lane, which is a low-level violation of policy,  
6 a supervisor could meet with the employee and say,  
7 "Do you acknowledge that you shouldn't have used the  
8 bus lane?" The employee could say, "Yes." You  
9 would complete the coaching form, and that would be  
10 it. It's not really mentoring. It's simply sort of  
11 a transactional interaction for the purposes of the  
12 coaching.

13 Q. Who helped developed coaching around the time it  
14 stopped being called PPI?

15 A. I was in internal affairs at the time, and the  
16 lieutenant of internal affairs was soliciting  
17 feedback from the team there. I believe the deputy  
18 chief of professional standards at the time was  
19 Scott Gerlicher, who would have been involved in  
20 sort of higher level conversations about this  
21 transition. I helped create the form that actually  
22 ended up being used, so there was a form for the  
23 policy -- PPI, policy and procedure inquiry, that  
24 ended up being similar to the coaching form that was  
25 developed. And so I took sort of my direction from

1 Lieutenant Piontek, who helped complete the -- the  
2 transition of that form.

3 Q. Was the City Attorney's Office involved?

4 A. I don't know.

5 Q. Was HR involved?

6 A. I don't know.

7 Q. Who would know?

8 A. Presumably, Lieutenant Piontek or then Deputy Chief  
9 Gerlicher.

10 Q. What's the purpose or intent of coaching?

11 A. There are a lot of intents of coaching. Some of it  
12 is performance based. Some of it is identifying  
13 problems that need correction. It's an opportunity  
14 for an employee to meet with a supervisor that may  
15 be struggling to identify other issues in their life  
16 that could be contributing to either poor  
17 performance or low-level policy violations.

18 Q. Is it intended to be punitive?

19 A. It is not.

20 Q. Is discipline intended to be punitive?

21 A. Discipline is intended to be corrective, but there  
22 may very well be a punitive component to it.

23 Q. Is discipline always punitive?

24 MR. ENSLIN: Object to the form, calls  
25 for speculation.

1 THE WITNESS: I think most officers  
2 would probably feel that it was.

3 BY MS. WALKER:

4 Q. Is how an officer feels about a consequence  
5 determinative of whether it's disciplinary?

6 MR. ENSLIN: Object to the form, calls  
7 for a legal conclusion.

8 THE WITNESS: It is not how an officer  
9 feels is what the intent is.

10 BY MS. WALKER:

11 Q. And the intent depends on what is in the chief's  
12 mind, not what he puts in a determination letter,  
13 correct?

14 MR. ENSLIN: Object to the form,  
15 misstates prior testimony.

16 THE WITNESS: Well, what's in the  
17 chief's mind should be reflected on the memo  
18 but also the final outcome.

19 BY MS. WALKER:

20 Q. But it's not in all cases, correct?

21 MR. ENSLIN: Object to the form.

22 THE WITNESS: I believe it is.

23 BY MS. WALKER:

24 Q. Why do you believe that?

25 A. If the chief says it's discipline or one of the

1 outcomes that we believe to be discipline, then it's  
2 discipline. If the chief says it's coaching, which  
3 we believe to be nondisciplinary, then it's not  
4 discipline.

5 Q. So you just said a couple things. You said if the  
6 chief says it's discipline, it's discipline. If the  
7 chief says it's coaching, then it's not discipline.  
8 What if the chief says it's discipline and it's  
9 coaching?

10 MR. ENSLIN: Object to the form,  
11 misstates prior testimony.

12 THE WITNESS: If the chief says it's  
13 coaching?

14 BY MS. WALKER:

15 Q. No. If the chief says it's discipline and it's  
16 coaching, then is it discipline?

17 MR. ENSLIN: Objection, asked and  
18 answered.

19 THE WITNESS: No.

20 BY MS. WALKER:

21 Q. Why don't you flip to page 62. Your counsel  
22 designated page 62, line 10, all the way up to page  
23 64, line 21. Do you want to take a look at that?  
24 And then I want to know if you agree with it. We  
25 can get a break after this.

1 A. Okay.

2 Q. Anything there you disagree with?

3 A. No.

4 Q. Anything you want to add?

5 A. No.

6 MS. WALKER: Why don't we break right  
7 here. We can go off the record.

8 (A recess was had from 2:53 p.m. until  
9 3:17 p.m.)

10 BY MS. WALKER:

11 Q. So we just put a bunch of exhibits in front of you  
12 with tabs, and I'm going to ask you to look, first,  
13 at Exhibit 5 and flip to page 20, which should be  
14 tabbed for you. Just to set the stage, Exhibit 5 is  
15 a quarterly report of the Office of Police Conduct  
16 Review, correct?

17 A. So it's not listed at page 20, so I want to make  
18 sure we're on the right --

19 Q. 17, page 17.

20 A. Okay. Thank you.

21 Q. But I'm correct that this is a quarterly report of  
22 the Office of Police Conduct, correct?

23 A. It appears to.

24 Q. Okay. And on page 17, you see the second bar graph  
25 has the heading, "Discipline Types Issued by Chief"?

1 A. Yes.

2 Q. And it lists three discipline types, "Training and  
3 coaching, suspension, and written reprimand." Do  
4 you see that?

5 A. Yes.

6 Q. Do you agree with me that this document  
7 characterized coaching as discipline?

8 MR. ENSLIN: Object to the form,  
9 outside the 30.02(f) scope.

10 THE WITNESS: So I just want to make  
11 clear that Office of Police Conduct is  
12 not the police department, and they have  
13 their own documents. I do see that they've  
14 listed it as a discipline type, but I stand  
15 by my ongoing testimony that coaching is not  
16 discipline, and it should not have been  
17 listed as a discipline type.

18 BY MS. WALKER:

19 Q. Is OFCR a City department?

20 A. Yes.

21 Q. So should I add this to the list of documents that  
22 inaccurately characterize coaching and where policy  
23 can't be trusted?

24 MR. ENSLIN: Object to the form,  
25 argumentative.

1 BY MS. WALKER:

2 Q. Is this a document that you would say we should not  
3 take at face value?

4 A. I think the document should have been more clear.

5 Q. So we should not take it at face value?

6 A. Coaching is not discipline, so we cannot take this  
7 chart at face value.

8 Q. So I'm going to add it to the list. Can you flip to  
9 Exhibit 7 and go to the tab -- first of all, this is  
10 a draft Memorandum of Agreement between the Unity  
11 Community Mediation Team and the Minneapolis Police  
12 Department.

13 (Exhibit 7 was introduced into the  
14 record.)

15 BY MS. WALKER:

16 Q. Do you see that?

17 A. Yes.

18 Q. Okay. Are you familiar with that negotiation, at  
19 least?

20 A. I am familiar with -- yes.

21 Q. Were you -- how are you familiar with it?

22 A. I reviewed this MOA as I was meeting with Unity  
23 Community Mediation Team to develop the 2022 updated  
24 MOA.

25 Q. Okay. So is there a signed version of this

1                   somewhere?

2           A.    I believe there is, yes.

3           Q.    Okay.  We would just make a note in the record that  
4               we would like this produced.  Flip to the tab --

5                       MR. ENSLIN:  You can just --

6                       BY MS. WALKER:

7           Q.    Flip to the tab on page 20.

8           A.    Yes.

9           Q.    You were personally involved in negotiating this?

10          A.    No.

11          Q.    Sorry.  Tell me again what your involvement was?

12          A.    This was the 2003 draft.

13          Q.    Uh-huh.

14          A.    I worked on this agreement in the 2022 update.

15          Q.    Okay.  And so on page 20, you see 7.3.2, and it's  
16               headed, "Disciplinary Options."  Do you see that?

17          A.    Yes.

18          Q.    And it lists disciplinary options as "Coaching, oral  
19               reprimand, written reprimand, suspension, demotion,  
20               and termination."  Did I read that correctly?

21          A.    I wasn't following along, but yes, I assume so.

22          Q.    So this document characterized coaching and oral  
23               reprimand as disciplinary, correct?

24          A.    It lists them as disciplinary options.

25          Q.    Right.  Do you know if this language is in the more

1 recent version that you worked on?

2 A. I do not recall. I don't remember adding  
3 disciplinary options to that, but it may be there.

4 Q. Okay. And so you would agree that this document  
5 characterizes both coaching and an oral reprimand as  
6 a disciplinary option?

7 MR. ENSLIN: Object to the form.

8 THE WITNESS: That is what the document  
9 says.

10 BY MS. WALKER:

11 Q. Okay. Do you believe that's an accurate  
12 characterization?

13 A. No.

14 Q. So this is a document that we should not take at  
15 face value?

16 A. Since coaching is not discipline, yes, that part of  
17 the statement is inaccurate.

18 Q. So I'm going to add Exhibit 9 -- sorry. That was  
19 Exhibit 7. Can you jump to Exhibit 9 and the tabbed  
20 portion on page 58?

21 (Exhibit 9 was introduced into the  
22 record.)

23 BY MS. WALKER:

24 Q. And the heading -- again, this is -- this is  
25 actually a policy of the City of Minneapolis. It's

1           called the "Minneapolis Police Department Body Worn  
2           Camera Policy: Response to Community Consent." Do  
3           you see that?

4           A. Yes.

5           Q. And on page 5, there's a heading that says,  
6           "Disciplinary consequences for violating the BWC  
7           policy should be set out in the policy." Did I read  
8           that correctly?

9           A. Yes.

10          Q. And under City Consideration, the third paragraph,  
11          it says, "Depending on the circumstances, a  
12          violation of a policy provision may constitute an  
13          offense warranting suspension or termination,  
14          whereas for other violations, only coaching or a  
15          written warning may be warranted." Did I read that  
16          correctly?

17          A. Yes.

18          Q. Okay. So again, here, coaching and a warning is  
19          categorized as a disciplinary consequence, correct?

20          A. Yes.

21          Q. Okay. Do you agree with that characterization?

22          A. I do not.

23          Q. So this is another official City policy document  
24          that we cannot take at face value?

25                   MR. ENSLIN: Object to the form.

1 THE WITNESS: I guess I want to point  
2 out that I -- I don't think this is a  
3 policy, but it is a -- a written response to  
4 community concerns, but I -- I don't  
5 disagree with your point that we can't take  
6 this at face value.

7 BY MS. WALKER:

8 Q. Does this help you refresh your memory on the  
9 availability of warnings to the police department?

10 MR. ENSLIN: Objection.

11 THE WITNESS: No.

12 BY MS. WALKER:

13 Q. Do you know when this document might have been  
14 created?

15 A. I do not.

16 Q. Could you look at Exhibit 10?

17 (Exhibit 10 was introduced into the  
18 record.)

19 BY MS. WALKER:

20 Q. I'm adding Exhibit 9 to our list. Exhibit 10 should  
21 also be tabbed for you. Exhibit 10 is a 2019 annual  
22 report of the OPCR, correct?

23 A. I feel like I don't have that.

24 MR. ENSLIN: I don't know that we have  
25 that one.

1 BY MS. WALKER:

2 Q. I'll repeat my question. Exhibit 10 is a 2019  
3 annual report of the Office of Police Conduct  
4 Review, correct?

5 A. Yes.

6 Q. That's a City department?

7 A. Yes.

8 Q. Okay. And you have it tabbed, so you can flip to  
9 the bar graph. Do you see the bar graph --

10 A. Yes.

11 Q. -- on page 1874?

12 A. Yes.

13 Q. And the big heading is "Discipline." Do you see  
14 that?

15 A. Yes.

16 Q. And then it lists 11 corrective actions. Do you see  
17 that?

18 A. Yes.

19 Q. And coaching is one of them all the way up to  
20 termination. Do you see that?

21 A. Yes.

22 Q. And this is another City document where coaching is  
23 classified -- characterized as discipline, correct?

24 A. Yes.

25 Q. Do you believe that's an accurate characterization?

1 A. Not of coaching.

2 Q. So this is another City document we cannot take at  
3 face value?

4 MR. ENSLIN: Object to form.

5 THE WITNESS: Yes.

6 BY MS. WALKER:

7 Q. All right. Why don't you take a look at  
8 Exhibit 11.

9 (Exhibit 11 was introduced into the  
10 record.)

11 BY MS. WALKER:

12 Q. This is another bar graph. The heading on it is  
13 "Discipline Types Issued by the Chief." Do you see  
14 that?

15 A. Yes.

16 Q. This also appears to be an OPC document, correct?

17 A. Yes.

18 MR. ENSLIN: Object to the form,  
19 foundation.

20 BY MS. WALKER:

21 Q. And among the discipline types listed in the bar  
22 graph, we have, "Training and coaching," all the way  
23 up to "termination," correct?

24 A. Yes.

25 Q. And so this is another document by a City department

1                   where discipline is characterized as coaching,  
2                   correct?

3           A.    Yes.

4           Q.    And you believe that's an inaccurate  
5                   characterization?

6           A.    Yes.

7           Q.    And this is another document produced by the City  
8                   that we shouldn't take at face value, correct?

9                   MR. ENSLIN:  Object to the form,  
10                  foundation.

11                  THE WITNESS:  Yes.

12           BY MS. WALKER:

13           Q.    Earlier today, you said we should assume that the  
14                   things City officials and City policies say reflect  
15                   reality.  Do you remember that testimony?

16           A.    Yes.

17           Q.    You stand by that?

18           A.    Yes.

19           Q.    Despite all these documents?

20           A.    Yes.

21           Q.    Is there any document I could show you that says  
22                   coaching is discipline that would change your  
23                   position that coaching is not discipline?

24           A.    I don't believe so.

25           Q.    That's just your position no matter what the

1 documents might say?

2 A. Yes.

3 Q. Why don't you take a look at Exhibit 12 again? So  
4 we talked about this Notice of Coaching that was  
5 issued by Chief Arradondo, correct?

6 A. Yes.

7 Q. And he says, "As discipline for this incident, you  
8 will receive coaching from your supervisor," right?

9 A. Yes.

10 Q. And you testified that he didn't mean "discipline."  
11 Do you remember that?

12 A. Yes.

13 Q. And I'm wondering -- let me ask one more question.  
14 He also went on to say that that person is receiving  
15 coaching for a B-level misconduct. Do you see that?

16 A. Yep.

17 Q. And I'm wondering why you think the word  
18 "discipline" is the mistake. Isn't it just as  
19 equally possible that instead of "coaching," he  
20 meant to say, "written reprimand"?

21 MR. ENSLIN: Object to the form, calls  
22 for speculation.

23 THE WITNESS: I don't --

24 BY MS. WALKER:

25 Q. Do you agree that this question calls for

1 speculation?

2 A. I am not an attorney, so I don't know how all of the  
3 objections work, so I'm not going to answer that  
4 question -- or I can't answer that question.

5 Q. Okay. How do you know when he said, "coaching," he  
6 didn't mean "oral reprimand" or "written reprimand"?

7 A. Well, at the top of the form, it says, "Notice of  
8 Coaching." Under the, "Regarding," it says, "Notice  
9 of Coaching." Well, he does say, "As discipline for  
10 this incident, you will receive coaching." And, you  
11 know, "Sustained at B-level with coaching." So  
12 discipline is mentioned, you know, one point here.  
13 But throughout this, this form is a Notice of  
14 Coaching.

15 Q. But it's just a template, right?

16 A. But this is the coaching template.

17 Q. It's the determination letter template, correct?

18 A. There are multiple determination templates. One is  
19 a Notice of Coaching. One is a Notice of  
20 Suspension. There are multiple outcome letters, but  
21 they're all templates.

22 Q. Isn't it true that the Notice of Coaching letter was  
23 intentionally designed to look like a discipline  
24 letter?

25 A. All of the outcome letters are intentionally

1           designed to look similar so that it's a familiar  
2           look and feel.

3           Q.   Isn't it true it was designed to look like a  
4           discipline letter?

5           A.   It wasn't designed to look like a discipline letter.  
6           It was designed to look like all of the outcome  
7           letters.

8           Q.   We'll come back to that.   How do you know he didn't  
9           mean A-level instead of B-level?   Your counsel might  
10          object that.   I'm asking you to speculate.

11                   MR. ENSLIN:   Objection, speculation.

12                   THE WITNESS:   So the category is listed  
13                   as B.   He then states that it's -- he's  
14                   sustaining a B-level, so it appears that the  
15                   intention was to coach for a B-level.

16                   BY MS. WALKER:

17           Q.   He could have made a mistake as to any one of these  
18           words; isn't that true?

19           A.   It is possible.

20           Q.   You have no reason to think when he said  
21           "discipline" that he didn't mean "discipline" other  
22           than rampant speculation, correct?

23                   MR. ENSLIN:   Object to the form,  
24                   misstates prior testimony, asked and  
25                   answered.

1 THE WITNESS: I believe the intention  
2 was to issue coaching.

3 BY MS. WALKER:

4 Q. What's that based on?

5 A. The letter.

6 MR. ENSLIN: Objection, asked and  
7 answered.

8 BY MS. WALKER:

9 Q. The letter -- what -- the plain language of the  
10 letter?

11 A. As we already discussed, the idea that this is on  
12 the Notice of Coaching form, that it references it  
13 as coaching, that it says, "As discipline for this  
14 incident, you will receive coaching," and that  
15 you're sustaining it at B level with coaching. It  
16 says it multiple times there.

17 Q. So you're relying on the plain language of the  
18 letter to ascertain the chief's intent; is that  
19 true?

20 MR. ENSLIN: Objection to form.

21 THE WITNESS: It seems clear that the  
22 intention here was coaching.

23 BY MS. WALKER:

24 Q. And you're relying on the plain language of the  
25 letter?

1 MR. ENSLIN: Objection, asked and  
2 answered.

3 BY MS. WALKER:

4 Q. You haven't talked to the chief, correct, about this  
5 letter?

6 A. I have not.

7 Q. Yeah. And you haven't seen any other documents  
8 about this incident, correct?

9 A. I have not.

10 Q. So just like me, all you have to go on is what the  
11 letter says, correct?

12 A. Yes.

13 MR. ENSLIN: Object to the form.

14 BY MS. WALKER:

15 Q. I'm going to hand you what we've previously marked  
16 as Exhibit 167, and we've got it flagged for you.

17 (Exhibit 167 was introduced into the  
18 record.)

19 BY MS. WALKER:

20 Q. Is this a document produced -- created by the City  
21 or by the Federation?

22 MR. ENSLIN: Object to the form,  
23 foundation, outside the scope of 30.02(f).

24 THE WITNESS: I have not seen this  
25 document before, and I do not see -- I do

1 not immediately see who created it, but it  
2 does say, "Minneapolis City Attorney's  
3 Office, Brady Protocol," but that doesn't  
4 sound like he prepared it.

5 BY MS. WALKER:

6 Q. Does this look like something the City might have  
7 created?

8 MR. ENSLIN: Object to the form.

9 THE WITNESS: I don't know who created  
10 it.

11 BY MS. WALKER:

12 Q. Is there a way to ascertain whether this document is  
13 in the possession of the City?

14 A. I don't know. I've never seen it before.

15 Q. Could you flip to page 2712, which is flagged for  
16 you?

17 A. Yes.

18 Q. The third bullet -- the second bullet says, "A-level  
19 discipline is nonpublic, usually coaching." Did I  
20 read that correctly?

21 A. Yes.

22 Q. And this is another example of coaching being  
23 described as discipline, correct?

24 MR. ENSLIN: Object to the form.

25 THE WITNESS: It says that, yes.

1 BY MS. WALKER:

2 Q. And to the extent the City created this document,  
3 this is another City document that we should not  
4 take at face value, correct?

5 MR. ENSLIN: Object to the form.

6 THE WITNESS: I don't know who created  
7 this document, so I can't say yes.

8 BY MS. WALKER:

9 Q. If the City created this document, we should not  
10 take this at face value, correct?

11 A. If the City created it, it should not have referred  
12 to A-level discipline as coaching.

13 Q. When you talk about low-level violations, can I  
14 assume you mean A-level?

15 A. I don't know that A-level -- that low-level is  
16 exclusively A-level, but generally, A-level is  
17 considered low -- low-level.

18 Q. Do you have any evidence that anyone within the  
19 Minneapolis Police Department has ever considered a  
20 B-level violation to be low-level?

21 MR. ENSLIN: Object to the form.

22 THE WITNESS: I have an example of a  
23 B-level violation that was given coaching,  
24 and coaching is generally, again, for  
25 low-level violations. So to some extent, it

1                   would seem that the chief believed that was  
2                   a low-level violation.

3                   BY MS. WALKER:

4                   Q.   Anything else to add on that?

5                   A.   No.

6                   Q.   Does the City have any agreement, written or  
7                   otherwise, with the Federation about coaching?

8                   A.   Not that I'm aware of.

9                   Q.   I think your testimony today is that there are  
10                  absolutely no limits on when or how coaching is  
11                  used.  It's entirely up to the chief of police; is  
12                  that right?

13                  A.   Yes.

14                  Q.   Could the mayor overrule the chief of police on  
15                  that?

16                               MR. ENSLIN:  Object to the form, calls  
17                               for a legal conclusion.

18                  BY MS. WALKER:

19                  Q.   Could the mayor mandate discipline --

20                  A.   No.

21                  Q.   -- even if the chief doesn't want to?

22                  A.   Sorry.  I interrupted.

23                               MR. ENSLIN:  Object to the form,  
24                               outside the scope of the 30.02(f).

25

1 BY MS. WALKER:

2 Q. You can answer.

3 A. That would still be up to the chief to determine  
4 whether or not he's going to comply with the mayor's  
5 order, but only the chief can impose discipline.

6 Q. Can I have you go to Exhibit 35, which is the  
7 transcript that got us all fired up earlier today?  
8 And I'm going to have you go to page 43 of it. Page  
9 43, line 21 at this May 2021 PCOC meeting, Abigail  
10 Cerra asked Deputy Chief, Amelia Huffman, "Okay. So  
11 under your understanding of the matrix, something  
12 like excessive force would not be eligible for  
13 coaching?" And Deputy Chief Huffman responded,  
14 "Yes, that's correct." Do you disagree with that  
15 exchange in any way?

16 A. No.

17 Q. So there are things that are off limits for  
18 coaching?

19 A. So my answer is based on the matrix.

20 Q. Okay.

21 A. Something like excessive force wouldn't be eligible  
22 for coaching. The matrix establishes a baseline  
23 level discipline, and that's in the matrix. The  
24 chief uses the matrix as a guide but is not bound by  
25 it. So the chief could choose to impose coaching

1           for something that the matrix doesn't indicate is  
2           eligible for coaching.

3           Q.    So is the matrix another example of something we  
4           shouldn't take at face value because the chief can  
5           override it whenever he wants?

6                     MR. ENSLIN:   Object to the form,  
7           argumentative.

8                     THE WITNESS:   The matrix is a guide for  
9           the chief.

10          BY MS. WALKER:

11          Q.    Is that a "yes" or "no"?

12                     MR. ENSLIN:   Object to the form, asked  
13          and answered.

14                     THE WITNESS:   It should be taken at  
15          face value as the general guidelines for  
16          what an officer should or could expect to  
17          receive as discipline for a certain  
18          violation, but the chief is not bound by  
19          that.   So it can be taken at face value to  
20          the extent that it's a guide for the chief.

21          BY MS. WALKER:

22          Q.    Are you aware of any instances where a Minneapolis  
23          police officer was coached and felt like he or she  
24          had been disciplined?

25          A.    I am not aware of anything specific.

1 Q. Are you aware that several Minneapolis police  
2 officers have grieved B-level coaching?

3 A. Yes.

4 Q. Are you aware that in their grievance, they refer to  
5 the consequence of discipline?

6 A. I don't know if I've seen the grievance documents,  
7 but I'm happy to answer additional questions.

8 Q. What did you say at the end there?

9 A. I'm happy to answer additional questions.

10 Q. Let's take a look at Exhibit 33, which we may need  
11 to hand you.

12 (Exhibit 33 was introduced into the  
13 record.)

14 BY MS. WALKER:

15 Q. This is a document produced by the City, you'll see  
16 at the bottom, correct?

17 A. Yes.

18 Q. And the heading on this document indicates it's from  
19 February of 2015, and it's called "IAU Case  
20 Processing Panel Report SOPs February 2015." Do you  
21 see that?

22 A. Yes.

23 Q. What -- do you know what this document is?

24 A. It says it's an SOP for panel reports. It appears  
25 that it's providing some sort of guidance on

1 understanding where cases are at in the process.

2 Q. It's some sort of a memo that's been signed by  
3 Commander Granger at the end, correct?

4 A. Yes.

5 Q. What was his role in 2015?

6 A. I believe he was the commander of internal affairs.

7 Q. Can you take a look at item number 4 on the first  
8 page. It says, "New, coaching as part of an  
9 administrative case outcome." Do you see that?

10 A. Yes.

11 Q. Is it in 2015 when coaching began to be used for  
12 cases that go through the administrative  
13 investigative process?

14 A. I don't know whether they were used before that, but  
15 clearly, this is highlighted to provide guidance  
16 indicating that that is a possible outcome.

17 Q. Right. Any reason to -- to -- any evidence that  
18 would suggest it was happening prior to 2015?

19 A. I don't have any evidence that it was or wasn't.

20 Q. And in this memo, Commander Granger says that the  
21 notification letter for coaching as part of the  
22 administrative case outcome, quote, "Will be drafted  
23 like a discipline letter outcome requiring  
24 signatures and date." Do you see that?

25 A. Yes.

1 Q. What do you know about that decision?

2 A. Only what's listed here.

3 Q. Why would a coaching notification letter be drafted  
4 like a discipline letter?

5 A. So that it has a consistent look and feel to the  
6 other documents that are coming out of internal  
7 affairs.

8 Q. So it looks and feels like discipline?

9 A. It looks and feels like the letters -- the template  
10 letters that are issued by internal affairs.

11 Q. Why is it important that it has the same look and  
12 feel?

13 A. For consistency.

14 Q. Why is consistency important?

15 A. I think it helps those receiving the letters and  
16 processing the letters to know what it is that  
17 they're getting.

18 Q. How does that help? How does consistency help in  
19 that?

20 A. I'm not sure how to answer beyond what I've already  
21 said.

22 Q. I -- what I hear you saying is that we wanted it to  
23 look like a discipline letter so the people getting  
24 it knew what they were getting. Tell me how that's  
25 wrong?

1           A.    The letters look consistent.  So on the top of the  
2                   one Exhibit 12 that we looked at, it's going to look  
3                   like a discipline letter.  This one says, "Notice of  
4                   Coaching."  This one over here says, "Notice of  
5                   Discipline."  They look similar, except for the  
6                   headers, the language within the letter.  So it's --  
7                   it's the same template, just certain words are  
8                   changed.  One will say, "coaching."  One will say,  
9                   "discipline."

10          Q.    And you want them to look the same so people -- I  
11                   believe your testimony was so people know what they  
12                   are getting?

13          A.    That they're getting a letter from the internal  
14                   affairs unit.  They all look roughly the same.  
15                   Regardless of the chief's decision, the outcome of  
16                   the case, they all have a similar look and feel, not  
17                   in the outcome, they're not all discipline, but in  
18                   the look.

19          Q.    So if it's so important that no one misunderstands  
20                   coaching to be discipline, wouldn't you want to do  
21                   the opposite and make sure coaching looks totally  
22                   different and no one could confuse it?

23          A.    We could.

24          Q.    But you didn't?

25          A.    I didn't.  I didn't create these.

1 Q. Okay. But the police department didn't?

2 A. Correct.

3 Q. They made it look exactly like discipline except for  
4 a few words?

5 A. They made the forms consistent in the flow with the  
6 exception of the outcome.

7 Q. And sometimes the chief of police accidentally, in  
8 your view, even used the word "discipline" to  
9 describe coaching?

10 A. Discipline was on the form letter, and it wasn't  
11 removed. So whether it was an accident or  
12 deliberate, I don't know.

13 Q. It might have been his intent? Might not have been?

14 MR. ENSLIN: Object to the form, asked  
15 and answered.

16 THE WITNESS: I would say it wasn't his  
17 intent.

18 BY MS. WALKER:

19 Q. I'll withdraw it. Strike the answer. Can  
20 mentorship be used to enhance discipline?

21 A. I don't believe so.

22 Q. Coaching, however, can, right?

23 A. What is your question?

24 Q. You just testified that mentorship cannot be used to  
25 enhance discipline. And my question is, but

1 coaching can?

2 A. To enhance discipline.

3 Q. Uh-huh.

4 A. I don't know what you mean.

5 Q. Coaching is part of progressive discipline?

6 A. It is not.

7 Q. Coaching is not part of progressive discipline?

8 A. No.

9 Q. So multiple coachings on the same violation within a  
10 particular reckoning period don't lead to enhanced  
11 discipline?

12 A. Not enhanced discipline, but multiple coaching for  
13 the same offense could lead to aggregated coachings  
14 becoming discipline.

15 Q. So coaching is part of progressive discipline?

16 A. It is not.

17 Q. And mentoring is not part of progressive discipline?

18 A. Mentoring is not part of the disciplinary process.

19 Q. And coaching is not either, in your opinion?

20 A. Coaching is not discipline.

21 Q. Not part of the disciplinary process?

22 A. Coaching is not discipline.

23 Q. Is it part of the disciplinary process?

24 MR. ENSLIN: Object to the form.

25 THE WITNESS: No.

1 BY MS. WALKER:

2 Q. What's education-based discipline?

3 A. Could be a variety of things. Often, it's either  
4 retraining or some form of, I guess, educating the  
5 officer about a familiar issue. The most common  
6 would be remedial training.

7 Q. Okay. So then is it a discharge?

8 A. No.

9 Q. Is it a demotion?

10 A. No.

11 Q. Is it a transfer?

12 A. No.

13 Q. Is it a suspension?

14 A. No.

15 Q. Is it a written reprimand?

16 A. No.

17 Q. So education-based discipline is something that  
18 exists out of those?

19 A. Education-based discipline is generally considered  
20 nondisciplinary corrective action.

21 Q. So why is it called education-based discipline?

22 A. That's a term that was created somewhere that I know  
23 we've adopted internally, but education-based  
24 discipline is one form of nondisciplinary corrective  
25 action.

1 Q. I'm struggling. You're saying education-based  
2 discipline is a form of nondisciplinary action?

3 A. Sure. Not education-based discipline. If you were  
4 saying education-based discipline, that -- I  
5 misheard that initially. Education-based discipline  
6 is -- I'm not sure that's how we use it.

7 Q. Do you need to see a document to know how it's used?

8 A. Sure.

9 Q. I'm going to hand you Exhibit 59. You might have  
10 it.

11 A. I do.

12 Q. Can you flip to page 1548? Do you see under the  
13 discipline categories B through D on this Exhibit?

14 A. Yes.

15 Q. And I should just, for the record, clarify that  
16 we're looking at an exhibit to the September 2020  
17 letter of Trina Chernos, and the exhibit begins on  
18 page 1538 and is the Minneapolis Police Department  
19 Discipline Process Manual from August 2017. And you  
20 testified you reviewed this Discipline Process  
21 Manual in preparation for today, correct?

22 A. Yes.

23 Q. Okay. And so discipline -- discipline categories B  
24 through D, do you see that?

25 A. Yes.

1 Q. You agree that B levels are disciplinary, right?

2 A. Yes.

3 Q. And then for both B and C, there's a reference to  
4 "Education-Based discipline." Do you see that?

5 A. Yes. This document does help clarify the questions  
6 that you're asking.

7 Q. So that would include retraining and education and  
8 remedial training, correct?

9 A. Yes.

10 Q. Anything else?

11 A. As far as?

12 Q. Does education-based discipline include anything  
13 else?

14 A. Here, it discusses education-based discipline. And  
15 seeing it here, what I believe this is is education  
16 as part of a disciplinary decision.

17 Q. So it's education-based discipline discipline, or is  
18 education-based discipline not discipline?

19 A. Under the context of discipline imposed in this  
20 particular case, the education is part of the  
21 disciplinary outcome.

22 Q. So should I expect to see determination letters to  
23 say you're getting C level and a suspension and also  
24 education-based discipline?

25 A. So generally in the chief's outcome letter, there

1 will be mention of education or retraining or  
2 remedial training. So depending on how the chief  
3 crafts the outcome letter, they could impose A-level  
4 coaching or any level coaching with nondisciplinary  
5 corrective action that includes education, which  
6 would be training, remedial training, policy review  
7 with a supervisor. However, if the chief chooses to  
8 impose discipline, which, at any level, B, C, or D,  
9 could include a written reprimand with  
10 education-based discipline, that includes  
11 retraining. So education could be disciplinary or  
12 part of a discipline process, but it doesn't always  
13 have to be.

14 Q. So sometimes training is disciplinary, and sometimes  
15 it's not?

16 MR. ENSLIN: Object to the form.

17 THE WITNESS: That's correct.

18 BY MS. WALKER:

19 Q. Okay. So sometimes training feels punitive?  
20 Sometimes it doesn't?

21 MR. ENSLIN: Object to the form.

22 THE WITNESS: If training was part of  
23 coaching, it shouldn't feel punitive.

24 BY MS. WALKER:

25 Q. But it might?

1 A. It should feel corrective.

2 Q. I'll admit I'm struggling to follow your  
3 explanation. Can you sit here in good faith and  
4 testify that you think rank and file police officers  
5 understand the scheme that you just articulated for  
6 me?

7 A. I can, because they have the letter from the chief  
8 that outlines the intent. They have Federation  
9 representatives that will accompany them and help  
10 explain if they don't understand what it means. And  
11 if they have questions or they have issues with it,  
12 that can be resolved through a conversation.

13 Q. So letters that look like discipline letters.  
14 That's what they should look at to understand this?

15 MR. ENSLIN: Object to form.

16 BY MS. WALKER:

17 Q. Yes or no?

18 A. I don't understand the question.

19 Q. You're saying they should understand it based on  
20 those letters that were drafted to look like  
21 discipline letters?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: They're looking at a  
24 letter that says what the outcome is, as  
25 determined by the chief. Some of those say

1 "Notice of Coaching." Some of those say,  
2 "Notice of Discipline." If there's  
3 confusion, they can talk to their Federation  
4 rep who can certainly connect with the chief  
5 or deputy chief of professional standards or  
6 anyone in internal affairs to settle any  
7 misunderstanding.

8 BY MS. WALKER:

9 Q. Should they look at any of the eight official City  
10 policies we've decided can't be taken at face value?  
11 Would that be helpful to them?

12 MR. ENSLIN: Object to the form,  
13 argumentative.

14 BY MS. WALKER:

15 Q. Would you recommend that?

16 A. If they have questions, I believe they should talk  
17 to their Federation rep.

18 Q. Okay. Is education-based discipline a documented  
19 oral reprimand?

20 A. I'm not aware that we use documented oral  
21 reprimands. However, if that were the chief's  
22 decision as part of discipline, education could be  
23 included as part of that.

24 Q. So a documented oral reprimand could be  
25 education-based discipline?

1           A.    Education-based discipline could be included along  
2                with an oral reprimand.

3           Q.    Could you look at Exhibit 32, which is the coaching  
4                form we looked at very early today, and Exhibit 50,  
5                which is that Civil Service Rule on warnings? So as  
6                you look at the definition of a warning, if you look  
7                at what the form expects to happen during a coaching  
8                session, tell me all the ways those two processes  
9                are different.

10          A.    They're different in that a warning is potentially  
11                part of discipline but a coaching is not.

12          Q.    Okay.

13          A.    The warning outlines some things that can occur to  
14                include a verbal discussion or detailing the  
15                problem, the plans for correcting it in a written  
16                memo. That could be an email. That could be some  
17                other form of communication, but it is not coaching.  
18                Coaching has some similar elements, but the  
19                intention of coaching is to be corrective and not  
20                disciplinary. But it's clear that a warning is  
21                disciplinary.

22          Q.    So let me -- I want to break this down to make sure  
23                I understand. So I asked you to tell me the  
24                differences, and the first thing you said is, "A  
25                warning is discipline and coaching is not." So I

1 wrote that down. Give me a second difference.

2 A. Another difference is plans for correcting the  
3 problem. But coaching, there may not be a problem,  
4 so there's nothing to necessarily correct.

5 Q. Isn't there a place on the form where the officer or  
6 the supervisor is asked to indicate the plan for --  
7 I believe it says, "Supervisor's recommendation"?

8 A. Mm-hmm.

9 Q. Okay. And so typically, they would recommend how  
10 the officer is going to fix the behavior they were  
11 coached for, right?

12 A. If there was an identified either policy violation  
13 or some other issue that needed correction.

14 Q. Let's talk about when officers are coached for B  
15 levels. For a B-level coaching, you would assume  
16 that the supervisor would make a recommendation  
17 about fixing the problem in this section? You would  
18 expect that, right, as former deputy chief of  
19 internal affairs?

20 A. I was the deputy chief of professional standards,  
21 not internal affairs.

22 Q. Thank you.

23 A. But the -- the difference is that in a sustained  
24 B-level coaching, the chief has made a determination  
25 that a policy was violated. That would be listed on

1           this form. In all other forms of coaching, if it's  
2           generated from OPCR or from internal affairs, it may  
3           not already be determined --

4           Q. I'm just asking -- I'm going to cut you off because  
5           I don't really care about A levels. Let's just  
6           assume I'm talking about B levels for this. So when  
7           this is completed for a B level, tell me how -- what  
8           the warning requires is different than what this  
9           form requires.

10          A. The details are more or less the same.

11          Q. So I've written down one difference you've  
12          identified, and that is that a warning is discipline  
13          and coaching is not. Can you give me any other  
14          difference?

15          A. That's the primary difference.

16          Q. And -- I'll move on. You don't have anything else  
17          to say in terms of differences, right?

18          A. No.

19          Q. Could you look at that transcript from Amelia  
20          Huffman, which I believe is Exhibit 178. Is it 178?  
21          Let me get the right number here.

22                       MR. ENSLIN: It's 178.

23                       MS. WALKER: 178.

24                       BY MS. WALKER:

25          Q. Can you flip to page 163? And the City adopted

1 Ms. Huffman's testimony as its own from page 163,  
2 line 5, to 166, line 9. Can you read that to  
3 yourself?

4 MR. ENSLIN: Can you give me the lines?

5 MS. WALKER: Page 163, line 5 to 166,  
6 line 9.

7 BY MS. WALKER:

8 Q. Just up through line 9 on 164. All right. So you  
9 see I basically asked Ms. Huffman the same question  
10 I asked you, correct?

11 A. Yes.

12 Q. "How is coaching different than a warning?"

13 A. Yes.

14 Q. And her response beginning at line 12 on page 163  
15 is, "I think that a disciplinary warning and  
16 coaching are different categories of things because  
17 we said they're different categories of things."  
18 Did I read that correctly?

19 A. Yes.

20 Q. And you agree with that testimony, right?

21 A. Yes.

22 Q. And both you and Ms. Huffman essentially have  
23 testified that a warning is different than coaching  
24 because the City says it is; isn't that true?

25 A. Yes.

1 Q. And that's the only difference you can identify as  
2 you sit here today, right?

3 MR. ENSLIN: Object to the form.

4 MS. WALKER: I'll withdraw. He already  
5 testified that's the only difference. We  
6 can move on.

7 BY MS. WALKER:

8 Q. Could you flip to page 143 of her testimony. And  
9 line 17 through 144, line 3 was adopted by the City.  
10 And I'd just ask you to read it. And do you agree  
11 with what she said?

12 A. Yes.

13 Q. Do you agree that discipline is supposed to be  
14 punitive?

15 A. I believe that discipline is supposed to be  
16 corrective but also has a punitive component of it.

17 Q. I'm going to hand you what's been marked  
18 Exhibit 132.

19 (Exhibit 132 was introduced into the  
20 record.)

21 BY MS. WALKER:

22 Q. This is a letter authored by the Federation's law  
23 firm. Do you recognize their law firm's name at the  
24 top of the letter?

25 A. Yes.

1 Q. I'll have you flip -- have you ever seen this  
2 before?

3 A. This doesn't look familiar. It's possible that I  
4 have.

5 Q. I'll have you flip to the third page of the letter.  
6 Now, I'll grant you that this is the Federation's  
7 attorney talking, but I do want to ask if you agree  
8 with the statement. Bottom of that third page,  
9 "Ever since the 1920 City charter established the  
10 Civil Service Commission, there have been two  
11 principles that have governed the discipline of all  
12 City employees. Number one, discipline must be for  
13 just cause." Do you agree with that?

14 A. Yes.

15 Q. "And number two, discipline is intended to be  
16 corrective rather than punitive." Do you agree with  
17 that?

18 MR. ENSLIN: Object to form.

19 THE WITNESS: This is the Federation's  
20 perspective, and this is what's in their  
21 mind.

22 BY MS. WALKER:

23 Q. I'm asking if you agree with it on behalf of the  
24 City?

25 MR. ENSLIN: Object to the form,

1 outside of the scope of the 30.02(f).

2 THE WITNESS: It is intended to be  
3 corrective, as I've said. However, there  
4 may be a punitive aspect to it.

5 BY MS. WALKER:

6 Q. That's not my question. It's a simple sentence:  
7 "Discipline is intended to be corrective rather than  
8 punitive."

9 A. It is intended to be corrective.

10 Q. Rather than punitive?

11 A. Yes.

12 Q. How is discipline different than coaching if they're  
13 just supposed to be corrective?

14 A. I don't believe the intention of this letter was to  
15 suggest --

16 Q. Let me stop you because I'm not asking about the  
17 intention of the letter. I've gone from the letter.  
18 You can set it to the side. If discipline is just  
19 intended to be corrective, how is it different from  
20 coaching?

21 A. It's not just intended to be corrective.

22 Q. You just testified on behalf of the City under oath  
23 that you agree with the statement that discipline is  
24 intended to be corrective rather than punitive?

25 MR. ENSLIN: Objection, misstates prior

1 testimony.

2 BY MS. WALKER:

3 Q. Do you want to withdraw your testimony?

4 MR. ENSLIN: He's testified numerous  
5 times, including, like, within the last ten  
6 minutes, that he understood discipline to be  
7 corrective but was also, at times, punitive.  
8 We can read back the testimony that he  
9 provided.

10 MS. WALKER: Are you done coaching the  
11 witness?

12 MR. ENSLIN: I'm not coaching the  
13 witness.

14 MS. WALKER: It's definitely coaching  
15 the witness.

16 MR. ENSLIN: I'm definitely not. I am  
17 reiterating the testimony that you heard  
18 within the last ten minutes.

19 BY MS. WALKER:

20 Q. Do you want to change your testimony?

21 A. No.

22 Q. Okay. How is discipline different than coaching?

23 MR. ENSLIN: Objection, asked and  
24 answered.  
25

1 BY MS. WALKER:

2 Q. Are you still thinking about it?

3 A. So I don't think that my testimony will change from  
4 what I've already said. But coaching is intended to  
5 be supportive. It involves a conversation between  
6 an employee and their supervisor about issues that  
7 go beyond maybe the alleged policy violation or the  
8 alleged issue. Discipline, while also intending to  
9 be corrective, does have a punitive component to it,  
10 which could be a wide range of things, such as a  
11 written reprimand, a suspension, a demotion, or a  
12 termination. So while it's not intended to be  
13 punitive, there may be a punitive aspect to  
14 discipline.

15 Q. So intent really matters in all this. Is that your  
16 testimony?

17 A. It certainly is important.

18 Q. And if I'm hearing you right, I think you're saying  
19 that coaching is basically supposed to be positive.  
20 Would you agree with that?

21 A. It's supposed to be corrective. It shouldn't be an  
22 adversarial process.

23 Q. Should discipline be adversarial?

24 A. It shouldn't be.

25 Q. Should discipline be positive?

1           A.    I think we would hope for a positive outcome from  
2           discipline.

3           Q.    Is the process positive?

4           A.    I hope that the investigators of misconduct create a  
5           process that employees see as fair and  
6           straightforward.  It's not intended to be  
7           uncomfortable, but when an employee is accused of  
8           misconduct, in some cases, serious misconduct, I can  
9           see where that wouldn't be a positive process.

10          Q.    Let me know if you agree with this statement:  
11                "Effective discipline is a positive process when its  
12                perceived purpose is to train or develop by  
13                instruction."

14          A.    What is your question?

15          Q.    Do you agree?

16          A.    Can you read it again, please?

17          Q.    "Effective discipline is a positive process when its  
18                perceived purpose is to train or develop by  
19                instruction."

20                       MR. ENSLIN:  Objection to the form,  
21                       outside the 30.02(f).

22                       THE WITNESS:  So it's intended to be a  
23                       positive process.

24               BY MS. WALKER:

25          Q.    So you agree with the statement or not?

1 MR. ENSLIN: Object to the form,  
2 outside the scope of the 30.02(f).

3 BY MS. WALKER:

4 Q. Do you want me to read it again?

5 A. Sure.

6 Q. "Effective discipline is a positive process when its  
7 perceived purpose is to train or develop by  
8 instruction."

9 A. So it's intended to be a positive process. I still  
10 say many employees might not feel that way despite  
11 the intention of the City.

12 Q. So how an employee feels dictates whether something  
13 is disciplinary?

14 MR. ENSLIN: Object to the form.

15 THE WITNESS: No.

16 BY MS. WALKER:

17 Q. So if a policy and procedure manual contains that  
18 statement I just read to you, that's another policy  
19 we shouldn't take at face value?

20 MR. ENSLIN: Object to the form.

21 BY MS. WALKER:

22 Q. Is that your testimony?

23 A. I think the policy is well-intended, and  
24 unfortunately, employees may not feel it's a  
25 positive process.

1 Q. So yes or no?

2 A. I think we can take the policy at face value.

3 Q. If someone were to define "Disciplinary action" as  
4 punitive, would you agree or disagree with that?

5 MR. ENSLIN: Object to the form, calls  
6 for speculation.

7 THE WITNESS: Could you read the  
8 question again?

9 BY MS. WALKER:

10 Q. If someone were to define "Disciplinary action" as  
11 punitive, would you agree or disagree with that?

12 A. I think we've said that the definition of  
13 "discipline" is that it's intended to be corrective,  
14 not punitive. So if somebody said they felt like it  
15 was punitive or if they defined it as punitive --  
16 I'm not sure what you're asking.

17 Q. If someone intended to be -- sorry. If someone were  
18 to define "disciplinary action" as punitive, would  
19 you agree or disagree with that?

20 MR. ENSLIN: Object to form, calls for  
21 speculation.

22 THE WITNESS: Can you give me an  
23 example?

24 BY MS. WALKER:

25 Q. That is the example.

1 A. Who is "someone"?

2 Q. Disciplinary action is punitive. Do you agree or  
3 disagree with that?

4 MR. ENSLIN: Object to the form.

5 THE WITNESS: As I've said, there's  
6 often a punitive aspect of discipline, but  
7 that is not the intent of discipline.

8 BY MS. WALKER:

9 Q. Do you agree or disagree with the definition?

10 MR. ENSLIN: Objection, asked and  
11 answered.

12 BY MS. WALKER:

13 Q. It's a simple question.

14 MS. WALKER: He hasn't answered.

15 THE WITNESS: I'll say no.

16 BY MS. WALKER:

17 Q. You disagree with the definition?

18 A. Yes.

19 MR. ENSLIN: I need five minutes.

20 MR. HAINES: Let's take five minutes.

21 (A recess was had from 4:15 p.m. until  
22 4:38 p.m.)

23 BY MS. WALKER:

24 Q. So the City adopted as its own the deposition  
25 testimony of Amelia Huffman beginning at page 149,

1 line 21 through 150, line 2. Could you read that to  
2 yourself? And so Ms. Huffman's pointed to the  
3 Discipline Matrix as the document that conveys to  
4 police officers that coaching is not discipline,  
5 correct?

6 A. Yes.

7 Q. Do you agree with that?

8 A. The Discipline Matrix is one. I agree with her  
9 statement.

10 Q. Okay.

11 A. I don't think it's complete.

12 Q. Okay. Where else is it conveyed that coaching is  
13 not discipline?

14 A. Past practice.

15 Q. Okay. I'm talking about documents. So can you  
16 point me to other documents?

17 A. Not offhand.

18 Q. All right. Would you also look at page 165, line 12  
19 through 166, line 9, and you can read that to  
20 yourself? Do you agree with what Ms. Huffman said  
21 there?

22 A. Which part?

23 Q. The part you read, 165 to 166?

24 A. She references to the policy and procedure manual  
25 being alongside the Discipline Matrix where it

1 indicates coaching is not discipline. There's a  
2 Complaint Process Manual.

3 Q. I know what it says. I'm just asking if you agree  
4 with what she said.

5 A. The idea these are all documents that could direct  
6 an employee to where they might find that coaching  
7 is not discipline, yes, I agree with that.

8 Q. Do you have anything to add to her testimony on that  
9 point?

10 A. No.

11 Q. She called the Discipline Matrix "A very fundamental  
12 communication," correct?

13 A. That's what she called it.

14 Q. A little bit before that, around line 9, she says,  
15 "It has been very faithful at representing that  
16 coaching is not discipline." Do you see that?

17 A. Yes.

18 Q. Do you agree the Discipline Matrix has been very  
19 faithful at representing that coaching is not  
20 discipline?

21 A. I do.

22 Q. Okay. Can you flip to page 168? And I directed her  
23 in my question beginning at line 16 to a box at the  
24 very end of the Discipline Matrix and a portion of  
25 it that says, "A-level violations are not listed in

1 the matrix and are considered coaching, not  
2 discipline." Do you see where I'm at?

3 A. Yes.

4 Q. And I asked Ms. Huffman, "Did I read that  
5 correctly?" And she said, "Correct." I said, "Is  
6 there anywhere else in this matrix where coaching is  
7 referenced?" And she said, "I believe that's the  
8 sole reference." Do you see that?

9 A. Yes.

10 Q. You're not aware of any other reference to coaching  
11 in the Discipline Matrix, correct?

12 A. I'm not.

13 Q. And then why don't you read line 25 through line 4  
14 on page 169 to yourself?

15 A. Okay.

16 Q. Do you stand by Ms. Huffman's testimony on behalf of  
17 the City?

18 A. Which part of it?

19 Q. The part you just read.

20 A. So the part that I just read looks like it's a  
21 question from you.

22 Q. Yeah. And she said, "Correct." Line 4.

23 A. Okay.

24 Q. Do you -- do you agree with Ms. Huffman?

25 A. I agree that it doesn't actually say anything about

1           whether coaching is B, C, or D level.

2           Q.   The Discipline Matrix is absolutely silent on the  
3           issue of B-level coaching, correct?

4           A.   Yes.

5           Q.   Absolutely silent on the issue of C-level coaching,  
6           correct?

7           A.   Yes.

8           Q.   Silent on the issue of D-level coaching, correct?

9           A.   Yes.

10          Q.   And silent on the issue of E-level coaching,  
11          correct?

12          A.   E-level coaching wasn't in place at the time of  
13          this, but it would be.

14          Q.   So the Discipline Matrix doesn't say one way or  
15          another whether coaching for anything above an  
16          A-level violation is disciplinary, right?

17          A.   Coaching is always understood to be nondisciplinary.

18          Q.   Strike that answer. So the Discipline Matrix  
19          doesn't say one way or another whether coaching is  
20          for a B-level violation is disciplinary?

21          A.   It does not.

22          Q.   And the Discipline Matrix is the only written  
23          document you can think of as you sit here today that  
24          conveys to Minneapolis police officers that coaching  
25          is not discipline and past pattern in practice? But

1 in terms of documents, the Discipline Matrix is the  
2 only one you know of?

3 A. And the Discipline Process Manual, as noted by  
4 Ms. Huffman.

5 Q. Anything besides that?

6 A. No.

7 Q. Most rank and file officers aren't going to read the  
8 Discipline Process Manual, correct?

9 A. They should.

10 Q. That's not my question. Can you answer my question?

11 A. I don't know that I can agree with your -- what  
12 you're suggesting. You're saying most officers  
13 wouldn't read the Discipline Process Manual. I  
14 don't know whether that to be true or not.

15 Q. They would be more familiar with the Discipline  
16 Matrix than the Discipline Process Manual, correct?

17 A. All of those documents are available to them.

18 Q. That's not my question.

19 A. Every supervisor, you know, anyone that's trying to  
20 get promoted frequently, that document is part of  
21 the recommended reading, so supervisors would need  
22 to look at that. So, you know, you're talking about  
23 nearly half the department is of some supervisory  
24 rank and very likely to have read it. So I don't  
25 have any reason to believe that officers wouldn't

1           have read it either, but particularly if they  
2           were --

3           Q.   Let me just stop you because the City has actually  
4           designated testimony of Ms. Huffman that they've  
5           adopted as their own. So I'll point you to page  
6           165, line 124. Ms. Huffman testified, "For sure" --  
7           she's talking about the Discipline Matrix. She  
8           says, "For sure, more than the Complaint Process  
9           Manual. The Complaint Process Manual is not the  
10          kind of document that is read by people who aren't  
11          involved in the complaint process within the  
12          department. It's not going to be something that  
13          your sort of average street cop is going to have  
14          read or referred to, whereas, the Discipline Matrix  
15          is widely distributed and discussed at each time  
16          that there's an update to the Discipline Matrix."  
17          So the City has adopted that, and I don't need to  
18          ask you any more questions about that issue.

19                   Other than the Discipline Matrix and the  
20          Discipline Policy Manual, can you think of any other  
21          documents where police officers have been told that  
22          coaching is not discipline?

23          A.   I can't think of anything off the top of my head.

24          Q.   So let's look at the Discipline Matrix, which is  
25          Exhibit 59. That's that Trina Chernos letter from

1           September 2020. The matrix was attached to the back  
2           of it. It begins -- the Bates stamp on this is --  
3           you found it, right? It begins page 001550. Do you  
4           see that?

5           A. Yes.

6           Q. All right. And this is from 2018, correct? It's  
7           part of the Discipline Process Manual?

8           A. I don't see where it says that, but if that's what  
9           you're asserting, then I don't disagree.

10          Q. All right. And it was, apparently, the Discipline  
11          Matrix in effect at the time she sent the 2020  
12          letter, as far as you know?

13          A. Yes.

14          Q. And it's the matrix that's essentially still in  
15          effect to this day, correct?

16          A. It is not.

17          Q. No? Let me ask you to flip to page 1553, the very  
18          last page of the matrix. Do you see where I'm at?

19          A. Yeah.

20          Q. Do you see that blue box called "Special Notes on  
21          Matrix"?

22          A. Yes.

23          Q. Does that box continue to exist on the current  
24          version of the matrix?

25          A. I don't recall.

1 Q. All right. When would that box have been removed?

2 A. I'm not saying that it would have been removed.

3 Q. When was this version of the matrix changed?

4 A. I believe in 2022.

5 Q. All right. I can tell Isabelle is already trying to  
6 figure out for us if that box still exists, but  
7 let's talk about what existed prior to 2022 for now,  
8 which is this document we're looking at, correct?

9 A. Yes.

10 Q. Can you read that blue box to yourself?

11 A. Okay.

12 Q. Can you tell me where it says that coaching is not  
13 discipline?

14 A. Not on the Discipline Matrix.

15 Q. Okay. Where does it say that in this document?

16 A. It doesn't say it in this document from what I can  
17 see.

18 Q. Is there some other Discipline Matrix that we should  
19 be looking at?

20 A. Well, coaching isn't discipline, so it wouldn't be  
21 on the Discipline Matrix.

22 Q. We may be misunderstanding each other. So you  
23 remember Ms. Huffman's testimony on how police  
24 officers know that coaching is not discipline  
25 because the Discipline Matrix tells them so?

1 A. Yes.

2 Q. And so this is the Discipline Matrix that was in  
3 effect prior to 2022?

4 A. Yes.

5 Q. So where in this document does it tell officers that  
6 coaching is not discipline?

7 A. It doesn't.

8 Q. So Ms. Huffman was wrong that the Discipline Matrix  
9 tells officers that coaching is not discipline?

10 A. I don't think she was wrong. If there was a  
11 sustained A-level violation, they would be coaching.  
12 That wouldn't be reflected on the Discipline Matrix.

13 Q. Oh, I agree that there's no A-level on this. This  
14 is for disciplinary levels, right, B, C, and D?

15 A. Yes.

16 Q. Okay. So is there or is there not a document where  
17 the police department has told officers that  
18 coaching is not discipline?

19 A. I believe it's outlined in the Discipline Process  
20 Manual.

21 Q. Okay. So are you're changing your mind? It's not  
22 actually in the Discipline Matrix?

23 MR. ENSLIN: Object to the form.

24 THE WITNESS: I don't know what you  
25 mean.

1 BY MS. WALKER:

2 Q. Let's back up. So I asked you, tell me the  
3 documents where the police department has told  
4 officers that coaching is not discipline. Remember,  
5 I asked you that?

6 A. Mm-hmm.

7 Q. And you said -- you looked at Ms. Huffman's  
8 testimony, and you said there's two, the Discipline  
9 Matrix and the Discipline Process Manual. Do you  
10 remember that testimony?

11 A. Yes.

12 Q. Okay. So we're going to take them one at a time.  
13 First, we're looking at the Discipline Matrix. Tell  
14 me where it says to rank and file officers that  
15 coaching is not discipline?

16 A. It doesn't say that specifically.

17 Q. Okay. What does it say that is supposed to help  
18 them understand that coaching is not discipline?

19 A. It says, "A-level violations are not listed in the  
20 matrix and are considered coaching, not discipline."

21 Q. Okay. So A-level violations are not discipline, but  
22 where does it say coaching is not discipline?

23 A. It doesn't specifically say that in the Discipline  
24 Matrix.

25 Q. Should we turn to the -- the Discipline Process

1 Manual then?

2 A. Okay.

3 Q. So that's in the same exhibit, and it begins at  
4 1548. Actually, 1548 is a specific page I want to  
5 refer you to. So this is the only other document  
6 you or Ms. Huffman could think of that supposedly  
7 tells officers that coaching is not discipline. So  
8 you're free to flip through the whole thing, but I  
9 think 1548 is the relevant section. And I'd just  
10 like you to point me to the sentence that tells  
11 officers that coaching is not discipline?

12 A. It's the header, "Non-Discipline Category A coaching  
13 documentation. Category A violations can only  
14 result in nondisciplinary corrective actions."

15 Q. So that said Category A violations are  
16 nondisciplinary, right?

17 A. Yes.

18 Q. Where does it say coaching is not disciplinary?

19 A. It's the only place that coaching is listed is under  
20 the nondisciplinary category.

21 Q. It's not the only place where coaching is used,  
22 right?

23 A. Yes.

24 Q. Sometimes it's used for B levels, right?

25 A. Yes.

1 Q. And this document doesn't say anything about whether  
2 coaching is disciplinary when it's used for a B  
3 level, right?

4 A. Yes.

5 Q. These are the only two documents you can identify?

6 A. Yes.

7 Q. So isn't it true that the police department has  
8 never put in writing that coaching for B level is  
9 nondisciplinary?

10 MR. ENSLIN: Object to the form.

11 BY MS. WALKER:

12 Q. Can you think of any other place where it might be?

13 A. I cannot.

14 Q. Do you think the current Discipline Matrix says  
15 that?

16 A. I don't recall if that remained in the new  
17 Discipline Matrix or not.

18 Q. Well, it wouldn't have remained. It would be a new  
19 addition, right?

20 A. The old matrix was, we'll say, amended or updated,  
21 so it could have remained.

22 Q. You don't know if that blue box remained?

23 A. Right.

24 Q. But if it says something about B-level coaching,  
25 that would be a brand-new addition effective in

1 2022, correct?

2 A. That would be. I don't believe the current  
3 Discipline Matrix reflects that.

4 Q. So as far as you know, there's still no document  
5 that a Minneapolis police officer can look to to  
6 determine whether B-level coaching is disciplinary?

7 MR. ENSLIN: Object to the form.

8 BY MS. WALKER:

9 Q. Is that true?

10 A. I am remembering correspondence between Deputy Chief  
11 Glampe and the Federation discussing a grievance  
12 about a B-level coaching, and the response was that  
13 coaching is not discipline. And that was for a B  
14 level, so that's in writing.

15 Q. Anything other than that?

16 A. No.

17 Q. Any policy?

18 A. Not that I can think of.

19 Q. Any public website?

20 A. No.

21 Q. While we're in this letter from Ms. Chernos, could  
22 you flip to the first exhibit after her signature?  
23 It's going to be 1535 at the bottom. This appears  
24 to be a printout from a human resources intranet  
25 site, correct?

1 A. Yes.

2 Q. And this is a page about coaching, guidelines for  
3 successful coaching, and then there's a series of  
4 examples on page 2. Do you see that?

5 A. Yes.

6 Q. And one of the examples here is to conduct a  
7 coaching session to provide positive feedback to the  
8 employee. Do you see that?

9 A. No, but I trust it's there.

10 Q. On page 2 under Examples, "HR suggests conducting a  
11 coaching session to provide positive feedback to the  
12 employee"?

13 A. Okay.

14 Q. Do you know in the history of coaching at the  
15 Minneapolis Police Department if this ever happened?

16 MR. ENSLIN: Object to the form,  
17 foundation, outside the scope of the  
18 30.02(f).

19 THE WITNESS: So I'd like to point out  
20 that coaching is described by human  
21 resources is not reflective of the coaching  
22 process as in what comes out of  
23 complaint-based coaching. So there was a  
24 training last year or the year before where  
25 HR met with all supervisors in the MPD,

1 provided training on coaching that's  
2 consistent with this, and was clear that  
3 this is not complaint-based coaching.  
4 That's a separate process. What they're  
5 talking about here is coaching more broadly  
6 speaking, not complaint-based coaching.

7 BY MS. WALKER:

8 Q. HR statements on coaching has very little to do with  
9 how it's used in the MPD. Would you agree with  
10 that?

11 A. Could you state that again, please?

12 Q. HR statement on coaching has very little to do with  
13 how it's used in the complaint-based MPD process,  
14 correct?

15 MR. ENSLIN: Object to the form.

16 THE WITNESS: These concepts could very  
17 well be used in the formal complaint-based  
18 coaching process.

19 BY MS. WALKER:

20 Q. Okay. So I'll repeat my question. In the history  
21 of coaching at the MPD, are you aware that anyone  
22 has ever scheduled a coaching session to provide  
23 positive feedback to an employee?

24 MR. ENSLIN: Object to the form,  
25 foundation, outside the scope of the

1 30.02(f).

2 THE WITNESS: Can you ask the question  
3 one more time?

4 (The requested testimony was read.)

5 THE WITNESS: I believe that every  
6 coaching session that I've done has intended  
7 to be positive and that I take the coaching  
8 process very seriously. And I hope that  
9 what comes out of that process is that my  
10 employees feel supported, encouraged, and  
11 know that I'm there to help them work  
12 through any issues.

13 BY MS. WALKER:

14 Q. Let me ask it slightly differently. Look at that  
15 first bullet under that example where it instructs  
16 you to describe the positive performance result or  
17 work habit. Do you know of any supervisor in the  
18 history of the MPD scheduling a coaching session to  
19 discuss positive performance?

20 MR. ENSLIN: Same objections.

21 BY MS. WALKER:

22 Q. I understand the process can be positive,  
23 theoretically, but that's not quite my question. Do  
24 you understand the difference?

25 A. Well, you're asking about has anyone scheduled a

1 meeting with an employee to coach outside of the  
2 complaint process. Is that what you're asking?

3 Q. I'm just asking you, is a coaching session ever  
4 scheduled to commend an employee for positive?

5 A. I don't think it's scheduled for that express  
6 purpose.

7 Q. Right. Coaching sessions are scheduled to address  
8 misconduct, correct?

9 MR. ENSLIN: Object to the form.

10 THE WITNESS: That is not true. They  
11 could be to investigate allegations of  
12 misconduct. There may not have been any  
13 misconduct.

14 BY MS. WALKER:

15 Q. Okay. Coaching is used to address negative  
16 behaviors, right?

17 MR. ENSLIN: Object to the form.

18 THE WITNESS: Coaching is used as a  
19 process to investigate complaints of  
20 misconduct, the formal complaint-based  
21 coaching is.

22 BY MS. WALKER:

23 Q. Coaching is used to investigate?

24 A. Yes.

25 Q. So coaching happens before misconduct is

1 substantiated?

2 A. Yes.

3 Q. Do you give officers Garrity warnings and -- before  
4 a coaching session?

5 A. No.

6 Q. Even though they're used to investigate?

7 A. Because it's not disciplinary. So a Garrity  
8 statement is read. You can't take statements from  
9 employees if that statement is going to be used as  
10 discipline without affording them the right to an  
11 attorney or a Federation rep.

12 Q. I understand Garrity. Do you use coaching outside  
13 of the investigative process?

14 A. So we're talking, specifically, about  
15 complaint-based coaching. When it's generated from  
16 OPCR or internal affairs, it comes to the supervisor  
17 as a nondisciplinary investigation. Generally --

18 Q. I think we're getting off track. I don't mean to  
19 interrupt you. I just want to be efficient. And I  
20 think I can build off something you said that we're  
21 talking about complaint-based coaching, right?

22 A. Yes.

23 Q. So if there's a complaint that gives rise to  
24 coaching, we can assume that it's not to commend an  
25 officer for a positive performance, right?

1 MR. ENSLIN: Object to the form.

2 THE WITNESS: The complaint is sent to  
3 the supervisor to investigate to determine  
4 whether there's merit to the complaint and  
5 what, if any, action --

6 BY MS. WALKER:

7 Q. I understand the process. Can you listen carefully  
8 to the question?

9 MR. ENSLIN: Object to the form.  
10 That's argumentative. You've also  
11 interrupted the witness twice in a row, and  
12 he's trying to answer the question.

13 MS. WALKER: He's evading the question,  
14 and he's very good at it.

15 MR. ENSLIN: He's not evading the  
16 question. That's argumentative and  
17 improper.

18 BY MS. WALKER:

19 Q. Can you flip to page 1558 in the same exhibit? This  
20 is also called the Discipline Matrix, although it's  
21 not the spreadsheet we looked at a couple minutes  
22 ago, right?

23 A. Yes.

24 Q. What's the difference exactly?

25 A. The spreadsheet is within the larger Discipline

1 Matrix document.

2 Q. If you look at the next page, there's a headline  
3 that says, "Imposition Of Discipline." Do you see  
4 that? Do you see where I'm at?

5 A. No.

6 Q. I'm on page 1559.

7 A. Mm-hmm.

8 Q. And there's a heading that says, "Imposition of  
9 Discipline" at the bottom?

10 A. Yes.

11 Q. And the first sentence there says, "The MPD will  
12 impose discipline consistent with department policy  
13 and procedure." Did I read that correctly?

14 A. Yes.

15 Q. Is that an accurate statement?

16 A. Yes.

17 Q. Except with the old policy manual that mandated  
18 discipline and the chief didn't always impose it,  
19 correct?

20 A. Yes.

21 Q. So is this an accurate statement?

22 A. It doesn't recognize the chief's ability to impose  
23 discipline as he determines is appropriate.

24 Q. Okay. So it's not accurate?

25 MR. ENSLIN: Object to the form, asked

1 and answered.

2 BY MS. WALKER:

3 Q. Do you think this is accurate?

4 A. I think that it's incomplete.

5 Q. Okay. So the document that Ms. Huffman and the City  
6 embraced her testimony as the latest and greatest  
7 word on what is discipline and what is coaching is  
8 not complete? Is that your testimony?

9 MR. ENSLIN: Object to the form,  
10 argumentative, asked and answered.

11 THE WITNESS: Yes.

12 BY MS. WALKER:

13 Q. Were you interviewed by the Department of Justice?

14 A. No.

15 Q. Were you involved in producing documents to the  
16 Department of Justice?

17 A. I don't recall whether I was or not. It's possible  
18 that while in internal affairs, I helped produced  
19 records, but I don't specifically recall that.

20 Q. Do you know if the City had a protective order with  
21 the Department of Justice for the data it produced?

22 A. I don't know.

23 Q. Who would know that?

24 A. City Attorney's Office.

25 Q. Have you read the DOJ report?

1 A. I have not.

2 Q. Why don't we give you a copy of it. It's  
3 Exhibit 40.

4 (Exhibit 40 was introduced into the  
5 record.)

6 BY MS. WALKER:

7 Q. I'll have you flip to page 71. And I'll represent  
8 to you that between pages 71 and 76, the DOJ  
9 summarizes a number of incidents that resulted in  
10 coaching and training. I'll give you time to flip  
11 to it. Do you see where I'm at?

12 A. Well, it's five pages worth of -- yes.

13 Q. You can take a minute to skim through them. You  
14 don't need to read closely. My questions are pretty  
15 general.

16 A. I'm ready.

17 Q. Page 71 to 76. You ready?

18 A. Sure.

19 Q. You heard me represent to you that these pages  
20 include summaries by the DOJ of various incidents  
21 that resulted in either coaching or training?

22 A. Yes.

23 Q. And my question is, do you know if the City has  
24 objected to the DOJ, including this personnel data  
25 in its report?

1 A. What are you asking me about what they rejected?

2 Q. Objected. Do you know if the City objected to the  
3 DOJ, including this kind of personnel data in its  
4 report?

5 A. I don't know what you mean.

6 Q. You don't know the answer?

7 A. I mean, are you asking did they object to the  
8 producing of the data, or did they object to the  
9 findings?

10 Q. To the public disclosure of the data about coaching  
11 and training.

12 A. I don't know the answer to that.

13 Q. Do you know who would know?

14 A. Presumably, the City Attorney's Office.

15 Q. On page 68, the DOJ said, "Our review shows that MPD  
16 frequently failed to address police misconduct which  
17 allows officers' serious violations of people's  
18 rights to go unpunished." Do you agree with that  
19 statement?

20 A. The City has not taken a position on the findings of  
21 the DOJ. We are entering a settlement agreement and  
22 we have not determined whether to -- that they're  
23 true or false.

24 Q. On page 71, the DOJ talks about an incident where an  
25 unarmed man said he planned to file a complaint, and

1 the MPD officer pushed him backwards so hard his  
2 head struck the sidewalk. The officer was required  
3 to go to training. Do you think that incident was  
4 punished or not?

5 MR. ENSLIN: Object to the form.

6 THE WITNESS: I don't know what  
7 happened in that case.

8 BY MS. WALKER:

9 Q. You can read about it. Go ahead. It's page 71, the  
10 third full paragraph.

11 A. Okay.

12 Q. So was that officer punished in your opinion or not?

13 MR. ENSLIN: Object to the form, calls  
14 for speculation.

15 THE WITNESS: According to this report,  
16 the officer was referred for nondisciplinary  
17 training.

18 BY MS. WALKER:

19 Q. So was he punished?

20 MR. ENSLIN: Object to the form, asked  
21 and answered.

22 THE WITNESS: To the extent that it was  
23 nondisciplinary and -- well, I don't know  
24 how we define "punishment," but it doesn't  
25 appear that based on the context of this

1 conversation, if discipline is punishment,  
2 then no, he was not disciplined.

3 BY MS. WALKER:

4 Q. I thought you testified that discipline is not  
5 punishment?

6 MR. ENSLIN: Object to the form,  
7 misstates prior testimony.

8 THE WITNESS: I think we talked about  
9 punitive. Maybe we talked about punishment.  
10 It's been a long afternoon, but -- what is  
11 your specific question?

12 BY MS. WALKER:

13 Q. Was this a punitive consequence?

14 A. It doesn't appear so.

15 Q. Almost done. When an officer is coached, does that  
16 happen during his shift? When he's off duty? Does  
17 it vary?

18 A. My expectation would be that it would always be on  
19 duty.

20 Q. He would be paid for that time?

21 A. Yes, he would be on duty.

22 Q. You talked before the break about how -- how a  
23 consequence feels and how discipline might feel  
24 punitive. Do you recall that?

25 A. Yes.

1 Q. Did you think that receiving a Letter of Reprimand  
2 might have the same feel to an officer as being told  
3 he has to go to coaching?

4 MR. ENSLIN: Objection, calls for  
5 speculation.

6 THE WITNESS: I think if the officer  
7 understands that coaching is not  
8 disciplinary, it should feel different.

9 BY MS. WALKER:

10 Q. In your experience, are officers excited and do they  
11 look forward to being coached?

12 A. In my experience, they do not look forward to being  
13 coached.

14 Q. They don't view it as a positive; is that true?

15 MR. ENSLIN: Object to the form.

16 THE WITNESS: I think they don't know  
17 what to expect, and that's what makes them  
18 feel that it's less than positive.

19 BY MS. WALKER:

20 Q. In your experience, they feel like -- do they feel  
21 like they're in trouble?

22 MR. ENSLIN: Object to the form.

23 THE WITNESS: I can't say that they  
24 would because I try to preface any coaching  
25 conversation with, there's -- there's no

1 reason to be afraid. There's no reason to  
2 be, you know -- like, this isn't -- this  
3 isn't supposed to be an adversarial process.  
4 We're going to meet, and we're going to have  
5 a discussion about this incident.

6 BY MS. WALKER:

7 Q. So why don't they look forward to it?

8 MR. ENSLIN: Object to the form.

9 THE WITNESS: I think as a general  
10 rule, employees don't necessarily look  
11 forward to these type of -- any type of  
12 conversation with their supervisor, really,  
13 especially if it's investigating a complaint  
14 of alleged misconduct.

15 MS. WALKER: Okay. Let's take five  
16 minutes. I think I'm done. I just want to  
17 confer with my colleagues.

18 (A recess was had from 5:18 p.m. until  
19 5:21 p.m.)

20 MS. WALKER: So I have no further  
21 questions at this time, but we are going to  
22 keep the deposition open, including because  
23 we don't have a stipulation yet on Topics 8  
24 and 9, but I know you have a hard stop at  
25 5:45. So we'll stop for today. And I have

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1 nothing else. Anything else for the record?

2 MR. ENSLIN: No.

3 MS. WALKER: We can go off the record.

4 THE COURT REPORTER: Will the witness  
5 read and sign?

6 MR. ENSLIN: Yes.

7 THE COURT REPORTER: Copies for both  
8 sides?

9 MS. WALKER: Yes. Thank you.

10 THE COURT REPORTER: And you as well?

11 MS. RISKIN: Yes.

12 (The foregoing proceeding concluded at  
13 5:22 p.m.)

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CHRISTINA M. DE GRANDE  
Professional Stenographic Court Reporter  
And Notary Public  
Commission expires January 31, 2027

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March 6, 2024

To: Mr. Enslin

Case Name: Minnesota Coalition On Government Information v. City Of  
Minneapolis, Et Al.

Veritext Reference Number: 6384526

Witness: Troy Schoenberger                      Deposition Date: 2/20/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown

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If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6384526

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/20/2024

WITNESS' NAME: Troy Schoenberger

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date Troy Schoenberger

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6384526

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/20/2024

WITNESS' NAME: Troy Schoenberger

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have listed my changes on the attached  
Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

I request that these changes be entered  
as part of the record of my testimony.

I have executed the Errata Sheet, as well  
as this Certificate, and request and authorize  
that both be appended to the transcript of my  
testimony and be incorporated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Troy Schoenberger

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They have listed all of their corrections  
in the appended Errata Sheet;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

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Date

Troy Schoenberger

21

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DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

23

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Commission Expiration Date

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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# EXHIBIT

# G

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STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL CIRCUIT  
CASE TYPE: Other Civil

MINNESOTA COALITION ON  
GOVERNMENT INFORMATION,

Court File No.  
27-CV-21-7237

Plaintiff,

v.

CITY OF MINNEAPOLIS; CASEY J.  
CARL, in his official capacity as  
Clerk for the City of Minneapolis;  
NIKKI ODOM, in her official  
capacity as Chief Human Resources  
Officer for the City of Minneapolis;  
MINNEAPOLIS POLICE DEPARTMENT;  
and BRIAN O'HARA, in his official  
capacity as Chief of Police for the  
City of Minneapolis,  
Defendants.

DEPOSITION OF CASEY CARL

DATE: February 26, 2024

TIME: 8:30 a.m.

PLACE: Ballard Spahr LLP, 2000 IDS Center, 80 South  
Eighth Street, Minneapolis, Minnesota 55402

PAGES: 1-93

JOB NO.: MW 6343858

REPORTED BY: Jonathan Wonnell, RMR

## A P P E A R A N C E S

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REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read in the record and do not necessarily reflect exact quotes from the source documents nor necessarily match punctuation.

## P R O C E E D I N G S

\* \* \* \* \*

Whereupon,

CASEY CARL,

called as a Witness, was duly sworn by  
Jonathan Wonnell, a Notary Public in and  
for the State of Minnesota, and was  
examined and testified as follows.

\* \* \* \* \*

## EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MS. NASCIMENTO:

Q Good morning.

A Good morning.

Q My name is Isabella Nascimento and I am  
with the law firm BallardSpahr which is where we're  
at today. I represent the Plaintiff, Minnesota  
Coalition on Government Information, in the lawsuit  
that you're being deposed as part of today. So with  
me is Leita Walker who is also with BallardSpahr and  
we might have one or two other attorneys, Emmy  
Parsons or Matt Thornton, come in during this. So  
just to let you know everyone who's here.

Just to start off, have you ever been  
deposed before?

A Yes.

1 Q How many times?

2 A Twice, I believe.

3 Q And when was that?

4 A Several years ago, possibly 2012.

5 Q Both of them in 2012?

6 A I believe so.

7 Q And what was your role in that case?

8 A The same as here. I came to provide  
9 testimony on a case that was being brought against  
10 the city.

11 Q Were you a named defendant in that case?

12 A Yes.

13 Q And it was a data request case?

14 A Correct.

15 Q So since you've been deposed already  
16 before just a couple ground rules I'll go over quick.  
17 One is obviously we have a court reporter here taking  
18 everything down so verbal answers. No uh-huhs or  
19 huh-uhs, nodding or shaking of your head. So answers  
20 yes or no if you wouldn't mind.

21 I'll try to wait until you finish your  
22 response to my questions but if you can do me the  
23 same courtesy it'll just make for a clearer  
24 transcript.

25 If you don't understand a question, please

1 tell me. Otherwise I'll assume you understand my  
2 question. Is that fair?

3 A Yes.

4 Q We can take breaks, but not while a  
5 question is pending. Okay?

6 A Yes.

7 Q Attorneys can object to the questions, but  
8 that's typically just for the record. So once the  
9 attorneys are done stating their objections then you  
10 can answer the question. All of my questions are  
11 just designed to understand what you know in your own  
12 personal knowledge. So you can assume that unless I  
13 state otherwise that's what I'm asking for. Okay?

14 A Yes.

15 Q And if you need a question repeated either  
16 because you didn't hear it or you've forgotten the  
17 question -- sometimes that happens with objections,  
18 for example -- I can repeat it or we can have it read  
19 back. Does that sound okay?

20 A Yes.

21 Q Great. Just a couple other things. So  
22 you understand you're here as part of the lawsuit in  
23 coaching versus the City of Minneapolis, Casey Carl,  
24 Nikki Odom and Brian O'Hara, right?

25 A Yes.

1           Q       So if I refer to the lawsuit, that's the  
2       one I'm talking about.

3           A       Yes.

4           Q       If I say MNCOGI you know I mean the  
5       Minnesota Coalition on Government Information or the  
6       plaintiff in this case?

7           A       Yes.

8           Q       If I refer to the MPD you understand I'm  
9       talking about the Minneapolis Police Department?

10          A       Yes.

11          Q       If I say the federation you know I mean  
12       the Police Officers Federation of Minneapolis?

13          A       Yeah.

14          Q       And then if I say the MGDPA you know I'm  
15       talking about the Minnesota Government Data Practices  
16       Act?

17          A       Yes.

18          Q       Okay. Perfect. So before we started you  
19       were put under oath. You understand that testifying  
20       under oath means you're legally obligated to tell the  
21       truth, correct?

22          A       Correct.

23          Q       And you understand that testifying today  
24       has the same force and effect as if you were  
25       testifying in court before a judge, right?

1           A       Yes.

2           Q       Are you on any medication today that would  
3 prevent you from testifying truthfully?

4           A       No.

5           Q       Is there any other reason you couldn't  
6 answer truthfully today?

7           A       No.

8           Q       Is there anything that's preventing you  
9 from being able to recall events that you have  
10 personal knowledge of?

11          A       No.

12          Q       Mr. Carl, what did you do to prepare for  
13 today's deposition?

14          A       Mr. Enslin and I spoke about prepping for  
15 the --

16                 MR. ENSLIN: And I don't -- you don't have  
17 to say anything about what we talked about. But you  
18 can tell her --

19                 THE WITNESS: Yeah.

20          A       Mr. Enslin told me we'd be deposed today  
21 and that we would meet in the Crystal Court and come  
22 up together.

23 BY MS. NASCIMENTO:

24          Q       Have you ever spoken to Mr. Enslin other  
25 than that one time?

1           A       We spoke twice, once to tell me I would be  
2       deposed and the second time to say that today's date  
3       was the deposition and we would meet in the Crystal  
4       Court.

5           Q       And so when was the first time that you  
6       spoke with Mr. Enslin?

7           A       I believe it was maybe a week or a week  
8       and a half ago.

9           Q       Where you see anyone else present during  
10      these meetings?

11          A       No.

12          Q       Had you previously met with the attorneys  
13      for the city about any other part of this case?

14          A       No.

15          Q       Besides the city attorneys did you meet  
16      with anyone else to prepare for your deposition  
17      today?

18          A       No.

19          Q       Did you review any documents in  
20      preparation for today?

21          A       No.

22          Q       So I think probably the answer to this is  
23      obvious but I'm going to ask anyway given your last  
24      answer. Did you review any other deposition  
25      testimony or transcripts from other depositions in

1       this case?

2           A       No.

3           Q       Did you speak with anyone who has been  
4       deposed in this case about their deposition?

5           A       No.

6           Q       So not Katherine Knudsen?

7           A       No.

8           Q       Mary Zenzen?

9           A       No.

10          Q       Lieutenant Schoenberger?

11          A       I'm sorry. Who?

12          Q       Lieutenant Troy Schoenberger?

13          A       No.

14          Q       Patience Ferguson?

15          A       No.

16          Q       Sherral Schmidt?

17          A       No.

18          Q       Amelia Huffman?

19          A       No.

20          Q       Did you take any notes in preparation for  
21       today's deposition?

22          A       No.

23          Q       Have you had any role in identifying  
24       documents to be produced in discovery in this case?

25          A       No.

1           Q       What about this lawsuit in general? Have  
2 you talked to anyone about it?

3           A       No.

4           Q       So you work now as the city clerk for the  
5 City of Minneapolis, correct?

6           A       Yes.

7           Q       Have you held any other positions or  
8 titles for the city?

9           A       No.

10          Q       And what is your official title?

11          A       City clerk.

12          Q       How long have you worked in that position?

13          A       I started with the city in August of 2010.

14          Q       So going on 14 years?

15          A       Correct.

16          Q       And were you appointed by city council?

17          A       Yes.

18          Q       To whom in the city do you directly  
19 report?

20          A       The city council.

21          Q       So you don't report to the mayor?

22          A       No.

23          Q       Who in the city clerk's office reports to  
24 you?

25          A       I have three assistant city clerks that

1 report directly to me. One of each of those  
2 assistant clerks is in charge of the business line  
3 within the clerk's office.

4 Q Who are those three people?

5 A So the first assistant city clerk is  
6 Jackie Hanson. The second assistant city clerk is  
7 Christian Rummelhoff. The third assistant city clerk  
8 is Katie Smith.

9 Q And you said they each work on different  
10 business lines; is that right?

11 A Correct.

12 Q Which line does Jackie Hanson work on?

13 A Ms. Hanson is the supervisor of the  
14 legislative support and operations division.

15 Q What about Katie Smith?

16 A Katie Smith is the director of our  
17 elections and voter services division.

18 Q And what about Mr. Rummelhoff?

19 A Christian Rummelhoff is the director of  
20 our records and information management position.

21 Q So if I'm hearing you correctly, Kathryn  
22 Knudsen does not report directly to you?

23 A Correct.

24 Q Mary Zenzen does not report directly to  
25 you?

1           A       Correct.

2           Q       Do they both report to Christian  
3 Rummelhoff?

4           A       Ms. Zenzen reports to Chris Rummelhoff. I  
5 believe that Ms. Knudsen reports to Ms. Zenzen.

6           Q       Did you receive any training to be able to  
7 do your job as the city clerk?

8           A       When I started in 2010 I completed a  
9 course offered by the League of Minnesota Cities for  
10 city clerks.

11          Q       What course was that?

12          A       I don't recall the name. It's a training  
13 they provide for city clerks in the State of  
14 Minnesota covering typical duties of city clerk  
15 officers.

16          Q       Did that include training on the MGDPA?

17          A       Yes. There was an introductory course to  
18 the Government Data Practices Act.

19          Q       And what are your responsibilities as the  
20 city clerk?

21          A       As city clerk I have essentially four  
22 categories of responsibilities. The first is that  
23 I'm the clerk of city council and so am responsible  
24 for facilitating the legislative process of the  
25 legislative body. I am the chief elections official

1 of the city and am responsible for administering all  
2 elections within Minneapolis.

3 I am the custodian of all records and data  
4 and the responsible authority pursuant to state law  
5 for the City of Minneapolis. And then the fourth  
6 category of my work and I'm the head of the  
7 legislative department and so the legislative  
8 department encompasses the 13 council members, their  
9 ward officers and aides, the office of city clerk and  
10 its divisions and the office of city auditor.

11 Q So for this case I'm sure it comes as no  
12 surprise, I'm most interested in that third category  
13 that you mentioned. So repeat that one more time for  
14 me?

15 A The responsible authority functions?

16 Q Yeah.

17 A The city clerk is designated as the  
18 responsible authority for the City of Minneapolis  
19 pursuant to state law and in addition is the official  
20 custodian of the city's information assets.

21 Q So you're the responsible authority for  
22 all departments of the City of Minneapolis?

23 A Correct.

24 Q Including the MPD?

25 A Correct.

1           Q       Practically what does it mean to be the  
2 responsible authority for the city?

3           A       Being the responsible authority means that  
4 you are responsible for enforcing the Minnesota  
5 Government Data Practices Act, that you are  
6 responsible for ensuring that data collected by the  
7 city, produced by the city, owned or maintained by  
8 the city are managed in accordance with the law, and  
9 that government data that is classified as public is  
10 accessible to the public and that data that is not  
11 classified as public is maintained securely.

12          Q       Okay. So one thing under the law is to be  
13 responsible for keeping records containing government  
14 data in an arrangement and condition to make them  
15 easily accessible for convenient use?

16          A       Correct.

17          Q       And as you mentioned another is to ensure  
18 that requests for government data are received and  
19 complied with in an appropriate and prompt manner,  
20 right?

21          A       Correct.

22          Q       So is it your understanding that you're  
23 ultimately responsible for every response to a  
24 request for data sent out in the name of the city?

25               MR. ENSLIN: Object to the form.

1           A       Yes.

2       BY MS. NASCIMENTO:

3           Q       What role do you actually play in  
4       responding to MGDPA requests?

5           A       Very little. My responsibility is to  
6       ensure that there are systems and processes in place  
7       for government -- requests for government data to be  
8       received and processed, to make sure that those are  
9       handled appropriately as required by the law.

10                   Separate from the responsible authority as  
11       the records manager, which is not the same role, my  
12       responsibility is to ensure that as city departments  
13       are creating data that data is managed according to  
14       identified life cycles up through and including  
15       disposition or permanent retention.

16                   The two roles tend to go together but are  
17       distinct.

18           Q       And if I refer to one of them incorrectly  
19       please do correct me so that we have a clear record.  
20       Sometimes as shorthanded I might collapse the two so  
21       it's much appreciated if you help me.

22           A       Sure.

23           Q       Do you ever personally respond to requests  
24       for data?

25           A       The only time I would personally respond

1 to a request is if I have responsive data to the  
2 request. And then it would not be me responding. I  
3 would respond through the information division that  
4 Mr. Rummelhoff supervises. They're the central  
5 agency that handles the intake and processing of  
6 requests.

7 And so if I were the subject of a data  
8 request, I would let them know, I would give them  
9 whatever data I have and then they would be  
10 responsible for reviewing, redacting and releasing  
11 it.

12 Q Do you ever consult on data requests?

13 A To the extent that there are data requests  
14 that are more high visibility or high profile,  
15 meaning media requests and media representatives or  
16 reporters are contacting the mayor or council members  
17 and demanding faster turnaround time, I may intervene  
18 to find out what is the status of a pending request.

19 Other than that I try not to be involved  
20 in any manner in the data requests because I want to  
21 be impartial from the operation of that. The way we  
22 set it up as the named responsible authority, I need  
23 to be removed from the day-to-day processes so that  
24 if there are objections to the way it's handled  
25 that's an appeal to me.

1 Q I see. So you typically handle appeals?

2 A If there are formal complaints for the way  
3 that responses to data requests have been made, then  
4 that would come to my attention.

5 Q But you have previously consulted on  
6 certain requests for data that have come to your  
7 office?

8 MR. ENSLIN: Object to the form.

9 A Pretty much if there is a request from the  
10 media for a more timely response I'll ask about the  
11 status and usually we'll try and respond back that  
12 this is the way it is, we're not going to move the  
13 media up in line or give them an advance in queue, we  
14 take the cases one at a time.

15 BY MS. NASCIMENTO:

16 Q Sure. Since you came in as the clerk for  
17 the City of Minneapolis. Have you ever searched for  
18 responsive data to a data request where you aren't  
19 the subject of the data request?

20 A No.

21 Q So you've never had to conduct any  
22 searches for responsive data where it's not, say, in  
23 your email box?

24 A No.

25 Q Do you know how those searches are

1 conducted?

2 A I don't have direct knowledge of how  
3 they're done.

4 Q So I heard you say a couple minutes ago  
5 that you ensure that there are systems and processes  
6 in place in order to properly respond to MGDPA  
7 requests and to make sure that data is managed in  
8 appropriate life cycles? Right? Did I get that  
9 right?

10 A Correct.

11 Q So one thing I'm trying to figure out is  
12 then in your position what are the systems and  
13 processes that you put in place to make sure that  
14 data is easily searchable?

15 A So in addition to having the team in place  
16 of Mr. Rummelhoff and his team who handle the work  
17 and make sure that they're trained and able to do the  
18 work, it's working with Mr. Rummelhoff to understand  
19 what systems he has in place or what systems are in  
20 place in other departments across the enterprise and  
21 how those systems interrelate to each other, helping  
22 them when they need direction on what's a better way  
23 of doing searches, which departments to connect with,  
24 so ensuring that the team has the capacity both in  
25 terms of personnel, information technology systems

1 and resources to do their work.

2 Q When someone on your team is responding to  
3 a data request, do they ever come to you to review  
4 documents to see if they have public or non-public  
5 data in them?

6 A No.

7 Q They never come to you to determine  
8 whether they should be withheld?

9 A No.

10 Q Or redacted?

11 A No.

12 Q Does anyone on your team ever come to you  
13 to talk about what the actual response, the written  
14 response, should be in response to a data request?

15 A Yes.

16 Q How frequently does that happen?

17 A Infrequently. Maybe twice a quarter, if  
18 that.

19 Q What are the situations where that's  
20 happened?

21 A Mr. Rummelhoff as the manager or  
22 supervisor of that division will come on certain  
23 issues where he's uncertain, where we haven't  
24 established an existing protocol or template for  
25 responses and say this is unusual or it's different,

1 here's what I think it should be, do you concur.

2 Q What types of issues do you recall?

3 A Mostly ones that are what I would classify  
4 as being more sensitive where there's an  
5 interpretation to be made. Mr. Rummelhoff will  
6 review the law and he'll make a recommendation on  
7 here's how I think the law applies in this  
8 circumstances.

9 We want to be consistent with how we have  
10 interpreted that with prior releases. And so he'll  
11 give me a rundown of how a certain case does or does  
12 not match with previous releases and if it deviates  
13 he'll say here's how I think it's new and different  
14 and I think this is the response we should establish  
15 as the language going forward for similar such cases.

16 Q Can you give me an example of what a  
17 sensitive issue is?

18 A I really can't. The best I could come up  
19 with is if there's something high profile that's  
20 being reported in the paper and we previously had one  
21 response but because the interpretation has now  
22 differed and we know we're going to get coverage in  
23 the paper, for example, or in the media, he'll say  
24 here's why it's different, here's why I think it's  
25 different and here's what I would suggest we say and

1 if we're asked why it's different now here's my  
2 interpretation of what's different.

3 I'll say I either agree or I don't and we  
4 either go with the interpretation that he's  
5 recommended or we stick with the previous case.

6 Q Can you clarify for me what you mean by a  
7 different interpretation? Do you mean a different  
8 interpretation of the law or on what's being asked in  
9 the request?

10 A It could be both. It could be  
11 interpreting the law because the Minnesota Government  
12 Data Practices Act gets amended almost every  
13 legislative session. It's one of the most volatile  
14 laws in the books, in my opinion. And because the  
15 legislature changes it every year your interpretation  
16 must change every year.

17 Data that last year was not public this  
18 year now is public. So where you've previously  
19 denied a request, now you must make an exception and  
20 say because of this change it is, or the facts of  
21 this case are slightly different and therefore we  
22 would interpret the law applying differently.

23 Q When was the last time Mr. Rummelhoff came  
24 to you with this type of question?

25 A I don't recall. It's been a while.

1           Q       And so it sounds like there have been  
2 cases, though, where you've suggested specific  
3 language to be used in response to a data request; is  
4 that right?

5                   MR. ENSLIN: Object to the form, misstates  
6 prior testimony.

7           A       No. I would say he suggests what the  
8 response should be and I'll either concur or not  
9 concur.

10 BY MS. NASCIMENTO:

11           Q       You also mentioned a second ago that he  
12 might come to you where the city doesn't have, say, a  
13 template for a response. So does the city have  
14 predrafted responses to certain issues when they  
15 arise in data requests?

16                   MR. ENSLIN: Object to the form.

17           A       In some cases, yeah.

18 BY MS. NASCIMENTO:

19           Q       Can you give me examples, which topics?

20           A       It's not necessarily done by topic, but by  
21 the outcome. So if we're going to deny someone the  
22 law requires us to cite the statute that allows for  
23 the non-release of data. And so there are specific  
24 templates with language that's been predetermined  
25 that this is how to respond in certain cases where

1 we're not releasing data.

2 Q Okay. Does the city have any pre-drafted  
3 responses to certain requests or topics that are  
4 requested in data requests?

5 A Not to my knowledge.

6 Q So does the city have a pre-drafted denial  
7 for data requests that reference coaching?

8 A Not to my knowledge.

9 Q Do you provide any trainings to city  
10 employees on how to respond to data requests?

11 A No.

12 Q Is there a standard process that city  
13 employees are supposed to use to respond to data  
14 requests?

15 A Yes.

16 Q What is that process?

17 A They work with Mr. Rummelhoff's division  
18 in terms of both identifying any responsive data that  
19 they may have, forwarding that responsive data to  
20 Mr. Rummelhoff's team and any other follow-up  
21 coordination that they are asked to do.

22 Q So I actually just got a response on a  
23 data request from the city on a separate request and  
24 it responded that each request goes through four  
25 different stages and those are intake, collection,

1 review and production. Does that sound accurate?

2 A To the best of my knowledge it does.

3 Q Is that the city's process on how to  
4 respond to data requests?

5 MR. ENSLIN: Object to the form.

6 A To the best of my knowledge, yes.

7 BY MS. NASCIMENTO:

8 Q For intake the responder said, quote, "We  
9 receive the requests and we clarify if needed." Is  
10 that an accurate statement of what the city does in  
11 response to its data requests?

12 MR. ENSLIN: Object to the form.

13 A Yes.

14 BY MS. NASCIMENTO:

15 Q Is that for every data request?

16 MR. ENSLIN: Object to the form,  
17 speculation.

18 A I believe it is.

19 BY MS. NASCIMENTO:

20 Q What's the city's policy on how data  
21 requests should be interpreted or construed?

22 MR. ENSLIN: Object to the form.

23 A We don't have a set policy on how data  
24 should be interpreted -- a request for data should be  
25 interpreted.

1 BY MS. NASCIMENTO:

2 Q So does the city have a policy on whether  
3 data requests should be interpreted as broadly as  
4 possible?

5 MR. ENSLIN: Object to the form.

6 A No. Not that I'm aware of.

7 BY MS. NASCIMENTO:

8 Q Or as narrowly as possible?

9 MR. ENSLIN: Same objection.

10 A No. Not that I'm aware of.

11 BY MS. NASCIMENTO:

12 Q Are all city employees who respond to data  
13 requests trained on these four stages of responding  
14 to a data request?

15 MR. ENSLIN: Object to the form.

16 A Not to my knowledge.

17 BY MS. NASCIMENTO:

18 Q Are there any training materials  
19 documenting those four steps?

20 MR. ENSLIN: Object to the form.

21 A Not to my knowledge.

22 BY MS. NASCIMENTO:

23 Q Those four stages of responding to a data  
24 request, is that an official city policy?

25 A No.

1           Q       Has the city ever adopted a policy that a  
2       data request can be summarily closed without  
3       conducting any sort of collection or review of  
4       responsive records?

5                   MR. ENSLIN:   Object to the form, calls for  
6       speculation.

7           A       Not that I -- no, not that I know of.

8       BY MS. NASCIMENTO:

9           Q       Does the city have a policy that if data  
10      requests reference coaching it can be summarily  
11      denied and closed without searching for any data  
12      responsive to the request?

13          A       No.

14          Q       So I asked if that was a policy, but does  
15      the city have a practice that if a data request  
16      references coaching it can be summarily denied and  
17      closed without responding for any responsive records?

18                  MR. ENSLIN:   Object to the form.

19          A       No.

20      BY MS. NASCIMENTO:

21          Q       So if that happened in this case that  
22      would be unusual?

23                  MR. ENSLIN:   Object to the form.

24          A       Yes.

25                  MR. ENSLIN:   Speculation.

1 BY MS. NASCIMENTO:

2 Q Would you support such a policy by the  
3 city?

4 MR. ENSLIN: Object to the form,  
5 speculation.

6 A I don't have an opinion on whether the  
7 city should have or should not have that policy.

8 BY MS. NASCIMENTO:

9 Q I'm going to hand you what's been  
10 premarked as Plaintiff's Exhibit 2. Or rather  
11 Ms. Walker is going to hand it to you. Do you  
12 recognize this document?

13 A No.

14 Q Have you ever seen it before?

15 A No.

16 Q So you didn't see it in February of 2021  
17 when it was first filed?

18 A Not to the best of my knowledge.

19 Q Do you see that the data request has four  
20 parts?

21 A Yes.

22 Q And I'd like to talk to you about the  
23 fourth part specifically. The fourth part asks for  
24 "All data dating from January 1st, 2011 to present in  
25 which coaching is described as a form of discipline

1 or acknowledged by a supervisor or the chief of  
2 police to constitute a form of discipline."

3 Did I read that correctly?

4 A Yes.

5 Q In the first part of that request do you  
6 see it asks for all data in which coaching is  
7 described as a form of discipline? Correct? The  
8 fourth part, the first clause.

9 A Yes.

10 Q And that clause can be read by itself,  
11 right?

12 MR. ENSLIN: Object to the form,  
13 speculation.

14 A I think so.

15 BY MS. NASCIMENTO:

16 Q It can be considered a standalone request?

17 MR. ENSLIN: Object to the form.

18 A Yes.

19 BY MS. NASCIMENTO:

20 Q And then the second clause in that says  
21 "All data in which coaching is acknowledged by a  
22 supervisor or the chief of police to constitute a  
23 form of discipline." Do you see that?

24 A Yes.

25 Q And that clause too can be read by itself,

1 right?

2 MR. ENSLIN: Object to the form,  
3 foundation, speculation.

4 A I assume it could be yes.

5 BY MS. NASCIMENTO:

6 Q As a standalone request?

7 A Yes.

8 Q And do you agree that that interpretation,  
9 reading those as two standalone requests, is a  
10 reasonable reading of MNCOGI's -- of the fourth part  
11 of MNCOGI's data request?

12 MR. ENSLIN: Object to the form,  
13 foundation, speculation.

14 A I don't have an opinion whether it is or  
15 isn't. It reads on its face.

16 BY MS. NASCIMENTO:

17 Q It reads on its face -- sorry. Finish  
18 that thought for me. It reads on its face what?

19 A Number 4 is a request for data whether you  
20 divide that sentence in two parts or not.

21 Q As the city clerk and as the responsible  
22 authority for the city, whose interpretation of a  
23 data request should govern, the requester's or the  
24 recipient's?

25 MR. ENSLIN: Objection to the form, calls

1 for speculation.

2 A I'm not sure I agree with the framing of  
3 your question. We would interpret that as to how the  
4 statute governs.

5 BY MS. NASCIMENTO:

6 Q Okay. So in this particular instance the  
7 city has tried to adopt a narrow interpretation of  
8 MNCOGI's data request. So I'm just trying to figure  
9 out is it typical for the city to read data requests  
10 it receives as narrowly as possible.

11 MR. ENSLIN: Object to the form,  
12 argumentative, misstates evidence, speculation.

13 A I'm not sure I can answer the question the  
14 way you asked it. Can you ask it again?

15 BY MS. NASCIMENTO:

16 Q So in this case the city has tried to  
17 adopt a narrow interpretation of MNCOGI's data  
18 request. And I'm just asking is it typical for the  
19 city to read data requests it receives as narrowly as  
20 possible?

21 MR. ENSLIN: Object to the form,  
22 speculation, argumentative, calls for a legal  
23 conclusion, misstates the evidence.

24 A I'm not aware the city has drawn that  
25 conclusion, to interpret the request from MNCOGI in

1 this case as narrowly as possible. I have no  
2 personal knowledge that says the city has done that.  
3 The last part of your question is -- can you state  
4 that again?

5 BY MS. NASCIMENTO:

6 Q Just is it typical for the city to read  
7 data requests as narrowly as possible?

8 MR. ENSLIN: Same objection.

9 A No.

10 BY MS. NASCIMENTO:

11 Q Ms. Walker is going to hand you what's  
12 been previously marked as Plaintiff's Exhibit 3. Do  
13 you recognize this document?

14 A No.

15 Q Have you ever seen it before?

16 A No.

17 Q So you didn't see it before March 2021  
18 when Ms. Knudsen first responded to MNCOGI?

19 A No.

20 Q And you didn't speak with Ms. Knudsen  
21 before she responded denying MNCOGI's request?

22 A No.

23 Q And you didn't review this in preparation  
24 for your testimony today?

25 A No.

1           Q       You see in Ms. Knudsen's response the  
2 first sentence is "Coaching is not discipline and has  
3 never been discipline"? Do you see that?

4           A       Yes.

5           Q       Do you agree with that statement?

6                   MR. ENSLIN: Object to the form,  
7 speculation.

8           A       I don't have an opinion on that.

9 BY MS. NASCIMENTO:

10          Q       Do you know whether that's the city's  
11 position, that coaching is not discipline and has  
12 never been discipline?

13          A       No. I don't know if that's true or not.

14          Q       Have you reviewed any documents that would  
15 confirm whether coaching is not discipline and has  
16 never been discipline or the inverse?

17          A       No.

18          Q       If I were to show you documents today that  
19 said, quote, coaching is a form of discipline, would  
20 that make you question the accuracy of Ms. Knudsen's  
21 statement?

22                   MR. ENSLIN: Object to the form.

23          A       I think it would depend on in which  
24 context it was presented. If it is a policy of the  
25 city then I would say there would need to be a

1 review.

2 BY MS. NASCIMENTO:

3 Q And if I were to show you documents that  
4 said coaching is being imposed as, quote, discipline,  
5 would that make you question the accuracy of  
6 Ms. Knudsen's statement?

7 MR. ENSLIN: Object to the form.

8 A Again, I have no knowledge that there is  
9 such data. It would be new data for me to receive.

10 BY MS. NASCIMENTO:

11 Q Because you have not seen any documents  
12 that say that?

13 A Correct.

14 Q And if you're looking back on Exhibit 2 as  
15 well, so if -- 2 and 3 side by side --

16 A Yup.

17 Q -- would you agree with me that if there  
18 were documents that said coaching is a form of  
19 discipline that those would have been responsive to  
20 the fourth part of MNCOGI's request?

21 MR. ENSLIN: Object to the form, calls for  
22 speculation.

23 A I think it would depend on how the data  
24 was requested, how it was classified and whether or  
25 not it was subject to release under law.

1 BY MS. NASCIMENTO:

2 Q Setting aside whether it can be released  
3 would you agree with me that if there were documents  
4 that said that they would be responsive to the  
5 request?

6 MR. ENSLIN: Object to the form, calls for  
7 speculation.

8 A No. Again, our policy is to trace whether  
9 government data is first classified as public or not  
10 public, and that isn't done until we get a request.  
11 Government data isn't classified when it's created.  
12 It's classified when it's requested. So I can't  
13 speculate as to whether or not that may or may not  
14 exist and whether it would or would not be public  
15 data at that point. The request has to be made and  
16 then the analysis has to be done.

17 BY MS. NASCIMENTO:

18 Q Okay. So I'd like to break that answer  
19 down a little bit, actually. So we do have a request  
20 in this case.

21 A Mm-hmm.

22 Q And I guess my question is if I were to  
23 show you a document that said coaching is being  
24 imposed as discipline, for example, and that document  
25 existed at the time that the request was made, I'm

1 just asking would you agree with me that that would  
2 be responsive to MNCOGI's request?

3 MR. ENSLIN: Object to the form,  
4 foundation, speculation.

5 A I don't know.

6 BY MS. NASCIMENTO:

7 Q Are you aware of any documents calling  
8 coaching discipline?

9 A No.

10 Q So you're not aware that documents calling  
11 coaching discipline have been produced in the course  
12 of this litigation?

13 MR. ENSLIN: Object to the form.

14 A No.

15 BY MS. NASCIMENTO:

16 Q So if you'll look at Exhibit 3, the next  
17 sentence in Ms. Knudsen's denial of MNCOGI's request  
18 reads "The data you are requesting is private under  
19 Minnesota Statute 13.43." Do you see that?

20 A Yes.

21 Q And did I read that correctly?

22 A Yes.

23 Q And Minnesota Statute 13.43 refers to the  
24 personnel data provision of the MGDPA, correct?

25 A I don't know.

1 Q Are you familiar with the MGDPA?

2 A Yes.

3 Q And all its provisions?

4 MR. ENSLIN: Object to the form.

5 A Yes. Generally, yes.

6 BY MS. NASCIMENTO:

7 Q So if I showed you the MGDPA and in  
8 particular that provision, would that help refresh  
9 your recollection?

10 A It might, yeah.

11 Q So Ms. Walker is going to hand you what's  
12 been premarked as Exhibit 183. And let me know when  
13 you've finished reviewing it.

14 MR. ENSLIN: Do you want him to read the  
15 whole thing?

16 MS. NASCIMENTO: You don't have to. It's  
17 just to kind of jog memory that it's a personnel data  
18 provision.

19 BY MS. NASCIMENTO:

20 Q So let me know when you're ready,  
21 Mr. Carl.

22 A (Reviewing document.) Yeah. If you don't  
23 need me to read the whole thing then --

24 Q Does that help refresh that Minnesota  
25 Statute 13.43 refers to the personnel data provision

1 of the MGDPA?

2 A Yes.

3 Q And so you see Ms. Knudsen's denial was  
4 specific to that provision, correct?

5 A Correct.

6 Q And she didn't write any other statutory  
7 basis for the denial of MNCOGI's request, correct?

8 A Correct.

9 Q And Ms. Zenzen has previously testified on  
10 behalf of the city that this part of the request does  
11 not seek only personnel data. So Ms. Knudsen's  
12 response isn't accurate, correct?

13 MR. ENSLIN: Object to the form. I'm  
14 sorry. Could you ask that question one more time?  
15 BY MS. NASCIMENTO:

16 Q Yeah. Ms. Knudsen's response that this  
17 request seeks only personnel data isn't accurate,  
18 correct?

19 MR. ENSLIN: Object to the form. Calls  
20 for a legal conclusion, foundation.

21 A I can't answer that. I believe you framed  
22 it by saying Ms. Zenzen testified that Ms. Knudsen  
23 issued something. I was not aware of either of their  
24 testimony. I don't know.

25

1 BY MS. NASCIMENTO:

2 Q Are you aware of any documents responsive  
3 to the fourth part of MNCOGI's data request that is  
4 not private personnel data under the Minnesota Data  
5 Practices Act?

6 MR. ENSLIN: Object to the form, calls for  
7 a legal conclusion.

8 A I do not.

9 BY MS. NASCIMENTO:

10 Q Do you have any reason to doubt that such  
11 documents exist?

12 MR. ENSLIN: Object to the form,  
13 speculation.

14 A I don't know.

15 BY MS. NASCIMENTO:

16 Q Can you recall my question where I asked  
17 if there were documents that coaching was being  
18 imposed as discipline, whether those would be  
19 responsive to MNCOGI's request? Do you recall that  
20 question?

21 A Yes.

22 Q And you said you weren't sure, you'd have  
23 to see what documents showed?

24 A Yes.

25 Q So is it the city's position that a

1 document is only responsive to a request if it can be  
2 publicly released?

3 MR. ENSLIN: Object to the form.

4 A I can't answer that. I don't know.

5 BY MS. NASCIMENTO:

6 Q If the city has responsive data to a  
7 request it needs to be transparent about that even if  
8 it's going to withhold the data pursuant to an  
9 objection, right?

10 MR. ENSLIN: Object to the form,  
11 speculation.

12 A Correct.

13 BY MS. NASCIMENTO:

14 Q So if it has responsive data it should say  
15 that?

16 MR. ENSLIN: Object to the form.

17 A Yes.

18 Q So Ms. Walker is going to hand you what's  
19 been previously marked as Exhibit 5. Do you  
20 recognize this document?

21 A No.

22 Q Have you ever seen it before?

23 A No.

24 Q But you see that it's a fourth quarter  
25 2013 data report issued by the Office of Police

1 Conduct Review?

2 MR. ENSLIN: Object to the form.

3 A Yes.

4 BY MS. NASCIMENTO:

5 Q If you'll look at the penultimate page  
6 which is -- the Bates stamp is 0000895. On this page  
7 there are two bar graphs, correct?

8 A Yes.

9 Q And the title of the second bar graph on  
10 that page is discipline types issued by chief, right?

11 A Yes.

12 Q And the first blue key underneath that for  
13 that bar graph is listed training and coaching,  
14 correct?

15 A Yes.

16 Q Would you agree with me -- actually, let  
17 me back up. I'll withdraw that part of the question.

18 This is a public record, correct?

19 MR. ENSLIN: Object to the form,  
20 foundation.

21 A To the best of my knowledge.

22 BY MS. NASCIMENTO:

23 Q You don't see it marked with a  
24 confidential stamp or anything on it, correct?

25 A Correct.

1 Q And the Office of Police Conduct Review,  
2 that's a city division?

3 A Yes, within the civil rights department.

4 Q And here we have discipline types issued  
5 by chief listing training and coaching. So would you  
6 agree with me that this record is responsive to the  
7 fourth part of MNCOGI's data request?

8 MR. ENSLIN: Object to the form,  
9 foundation, speculation.

10 A Not necessarily, no.

11 BY MS. NASCIMENTO:

12 Q Why not?

13 A This is a report that summarizes chief  
14 actions as listed at the top of the page that was  
15 prepared by the Office of Police Conduct Review. I  
16 don't believe that that necessarily is responsive to  
17 Number 4 that says they want data where coaching is  
18 described as a form of discipline or acknowledged by  
19 a supervisor or chief. To me I don't know that that  
20 is necessarily responsive or not.

21 Q So you would not agree that this is data  
22 in which coaching is described as a form of  
23 discipline?

24 MR. ENSLIN: Object to the form, asked and  
25 answered.

1           A           Again, I don't know if it is or isn't.

2       BY MS. NASCIMENTO:

3           Q           What would you need to be able to make  
4       that determination?

5                   MR. ENSLIN:   Object to the form,  
6       foundation, speculation.

7           A           I'm not sure I can tell you what I'd need  
8       to make that determination. I'm not sure I'm the one  
9       who makes that determination. This is the first time  
10      I've ever seen this report.

11     BY MS. NASCIMENTO:

12           Q           Who would make that determination?

13           A           The data practices team that  
14      Mr. Rummelhoff supervises would gather any responsive  
15      data from the departments who respond to the request,  
16      they would review that and they would make  
17      determinations. Again, I don't handle that work  
18      directly.

19           Q           So would this report be pulled as part of  
20      the responsive data to that fourth part of the  
21      request?

22                   MR. ENSLIN:   Object to the form,  
23      speculation.

24           A           I don't know.

25

1 BY MS. NASCIMENTO:

2 Q So I just want to make sure that I  
3 understand your answer. Is your testimony today that  
4 this document would not be responsive to the fourth  
5 part of MNCOGI's data request or just you're not the  
6 person responsible for making that determination?

7 MR. ENSLIN: Object to the form, asked and  
8 answered.

9 A I don't know whether or not it would or  
10 would not be responsive to the request. And having  
11 never seen it before, I don't know.

12 BY MS. NASCIMENTO:

13 Q Ms. Walker is going to hand you what's  
14 been previously marked as Plaintiff's Exhibits 6 and  
15 7. Have you ever seen these documents before?

16 A No.

17 Q So you see Exhibit 6 is an email from  
18 Glenn Burt to Andrea Jenkins dated September 22nd,  
19 2020, correct?

20 A Correct.

21 Q And there's an attachment with the title  
22 2003 federal mediation agreement. Do you see that?

23 A Yes.

24 Q And so if you look at Exhibit 7, it's  
25 titled memorandum of agreement. It's from 2003 and

1 it's that attachment, the 2003 federal mediation  
2 agreement. I can represent that to you based on the  
3 metadata of these documents. If you'll flip to  
4 what's Section 7.3.2, and the Bates stamp on that is  
5 1189 --

6 A Yes.

7 Q -- that section is titled disciplinary  
8 options and reads "Pursuant to the Minneapolis civil  
9 service rules and the MPD discipline manual,  
10 disciplinary options are coaching, oral reprimand,  
11 written reprimand, suspension, demotion and  
12 termination."

13 Did I read that correctly?

14 A Yes.

15 Q And so would you agree that this is a  
16 document in which coaching is listed as a form of  
17 discipline?

18 MR. ENSLIN: Object to the form,  
19 foundation, speculation.

20 A Yes. It seems to say that.

21 BY MS. NASCIMENTO:

22 Q And so would you also agree with me that  
23 this record would be responsive to the fourth part of  
24 MNCOGI's data request?

25 MR. ENSLIN: Object to the form,

1 foundation, speculation.

2 A It might be.

3 BY MS. NASCIMENTO:

4 Q You said it might be. What is stopping  
5 you from saying it is responsive?

6 MR. ENSLIN: Object to the form.

7 A I've never seen the document before  
8 sitting here today. I don't know if this was in our  
9 possession, if it was forwarded to the data practices  
10 team. I don't know if they ever saw it when they  
11 were doing reviews of data that may or may not have  
12 been responsive to this request dated February 15,  
13 2021.

14 BY MS. NASCIMENTO:

15 Q Does your team have to see the data for it  
16 to be responsive to the request?

17 MR. ENSLIN: Object to the form,  
18 speculation.

19 A My team wouldn't necessarily know of the  
20 existence of the data if it wasn't provided to them.

21 BY MS. NASCIMENTO:

22 Q Sure. But just because data is not  
23 provided to them, is it your testimony that if data  
24 isn't provided to you that it's not responsive to the  
25 requests?

1           A           No.

2           Q           I guess I'm asking you to determine today  
3 whether that document is responsive to the fourth  
4 part of MNCOGI's request.

5                   MR. ENSLIN: Object to the form,  
6 foundation, speculation. He already testified he's  
7 never seen the request, he's never seen this  
8 document, he doesn't know anything about this  
9 document, where it came from. You cannot force him  
10 to make an opinion that he doesn't have the facts to  
11 make.

12 BY MS. NASCIMENTO:

13           Q           Okay. Mr. Carl, you see that the cover  
14 email there is from Glenn Burt to Andrea Jenkins,  
15 correct?

16           A           Yes.

17           Q           Andrea Jenkins was a city council person?

18           A           Yes.

19           Q           So would you agree with me that this  
20 document was in the city's position in October 2020?

21                   MR. ENSLIN: Object to the form,  
22 foundation.

23           A           It appears that it was, yes.

24 BY MS. NASCIMENTO:

25           Q           Okay. And now you have MNCOGI's request

1 and you know that that document was in the city's  
2 possession in 2020 and this request was made in 2021.  
3 As the responsible authority and a 14-year city  
4 clerk, can you tell me whether that document in which  
5 coaching is described as a form of discipline would  
6 be responsive to the fourth part of MNCOGI's request?

7 MR. ENSLIN: Object to the form,  
8 speculation, foundation, asked and answered.

9 A It could be.

10 BY MS. NASCIMENTO:

11 Q If Mr. Rummelhoff came to you today with  
12 this document and that request, what would you tell  
13 him?

14 MR. ENSLIN: Object to the form, calls for  
15 speculation.

16 A I believe we'd discuss what his  
17 recommendation was.

18 BY MS. NASCIMENTO:

19 Q And what would you recommend?

20 MR. ENSLIN: Object to the form, asked and  
21 answered.

22 A I don't know. I don't know what my  
23 recommendation would be if he came to me or not.

24 BY MS. NASCIMENTO:

25 Q Would you agree with me that this is not

1 private personnel data under Minnesota Statute 13.43?

2 MR. ENSLIN: Object to the form, calls for  
3 a legal conclusion.

4 A It doesn't appear to be.

5 BY MS. NASCIMENTO:

6 Q And this document was not provided in  
7 response to MNCOGI's data request, correct?

8 MR. ENSLIN: Object to the form,  
9 foundation.

10 A I have no knowledge whether it was or not.

11 BY MS. NASCIMENTO:

12 Q So if you'll look back at Plaintiff's  
13 Exhibit 3 you see in Ms. Knudsen's response she  
14 writes "MPD has no responsive data and your request  
15 is now closed." Do you see that?

16 A Yes.

17 Q And so you see Ms. Knudsen's response is  
18 specific to the MPD, correct?

19 A Correct.

20 Q If you look back at Plaintiff's  
21 Exhibit 2 -- and take your time if you need to review  
22 it -- what in MNCOGI's request indicates that it was  
23 asking for data only in the MPD's possession?

24 A (Reviewing document.) It doesn't appear  
25 that the original request from February 15 of 2021

1 limits data to data from MPD.

2 Q So that seems to be a limitation that  
3 Ms. Knudsen imposed herself, correct?

4 MR. ENSLIN: Object to the form,  
5 foundation.

6 A I don't know that that's true.

7 BY MS. NASCIMENTO:

8 Q That wasn't a limitation imposed by  
9 MNCOGI's request, correct?

10 A The Data Practices Act allows elected  
11 officials to withhold correspondence between  
12 themselves and their constituency. What you provided  
13 me was an email from Glenn Burt to an elected  
14 official. I don't know if Ms. Jenkins withheld that  
15 or not.

16 Q I'm not asking you about Exhibits 6 and 7  
17 at this point. I'm just asking you about Exhibit 3  
18 in which Ms. Knudsen responded that MPD has no  
19 responsive data. And I believe your testimony was  
20 that there's nothing on the face of MNCOGI's request  
21 that limited the request only to MPD data, correct?

22 A Correct.

23 Q And so that's not a limitation that MNCOGI  
24 imposed, right?

25 A It doesn't appear to be.

1           Q       So it must have been a limitation that the  
2 city imposed itself, correct?

3                   MR. ENSLIN: Object to the form,  
4 foundation.

5           A       I don't know if that's true or not.

6 BY MS. NASCIMENTO:

7           Q       So Ms. Zenzen previously testified on  
8 behalf of the city that MNCOGI's data request was  
9 summarily denied and closed without anyone ever  
10 seeking clarification on the request, locating or  
11 gathering data responsive to the request or without  
12 anyone reviewing any data to see whether it could be  
13 redacted or wholly produced.

14                   Were you aware of that?

15                   MR. ENSLIN: Object to the form.

16           A       No.

17 BY MS. NASCIMENTO:

18           Q       If you were to receive this request  
19 through the city's portal today, would you handle it  
20 differently?

21                   MR. ENSLIN: Object to the form.  
22 Speculation.

23           A       I don't know.

24 BY MS. NASCIMENTO:

25           Q       Would you summarily deny and close it?

1                   MR. ENSLIN: Object to the form,  
2 speculation, foundation.

3           A        I don't know.

4 BY MS. NASCIMENTO:

5           Q        Would you expect your employees to handle  
6 it differently?

7                   MR. ENSLIN: Object to the form,  
8 speculation and foundation.

9           A        I don't know.

10 BY MS. NASCIMENTO:

11           Q        Is it your position as responsible  
12 authority for the City of Minneapolis as the city  
13 clerk for the City of Minneapolis that summary denial  
14 and closure without ever seeking clarification,  
15 locating, gathering data or reviewing any data to see  
16 whether it could be redacted or wholly produced is an  
17 appropriate response to a data request?

18                   MR. ENSLIN: Object to the form,  
19 speculation, foundation.

20           A        No.

21 BY MS. NASCIMENTO:

22           Q        Do you believe that complies with the  
23 MGDPA?

24                   MR. ENSLIN: Object to the form,  
25 speculation.

1           A           Do I believe that summarily dismissing a  
2           case complies with MGDPA?

3           BY MS. NASCIMENTO:

4           Q           Yes. Without ever looking for data,  
5           determining whether any data could be redacted or  
6           wholly produced or seeking clarification before it's  
7           denied?

8           A           No.

9                       MR. ENSLIN: Object to the form,  
10          speculation.

11          A           No.

12                      MR. ENSLIN: Could we take five whenever?  
13          It doesn't have to be now.

14                      MS. NASCIMENTO: I was actually going to  
15          suggest the same.

16                      MR. ENSLIN: Okay.

17                      (Recess from 9:32 a.m to 9:45 a.m.)

18          BY MS. NASCIMENTO:

19           Q           So if you can grab Plaintiff's Exhibit 2  
20           and Plaintiff's Exhibit 5 for me one more time. And  
21           you're again looking at the second-to-last page of  
22           the bar graphs on there. So if Mr. Rummelhoff came  
23           to you today and said, Mr. Carl, here's the request  
24           that we got and I did a search and it turned up  
25           Plaintiff's Exhibit 5, do I need to disclose this,

1 what would you say to him?

2 MR. ENSLIN: Object to the form,  
3 speculation.

4 A On the face of it it would seem to be  
5 responsive to the request.

6 BY MS. NASCIMENTO:

7 Q Ms. Walker is going to hand you what's  
8 been previously marked as Plaintiff's Exhibit 10. So  
9 my question is the same, if Mr. Rummelhoff came to  
10 you today and said here's the request, here's the  
11 document that turned up -- if you can look  
12 specifically at the page with the Bates stamp 1874 --  
13 and this should be another bar graph --

14 A Yes.

15 Q -- and he said do I need to disclose that,  
16 would the answer be the same?

17 MR. ENSLIN: Object to the form,  
18 speculation, foundation.

19 A Possibly. I assume so.

20 BY MS. NASCIMENTO:

21 Q Well, you see it says discipline at the  
22 top?

23 A Yes.

24 Q And one of the first bullet points --  
25 sorry -- the third bullet point from the top is

1 coaching?

2 A Yes.

3 Q Ms. Walker is going to hand you what's  
4 been previously marked as Plaintiff's Exhibit 11.  
5 And if he came to you with this document would your  
6 answer be the same?

7 MR. ENSLIN: Object to the form.

8 A Again, it could be.

9 BY MS. NASCIMENTO:

10 Q It could be as in you would tell him to  
11 disclose it?

12 MR. ENSLIN: Object to the form and  
13 foundation, speculation.

14 A Yes, if it were responsive. If I had read  
15 the request and understood the context and this was a  
16 document that might be brought to my attention, it  
17 may be that I would say it should be disclosed.

18 BY MS. NASCIMENTO:

19 Q What other information do you need to  
20 advise him beyond the plain language of the request  
21 and the plain language of the document?

22 MR. ENSLIN: Object to the form,  
23 speculation.

24 A I don't know what else may be needed in  
25 that particular case. I don't know.

1 BY MS. NASCIMENTO:

2 Q Would you need to review any city policy  
3 to make that determination?

4 MR. ENSLIN: Object to the form, asked and  
5 answered.

6 A It could be. I don't know.

7 BY MS. NASCIMENTO:

8 Q Which policy?

9 A I don't know.

10 Q Would you need to talk to the mayor about  
11 whether it could be released?

12 A No.

13 Q Would you need to talk to the City  
14 Attorney's Office?

15 A Possibly.

16 Q Would you need to review the MGDPA?

17 A Possibly.

18 Q And in this case about this document would  
19 you be of the review the MGDPA?

20 MR. ENSLIN: Object to the form, asked and  
21 answered, speculation.

22 A Again, potentially I would. This is a  
23 simple piece of paper. A request is usually not as  
24 simple as this is or isn't it. And so it could be,  
25 it might not be, I would have to look into it and

1 have more awareness of what this request was about.

2 BY MS. NASCIMENTO:

3 Q You can set those aside. Thank you.

4 Ms. Walker is going to hand you what's been  
5 previously marked as Exhibit 28. Mr. Carl, do you  
6 recognize this document?

7 A No.

8 Q Have you ever seen this document before?

9 A Not to my knowledge.

10 Q Do you see that you're a named defendant  
11 on the face of this document?

12 A Yes.

13 Q Were you aware you were a named defendant  
14 in this case?

15 A Yes.

16 Q When did you learn that for the first  
17 time?

18 A I don't recall. It was after the issue  
19 was filed. And in passing I believe Mr. Rummelhoff  
20 in one of our usual check-ins had given me the update  
21 that there was a lawsuit, it involved MNCOGI and that  
22 I was named.

23 Q Okay. But you've never read the complaint  
24 in this case?

25 A No, I have not.

1           Q       Ms. Walker is going to hand you what's  
2       been previously marked in this case as Exhibit 29.  
3       Do you recognize this document?

4           A       No.

5           Q       Have you ever seen it before?

6           A       I don't recall if I've seen it or not.

7           Q       Did you review this answer before it was  
8       filed?

9           A       I don't recall having seen this document  
10      before.

11          Q       Ms. Walker is going to hand you what's  
12      been previously marked as Plaintiff's Exhibit 30. Do  
13      you recognize this document?

14          A       No.

15          Q       And if you flip through it you can see  
16      it's actually a compilation of the discovery  
17      responses provided in this case.

18          A       It appears to be so.

19          Q       And you've never seen that before?

20          A       Not to the best of my recollection.

21          Q       You didn't review them before they were  
22      served?

23          A       I don't recall.

24          Q       Did anyone in your department review them  
25      for accuracy before they were served?

1           A       I don't know.

2           Q       Before today were you aware that it was  
3       the city's position that as a matter of policy  
4       coaching is not discipline?

5                   MR. ENSLIN: Object to the form.

6           A       I have -- I don't know that it's a matter  
7       of policy.

8       BY MS. NASCIMENTO:

9           Q       Were you aware that the city took the  
10       position that coaching is not discipline?

11          A       Yes.

12          Q       When did you first learn of the city's  
13       position?

14          A       There was a meeting requested by the  
15       former Police Conduct Oversight Commission, the  
16       PCOC -- I don't recall the date -- where at that time  
17       the commission was interested in this subject matter,  
18       coaching as a form of discipline. There had been  
19       several discussions before my office took over  
20       responsibility for clerking for the PCOC.

21                   And in response to a request from the  
22       then-chair of the PCOC there was a meeting to address  
23       that request, is coaching discipline. And on behalf  
24       of that body I arranged a meeting with certain  
25       high-level officials within the city's enterprise to

1 speak to the PCOC about that subject.

2 Q So did you learn about it from the PCOC,  
3 the city's position, or did you learn about it from  
4 somewhere else?

5 A I learned about it when the response was  
6 given to the PCOC.

7 Q The response was given by whom?

8 A There were a group of executives that I  
9 asked to come respond to the PCOC. My recollection  
10 is that the people I invited to speak included  
11 then-city coordinator Mark Ruff, the chief human  
12 resources officer, Patience Ferguson. I think there  
13 were a few other people who came. Those were the two  
14 primary people I recall asking to be there. And I  
15 believe Ms. Ferguson is the one who expressed the  
16 position that coaching is not discipline.

17 Q Are you referring to a meeting of the PCOC  
18 in May of 2021 by chance?

19 A It might be that date. I don't recall the  
20 date. But it was a meeting of the Police Conduct  
21 Oversight Commission, or PCOC.

22 Q And that was the first time you heard the  
23 city's position that coaching is not discipline?

24 A That's the first time I heard that  
25 coaching is not considered discipline stated by a

1 city executive.

2 Q Had you heard it stated by anyone else  
3 prior to that?

4 A No.

5 Q Since then has anyone told you explicitly  
6 that the city's position is that coaching is not  
7 discipline?

8 MR. ENSLIN: Object to the form.

9 A No.

10 BY MS. NASCIMENTO:

11 Q Have you spoken to anyone about that?

12 A No.

13 Q Do you know how it was determined in the  
14 City of Minneapolis that coaching is not discipline?

15 A No.

16 Q Do you know who set the policy for the  
17 city?

18 MR. ENSLIN: Object to the form.

19 A No.

20 BY MS. NASCIMENTO:

21 Q Ms. Walker is going to hand you what's  
22 been previously marked as Plaintiff's Exhibit 35.  
23 And if you'll take the time you need to just look  
24 over that to see if that refreshes your recollection  
25 that that's the meeting that you were talking about.

1           A           (Reviewing document.) This appears to be  
2           that meeting.

3           Q           Thank you. And you said earlier that the  
4           PCOC was interested in the topic coaching as a form  
5           of discipline, correct?

6           A           Correct.

7           Q           And were they specifically interested in  
8           coaching as a form of discipline at the MPD?

9           A           Yes. That was my understanding of their  
10          interest.

11          Q           Okay. It was not coaching as discipline  
12          within the city enterprise generally?

13          A           Correct.

14          Q           And, again, some of my questions are silly  
15          be I just need to be able to establish foundation, so  
16          bear with me. Are you aware that the MPD uses a  
17          process called coaching?

18          A           No. I don't have any knowledge about  
19          that.

20          Q           So you don't know whether the MPD uses  
21          coaching one way or another?

22          A           I have no personal knowledge about it.

23          Q           Okay. But given the PCOC's interest in  
24          coaching as discipline at the MPD you're at least  
25          aware that there is some discussion of coaching being

1 used by the MPD, correct?

2 A Yes.

3 Q Okay. But you don't know who created  
4 coaching at the MPD?

5 A No.

6 Q Or who implemented it?

7 A No.

8 Q Do you know anything about MPD's coaching  
9 process?

10 A No.

11 Q So do you know whether MPD uses coaching  
12 the same way that other departments in the City of  
13 Minneapolis use coaching?

14 A No.

15 Q Are you aware that coaching in the MPD can  
16 follow one or two different tracks?

17 MR. ENSLIN: Object to the form.

18 A No.

19 BY MS. NASCIMENTO:

20 Q And so you don't know if there's a  
21 difference between coaching A -- the investigation of  
22 A-level violations versus B or higher level  
23 violations?

24 MR. ENSLIN: Object to the form.

25 A No.

1 BY MS. NASCIMENTO:

2 Q Okay. Do you know what kind of things  
3 officers can be coached for?

4 A No.

5 Q Or what they can't be coached for?

6 A No.

7 Q Do you know who at the MPD decides whether  
8 an employee can or should be coached?

9 A No.

10 Q Are you aware that the MPD documents the  
11 imposition of coaching?

12 A No.

13 Q Have you seen any coaching documents  
14 before?

15 A No.

16 Q Isn't it true if coaching is imposed by  
17 the chief then the decision to coach an officer  
18 appears in a chief's determination letter?

19 MR. ENSLIN: Object to the form and  
20 foundation.

21 A I don't know.

22 BY MS. NASCIMENTO:

23 Q And isn't it true that the actual coaching  
24 session is typically documented on a coaching  
25 documentation form?

1 MR. ENSLIN: Object to the form and  
2 foundation.

3 A I don't know.

4 BY MS. NASCIMENTO:

5 Q And if both of those things are true,  
6 which we'll look at in a bit, that's at least two  
7 types of data that's being generated by the city with  
8 respect to coaching, correct?

9 A If as you state that's happening, then I  
10 would assume that's true.

11 Q At some point did your department get  
12 involved with the issue of coaching at the MPD?

13 A My involvement was limited to arranging  
14 for certain executives to come speak to the PCOC, the  
15 Police Conduct Oversight Commission, at this meeting  
16 in May of 2021.

17 Q Did your department start getting  
18 questions beyond just from the PCOC about coaching at  
19 the MPD?

20 A Not to my knowledge.

21 Q At some point the MPD's use of coaching  
22 started getting some public attention, right?

23 A Yes.

24 Q Do you recall when that happened?

25 A I believe it was when the PCOC started

1     their investigation into coaching as discipline.  
2     There were media stories covering their work in that  
3     regard. The former vice chair and then-chair, the  
4     last chair of the PCOC, Abigail Cerra, had particular  
5     connections with media and used them to publicize her  
6     work.

7           Q       What role did you have in responding to  
8     the increasing public attention surrounding the MPD's  
9     use of coaching?

10          A       None.

11          Q       When was the first time the city received  
12     a request for MPD data related to coaching?

13                 MR. ENSLIN: Object to the form and  
14     foundation.

15          A       I don't know.

16     BY MS. NASCIMENTO:

17          Q       I don't need an exact date, but could you  
18     give me a ballpark? Was it in 2010?

19          A       I don't know.

20          Q       About how many requests has the city  
21     received for coaching data?

22          A       I don't know.

23          Q       More than two?

24          A       I don't know.

25          Q       Ms. Walker is going to hand you what's

1       been previously marked as Plaintiff's Exhibit 182.

2       Do you recognize this document?

3           A       No.

4           Q       Have you ever seen it before?

5           A       Not to my recollection.

6           Q       It's an email from August which 2020 from  
7       Imani Jaafar, correct?

8           A       Yes.

9           Q       Who was at that time the director of the  
10       Office of Police Conduct Review, correct?

11          A       I don't know.

12          Q       Do you have any reason to dispute that?

13          A       She was the director of the OPCR or the  
14       Office of Police Conduct Review. But at this --  
15       around this same time she became the interim director  
16       of civil rights, so I'm not sure which capacity she  
17       was in.

18          Q       At some point she was in charge at least  
19       from the OPCR side for conducting investigations into  
20       officers for potential misconduct, right?

21          A       Yes.

22          Q       And in fact that was one office generating  
23       some of the data at the heart of this lawsuit, right?

24               MR. ENSLIN: Object to the form and  
25       foundation, speculation.

1           A           I believe so.

2       BY MS. NASCIMENTO:

3           Q           And so she would have access to all of the  
4       records regarding coaching, correct?

5                   MR. ENSLIN: Object to the form and  
6       foundation, speculation.

7           A           I don't know.

8       BY MS. NASCIMENTO:

9           Q           You would think, though, that Ms. Jaafar  
10      was very familiar with the data in this case,  
11      correct?

12                  MR. ENSLIN: Object to the form,  
13      foundation, speculation.

14          A           I would assume so.

15      BY MS. NASCIMENTO:

16          Q           And here she's emailing several City of  
17      Minnesota employees, members of the PCOC and even  
18      Mayor Jacob Frey, correct?

19          A           Yes.

20          Q           And you're also on this email?

21          A           Yes.

22          Q           And Ms. Jaafar says "Ha. Also just FYI  
23      coaching is not considered discipline ever," correct?

24          A           Correct.

25          Q           What prompted this email?

1           A       I don't know.

2           Q       Do you know what she was responding to?

3           A       No, I don't.

4           Q       At this time in August of 2020 were people  
5 asking questions about coaching as a form of  
6 discipline?

7           A       I don't know.

8           Q       Ms. Walker is going to hand you what's  
9 been previously marked as Plaintiff's Exhibit 57.  
10 And just while she's getting that out, you mentioned  
11 that you were aware of, for example, media reports or  
12 publicity that the PCOC had about the issue of  
13 coaching, correct?

14          A       Yes.

15          Q       Are you generally aware of media reports  
16 about the city and what data it possesses?

17                   MR. ENSLIN: Object to the form,  
18 foundation, speculation.

19          A       In a general way.

20 BY MS. NASCIMENTO:

21          Q       You try to stay on top of it?

22          A       Yes.

23          Q       Do you recognize this article?

24          A       No, I don't.

25          Q       You didn't read it when it came out in

1 June of 2020?

2 A I don't recall.

3 Q So this article from June of 2020 is about  
4 two months before the email from Ms. Jaafar that we  
5 just looked at, correct?

6 A Reading the date stamp on the email and  
7 the article as printed, it appears to be, yes.

8 Q And if you look at the bottom paragraph  
9 which starts "When asked if the 3 percent discipline  
10 outcome and use of coaching was acceptable" -- do you  
11 see where I'm reading?

12 A Yes.

13 Q The Star Tribune actually attributes to  
14 Ms. Jaafar a statement in the next sentence, quote,  
15 "Only A-level violations such as foul language,  
16 speeding through a neighborhood or not turning on a  
17 body camera at the start of a call are eligible for  
18 coaching." Do you see that?

19 A I see that sentence.

20 Q Do you know whether it's true that only  
21 A-level violations are eligible to receive coaching?

22 MR. ENSLIN: Object to the form.

23 A I do not know.

24 BY MS. NASCIMENTO:

25 Q Are you aware that when Ms. Jaafar made

1 that statement attributed to her by the Star Tribune  
2 the MPD was actually imposing coaching for violations  
3 above the A level?

4 A No, I am not aware.

5 Q So Ms. Walker is going to hand you what's  
6 been previously marked as Plaintiff's Exhibit 12 and  
7 Plaintiff's Exhibit 17. Have you ever seen these  
8 documents before?

9 A No.

10 Q I'm going to start with Plaintiff's  
11 Exhibit 12. This is a notice of coaching issued by  
12 Chief of Police Medaria Arradondo. Do you see that?

13 A Yes.

14 Q For a sustained B-level violation. Do you  
15 see that?

16 A Yes.

17 Q For a code of conduct violation?

18 A Yes.

19 Q And then the paragraph immediately below  
20 the redacted line it says "As discipline for this  
21 incident you will receive coaching from your  
22 supervisor as 5-105(A)(4) professional code of  
23 conduct was sustained at a B-level with coaching."  
24 Did I read that correctly?

25 A Yes.

1           Q       And you just testified -- and I want to  
2       confirm -- you were not of these documents back in  
3       2020 when Ms. Jaafar made the statement that only  
4       A-level violations were eligible to receive coaching,  
5       correct?

6           A       Correct.

7           Q       Would you agree with me that this document  
8       would be responsive to part 4 of MNCOGI's data  
9       request?

10                  MR. ENSLIN: Object to the form,  
11       foundation, speculation.

12           A       Possibly, yes.

13       BY MS. NASCIMENTO:

14           Q       And looking at Plaintiff's Exhibit 17 this  
15       is also a determination letter about to a sustained  
16       B-level violation, correct?

17           A       Yes.

18           Q       A violation of the professional code of  
19       conduct?

20           A       Yes.

21           Q       In which coaching was issued?

22           A       Yes.

23           Q       And the last paragraph there says "Be  
24       advised that any additional violation of department  
25       rules and regulations may result in more severe

1 disciplinary action up to and including discharge"?

2 A Yes.

3 Q Issued by the chief of police?

4 A Issued by the chief of police by the  
5 assistant chief.

6 Q Yes. But it's signed under Harteau,  
7 correct?

8 A Correct.

9 Q And you were not aware of this document  
10 back in 2020?

11 A No.

12 Q You testified earlier that if the city has  
13 responsive data then it needs to be transparent about  
14 that even if it's withholding the data pursuant to an  
15 objection, correct?

16 MR. ENSLIN: Object to the form.

17 A Correct.

18 BY MS. NASCIMENTO:

19 Q And that if it has responsive data it  
20 should say so, correct?

21 A Yes.

22 Q And looking at Plaintiff's Exhibit 3,  
23 which is Ms. Knudsen's response to MNCOGI's request,  
24 in which she says the MPD has no responsive data, do  
25 you agree with that statement?

1                   MR. ENSLIN: Object to the form,  
2 foundation, speculation.

3           A        I can't draw a conclusion from that. I  
4 don't know why she made that statement.

5 BY MS. NASCIMENTO:

6           Q        I'm not asking you why. I'm just asking  
7 you is that an accurate statement?

8                   MR. ENSLIN: Object to form and  
9 foundation, speculation.

10          A        I don't know whether it is or not.

11 BY MS. NASCIMENTO:

12          Q        These are letters issued by the chief of  
13 police?

14          A        It says MPD has no responsive data.  
15 Responsive data needs to be public data. I don't  
16 know if this data is classified as public data or  
17 not.

18          Q        So it's the city's position that data is  
19 only responsive to a request if it could be released?

20                   MR. ENSLIN: Object to the form,  
21 foundation, speculation.

22          A        Public data must to be released. Not  
23 public data may not be released. Those are two  
24 different issues.

25

1 BY MS. NASCIMENTO:

2 Q But can not-public data still be  
3 responsive to a request?

4 MR. ENSLIN: Object to the form.

5 A It might be.

6 BY MS. NASCIMENTO:

7 Q Okay. So is it your testimony today that  
8 data can be responsive even if it can't be released  
9 pursuant to the MGDPA?

10 MR. ENSLIN: Object to the form,  
11 speculation.

12 A It might be.

13 BY MS. NASCIMENTO:

14 Q Is that a yes?

15 A It might be public data. It might not be  
16 public. We only release public data. So responsive  
17 would be data that's public responsive to the  
18 request.

19 Q Okay. So I just want to make sure I  
20 understand. And so apologies to ask you this in  
21 several different ways, but I want to understand the  
22 city's position. Is it the city's position that if  
23 data is not public then it is not responsive to a  
24 request?

25 MR. ENSLIN: Object to the form,

1 speculation.

2 A Not in my opinion. My assumption is that  
3 there should be a word that MPD has no responsive  
4 public data. She didn't use the word "public." The  
5 MPD may have responsive data. They have no  
6 responsive public data. And we can only release data  
7 that's classified as public.

8 BY MS. NASCIMENTO:

9 Q So we can agree that data can still be  
10 responsive even if it can't be released publicly?

11 MR. ENSLIN: Object to the form,  
12 foundation, speculation.

13 A I concur with that statement.

14 BY MS. NASCIMENTO:

15 Q So seeing the request, the denial in those  
16 two documents, is it an accurate statement that MPD  
17 has no responsive data?

18 MR. ENSLIN: Object to the form, asked and  
19 answered.

20 A It might not be.

21 BY MS. NASCIMENTO:

22 Q As the responsible authority for the City  
23 of Minneapolis do you feel it's part of your job to  
24 correct the public record about misstatements of what  
25 data the city does and does not have?

1 MR. ENSLIN: Object to the form,  
2 speculation.

3 A To the extent that someone has made me  
4 aware of an inaccuracy and I can verify that there is  
5 an inaccuracy then, yes, I would want to correct  
6 that.

7 BY MS. NASCIMENTO:

8 Q Okay. And so I've also shown you an  
9 article in at least one city official is attributed  
10 as saying that only A-level violations are eligible  
11 for coaching, correct?

12 A Correct.

13 Q But today I've show up you two documents  
14 in which two B-level violations were sustained and  
15 coaching was imposed, correct?

16 A Correct.

17 Q Do you plan to go and correct the record  
18 now that you know that city officials have misstated  
19 what kind of data the city has in its possession?

20 MR. ENSLIN: Object to the form,  
21 argumentative, speculation.

22 A No, I have no plans to correct it because  
23 I was made aware of a deposition. There may or may  
24 not be inaccuracies in the record.

25

1 BY MS. NASCIMENTO:

2 Q Ms. Walker is going to hand you what's  
3 been previously marked as Plaintiff's Exhibits 13,  
4 14, 15, 16, 18, 19, 20, 21, 22, 23. And you can keep  
5 Exhibits 12 and 17 in front of you. So, Mr. Carl, if  
6 you've looked through the documents that Ms. Walker  
7 handed you or that Mr. Enslin handed you from  
8 Ms. Walker, I've shown you today more than five  
9 documents in which officers received coaching for  
10 sustained B-level violations, correct?

11 A It appears that way, yes.

12 MR. ENSLIN: I'm sorry. Could you ask  
13 that question one more time?

14 MS. NASCIMENTO: I've shown you at least  
15 five documents in which officers received coaching  
16 for sustained B-level violations.

17 BY MS. NASCIMENTO:

18 Q You have in front of you at least four  
19 documents in which officers are told they will  
20 receive coaching "as discipline," correct?

21 A Yes.

22 Q I've shown you more than ten documents in  
23 which coaching was imposed by the chief of police of  
24 the MPD, correct?

25 MR. ENSLIN: Object to the form and

1 foundation.

2 A I believe that's true, yes.

3 BY MS. NASCIMENTO:

4 Q I've shown you at least two documents in  
5 which officers are advised that "Any additional  
6 violations of department rules and regulations may  
7 result in more severe disciplinary action up to and  
8 including discharge," correct?

9 A Correct.

10 Q I've shown you at least one document in  
11 which an officer received coaching for a C-level  
12 violation, correct?

13 MR. ENSLIN: Object to the form.

14 A Yes.

15 BY MS. NASCIMENTO:

16 Q I've shown you at least three documents in  
17 which --

18 MR. ENSLIN: Wait. Can we just -- which  
19 one are you talking about for the C? Oh, I got it.  
20 Okay. It's talking about in addition to the one  
21 that's the letter of reprimand, the same one he also  
22 received coaching? Is that the one you're --

23 MS. NASCIMENTO: Yes.

24 MR. ENSLIN: Okay.

25

1 BY MS. NASCIMENTO:

2 Q I've shown you at least three documents in  
3 which officers received coaching for sustained code  
4 of conduct violations, correct?

5 MR. ENSLIN: Object to the form and  
6 foundation. Object to the extent the documents  
7 differ from what they say.

8 A My cursory review of these show at least  
9 three that have professional code of conduct as the  
10 citation.

11 BY MS. NASCIMENTO:

12 Q If you can look at Exhibits 14 and 21,  
13 I've shown you at least two documents today in which  
14 officers were coached over sustained violations on  
15 how they handled firearms?

16 MR. ENSLIN: Objection, foundation.

17 A Yes.

18 BY MS. NASCIMENTO:

19 Q I've shown you at least one document in  
20 which an officer was coached for a sustained  
21 violation regarding appearing based on a subpoena or  
22 trial notice, correct?

23 A Yes.

24 Q And at least one document in which an  
25 officer was coached over their use of force

1 reporting, correct?

2 A Yes.

3 Q Now, I'm not asking you about the  
4 exhibits, which I understand are marked confidential.  
5 But I've asked you a series of questions without  
6 referencing any officer, any incident number, any  
7 case number or any other identifying information. So  
8 do you have any objection to those questions and your  
9 answers in this transcript being released to the  
10 public to clarify what data the city has in its  
11 possession?

12 MR. ENSLIN: Object to the form. It's an  
13 improper question. He's not here on behalf of the  
14 city. He's not an attorney. I'm instructing him not  
15 to answer.

16 BY MS. NASCIMENTO:

17 Q Will you take your counsel's instruction  
18 not to answer?

19 A Yes.

20 Q As the responsible authority for the city  
21 isn't it ultimately your call on whether information  
22 should be made available to the public?

23 A No.

24 Q Whose call is that?

25 A It depends on the classification of data.

1 There are within the statute limitations on who can  
2 make certain determinations. As one example, active  
3 crime investigation data can only be released by the  
4 chief of police, not the responsible authority.

5 MS. NASCIMENTO: Let's take a five to  
6 ten-minute break. I think I may be able to  
7 streamline some questions?

8 MR. ENSLIN: Sure.

9 (Recess from 10:27 a.m to 10:41 a.m.)

10 BY MS. NASCIMENTO:

11 Q As the city clerk, are you familiar with  
12 the MPD's policy and procedure manual?

13 A No.

14 Q Okay. Have you read it?

15 A No.

16 Q Have you ever been asked to consult on any  
17 changes?

18 A No.

19 Q And so you were not involved in any of the  
20 changes to the manual that became effective December  
21 of 2020?

22 A No.

23 Q Did you know it was changed effective  
24 December 2020?

25 A No.

1 Q And so we talked a little bit ago and you  
2 have Exhibit 35 somewhere in this -- it's this one --

3 A Yup.

4 Q About this meeting of the PCOC, May 11th  
5 of 2021, correct?

6 A Yes.

7 Q And you attended that meeting?

8 A Yes.

9 Q And in fact helped facilitate the  
10 presentation at that meeting, correct?

11 A Yes.

12 Q You also recall we talked a little bit ago  
13 about how there are at least two different tracks or  
14 processes that investigations that can result in  
15 coaching can follow. Do you remember my question on  
16 that?

17 MR. ENSLIN: Object to the form.

18 A Yes.

19 BY MS. NASCIMENTO:

20 Q And you testified you weren't aware of  
21 those two different processes, correct?

22 A Correct.

23 Q And so you didn't instruct any of the  
24 presenters for the May 2021 meeting to limit their  
25 discussion about coaching to only one of those

1 processes, correct?

2 MR. ENSLIN: Object to the form.

3 A Not to my knowledge.

4 BY MS. NASCIMENTO:

5 Q Were you aware whether their statements  
6 were limited to any particular process as opposed to  
7 all types of coaching at the MPD?

8 MR. ENSLIN: Object to the form.

9 A No.

10 BY MS. NASCIMENTO:

11 Q And you knew that the PCOC was interested  
12 in coaching at the MPD?

13 A Yes.

14 Q All kinds of coaching?

15 MR. ENSLIN: Object to the form.

16 A Coaching, full stop. They were interested  
17 in coaching as a form of discipline.

18 BY MS. NASCIMENTO:

19 Q Okay. They never indicated any sort of  
20 limitation? In fact they were interesting, for  
21 example, only in coaching coming out of the joint  
22 supervisor's referral process?

23 A Not that I recall.

24 Q And you said that you learned of the  
25 city's position that coaching is not discipline in

1 the course of that meeting, correct?

2 A Yes.

3 Q And so when you walked in here today and  
4 before looking at any of these documents you didn't  
5 know whether the city's -- the statements made by the  
6 city officials in the course of that meeting were  
7 true or false, correct?

8 A Correct.

9 Q Ms. Walker sating hand you what's been  
10 previously marked as Plaintiff's Exhibit 59. Do you  
11 recognize this document?

12 A No.

13 Q Have you ever seen it before?

14 A Not that I recall.

15 Q Did you have any input into its contents?

16 A Not to my knowledge, no.

17 Q So you didn't review it for accuracy  
18 before it was sent to the PCOC?

19 A I have no recollection of having input  
20 into it or reviewing it.

21 Q So if you look at Plaintiff's Exhibit 35,  
22 which is the meeting transcript, do you recall that  
23 the presenters at this meeting included Jim Rowader,  
24 Trina Chernos, Medaria Arradondo, Patience Ferguson  
25 and Amelia Huffman?

1           A       I don't recall that personally, but it  
2 sounds correct.

3           Q       And if you need a minute to flip through  
4 that just to refresh your recollection, that's fine.  
5 Just let me know when you're ready.

6           A       (Reviewing document.) Can you tell me  
7 again who is it you're specifically asking was  
8 present?

9                   MR. ENSLIN: Just let her ask her  
10 questions. If she has a question she'll ask you.

11                  THE WITNESS: Okay.

12           A       Can you repeat the question?

13 BY MS. NASCIMENTO:

14           Q       I was just asking if you recalled that the  
15 presenters at the meeting were Jim Rowader, Trina  
16 Chernos, Medaria Arradondo, Patience Ferguson and  
17 Amelia Huffman?

18           A       I recall that Patience Ferguson was there.

19           Q       Were you aware that one of the presenters  
20 limited her comments to only one kind of coaching  
21 within the MPD?

22                   MR. ENSLIN: Object to the form.

23           A       No.

24 BY MS. NASCIMENTO:

25           Q       You didn't understand that when you were

1 watching?

2 MR. ENSLIN: Object to the form.

3 A No.

4 BY MS. NASCIMENTO:

5 Q And so you did not understand that her  
6 comments were limited only to coaching resulting from  
7 the joint supervisor's referral process and not any  
8 other kind of coaching?

9 MR. ENSLIN: Object to the form.

10 A No.

11 BY MS. NASCIMENTO:

12 Q How did you prepare for the May 2021 PCOC  
13 meeting?

14 A My recollection is that for a few meetings  
15 leading up to this one the body, PCOC, had  
16 discussions amongst its own members during previous  
17 meetings surrounded around the topic of coaching,  
18 whether coaching was discipline, how coaching was  
19 done, and that as the persons -- the clerks staffing  
20 them, they asked me to have a response for the city.  
21 I don't have that information. I said I would need  
22 to work with the appropriate people to bring a  
23 response.

24 I recall being at our cabin one weekend  
25 when -- I believe she was the vice chair at the time.

1 Abigail Cerra called me and said she really wanted  
2 that presentation, she wanted it the next meeting and  
3 sort of outlined in a very general way specific  
4 things she wanted addressed, what is coaching, who  
5 uses it, how is it done, what are the policies.

6 I said I would do my best to get a  
7 response for her and in response to that I reached  
8 out and I believe -- my recollection is that I worked  
9 with then city coordinator Mark Ruff who oversaw the  
10 human resources department. I believe that he was  
11 the one who reached out and engaged Patience  
12 Ferguson, then the human resources director.

13 Jim Rowader was the city attorney. There  
14 is an attorney from the city attorney's office who is  
15 assigned to staff this commission. I can't recall  
16 who that is. And the attorney was also in those  
17 meetings and knew that this was a request. And so  
18 between the attorney's office and me connecting to  
19 Mr. Ruff, we arranged for people to come and give  
20 this presentation which ultimately was done on  
21 May 11th, 2021.

22 Q Did you meet with all of those individuals  
23 before the May 2021 PCOC meeting?

24 A I don't recall having a meeting with the  
25 people who made the presentation. I remember talking

1 with Mr. Ruff, passing along to him what was  
2 expected. I believe there may have been some email  
3 correspondence that sort of clarified here is the  
4 scope of what we're looking for.

5 Q You don't recall meeting with any of the  
6 attorneys from the City Attorney's Office prior to  
7 that presentation?

8 A I don't recall meeting with anyone prior  
9 to the presentation.

10 MS. NASCIMENTO: I think I'm almost done  
11 with my questions.

12 MR. ENSLIN: Okay.

13 MS. NASCIMENTO: And so if we do just  
14 another five or ten I can streamline my questions and  
15 finish up.

16 MR. ENSLIN: Okay. Thank you.

17 (Recess from 10:54 a.m to 10:58 a.m.)

18 BY MS. NASCIMENTO:

19 Q You testified earlier that you report to  
20 city council, correct?

21 A Yes.

22 Q And that you serve at the pleasure of the  
23 council?

24 A Yes.

25 Q What have you heard from city council

1 about this case?

2 A Nothing.

3 Q Okay. So do you know whether city council  
4 has requested a briefing on this case?

5 A I do not.

6 Q And do you know whether that request has  
7 been granted or not?

8 A I do not.

9 MS. NASCIMENTO: Okay. That's all I have.  
10 (Reading and signing reserved).

11 (Whereupon, at 11:01 a.m. the deposition  
12 concluded.)

13 \* \* \* \* \*

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## REPORTER'S CERTIFICATE

STATE OF MINNESOTA )  
COUNTY OF HENNEPIN )

ss.

I hereby certify that I reported the deposition of CASEY CARL on February 26, 2024, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and that this transcript is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality.

That the right to read and sign the deposition by the witness was requested.

WITNESS MY HAND AND SEAL THIS 28th day of February, 2024.



Jonathan Wonnell

Notary Public, Hennepin County, Minnesota

My Commission expires January 31, 2027

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Phone: 216-523-1313

March 8, 2024

To: Mr. Kelly

Case Name: Minnesota Coalition On Government Information v. City Of  
Minneapolis, Et Al.

Veritext Reference Number: 6343858

Witness: Casey Carl                      Deposition Date: 2/26/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown

above, or email to [production-midwest@veritext.com](mailto:production-midwest@veritext.com).

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6343858

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/26/2024

WITNESS' NAME: Casey Carl

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Casey Carl

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6343858

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/26/2024

WITNESS' NAME: Casey Carl

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have listed my changes on the attached  
Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

I request that these changes be entered  
as part of the record of my testimony.

I have executed the Errata Sheet, as well  
as this Certificate, and request and authorize  
that both be appended to the transcript of my  
testimony and be incorporated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Casey Carl

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They have listed all of their corrections  
in the appended Errata Sheet;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

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Date

Casey Carl

21

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22

DAY OF \_\_\_\_\_, 20\_\_\_\_ .

23

\_\_\_\_\_  
Notary Public

24

25

\_\_\_\_\_  
Commission Expiration Date

[&amp; - 55402]

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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# EXHIBIT H

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STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL CIRCUIT  
CASE TYPE: Other Civil

MINNESOTA COALITION ON  
GOVERNMENT INFORMATION,

Court File No.  
27-CV-21-7237

Plaintiff,

v.

CITY OF MINNEAPOLIS; CASEY J.  
CARL, in his official capacity as  
Clerk for the City of Minneapolis;  
NIKKI ODOM, in her official  
capacity as Chief Human Resources  
Officer for the City of Minneapolis;  
MINNEAPOLIS POLICE DEPARTMENT;  
and BRIAN O'HARA, in his official  
capacity as Chief of Police for the  
City of Minneapolis,  
Defendants.

DEPOSITION OF TRINA CHERNOS

DATE: February 29, 2024

TIME: 8:30 a.m.

PLACE: Ballard Spahr LLP, 2000 IDS Center, 80 South  
Eighth Street, Minneapolis, Minnesota 55402

PAGES: 1-145

JOB NO.: MW 6343800

REPORTED BY: Jonathan Wonnell, RMR

## A P P E A R A N C E S

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8  
9 REPORTER'S NOTE: All quotations from exhibits are  
reflected in the manner in which they were read in the  
10 record and do not necessarily reflect exact quotes from  
the source documents nor necessarily match punctuation.

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## P R O C E E D I N G S

\* \* \* \* \*

Whereupon,

TRINA CERNOS,

called as a Witness, was duly sworn by  
Jonathan Wonnell, a Notary Public in and  
for the State of Minnesota, and was  
examined and testified as follows.

\* \* \* \* \*

## EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MS. PARSONS:

Q Thank you. Good morning, Ms. Chernos. As  
I said earlier my name is Aimee Parsons and I'm with  
Ballard Spahr. I represent the plaintiff in this  
case, the Minnesota Coalition On Government  
Information, in the matter that you're being deposed  
today. With me today to my left is Leita Walker,  
Isabella Nascimento and Matt Thornton, also with  
Ballard Spahr, also appearing on behalf of the  
plaintiff.

I recognize you're a lawyer, so it's a  
funny way to start here. Have you ever been deposed  
before?

A Yes.

Q Okay. So I assume between that and your

1 previous experience I assume deposing other people  
2 you're familiar with the ground rules, but I'll just  
3 for everyone's sake run through them quickly. You're  
4 here to testify today in the lawsuit brought by our  
5 client, who I'll call MNCOGI, versus the City of  
6 Minneapolis, Casey Carl, Nikki Odom and Brian O'Hara,  
7 correct?

8 A I'm not sure I understand the question.  
9 Are you asking about how the case is captioned?

10 Q Sure. I'm asking if you understand the  
11 lawsuit that you're here to testify.

12 A Generally, yes.

13 Q Okay. Great. So if I refer to the city  
14 defendant by that I mean the City of Minneapolis, the  
15 Minneapolis Police Department, Casey Carl, Nikki Odom  
16 and Brian O'Hara. Okay?

17 A Okay.

18 Q MPD, Minneapolis Police Department,  
19 correct? Does that -- can you keep that straight?  
20 Does that make sense?

21 A Yes. I can keep that straight.

22 Q Okay. Great. And then the MGDPA is the  
23 Minnesota Government Data Practices Act. Correct?

24 A Correct.

25 Q Okay. The same sort of general

1 considerations for the court reporter, verbal  
2 answers, mumbling, no talking over each other, we'll  
3 do our best to have a clean record.

4 Before you -- the last question I'll run  
5 through here, any medication today that you're taking  
6 that would prevent you from testifying truthfully?

7 A No.

8 Q Any other reason why you can't answer  
9 truthfully today?

10 A No.

11 Q Anything that would prevent you from  
12 recalling answers to questions or events today?

13 A Possibly. When I first became aware of  
14 this lawsuit, which as I recall was captioned  
15 differently than how you're describing it today, it  
16 was a long time ago.

17 Q Okay.

18 A I will do my best.

19 Q Thank you. That's all I can ask. So on  
20 that point, let's talk a little bit about what you  
21 did to prepare for the deposition today. Did you  
22 meet with lawyers for the city defendants?

23 A Yes.

24 Q When?

25 A Recently.

1 Q Recently this morning or recently last  
2 week, this week?

3 A It included this morning, yes.

4 Q Earlier this week as well?

5 A Yes.

6 Q Okay. So how many times would you say you  
7 met with them?

8 A Approximately three including this  
9 morning.

10 Q Okay. For how long?

11 A I did not track the time.

12 Q You're not of the time? Okay. Anyone  
13 else present during the meetings?

14 A No.

15 Q Besides the city attorneys did you meet  
16 with anyone else to discuss this deposition?

17 A No.

18 Q Okay. Did you review any documents to  
19 prepare for today?

20 A Yes.

21 Q Which documents did you review?

22 A I reviewed documents that were put in  
23 front of me by the attorneys I met with.

24 Q Can you describe generally which documents  
25 those were?

1           A       They included emails, the answer to the  
2       complaint, a PowerPoint -- well, what looked to me to  
3       be a PowerPoint presentation.

4           Q       Sure.

5           A       And the transcript from the PCOC meeting  
6       in 2021.

7           Q       Okay. Do you recall in the emails that  
8       you looked at -- I'm assuming you're familiar with  
9       Bates labeling -- were each of the emails that you  
10      looked at labeled with a Bates label?

11          A       Yes.

12          Q       So in other words, right, they either  
13      said -- the ones that we've seen in this case have  
14      had CITY, I believe it's FED and PLF, so it's  
15      indicating that all those documents were produced in  
16      this litigation, correct?

17                   MR. ENSLIN: Object to form and  
18      foundation.

19      BY MS. PARSONS:

20          Q       Okay. You can answer.

21          A       Could you repeat the question, please?

22          Q       The documents we've seen, the Bates  
23      labeled have been CITY, FED, PLF. Do you recall  
24      whether you saw any different Bates labels than that?

25          A       I did not pay attention to -- I saw

1 numbers.

2 Q Okay.

3 A But --

4 Q So no reason to think that any documents  
5 you looked at have not been produced in this  
6 litigation?

7 A I have no basis to speak to what has been  
8 produced or not produced.

9 Q Okay. Sure. Did you review any  
10 deposition transcripts from this matter?

11 A No.

12 Q No? Did you take any notes in preparation  
13 for today?

14 A No.

15 Q Did you speak with anyone else in general  
16 about being deposed today?

17 A Only that it was scheduled.

18 Q Any other steps to prepare for today?

19 A No.

20 Q Okay. Thank you. So moving on a little  
21 bit, I'd like to ask you first about your current  
22 role. Could you please tell us what your current job  
23 is?

7 Q Okay. And what was your role before that?

8 A Deputy city attorney for the City of  
9 St. Paul.

10 Q And when did you start that role?

11 A I guess 2022.

12 Q When did you leave that role?

13 A January 7th, 2024.

17 Q Okay. While you were in your role as city  
18 attorney, what were your duties in that role?

19 A I never served as city attorney.

20 Q I apologize. Could you tell me again your  
21 exact title. Deputy city attorney? Is that what  
22 you --

23 MR. ENSLIN: With St. Paul, are you  
24 saying?

25

1 BY MS. PARSONS:

2 Q With St. Paul, yes.

3 A Yes. I was deputy city attorney for  
4 St. Paul.

5 Q Okay. In that role as deputy city  
6 attorney for St. Paul could you please tell me your  
7 duties?

8 A My duties included advising city council,  
9 representing the City of St. Paul, managing the civil  
10 division.

11 Q Within those roles how were you  
12 involved -- or excuse me. Were you involved with  
13 disciplinary decisions?

14 A Yes, somewhat.

15 Q Could you please explain?

16 A The City of St. Paul had an employment  
17 attorney who reported to me. So when she was not  
18 available I assisted with some of her duties.

19 Q Okay. Were you familiar or were you  
20 involved with coaching in St. Paul?

21 A No.

22 Q No? Okay.

23 I think you had just testified you started  
24 with St. Paul on August 20th, 2022.

25 A I did not state the day that I started

1       there.

2           Q       Okay. Then I misunderstood. Apologies.  
3       So August of 2022 is what you had said?

4           A       Yes. August of the year 2022, yes,  
5       correct.

6           Q       Okay. Thank you for clarifying. Prior to  
7       August 2022 what was your role?

8           A       I served as an Assistant City Attorney  
9       with the Minneapolis City Attorney's Office.

10          Q       One more question on St. Paul. You  
11       testified that you were not involved with coaching  
12       while in St. Paul. Do you know whether St. Paul uses  
13       coaching?

14          A       I do.

15                   MR. ENSLIN: Objection, foundation.

16                   BY MS. PARSONS:

17          Q       Okay. Tell me what you understand about  
18       whether they use coaching.

19          A       I had asked their labor relations director  
20       if they use coaching and he told me that they did.

21          Q       Okay.

22          A       And I asked him if coaching was discipline  
23       in St. Paul and he told me no.

24          Q       Okay. Why did you ask him about whether  
25       they used coaching?

1           A           Because Minneapolis City Attorney Jim  
2           Rowader asked me if coaching was discipline.

3           Q           So let's take that in two pieces. When  
4           did Rowader ask you if coaching was discipline?

5           A           I don't recall exactly.

6           Q           Was it while you were employed by the City  
7           of Minneapolis?

8           A           Yes.

9           Q           So when did you ask the attorney in  
10          St. Paul if coaching was discipline?

11          A           I did not ask an attorney in St. Paul if  
12          coaching is discipline.

13          Q           Apologies. Who did you ask in St. Paul?

14          A           The labor relations director.

15          Q           The labor relations director. Okay. When  
16          did you ask the labor relations director if coaching  
17          was discipline?

18          A           I don't recall other than that it was in  
19          response to City Attorney Rowader asking me if I had  
20          talked with any other entities about whether coaching  
21          was discipline.

22          Q           Okay. So it was while you were employed  
23          with the City of Minneapolis?

24          A           Correct.

25          Q           Who else did you ask whether coaching was

1 discipline in response to Mr. Rowader's request?

2 A Kristyn Anderson.

3 Q Okay. Can you please tell me who  
4 Ms. Anderson is?

5 A Ms. Anderson is now, as I understand it,  
6 the Minneapolis City Attorney.

7 Q Okay. And who was she -- what role was  
8 she in when you asked her that question?

9 A I don't know what role she was in at the  
10 time.

11 Q Okay. Around what time did Mr. Rowader  
12 ask you to look into whether coaching was discipline?

13 A During his employment as Minneapolis City  
14 Attorney.

15 Q So is that -- can we ballpark? Was that  
16 2021, 2022, 2020?

17 A I would be guessing. I don't know when  
18 he -- I remember generally when his employment was,  
19 but I don't recall specifically when we talked about  
20 this.

21 Q Let's try a different way. Was it before  
22 the -- you mentioned that you had reviewed the  
23 transcript from the May 2021 PCOC meeting. Was it  
24 before that meeting or after that meeting?

25 A It was before that meeting.

1 Q In preparation for that meeting?

2 MR. ENSLIN: I'm going to object on  
3 privilege and work product grounds and instruct the  
4 witness not to answer.

5 BY MS. PARSONS:

6 Q Understood on privilege. I'm just asking  
7 here about timing, not about the substance. Was it  
8 in preparation for the May PCOC meeting?

9 MR. ENSLIN: Object to the form, same  
10 objections, instruct the witness not to answer.

11 MS. PARSONS: I'd like to ask that the  
12 court reporter make note of any location where  
13 privilege is asserted and the witness is instructed  
14 not to answer so that we can come back to that later.  
15 We'll move on for now.

16 BY MS. PARSONS:

17 Q So going back to your roles while employed  
18 by the City of Minneapolis, I believe you testified  
19 that you were Assistant City Attorney in the most  
20 recent role while employed by the City of  
21 Minneapolis, correct?

22 A Yes. My only title with the Minneapolis  
23 City Attorney was -- Assistant City Attorney to HR/LR  
24 was the actual title.

25 Q Okay. Thank you. How long were you

1 employed by the City of Minneapolis?

2 A 15 years.

3 Q And were you Assistant City Attorney for  
4 all 15 years?

5 A Yes. Assistant City Attorney for HR/LR.

6 Q Okay. What was your involvement in MGDPA  
7 requests generally while employed by the City of  
8 Minneapolis?

9 A I provided legal advice.

10 Q On every request?

11 A No.

12 Q Okay. So how is it determined where you  
13 would provide legal advice? I'm not asking for the  
14 substance of legal advice.

15 A You know, and actually if I may go back to  
16 my previous answer, which is I only know when I was  
17 asked for advice.

18 Q Okay.

19 A I can't speak to how many data requests  
20 the city has received.

21 Q Sure. Fair enough. Do you recall my last  
22 question?

23 A I don't. Sorry.

24 Q So without asking for the substance of  
25 legal advice, how was it determined whether you would

1 be asked to provide legal advice?

2 A I don't know.

3 Q Okay. Were you -- how were you made aware  
4 of MGDPA requests?

5 A When I was asked for legal advice?

6 Q So in other words were you asked by city  
7 employees saying I've received this request, can you  
8 look at it?

9 A Generally, yes.

10 Q Were there ways that you could check on  
11 requests that the city had received absent being  
12 asked by an employee?

13 A No.

14 Q Okay. Were you -- did you have a role in  
15 pulling records responsive to MGDPA requests?

16 A Yes.

17 Q Do you recall how frequently you were  
18 asked to pull records responsive to requests?

19 A No.

20 Q When you were asked by employees to look  
21 at an MGDPA request, were you asked to provide  
22 insight on responsiveness?

23 MR. ENSLIN: Object to the form?

24 BY MS. PARSONS:

25 Q Did you understand the question?

1           A       No, I don't. I don't understand what you  
2       mean by responsiveness.

3           Q       Okay. So the way I use responsiveness is  
4       a request comes in, it's determined whether there are  
5       records that respond to that request. So that's how  
6       I use it, responsiveness saying is this record what  
7       the person who requested the information is looking  
8       for. Do you understand that definition of  
9       responsiveness?

10          A       I understand your explanation, yes.

11          Q       Okay. So based on that explanation were  
12       you asked to provide insight on whether documents  
13       themselves were responsive to requests?

14          A       I provided legal advice.

15          Q       And what do you mean -- not the substance  
16       of the legal advice, but what do you mean by legal  
17       advice?

18          A       I provided legal advice regarding  
19       compliance.

20          Q       And what did that mean?

21                   MR. ENSLIN: Object to the form, asked and  
22       answered.

23       BY MS. PARSONS:

24          Q       If you understood, you can answer.

25          A       Would you ask me again, please?

1 MS. PARSONS: Can you read that back,  
2 please?

3 (The requested portion of this record was  
4 read back by the reporter.)

5 A What does what mean?

6 BY MS. PARSONS:

7 Q What does legal advice on compliance mean.

8 MR. ENSLIN: Object to the form.

9 BY MS. PARSONS:

10 Q I can ask it another way. Were you asked  
11 to look at an MGDPA request and determine what was  
12 within the scope of the information requested or the  
13 data requested?

14 MR. ENSLIN: Object to the form.

15 BY MS. PARSONS:

16 Q If you understood, you can answer.

17 A I don't understand.

18 Q Was your job to provide advice about  
19 whether an exception or a privilege applied or  
20 whether something was in the scope of what was  
21 requested?

22 MR. ENSLIN: Object to the form.

23 A Which of those two questions would you  
24 like me to try to answer first?

25

1 BY MS. PARSONS:

2 Q Both. You can choose.

3 A My legal advice included looking at the  
4 Minnesota Government Data Practices Act and advising  
5 my client, the City of Minneapolis.

6 Q Advising on whether an exception applied  
7 under the MGDPA?

8 MR. ENSLIN: Object to the form,  
9 speculation.

10 BY MS. PARSONS:

11 Q You can answer.

12 A I don't know what you mean by exception to  
13 the MGDPA.

14 Q So then when you tell me -- when you  
15 testified that you looked at the MGDPA and advised on  
16 the request, what did that mean to you?

17 A I advised on compliance.

18 Q And what does compliance mean to you?

19 MR. ENSLIN: Object to the form, asked and  
20 answered.

21 BY MS. PARSONS:

22 Q What does compliance mean to you?

23 MR. ENSLIN: Object to the form.

24 BY MS. PARSONS:

25 Q You can answer.

1           A           Can you ask me more specifically?

2           Q           I'm trying to ask specifically. You've  
3 told me compliance and I'm trying to understand in  
4 your interpretation what does compliance mean?

5           A           Compliance with respect to the Data  
6 Practices Act is looking at the act and advising a  
7 client about what compliance looks like with respect  
8 to a particular request.

9           Q           Does compliance mean you would be asked to  
10 look at a document and say is this responsive to this  
11 request?

12                   MR. ENSLIN: Object to the form,  
13 speculation.

14 BY MS. PARSONS:

15           Q           You can answer.

16           A           Would you repeat the question, please?

17                   MS. PARSONS: Can you repeat that back?

18                   (The requested portion of this record was  
19 read back by the reporter.)

20           A           Yes.

21 BY MS. PARSONS:

22           Q           Okay. Does compliance mean you would look  
23 at a document and say an exception applies under the  
24 MGDPA?

25                   MR. ENSLIN: Object to the form.

1 BY MS. PARSONS:

2 Q You can answer.

3 A I don't know what you mean by exception to  
4 the MGDPA.

5 Q So does the MGDPA -- in your understanding  
6 is every record public under the MGDPA?

7 MR. ENSLIN: Object to the form.

8 BY MS. PARSONS:

9 Q You can answer.

10 A Not every record is even governed by the  
11 MGDPA. That's partly why I'm struggling with your  
12 question.

13 Q So every record possessed by the City of  
14 Minneapolis -- is every record possessed by the City  
15 of Minneapolis public data under the MGDPA?

16 MR. ENSLIN: Object to the form, calls for  
17 a legal conclusion, speculation.

18 BY MS. PARSONS:

19 Q You can answer.

20 A I can't. I actually agree with my counsel  
21 on that.

22 Q So what would make something not public  
23 under the MGDPA?

24 MR. ENSLIN: Object to the form.

25

1 BY MS. PARSONS:

2 Q There are exceptions within the MGDPA,  
3 correct?

4 A I disagree with that characterization.

5 Q So how would you characterize the  
6 provisions of the MGDPA that spell out what records  
7 are not public?

8 A It is my understanding about the MGDPA  
9 that it is an attempt by the state legislature to  
10 instruct Minnesota governmental entities on access to  
11 records that fall under that statute.

12 Q Okay. And perhaps you have a different  
13 term. My term that I would use to say is there are  
14 exceptions under the act for which certain records  
15 are not public. How would you describe records  
16 possessed by the City of Minneapolis that are not  
17 subject to disclosure under the MGDPA?

18 MR. ENSLIN: Object to the form, calls for  
19 a legal conclusion, speculation, compound question.

20 BY MS. PARSONS:

21 Q You can answer if you understand.

22 A The act specifies the classification of  
23 data.

24 Q Okay. So do you understand -- when I say  
25 were you asked to look -- were you asked to opine on

1 whether documents were exempt for disclosure under  
2 the MGDPA?

3 MR. ENSLIN: Object to the form.

4 BY MS. PARSONS:

5 Q Do you understand what that means?

6 A I was asked to give legal advice about  
7 data classification.

8 Q As data classification meaning whether it  
9 was public?

10 A Yes, or whether it was not public or  
11 nonpublic.

12 Q Okay.

13 A Or some other classification.

14 Q Okay. Let's talk more about your  
15 involvement with the MPD. You said you were  
16 Assistant City Attorney for HR/LR. Can you tell me  
17 what HR and LR mean?

18 A That was my title.

19 Q Okay. And what does HR --

20 A HR means human resources.

21 Q And LR?

22 A Labor relations.

23 Q Okay. How were you involved with MPD in  
24 that role as Assistant City Attorney for HR and LR?

25 A I provided legal advice and

1 representation.

2 Q Okay. What kind of legal advice? I'm not  
3 asking for specifics.

4 A Anything HR or LR related.

5 Q Okay. So HR/LR, human resources, labor  
6 relations, anything, does that mean policies?

7 A Yes, it could.

8 Q Tell me which policies you recall.

9 MR. ENSLIN: Object to the form. I also  
10 object on privilege and work product grounds to the  
11 extent you are asking for what legal advice she  
12 provided on a specific policy.

13 MS. PARSONS: I'm not.

14 BY MS. PARSONS:

15 Q Just which policies you recall.

16 A I could not list them all. The policy  
17 manual as I last saw it on --

18 Q Fair to say that if there were -- strike  
19 that.

20 How were you involved with discipline  
21 within MPD?

22 A I provided legal advice and  
23 representation.

24 Q For all disciplinary actions within MPD  
25 when you were employed as Assistant City Attorney?

1 MR. ENSLIN: Object to the form.

2 A When I was asked to I provided legal  
3 advice.

4 BY MS. PARSONS:

5 Q Was there anyone else who provided legal  
6 advice on discipline actions within MPD on behalf of  
7 the City Attorney's Office?

8 MR. ENSLIN: Object to the form.

9 BY MS. PARSONS:

10 Q You can answer.

11 A I can only state that I know there were  
12 other people who had my same title.

13 Q Who were involved with disciplinary  
14 actions?

15 A Representing the city and providing legal  
16 advice for the City of Minneapolis, yes.

17 Q Who were those individuals?

18 A Mike Bloom, B-l-o-o-m. Valerie Darling,  
19 D-a-r-l-i-n-g. Caroline Bachun, B-a-c-h-u-n.  
20 Myself. Sarah Riskin.

21 Q Is that all?

22 A Those are individuals who I am aware held  
23 my same title.

24 Q Okay. Were you involved in grievances of  
25 discipline?

1           A           I provided advice and representation  
2 regarding grievances, yes.

3           Q           Roughly how many would you say you were  
4 involved with?

5           A           I can't even estimate.

6           Q           More than a hundred?

7           A           No, yes, I had.

8           Q           More than ten?

9           A           Yes, more than ten.

10          Q           Roughly how many -- let's try to ballpark  
11 in a given year. How many would you say in a given  
12 year?

13          A           I don't know.

14          Q           More than ten in a given year?

15          A           I don't know.

16          Q           More than five in a given year?

17          A           I can't say for certain.

18          Q           Were you each of -- you just listed  
19 including yourself -- well, aside from yourself you  
20 listed four other assistant city attorneys involved  
21 with discipline. Do you know whether each of those  
22 attorneys was involved in grievances of discipline?

23          A           I can't speak to all, no.

24          Q           What was your involvement with coaching  
25 with the MPD?

1           A           I provided legal advice and representation  
2           to the MPD and other city departments.

3           Q           What other city departments?

4           A           Whoever asked for legal advice and  
5           representation.

6           Q           Do you remember any of those departments?

7           A           I advised all city departments that asked  
8           for advice on human resources or labor relations  
9           matters.

10          Q           I'd like to put some exhibits before you  
11          to understand whether you've seen them before.   Okay?

12                   MS. PARSONS:   Isabella, can you help me  
13          grab Exhibits 12, 17, 88, 92 and 177.

14          BY MS. PARSONS:

15          Q           So you should have before you Exhibits 12,  
16          17, 88, 92 and 177.   Do you have those?

17          A           Yes.

18          Q           Take a minute and look at them and my  
19          question is whether you've seen these documents  
20          before.

21          A           (Reviewing document.)   With respect to  
22          Number 12 I don't know if I have seen this before  
23          today or not.

24          Q           Okay.

25          A           With respect to Number 17 I have not seen

1     this document before today. With respect to  
2     Number 88 I do not know if I have seen this document  
3     before today. With respect to Number 92 I do not  
4     know if I have seen this before today. Regarding  
5     number 177 I do not know if I have seen this document  
6     before today.

7           Q       Thank you. So Exhibit 17 was the only  
8     document that you said you have not seen, right, in a  
9     definitive way. I'm curious about the difference in  
10    the answers. Is it possible you've seen the other  
11    forms?

12                   MR. ENSLIN: Object to the form, asked and  
13    answered.

14           A       I don't know if I did or did not before  
15    today.

16    BY MS. PARSONS:

17           Q       Are these -- have you seen other forms  
18    like these?

19           A       I don't know what you mean by forms like  
20    these.

21           Q       Other documents like these.

22           A       These appear to be in letter format.  
23    They're on letterhead.

24           Q       Okay. Have you seen other letters like  
25    these?

1           A       I have seen letters on Minneapolis  
2 letterhead, yes.

3           Q       Would you agree that these are notices of  
4 coaching letters?

5                   MR. ENSLIN: Object to the form,  
6 foundation.

7           A       I did not author them. I do not know what  
8 they are.

9 BY MS. PARSONS:

10          Q       I'll represent that other letters like  
11 these have been produced in this litigation as well.  
12 My question to you is whether you have seen these  
13 letters before? Or -- excuse me -- similar letters  
14 to these.

15                   MR. ENSLIN: Object to the form.

16 BY MS. PARSONS:

17          Q       If you understood you can answer.

18          A       I have seen letters on letterhead with  
19 Minneapolis letterhead before today.

20          Q       Have you seen -- I would call them  
21 coaching determination letters. Have you seen other  
22 coaching determination letters?

23                   MR. ENSLIN: Object to the form?

24 BY MS. PARSONS:

25          Q       Do you understand the term coaching

1 determination letter?

2 A I don't know what you mean by that.

3 Q Tell me what you understand is a coaching  
4 determination letter.

5 A I have seen a coaching form.

6 Q And what is that?

7 A The coaching form I have seen was attached  
8 to my letter to the PCOC commissioner.

9 Q Okay. We'll get to that in a bit. So  
10 this is separate from the coaching form, correct?

11 A These are letters on letterhead.

12 Q Correct. Have you seen letters on  
13 letterhead describing coaching being imposed for  
14 sustained violations of MPD policies?

15 A The documents you placed in front of me  
16 today I can see state on letterhead -- I see the word  
17 "coaching" on Number 12. I see the word "coaching"  
18 on Number 17. I see the word "coaching" on  
19 Number 88. I see the word "coaching" on Number 92,  
20 and I see the word "coaching" on Number 177.

21 Q Okay. Have you seen letters where  
22 coaching was issued for a violation of MPD policy?

23 A I can't say for certain.

24 Q You don't know?

25 A I don't know.

1 Q Okay. Fair to say, though, you do not  
2 recall having seen any of these specific letters?

3 A With respect to Number 17, I know that I  
4 have not seen that letter before today.

5 Q Okay. And you do not remember seeing any  
6 of the other letters?

7 A I don't recall whether I did or did not.

8 Q Okay. All right. Let's do the same  
9 question -- so I'll give you --

10 MS. PARSONS: Isabella, can you pull  
11 Exhibits 55, 56, 76, 140 and 169.

12 BY MS. PARSONS:

13 Q Take a minute and review those documents  
14 and then my question will be whether you've seen  
15 these documents before.

16 A (Reviewing document.)

17 Q Okay.

18 A Regarding number 55, I cannot say whether  
19 or not I have seen this document before today.  
20 Regarding number 56 I cannot say for certain whether  
21 or not I have seen this document before today.  
22 Regarding number 76 I cannot state with certainty  
23 whether or not I have seen this document before  
24 today. Same answer with respect to Number 140 and  
25 same answer with respect to Number 169.

1 Q Thank you. So looking more  
2 specifically -- or looking back at these records --  
3 let me skip over Exhibit 55. Looking at 56, the name  
4 of the officer there is . Do you  
5 recall knowing about the grievance of

8 Q Okay. Exhibit 140, the grievance of  
9 Officer Do you recall knowing  
10 about the grievance of Officer ?

12 Q Exhibit 169 relates to a grievance of  
13 Officer . Do you recall a grievance  
14 of Officer

16 Q Do you recall any other grievances by MPD  
17 officers for instances of coaching?

19 Q Have you ever looked to find -- to see  
20 whether there are grievances filed by MPD officers  
21 for instances of coaching?

23 Q Okay. Let's look at Isabella, four more  
24 documents for you. Exhibits 77, 79, 84, 152.

1 BY MS. PARSONS:

2 Q Okay. Take a minute now that you have  
3 those exhibits, look at them and then my question  
4 will be whether you've seen these documents.

5 A (Reviewing document.)

6 Q Okay. Have you ever seen these documents?

7 A Regarding number 77 I cannot say with  
8 certainty whether or not I have seen this document  
9 before today. Regarding number 79 I cannot say with  
10 certainty whether or not I have seen this document  
11 before today. Regarding Number 84, same answer, and  
12 regarding number 152, same answer. All of the  
13 exhibits that you have placed in front of me that  
14 we've discussed so far this morning do not bear my  
15 name on them.

16 Q Correct. Are you familiar with the  
17 grievance of Officer ? Or looking at --  
18 apologies. Looking back at Exhibit 77 that was  
19 regarding the grievance of Officer . Were you  
20 aware of the grievance of Officer ?

21 A I can't say for certain.

22 Q Okay. Try to go Exhibit 79, that was  
23 regarding a grievance of Officer -- I'll pronounce it  
24

25 A No. The name is unfamiliar to me.

1 Q Okay. And then looking At 15, that was a  
2 settlement agreement based on a grievance of Officer  
3 . Is that familiar to  
4 you, that proceeding?

5           A       I can't say whether I saw this document  
6   before today.

7 Q Are you familiar with the grievance more  
8 broadly of Officer ?

9	A	No.
---	---	-----

10 Q Okay. Are you aware of any other  
11 settlement negotiations regarding grievances filed by  
12 MPD officers that were resolved through coaching?

13           A       I'm not sure how to answer your question  
14       because -- I'm not sure how to answer your question.  
15       Could you repeat it, please?

16 Q Were you involved in grievances of MPD  
17 officers that were settled at least in part by the  
18 imposition of coaching?

19           A       I can't say for certain.

20 Q Are there some that are coming to mind  
21 that may have been resolved at least in part through  
22 coaching?

23           A       If I was asked to provide legal advice or  
24   representation, I did.

25	Q	On the use of coaching to resolve
----	---	-----------------------------------

1       grievances?

2                   MR. ENSLIN: Object to the form. That  
3       also calls for attorney-client privileged work  
4       product, so I'm going to instruct the witness not to  
5       answer.

6       BY MS. PARSONS:

7           Q       Did you know before looking at these  
8       documents just now that there were times where  
9       grievances filed by MPD officers were resolved at  
10      least in part through the imposition of coaching?

11          A       I don't know.

12          Q       Okay. Let's see look at five more  
13      documents and then I'll be done with collections of  
14      documents for a moment. Exhibits 5, 7, 9, 10 and 11.

15          A       All right.

16          Q       All right. So these are longer documents.  
17      I don't need you to read all of them. You can skim  
18      through them and see. My question again will be  
19      whether you recall seeing any of these documents and  
20      as necessary I can point you to more specific points.  
21      Okay?

22          A       Okay.

23          Q       So go ahead and familiarize yourself with  
24      those.

25          A       (Reviewing document.)

1           Q       Based on your initial review of these, do  
2 any of them look familiar to you? Have you seen them  
3 before?

4           A       None look familiar to me.

5           Q       Okay. More specifically let's look at a  
6 few pages. Taking Exhibit 5, I think on the left,  
7 looking at page 17, on the bottom half -- are you  
8 there at page 17? The bottom chart there says  
9 "discipline types issued by chief," training and  
10 coaching listed there. Have you seen this chart?

11          A       No.

12          Q       Have you seen any other charts that look  
13 similar to this?

14          A       What do you mean by similar to this?

15          Q       Well, so this is a --

16          A       I've seen bar graphs in my lifetime. This  
17 is a bar graph.

18          Q       Okay. So OPCR. This is a Q4 2013 data  
19 report. Are you familiar with other charts listing  
20 discipline types issued by chief where  
21 training/coaching is included?

22          A       No.

23          Q       Exhibit 7 --

24          A       Oh, Exhibit 7.

25          Q       So this is a memorandum of agreement. On

1 page 20, if you look sort of in the top third where  
2 it says "7.3.2, disciplinary options. Pursuant to  
3 the Minneapolis Civil Service Rules and the MPD  
4 discipline manual, discipline options are coaching,  
5 oral reprimand, written reprimand, suspension,  
6 demotion and termination. Both documents provide  
7 that discipline is to be corrective and not  
8 punitive."

9 Are you familiar with that statement  
10 specifically?

11 A No.

12 Q Are you familiar with any other statements  
13 referencing the disciplinary options as including  
14 coaching?

15 MR. ENSLIN: Object to the form.

16 BY MS. PARSONS:

17 Q You can answer.

18 A Am I aware of --

19 Q Any other documents -- I can be more  
20 specific. Any other documents describing  
21 disciplinary options that are available within the  
22 MPD as including coaching?

23 MR. ENSLIN: Object to the form.

24 BY MS. PARSONS:

25 Q You can answer.

1           A           I'm not sure I can. I don't understand  
2           the question. I'm sorry.

3           Q           Okay. So you don't recall seeing any  
4           other documents describing disciplinary options that  
5           are available within the MPD as including coaching?

6                       MR. ENSLIN: Object to the form.

7           BY MS. PARSONS:

8           Q           You can answer.

9           A           Again, I'm not sure I can answer.

10          Q           Do you recall seeing a document where  
11          coaching is described as discipline?

12                      MR. ENSLIN: Object to form.

13          BY MS. PARSONS:

14          Q           You can answer.

15          A           It was brought to my attention that there  
16          were people asserting that coaching was discipline.

17          Q           Brought to your attention by whom?

18          A           I believe it was Assistant City Attorney  
19          Joel Fussy told me that somebody was asserting that  
20          coaching was discipline.

21          Q           When was that?

22          A           I don't recall specifically.

23          Q           Do you recall the year?

24          A           I don't.

25          Q           Do you recall if it was before or after

1 the May 2021 PCOC meeting?

2 A Yes.

3 Q And was it before or was it after?

4 A Before.

5 Q In preparation for the PCOC meeting?

6 MR. ENSLIN: Object to the form.

7 BY MS. PARSONS:

8 Q You can answer.

9 A Would you repeat the question, please?

10 MS. PARSONS: Can you repeat that back,  
11 please?

12 (The requested portion of this record was  
13 read back by the reporter.)

14 A I don't know.

15 BY MS. PARSONS:

16 Q Tell me what you do remember about what  
17 Mr. Fussy told you.

18 A Just -- all I recall is that somebody was  
19 claiming that coaching was discipline.

20 Q Do you recall who that somebody was?

21 A I don't.

22 Q Did Mr. Fussy provide any further detail  
23 about the basis for that person's belief that  
24 coaching is discipline?

25 A No.

1           Q       In response to Mr. Fussy's question, what  
2       did you do to investigate whether coaching is  
3       discipline?

4           MR. ENSLIN: I'll object to the form.  
5       I'll also object to the extent it requires you to  
6       give away any attorney-client privilege or work  
7       product and will instruct you not to answer to the  
8       extent any part of that question would require you to  
9       disclose those.

10       BY MS. PARSONS:

11           Q       Subject to those objections you can  
12       answer.

13           A       I attached documents to the memo that I  
14       wrote to the chair of the PCOC commission.

15           Q       Did you conduct a search for documents or  
16       how did you identify which documents to attach?

17           MR. ENSLIN: Object to the form. That  
18       would call for disclosure of work product and I'm  
19       going to instruct you not to answer.

20       BY MS. PARSONS:

21           Q       Have you ever looked for documents to see  
22       whether they describe coaching as discipline?

23           A       I'm not sure I understand -- when you say  
24       they described, I don't understand the question.

25           Q       Well, here's an example, right? So look

1 at Exhibit 7, it says "disciplinary options are  
2 coaching." Did you review or search for records to  
3 see if there are this document or other documents  
4 where coaching is described as discipline?

5 MR. ENSLIN: Object to the form.

6 A All I can say is I went through a process  
7 to find what I attached to my memo.

8 BY MS. PARSONS:

9 Q And what was that process?

10 MR. ENSLIN: Object to the form. That  
11 would call for the disclosure of work product. I  
12 instruct you not to answer.

13 BY MS. PARSONS:

14 Q Did you search for documents before  
15 answering?

16 MR. ENSLIN: Can you say that one more  
17 time?

18 MS. PARSONS: Can you repeat that?

19 MR. ENSLIN: Before answering what?

20 (The requested portion of this record was  
21 read back by the reporter.)

22 MR. ENSLIN: Did you search for documents  
23 before answering what?

24 BY MS. PARSONS:

25 Q Did you understand the question?

1 MR. ENSLIN: I'll object. Vague.

2 A Would you repeat the question?

3 BY MS. PARSONS:

4 Q I'll rephrase. Did you search for  
5 documents before answering Mr. Fussy's question or  
6 respond -- excuse me -- strike that.

7 Did you search for documents before  
8 responding to Mr. Fussy?

9 MR. ENSLIN: I'll object to the form to  
10 the extent it misstates prior testimony.

11 BY MS. PARSONS:

12 Q You can answer if you understood.

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

14 Q Okay. We'll come back to that. Going  
15 back to a question that I had asked earlier, did you  
16 ever see a document where coaching was described as  
17 discipline?

18 A You placed documents in front of me today  
19 that do --

20 Q Okay.

21 A -- apparently. I did not author them so I  
22 can't speak to any intent.

23 Q Did I see -- have you seen other documents  
24 where coaching is described as discipline?

25 A I -- as I sit here today, I cannot recall.

1 Q Okay. All right. So let's look just  
2 quickly at a few other pages in the exhibits before  
3 you. So looking at Exhibit 9, I'll direct you to  
4 page 5, disciplinary consequences for violating the  
5 BWC policy be clearly set out in the policy. Looking  
6 back at page 1, BWC is body worn camera policy.

7 Do you recall -- you can take a look at  
8 this and then my question will be whether you recall  
9 this language.

10 A (Reviewing document.) I can't say for  
11 certain whether I've seen this document before today.

12 Q Exhibit 10. This one does not have page  
13 numbers but I'll direct you based on the Bates  
14 number. So sort of right in the middle-ish, Bates  
15 number ending in 1874. Discipline, Q3 2018 to Q3  
16 2019, eleven collective actions, five coaching. Do  
17 you remember this chart?

18 A No.

19 Q Do you remember any other charts  
20 describing discipline corrective actions including  
21 coaching?

22 MR. ENSLIN: Object to the form.

23 A No.

24 BY MS. PARSONS:

25 Q Let me just refresh my memory. So then

1 11. Exhibit 11, sorry. I think it's the one page  
2 underneath that. Yeah. Discipline types issued by  
3 chief, training and coaching listed there. Do you  
4 recall this chart?

5 A No.

6 Q Do you recall any other charts where  
7 discipline types issued by chief appear and training  
8 and coaching are listed?

9 A No.

10 (Plaintiff's Exhibit 209 was marked  
11 for identification.)

12 BY MS. PARSONS:

13 Q The last one, looking at Exhibit 209, do  
14 you recall seeing any version of this document?

15 A I do not recall.

16 Q I direct you to review the comment bubble  
17 there on the right in red.

18 A (Reviewing document.)

19 Q I'll represent to you that the city  
20 defendants produced this and that that comment bubble  
21 was written by then-Chief Arradondo. Do you recall  
22 seeing any other documents where Chief Arradondo  
23 expressed concern that under an OPCR coaching process  
24 the measures and steps described herein is often  
25 viewed by the involved employee as being or could in

1 fact lead to discipline?

2 MR. ENSLIN: Object to the form,  
3 foundation. Object to the extent it misstates  
4 evidence, including a document which speaks for  
5 itself.

6 BY MS. PARSONS:

7 Q Did I read that correctly?

8 A Oh, I'm sorry. I wasn't following along.  
9 I can, if you want to read it aloud again.

10 Q You can read the comment bubble to the  
11 extent you have not already and then my question is  
12 whether you have seen comments similar here.

13 A (Reviewing document.) I can't say for  
14 certain.

15 Q Were you aware before today that Chief  
16 Arradondo had concerns about coaching -- about the  
17 OPCR process, the measures and steps described herein  
18 is often viewed by the involved employee as being or  
19 could in fact lead to discipline?

20 MR. ENSLIN: Object to the form,  
21 foundation. Object to the extent blatantly misstates  
22 evidence.

23 BY MS. PARSONS:

24 Q Did I read that correctly? Did I read  
25 that excerpt correctly?

1 MR. ENSLIN: Object, because the excerpt  
2 speaks for itself. So regardless of whether you read  
3 it correctly, it speaks for itself.

4 BY MS. PARSONS:

5 Q Were you aware that Chief Arradondo had  
6 voiced this concern?

7 MR. ENSLIN: Object to the form. Object  
8 to the extent this misstates evidence in the record.  
9 Foundation.

10 BY MS. PARSONS:

11 Q You can answer.

12 A I can't answer.

13 Q So is it fair to say you are unaware that  
14 Chief Arradondo had a concern about the OPCR coaching  
15 process?

16 MR. ENSLIN: Object to the extent it  
17 misstates evidence, foundation.

18 BY MS. PARSONS:

19 Q Are you aware?

20 A All I can do is read number 209 along with  
21 you. That's all I am capable of doing on this today.

22 Q Okay. So you are unaware of any concern  
23 by Chief Arradondo about the OPCR coaching process?

24 MR. ENSLIN: Object to the form.  
25

1 BY MS. PARSONS:

2 Q Did any supervisor ever express --

3 THE REPORTER: Was there an answer?

4 MS. PARSONS: I'm sorry. Could you read  
5 back my last question?

6 (The requested portion of this record was  
7 read back by the reporter.)

8 MR. ENSLIN: And I will object only to the  
9 extent that your answer would require you to relieve  
10 legal advice or work product. And I would instruct  
11 you not to answer to that extent.

12 BY MS. PARSONS:

13 Q You can answer.

14 A I'm not going to answer any questions of  
15 yours that call for me divulging any attorney-client  
16 privileged communications.

17 Q I'm not asking for the substance. I'm  
18 asking for the topic. Did Chief Arradondo ever  
19 express -- are you aware that Chief Arradondo ever  
20 expressed concern about the OPCR coaching process?

21 MR. ENSLIN: And I will object. To the  
22 extent this occurred Chief Arradondo came to you for  
23 legal advice in that regard, I am instructing you not  
24 to answer.

25 A I also can't speculate on another person's

1 awareness.

2 BY MS. PARSONS:

3 Q Okay. We'll come back to that. Did a  
4 supervisor -- did any supervisor ever express concern  
5 to you about the OPCR coaching process?

6 MR. ENSLIN: Object to the form.

7 BY MS. PARSONS:

8 Q If you understood you can answer.

9 A Those kinds of questions if any had  
10 occurred would have been in the context of  
11 attorney-client privilege. I will not answer.

12 Q I'm not asking you to divulge the contents  
13 of the conversation. I'm asking if a supervisor ever  
14 expressed concern about the OPCR. You can answer  
15 with a yes or no.

16 MR. ENSLIN: No. I'm going to object and  
17 instruct you not to answer. You are asking for legal  
18 advice that may have been solicited. She's already  
19 said she's not going to answer. You are asking for  
20 the contents of advice and so I'm instructing her not  
21 to answer that question.

22 MS. PARSONS: Mark, under the local rules  
23 and the case law, the fact that a communication  
24 existed and the topic of that communication is not  
25 privileged.

1 MR. ENSLIN: That's not what you're  
2 asking.

3 MS. PARSONS: That is I'm asking.

4 MR. ENSLIN: No, it isn't. You asked if  
5 somebody had concern. That's the substance of the  
6 topic. She's not going to answer that today. That  
7 is a different question than what you're saying. So  
8 you're asking for the substance potentially of legal  
9 advice and we're not going to get into that today.  
10 BY MS. PARSONS:

11 Q Did a supervisor ever ask you about the  
12 OPCR coaching process?

13 A Again, to the extent that any of my  
14 communications for a request for legal advice were  
15 posed I will not answer.

16 Q That's not my question. My question is  
17 whether they -- where a supervisor asked you about  
18 the OPCR. That is not asking for -- I'm not asking  
19 you to divulge a legal communication with a client.

20 A Respectfully, I disagree with your  
21 characterization that it would be covered by the  
22 privilege. And that's not your decision. That's the  
23 entity that issues my law license in Minnesota.

24 Q Okay. We'll come back to that and take a  
25 break.

1 (Recess from 10:14 a.m to 10:35 a.m.)

2 MS. PARSONS: All right. Isabella, can  
3 you pull Exhibit 2 for me?

4 BY MS. PARSONS:

5 Q Do you recognize this document?

6 A I don't.

7 Q I'll represent to you that this is the  
8 MGDPA request that is the subject of this lawsuit.  
9 Does that jog your memory at all?

10 A Does it jog my memory that you represent  
11 something?

12 Q Whether you've seen this document before?

13 A It does not jog my memory, no.

14 Q Okay. So fair to say you've never seen  
15 this document?

16 MR. ENSLIN: Object to the form, misstates  
17 what she just testified to.

18 A I don't know whether I have or have not.

19 BY MS. PARSONS:

20 Q Whether you've seen this document or not  
21 were you aware of this request before today?

22 MR. ENSLIN: Object to the form.

23 A I don't know.

24 BY MS. PARSONS:

25 Q Were you aware before you prepared to

1 appear at this deposition?

2 MR. ENSLIN: Object to the form.

3 BY MS. PARSONS:

4 Q You can answer.

5 A I don't know if I've seen this before  
6 today, no. Was that your question?

7 Q No.

8 MS. PARSONS: Can you read it back,  
9 please?

10 (The requested portion of this record was  
11 read back by the reporter.)

12 MR. ENSLIN: Same objection. Asked and  
13 answered.

14 BY MS. PARSONS:

15 Q Were you aware of the MGDPA request, this  
16 request, before you prepared for this deposition?

17 MR. ENSLIN: Object to the form, asked and  
18 answered.

19 BY MS. PARSONS:

20 Q You can answer.

21 A I can't say for certain whether I did or  
22 did not. I don't know.

23 Q Were you aware of this request when you  
24 were employed by the City of Minneapolis?

25 MR. ENSLIN: Object to the form, asked and

1 answered.

2 BY MS. PARSONS:

3 Q You can answer.

4 A I don't know.

5 Q You don't know. Okay.

6 MS. PARSONS: Let's look at Exhibit 28,  
7 Isabella.

8 BY MS. PARSONS:

9 Q Have you seen this complaint before?

10 A I have in front of me a document marked  
11 Plaintiff's Exhibit 28. I can't say for certain if  
12 this is the complaint that I saw prior to today.

13 Q You don't need to read the entire thing,  
14 but if you want to flip through it to familiarize  
15 yourself with that.

16 A (Reviewing document.)

17 Q Okay. Now that you've familiarized  
18 yourself with that, have you seen this complaint  
19 before today?

20 A I flipped through the pages as you asked.  
21 I cannot state for certain that I have seen all of  
22 these pages prior to today.

23 Q Were you aware of this lawsuit prior to  
24 today?

25 A Yes. Prior to today I became aware of a

1 lawsuit captioned Minnesota Coalition On Government  
2 Information as page 28 -- or I'm sorry -- Exhibit 28  
3 indicates. I can't state, though, if it had a court  
4 file number on it or not.

5 Q When did you become aware of the lawsuit?

6 A I can't say for certain.

7 Q I noticed you're bleeding. Do you want to  
8 take a minute to -- we have a Kleenex.

9 MS. PARSONS: We can go off the record for  
10 a second.

11 (Discussion off the record from 10:42 a.m  
12 to 10:44 a.m.)

13 BY MS. PARSONS:

14 Q So back on the record. We were just  
15 talking about when you became aware of this lawsuit  
16 and I believe you testified that you couldn't recall  
17 when you became aware. Was it when you were employed  
18 by the City of Minneapolis?

19 A Yes.

20 Q So this lawsuit was filed on June --  
21 according to Exhibit 28, June 3rd, 2021. Do you  
22 recall roughly how soon after the complaint was filed  
23 that you became aware of it?

24 A I do not.

25 Q Were you consulted about responding to

1 this complaint?

2 A Yes.

3 Q Without divulging privileged information,  
4 did you help prepare the strategy for responding to  
5 the complaint?

6 A I can't say for certain.

7 Q Did you participate in drafting the  
8 answer?

9 A Participate is broadly asked. I talked  
10 with the counsel who were assigned to this matter.

11 Q Prior to the answer being filed?

12 A Yes.

13 Q Did you speak with counsel prior to --  
14 there was a motion for judgment on the pleadings  
15 filed in this matter. Are you familiar with that?

16 A No.

17 Q There was a motion for summary judgment  
18 for partial summary judgment on the definition of  
19 disciplinary action. Were you aware of that?

20 A All I can say is I remember consulting  
21 with my colleagues in defense of this lawsuit.

22 Q Specific to the motion for partial summary  
23 judgment on the definition of disciplinary action?

24 MR. ENSLIN: Object to the form. To the  
25 extent that that would require you to disclose work

1 product or attorney-client communications, I would  
2 instruct you not to answer.

3 BY MS. PARSONS:

4 Q Without asking for privileged information,  
5 did you consult -- or did you speak to your  
6 colleagues about the motion for partial summary  
7 judgment on the definition of disciplinary action  
8 before it was filed?

9 MR. ENSLIN: Object to the form. Same  
10 objection.

11 BY MS. PARSONS:

12 Q Just the existence of communications, not  
13 the subject.

14 A I do not recall what type of a filing the  
15 conversations may have been about other than what  
16 I've already answered.

17 Q Without asking for privileged information,  
18 what else do you know about this lawsuit?

19 MR. ENSLIN: Object to the form.

20 BY MS. PARSONS:

21 Q You can answer.

22 MR. ENSLIN: I'll object to the extent  
23 that -- I don't know how that can be answered without  
24 revealing mental impressions or attorney-client  
25 communications.

1 BY MS. PARSONS:

2 Q You can answer if you can do so without  
3 providing privileged information.

4 A I read a document marked the complaint and  
5 I read the documents -- actually, I shouldn't say  
6 that. I looked at some of the documents that counsel  
7 for the Minneapolis City Attorney's Office placed in  
8 front of me leading into this deposition.

9 Q So that's -- if I'm understanding  
10 correctly, is that preparation you did -- your answer  
11 was specific to preparation for this deposition,  
12 correct?

13 A Correct.

14 Q When you were employed by the City of  
15 Minneapolis what else can you tell me about what you  
16 knew about this lawsuit?

17 MR. ENSLIN: Object to the form. Object  
18 to the extent it calls for mental impressions or  
19 attorney-client privilege. In fact it directly seems  
20 to ask for mental impressions because you're asking  
21 what she knew about a lawsuit while she worked for  
22 the city. So I'm instructing you not to answer that  
23 question.

24 BY MS. PARSONS:

25 Q Let's talk more specifically, did you have

1 a role in identifying and collecting documents to be  
2 produced in this litigation?

3 A I don't recall.

4 Q What would help you refresh your memory on  
5 that?

6 MR. ENSLIN: Object to the form.

7 BY MS. PARSONS:

8 Q You can answer.

9 MR. ENSLIN: I'll also object as  
10 speculative.

11 BY MS. PARSONS:

12 Q What would help you refresh your memory as  
13 to whether you had any role in identifying and  
14 collecting documents responsive to this litigation?

15 A I don't know.

16 Q Would emails help you?

17 MR. ENSLIN: Object to the form, calls for  
18 speculation, asked and answered. She just answered  
19 your question. She said she doesn't know.

20 BY MS. PARSONS:

21 Q Is there anything that would refresh your  
22 recollection on that?

23 MR. ENSLIN: Objection, asked and  
24 answered, that direct question.

25 A I can't say for certain.

1 BY MS. PARSONS:

2 Q Are you aware that the city defendants  
3 yesterday produced documents in this litigation for  
4 which you are listed in the metadata as the  
5 custodian?

6 A I can't answer that question.

7 Q Why not?

8 A You asked me about metadata. I don't know  
9 what you're talking about. I'm sorry.

10 Q So I will represent to you that the city  
11 defendants yesterday produced documents in this  
12 litigation where the metadata lists you as a  
13 custodian of that -- of those documents. Were you  
14 aware that the city was producing those documents  
15 yesterday?

16 A No.

17 Q Going back to your testimony earlier where  
18 we were talking about the number of grievances you  
19 participated in, if I'm recalling correctly you  
20 couldn't say if it was more than a hundred on a  
21 yearly basis, but that somewhere around ten per year  
22 was theoretically possible. Do I have that correct?

23 MR. ENSLIN: Object to the extent it  
24 misstates her testimony.

25

1 BY MS. PARSONS:

2 Q Is that a fair characterization of what  
3 you recall?

4 A I can't answer without reading the  
5 transcript.

6 Q Okay. Is ten per year grievances a  
7 reasonable estimate?

8 A I have no basis on which to answer that  
9 question.

10 Q I'm asking about your participation in  
11 grievances.

12 A I don't know how many it was on an annual  
13 basis.

14 Q Okay. What would help you refresh your  
15 recollection on that?

16 A I wouldn't know until I saw something.

17 Q Okay. Take a look at -- go back to  
18 Exhibit 2. And the numbered paragraphs 1 through 4  
19 are documents -- are data that were requested by  
20 MNCOGI. Once you've had a chance to review those  
21 four numbered paragraphs my question is whether there  
22 are documents in your possession responsive to any of  
23 those numbered paragraphs.

24 A (Reviewing document.)

25 Q Okay?

1                   MR. ENSLIN: Object to the form, calls for  
2 speculation, calls for a legal conclusion, calls for  
3 expert testimony which is outside the scope of this  
4 deposition.

5 BY MS. PARSONS:

6           Q       On February 15th, 2021 you were employed  
7 by the City of Minneapolis, correct?

8           A       Correct.

9           Q       In your -- as an employee of the City of  
10 Minneapolis did you possess any data responsive to  
11 numbered paragraph 1?

12                   MR. ENSLIN: Object to the form, same  
13 objection. Calls for speculation. Calls for a legal  
14 conclusion. Also vague.

15 BY MS. PARSONS:

16           Q       You can answer.

17           A       (Reviewing document.) Would you repeat  
18 the question, please?

19                   MS. PARSONS: Can you read that back,  
20 please?

21                   (The requested portion of this record was  
22 read back by the reporter.)

23           A       No.

24 BY MS. PARSONS:

25           Q       As an employee of the City of Minneapolis

1 did you possess any data responsive to numbered  
2 paragraph 2?

3 MR. ENSLIN: Same objections. Vague,  
4 calls for a legal conclusion, calls for speculation.

5 A (Reviewing document.) Actually, I need to  
6 go back to Number 1. As I'm rereading this Exhibit  
7 Number 2, indented paragraph number 1 on page 1, the  
8 way the data request is phrased, including, but not  
9 limited to, I apologize, when I answered no earlier I  
10 was stating that I had not seen data related to  
11 coaching of Derek Chauvin, C-h-a-u-v-i-n. I can't  
12 answer to all data but not limited to.

13 BY MS. PARSONS:

14 Q Okay. To make sure I understand your  
15 answer that you did not have data responsive to  
16 numbered paragraph 1 was limited to specific request  
17 for coaching documentation forms? And excluding  
18 all -- you are unaware, right? -- so let's take these  
19 separately, right?

20 So coaching documentation forms relating  
21 to coaching of Derek Chauvin, how do you answer that  
22 question as to whether you had data responsive to  
23 that?

24 MR. ENSLIN: Same objections.  
25

1 BY MS. PARSONS:

2 Q I'm trying to understand your  
3 clarification.

4 A Until the death of George Floyd I believe  
5 I had not heard the name Derek Chauvin before or seen  
6 his name on any documents.

7 Q Okay. And so what was your clarification  
8 regarding all data including but not limited to?

9 A Okay. So -- and I'm sorry. I'm not --  
10 I'm trying to familiarize myself with this document  
11 during a deposition.

12 Q Sure.

13 A (Reviewing document.) Yeah. What I -- as  
14 I sit here today, I do not recall prior to the death  
15 of George Floyd being familiar with the name Derek  
16 Chauvin.

17 Q Okay. So not to belabor it, but just to  
18 make sure I'm understanding, so all data including  
19 but not limited to, was your testimony that you  
20 aren't certain whether you had that or that you know  
21 you do not have that?

22 MR. ENSLIN: Object to the form, vague,  
23 ambiguous, calls for a legal conclusion, foundation.

24 BY MS. PARSONS:

25 Q Let's back up a little bit. So after the

1 death of George Floyd when you had heard the name  
2 Derek Chauvin and you were employed by the City of  
3 Minneapolis, did you have data responsive to  
4 request 1?

5 MR. ENSLIN: Object to the form, vague,  
6 ambiguous, calls for a legal conclusion, foundation.

7 BY MS. PARSONS:

8 Q You can answer.

9 A I provided legal advice and attorney work  
10 product to the City of Minneapolis, my client, after  
11 the death of George Floyd. Other than that, I refuse  
12 to answer anything that would involve attorney-client  
13 privilege.

14 Q Did you have coaching documentation forms  
15 for Derek Chauvin?

16 MR. ENSLIN: Object to the form,  
17 foundation, vague and ambiguous, and she's now given  
18 her answer. So she's not going to answer any further  
19 on that question.

20 BY MS. PARSONS:

21 Q All right. Paragraph 2. I don't believe  
22 we had an answer as to whether as an employee of the  
23 City of Minneapolis you had any data responsive to  
24 numbered paragraph 2.

25 MR. ENSLIN: Same objections. Vague and

1     ambiguous, foundation, calls for speculation and  
2     calls for a legal conclusion.

3             MS. WALKER:   Mark, it's a pretty  
4     straightforward question.   Can you explain on the  
5     record so we can rephrase why you think it's a vague  
6     and ambiguous question?

7             MR. ENSLIN:   Sure.   She's not here on  
8     behalf of the city.   So when you say her possession,  
9     I don't know what you're talking about.   You're also  
10    asking about a data request that I believe she  
11    testified she's never seen before today.   So, first  
12    of all, it's vague and ambiguous as to who you're  
13    asking and why and what that means.   And second, she  
14    has no foundation because she's never seen it before  
15    today.   So you're asking her to speculate.

16            So you constantly have been doing this  
17    through all of the depositions which you oscillate  
18    between wanting the witness to speculate when you  
19    think it will be something helpful and telling them  
20    not to speculate when you think they will speculate  
21    in a way that is going to be harmful.   That is  
22    improper.

23            This whole line of questions is improper.  
24    She's already said she's never seen this before  
25    today, I believe.   That is the basis for all of my

1 objections.

2 BY MS. PARSONS:

3 Q Have I provided you time to familiarize  
4 yourself with these four numbered paragraphs?

5 A I have not read Exhibit Number 2 word for  
6 word.

7 Q Okay. How about you read numbered  
8 paragraphs 1 through 4 word for word to familiarize  
9 yourself.

10 A (Reviewing document.)

11 Q Have you read them word for word?

12 A I have now read paragraphs numbered 1, 2,  
13 3, 4 on Exhibit 2 word for word, yes.

14 Q Okay. Now that you've done that, numbered  
15 paragraph 2, while employed by the City of  
16 Minneapolis did you have any data responsive to  
17 Number 2?

18 MR. ENSLIN: Same objections, vague and  
19 ambiguous, calls for a legal conclusion, foundation,  
20 speculation.

21 A Number 2 references a report and contains  
22 a website but I'm unfamiliar with that. Number 2  
23 as well as number 1 references attached hereto, and I  
24 don't see any attachments to Exhibit 2.

25

1 BY MS. PARSONS:

2 Q Okay. Number 3, paragraph numbered 3, as  
3 a city employee did you have data responsive to that  
4 request?

5 MR. ENSLIN: Same objections.

6 A I am unable to answer the question.

7 Q Why?

8 A Paragraph number 3 references attached  
9 hereto and there is nothing attached hereto.

10 Q Are you familiar with the coaching  
11 documentation form used by MPD?

12 A I am familiar with the coaching form that  
13 I attached to my memo.

14 Q So let's just briefly flip to -- I think  
15 you'll need it -- Exhibit 59. My question is whether  
16 this is the memo that you just referenced.

17 A Exhibit 59 does appear to be the  
18 September 8th, 2022 memo.

19 Q Okay. At page Bates numbered 1562 there  
20 is a document with the heading coaching  
21 documentation. Do you see that?

22 A Bates page 1562 states across the top in  
23 all capital letters, coaching documentation.

24 Q Okay. And that is a coaching -- you have  
25 no reason to believe that is not an accurate

1 representation of the coaching documentation form  
2 attached to your memo, correct?

3 A Correct.

4 Q So going back to Plaintiff's Exhibit 2,  
5 paragraph 3, all data included but not limited to  
6 coaching documentation forms, I'll represent the form  
7 that we just looked at at 1562 is what was attached.  
8 With that representation as a city of employee did  
9 you have any data responsive to request 3?

10 MR. ENSLIN: Object to the form, vague and  
11 ambiguous, calls for speculation, calls for a legal  
12 conclusion, foundation.

13 BY MS. PARSONS:

14 Q You can answer.

15 A I don't know.

16 Q Okay. Paragraph 4 there, "All data dating  
17 from January 1, 2011 to present in which coaching was  
18 described as a form of discipline or acknowledged by  
19 a supervisor or the chief of police to constitute a  
20 form of discipline," as an employee of the City of  
21 Minneapolis did you have any data responsive to that  
22 request?

23 MR. ENSLIN: Object to the form, vague and  
24 ambiguous, calls for speculation, calls for a legal  
25 conclusion, foundation.

1 BY MS. PARSONS:

2 Q You can answer.

3 A I don't know.

4 Q As an employee with the City of  
5 Minneapolis did you ever look for data responsive to  
6 numbered paragraphs 1 through 4?

7 A I don't recall.

8 Q Did you look before the lawsuit was filed  
9 on June 3rd, 2021?

10 MR. ENSLIN: Object to the form. She just  
11 answered the question. She said she doesn't recall.

12 BY MS. PARSONS:

13 Q You can answer.

14 A I don't recall.

15 Q Did you ever look for data while employed  
16 as an employee by the City of Minneapolis for data  
17 responsive to paragraphs 1 through 4 after the  
18 lawsuit was filed on June 3rd, 2021?

19 MR. ENSLIN: Objection, asked and  
20 answered.

21 A I don't recall.

22 BY MS. PARSONS:

23 Q As you sit here today do you have any data  
24 responsive to requests 1 through 4 in your  
25 possession?

1 MR. ENSLIN: Object to the form, vague and  
2 ambiguous, foundation, calls for a legal conclusion.

3 BY MS. PARSONS:

4 Q You can answer.

5 A Would you repeat the question, please?

6 MS. PARSONS: Can you please read that  
7 back?

8 (The requested portion of this record was  
9 read back by the reporter.)

10 A I did not write this request, so I'm not  
11 in a position to answer what would be responsive or  
12 not.

13 BY MS. PARSONS:

14 Q Do you have any coaching documentation  
15 forms for Derek Chauvin?

16 MR. ENSLIN: Objection, vague and  
17 ambiguous.

18 BY MS. PARSONS:

19 Q You can answer.

20 A No.

21 Q Do you have any completed documentation  
22 forms for an MPD officer who used a neck restraint or  
23 other method of restraint resulting in a partial or  
24 total obstruction of the breath or airways?

25 MR. ENSLIN: Object to the form, vague and

1       ambiguous.

2       BY MS. PARSONS:

3           Q       You can answer.

4           A       Would you repeat the question, please?

5                   (The requested portion of this record was  
6       read back by the reporter.)

7                   MR. ENSLIN:   Are you asking if she has  
8       that in her personal possession now?

9                   MS. PARSONS:   Correct.

10                  MR. ENSLIN:   Like today outside of this --

11                  MS. PARSONS:   Correct.

12       BY MS. PARSONS:

13           Q       Are you still thinking?

14           A       Not that I know of, no.

15           Q       Do you have in your possession today any  
16       coaching documentation forms from January 1, 2020 to  
17       present related to coaching of an officer resulting  
18       from a sustained complaint where the original  
19       complaint alleged a B-, C- or D-level violation where  
20       coaching was the only corrective action taken?

21                  MR. ENSLIN:   Object to the form.

22           A       I'm unable to answer the question.

23       BY MS. PARSONS:

24           Q       Why?

25           A       Because of the way number 4 is phrased.

1 Q What about the way it's phrased?

2 A Well, it's date-specific. It is formed  
3 "in which coaching is described as a form of  
4 discipline." I don't know what that could mean. It  
5 goes on to ask "or acknowledged by a supervisor."

6 Q Oh, I'm sorry. We're looking at  
7 paragraph 3.

8 A Oh, I'm sorry. I thought you said  
9 Number 4.

10 Q That's okay.

11 A But I -- with respect to Number 3, that  
12 references an attachment and there is not one to  
13 Exhibit 2. I'm unable to answer with respect to  
14 Number 3, paragraph 3.

15 Q As we have talked through before,  
16 Exhibit 59, the attachment of the coaching  
17 documentation form, does that clear up your confusion  
18 about 3?

19 A No.

20 Q Why else are you confused?

21 A (Reviewing document.) To the extent your  
22 question is asking for documents that were provided  
23 to me related to this deposition, I do not have those  
24 in front of me. I came to this deposition with no  
25 documents in my possession.

1           Q       Let me back up a little more broadly. Do  
2 you have access to any coaching documentation forms  
3 completed for MPD officers?

4           A       No.

5           Q       Do you mean today you don't have access?

6           A       My answer no was with respect to today.

7           Q       Okay. Since -- in your possession since  
8 leaving the City of Minneapolis have you had access  
9 or maintained access to coaching documentation forms  
10 for MPD officers?

11                   MR. ENSLIN: Object to the form.

12           A       Not that I know of.

13 BY MS. PARSONS:

14           Q       Okay. Let's set aside exhibits for a  
15 second and talk about coaching generally speaking.  
16 When did you first learn about coaching within the  
17 City of Minneapolis?

18           A       I don't recall.

19           Q       Roughly what year?

20           A       I don't recall.

21           Q       Within your 15 years at the City of  
22 Minneapolis was it when you were first hired?

23           A       I don't recall.

24           Q       Were you trained on coaching?

25           A       I don't recall.

1 Q Were you provided documents discussing  
2 policies surrounding coaching?

3 A Yes.

4 Q Which policies?

5 A I was provided with a PowerPoint  
6 presentation that bore the date of 2014 or 2015 that  
7 mentioned coaching.

8 Q When were you provided that?

9 A I don't recall specifically.

10 Q Was it while you were employed by the City  
11 of Minneapolis?

12 A Within that 15-year period, yes.

13 Q Okay. What do you recall about what that  
14 presentation said?

15 A I recall it stating that coaching is not  
16 considered discipline.

17 Q What else do you recall?

18 A That it appeared to be a PowerPoint  
19 presentation that was presented to the PCOC.

20 Q When was the last time you viewed that  
21 document?

22 A I don't recall.

23 Q Was it -- was the last time you viewed  
24 that document while you were employed by the City of  
25 Minneapolis?

1           A           It was a document presented to me for  
2           preparation for this deposition.

3           Q           What was the name of that document?

4           A           I don't recall the name of it.

5           Q           Prior to reviewing it for preparation for  
6           this deposition have you recalled that presentation,  
7           the document?

8           A           The document, yes?

9           Q           So you recalled it -- so in other words,  
10          when it was presented to you for preparation for this  
11          deposition, you said I remember this from when I was  
12          at the City of Minneapolis?

13          A           No.

14          Q           So in other words --

15          A           I'm not going to talk about my  
16          conversations with counsel with respect to preparing  
17          for this deposition.

18          Q           Okay. You just testified that while you  
19          were employed by the City of Minneapolis you received  
20          a copy of this PowerPoint presentation at some point.  
21          What is your basis for that testimony?

22          A           My basis for that testimony is that it was  
23          a federation exhibit book at an arbitration while I  
24          was employed by the City of Minneapolis.

25          Q           What arbitration was that?

1           A       I don't recall.

2           Q       What year was that?

3           A       I don't recall.

4           Q       Did that arbitration address coaching of  
5 an MPD officer?

6           A       No. I've had no arbitrations regarding  
7 coaching of an MPD officer.

8           Q       But this presentation was part of an  
9 arbitration book from the federation where coaching  
10 was described as not discipline?

11          A       It was a discipline grievance arbitration.

12          Q       What do you recall about discussion of  
13 that PowerPoint presentation with the federation?

14          A       Nothing.

15          Q       Just that line that coaching is not  
16 considered discipline?

17          A       I don't believe that's what I said. I  
18 said it was an exhibit in the federation exhibit book  
19 for a discipline grievance arbitration.

20          Q       Was that line discussed as part of the  
21 arbitration?

22          A       I don't recall.

23          Q       What would refresh your recollection on  
24 that?

25          A       I can't say without seeing something that

1 might or might not.

2 Q Was your practice in arbitrations with the  
3 federation to communicate by email?

4 A Email was one of the methods of  
5 communication with the federation in an arbitration  
6 process.

7 Q And how did you receive -- you called it  
8 the federation arbitration book. How did you receive  
9 federation arbitration books? Was that by email?

10 A No.

11 Q So how did you receive them?

12 A Usually the morning of the arbitration.

13 Q In a hard copy?

14 A Yes.

15 Q Okay. Did you maintain federation  
16 arbitration books in your records after the day of  
17 the arbitration?

18 A I did not have a consistent practice with  
19 respect to that.

20 Q Did anyone else within the City of  
21 Minneapolis?

22 A I don't know.

23 Q In other words, I -- there are processes  
24 that I have to provide other people records for  
25 keeping. Did you have a process like that where you

1 provided federation arbitration books and trusted  
2 that someone else would keep those?

3 A I did not have a consistent practice.  
4 There was a paralegal assigned to support my work for  
5 the City of Minneapolis.

6 Q Okay. And who is that paralegal?

7 A At which time period over the 15 years?

8 Q Let's talk through names and the dates  
9 that you recall them being a paralegal to support  
10 your work.

11 A I don't recall dates with specificity.

12 Q Okay. So names, the two paralegals who  
13 supported my work at the Minneapolis City Attorney's  
14 Office were Kerry Sovell, K-e-r-r-y, S-o-v-e-l-l.

15 Q S-o-v -- I'm sorry. I didn't catch --

16 A E-l-l.

17 Q Okay.

18 A And Mai Yang, M-a-i, last name Y-a-n-g.

19 Q And where did you understand that  
20 Ms. Sovell stored documents?

21 MR. ENSLIN: Object to the form, vague and  
22 ambiguous, completely irrelevant.

23 A I don't know.

24 BY MS. PARSONS:

25 Q How about where Ms. Yang stored documents?

1 MR. ENSLIN: Same objections.

2 A I don't know.

3 BY MS. PARSONS:

4 Q How did -- describe to me how city  
5 departments used coaching while you were employed by  
6 the City of Minneapolis.

7 MR. ENSLIN: Object to the form, vague and  
8 ambiguous. foundation.

9 BY MS. PARSONS:

10 Q You can answer.

11 A I don't know. Unless I was asked for  
12 legal advice, I can't answer.

13 Q So is your testimony today that you do not  
14 know how city departments used coaching?

15 MR. ENSLIN: Object to the form, vague and  
16 ambiguous, foundation.

17 BY MS. PARSONS:

18 Q You can answer.

19 A I can't speak to what others may have  
20 done. I -- any information I thought I have I tried  
21 to capture in my memo shown in Exhibit 59.

22 Q That wasn't really my question, right? It  
23 was --

24 MS. PARSONS: Actually can I ask you to  
25 read that back?

1 (The requested portion of this record was  
2 read back by the reporter.)

3 MR. ENSLIN: Same objections.

4 BY MS. PARSONS:

5 Q You can answer.

6 A I don't know --

7 Q Okay.

8 A -- other than to say coaching is a  
9 performance management tool.

10 Q And what do you mean by that?

11 A That coaching is a performance management  
12 tool.

13 Q And what does that mean to you?

14 MR. ENSLIN: Objection, vague and  
15 ambiguous.

16 BY MS. PARSONS:

17 Q You can answer.

18 A It's a tool used for performance  
19 management.

20 Q Okay. So let's take those one by one.  
21 What does it mean that it's a tool?

22 A I could refer to HR's coaching document in  
23 Exhibit 59, if that would help. I would refer  
24 counsel to -- in Exhibit 59, Bates pages 1535, 1536  
25 and 1537.

1           Q       Is that the sole basis of your  
2 understanding of how coaching is a tool, is used as a  
3 tool?

4                   MR. ENSLIN: Object to the form, vague and  
5 ambiguous.

6 BY MS. PARSONS:

7           Q       You can answer.

8           A       No.

9           Q       What else informs your statement that  
10 coaching is used as a tool?

11          A       Other attorneys who practice in this area.

12          Q       Other attorneys meaning whom?

13          A       Jim Rowader, Sandi Blaeser, S-a-n-d-i,  
14 B-l-a-e-s-e-r, Valerie Darling, Kristyn Anderson.

15          Q       Are you still thinking?

16          A       Yes.

17          Q       Any others?

18          A       No, not that I can think of.

19          Q       I'll come back to that in just a second,  
20 but any other documents beyond the HR coaching  
21 document at 1535 that inform your understanding of  
22 coaching as used as a tool?

23          A       Yes. Anything referenced in my memo,  
24 Exhibit 59.

25          Q       Anything beyond those documents attached

1 to your letter?

2 A I don't know.

3 Q What would refresh your recollection?

4 A Possibly seeing other things that I may  
5 have seen in the course of my career as an employment  
6 lawyer.

7 Q Okay. When you say that it was -- your  
8 understanding of how coaching was used as a tool was  
9 informed by other attorneys, how was it informed by  
10 Jim Rowader?

11 MR. ENSLIN: And I'll object to the extent  
12 it calls for the disclosure of privileged  
13 communications or work product, and I will instruct  
14 you not to answer to the extent that would be the  
15 case.

16 BY MS. PARSONS:

17 Q Consistent with that, you can answer.

18 A Jim Rowader spoke to coaching also not  
19 being disciplinary in the private sector.

20 Q Where did he speak on that?

21 A At some point when his employment and mine  
22 overlapped at the Minneapolis City Attorney's Office.

23 Q Roughly when was that?

24 A I don't recall the exact time frame when  
25 he was employed there.

1           Q       You said the private sector, so  
2       Mr. Rowader was speaking as to his experience prior  
3       to being employed by the City of Minneapolis; is that  
4       correct?

5                   MR. ENSLIN:   Object to the form,  
6       foundation.

7           A       That was how I understood his discussion  
8       with me, yes.

9       BY MS. PARSONS:

10          Q       Tell me what else you understand or recall  
11       about your discussion with him.

12          A       I recall him asking me -- not the exact  
13       words, but whether I had awareness of what other  
14       organizations considered coaching. And I explained  
15       to him with whom I had spoken recently about that,  
16       including that one of the people with whom I spoke  
17       laughed out loud and said are you serious, words to  
18       this effect, who's claiming that coaching is  
19       discipline.

20          Q       Does that conversation happen in 2020?

21          A       I can't say for certain on when it  
22       occurred.

23          Q       Did it happen after the murder of George  
24       Floyd?

25          A       I can't say for certain.

1           Q       Did it happen before your September 8th,  
2       to 20 memorandum?

3           A       I can't say for certain.

4           Q       Would there be a calendar invite for that  
5       communication?

6           A       Not necessarily.

7           Q       Anything else that would help you remember  
8       when that conversation took place?

9           A       I don't know.

10          Q       What else do you remember about that  
11       conversation?

12          A       Nothing that I can remember.

13          Q       You said you mentioned that you had talked  
14       to several other people, that you told Mr. Rowader  
15       that you had talked to several other people. You had  
16       previously identified Sandi Blaeser, Valerie Darling,  
17       Kristyn Anderson. Were those the individuals you  
18       were referencing in your conversation with  
19       Mr. Rowader?

20          A       First, I don't know that I said several to  
21       you today.

22          Q       Okay.

23          A       The individuals also included Jason  
24       Schmidt who I believe I mentioned his name earlier  
25       today.

1 Q Okay. Who was the person who laughed out  
2 loud?

3 A I don't remember.

4 Q Okay. After that conversation with  
5 Mr. Rowader did that change your understanding of how  
6 coaching is used by MPD?

7 MR. ENSLIN: Object to the form. That  
8 would require disclosure of mental impressions and  
9 privileged communications so I'm going to instruct  
10 you not to answer.

11 BY MS. PARSONS:

12 Q Let's talk about your involvement with  
13 coaching in the City Attorney's Office. Were you  
14 involved with decisions to coach city employees?

15 A If I was asked to provide legal advice  
16 about coaching I provided legal advice.

17 Q Outside of legal advice, the decision to  
18 coach an employee, were you involved in the decision  
19 to coach an employee?

20 A I provide legal advice. I don't make  
21 decisions about whether to coach an employee.

22 Q Were you involved in decisions to complete  
23 documentation forms?

24 A Documentation forms?

25 Q Sorry. Were you involved in decisions to

1 complete coaching documentation forms?

2 A I can't say for certain whether or not I  
3 was.

4 Q Were you involved in decisions regarding  
5 where coaching documentation forms were stored within  
6 the City of Minneapolis?

7 A I can't say for certain whether I was or  
8 was not.

9 Q Were you involved in decisions to settle  
10 grievances with MPD officers involving coaching?

11 A I provided legal advice and representation  
12 if the MPD asked me to with respect to settling a  
13 grievance.

14 Q We'll come back to that. Were you  
15 involved with decisions about how to handle public  
16 disclosure of coaching documents?

17 MR. ENSLIN: Objection to the form. That  
18 would -- as a specific topic it would call for the  
19 disclosure of attorney-client privilege or work  
20 product, I'm instructing you not to answer.

21 BY MS. PARSONS:

22 Q Were you involved with data requests for  
23 coaching documents?

24 A I provided legal advice regarding  
25 compliance with the Data Practices Act.

1           Q           How many times for requests related to  
2 coaching documents?

3           A           I can't say for certain whether or not I  
4 was or was not asked to provide advice about --

5           Q           Okay. Have you ever filled out a  
6 documentation -- excuse me. I keep tripping over  
7 that. Have you ever filled out a coaching  
8 documentation form for coaching of an MPD officer?

9           A           It was not my role to complete  
10 documentation on employees.

11          Q           That wasn't quite my question. My  
12 question was did you ever complete a coaching  
13 documentation form for an MPD officer.

14          A           Not that I recall.

15          Q           Okay. Did you ever draft a chief  
16 determination letter imposing coaching on an MPD  
17 officer?

18          A           Not that I recall.

19          Q           Okay.

20                   MS. PARSONS: I think maybe let's take a  
21 break now. We can go off the record.

22                   (Lunch recess from 11:44 a.m to 12:52  
23 p.m.)

24 BY MS. PARSONS:

25          Q           All right. We're going switch topics a

1 little bit and talk more about your public statements  
2 about coaching. You've spoken publicly about  
3 coaching within Minneapolis, correct? Or -- strike  
4 that.

5 You've spoken publicly about how coaching  
6 is used by the City of Minneapolis, correct?

7 A At the PCOC meeting.

8 Q Okay. When was the first time that you  
9 spoke publicly about how Minneapolis uses coaching?

10 A I think the only time I spoke publicly  
11 about it was at the PCOC meeting.

12 Q Okay. Any press interviews that you  
13 remember?

14 A I remember participating in one, but I  
15 don't believe the topic was on coaching.

16 Q Okay.

17 A And it wasn't -- how did you characterize  
18 it? I'm sorry. Could you repeat the --

19 Q Public statements about how coaching is  
20 used in Minneapolis.

21 A Just spoke at the PCOC meeting.

22 Q So no hearings related to coaching?

23 A Those weren't open to the public.

24 Q Okay. What hearings did you speak at?

25 A And with respect to coaching the hearings

1 were not about coaching.

2 Q Okay. So no hearings about coaching  
3 whether public or otherwise?

4 A Right. I spoke in public at the PCOC  
5 meeting on the topic of coaching.

6 Q Okay. And no hearings on the topic of  
7 coaching?

8 A Correct.

9 Q No other panels on the topic of coaching?

10 A Not that I recall.

11 Q Have you participated -- or have you  
12 spoken at any training sessions for Minneapolis  
13 employees on the use of coaching?

14 A Not that I recall.

15 Q Okay. We've talked about Exhibit 59 and  
16 we'll come back to that, your September 2020 letter.  
17 Any other written statements about coaching and the  
18 use within MPD? Or excuse me -- strike that.

19 Any other written statements about the use  
20 of coaching within Minneapolis?

21 A I don't know.

22 Q Let's actually -- you have Exhibit 59 in  
23 front of you, correct? All right. Now I'm there.  
24 You testified earlier that you have no reason to  
25 dispute that this was the memorandum that you sent on

1 September 8th, 2020 to the PCOC, correct?

2 A I believe I testified it appears to be the  
3 memo --

4 Q Any reason to --

5 A -- and attachments that is addressed to  
6 Chair Foroozan.

7 Q Any reason to doubt that it is the memo  
8 that you sent?

9 A I don't recall how it was transmitted or  
10 by whom.

11 Q Okay. I'll trust that at any point if you  
12 question that that you'll let me know. Okay?

13 A Okay.

14 Q Okay. Did you draft this letter?

15 A Yes.

16 Q Did anyone else help draft the letter?

17 A Yes.

18 Q Who?

19 A I don't remember who I sent a draft to.

20 Q Did you send it within the Office of the  
21 City Attorney?

22 A I don't remember who I provided a draft  
23 to.

24 Q Did you send it outside of the Office of  
25 the City Attorney?

1           A       I don't recall if I did or did not.

2           Q       So how can be certain you sent it to  
3 others before you sent it to the chair of the PCOC?

4           A       I just remember sharing a draft.

5           Q       But you have no recollection who you sent  
6 it to?

7           A       I -- as I sit here today I do not remember  
8 who I sent this to.

9           Q       Would you expect to have emails? Did you  
10 send this by email?

11          A       Yes.

12          Q       So if you sent it to anyone else there  
13 would be an email reflecting that?

14          A       I can't speak to records retention.

15          Q       If you sent it it was by email?

16          A       Yes.

17          Q       Okay. Did anyone provide edits?

18          A       I don't remember.

19          Q       You don't recall receiving any comments or  
20 red lines about this letter?

21          A       I don't remember.

22          Q       Okay. Why did you draft this letter?

23          A       It was my understanding that the chair had  
24 asked for a legal opinion.

25          Q       Okay.

1 MS. PARSONS: Isabella, can you grab  
2 Exhibit 190, please? And 191, actually.

3 (Plaintiff's Exhibits 190 and 191  
4 were marked for identification.)

5 THE WITNESS: (Reviewing document.)

6 BY MS. PARSONS:

7 Q So as you're looking through that, I'll  
8 represent to you that defendants produced Exhibit 190  
9 as an attachment to Exhibit 191. Is this -- I know  
10 Exhibit 190 does not appear as an email, but is this  
11 the request that you just referenced, Exhibit 190?  
12 Is this the request that you just referenced?

13 A I don't know.

14 Q Any reason to think there was a different  
15 request that preceded this letter?

16 A When I look at Exhibit 191 these dates are  
17 all after the publication date of the memo.

18 Q Right. I realize it's confusing, right,  
19 because you don't actually have the original email.  
20 Do you recognize the substance of the communication  
21 in 191 as something that you reviewed before drafting  
22 the September 8th letter?

23 A Well, on Exhibit 191 there is a lot of  
24 redacted information so I'm unable to answer your  
25 question.

1           Q       Let's look at just Exhibit 190. Do you  
2 recall seeing the substance of that communication?

3           A       I remember seeing the phrasing in 1, 2 and  
4 3.

5           Q       Okay. So how were you -- how did you come  
6 to be asked to draft this September 8th letter?

7           A       Assistant City Attorney Joel Fussy engaged  
8 my assistance.

9           Q       And why do you believe Mr. Fussy asked for  
10 your assistance in that?

11                   MR. ENSLIN: Object to the form,  
12 foundation.

13           A       I don't know.

14 BY MS. PARSONS:

15           Q       Did Mr. Fussy participate in drafting this  
16 letter?

17           A       I'm sorry. In drafting Exhibit 190?

18           Q       I'm sorry. Exhibit 59, the September 8th  
19 letter.

20                   MR. ENSLIN: Object to the form, asked and  
21 answered.

22           A       I can't say for certain.

23 BY MS. PARSONS:

24           Q       What did you -- strike that.

25                   The September 8th letter you understood

1 was going to the chair of the PCOC. Chair Foroozan  
2 is not a city employee or was not a city employee as  
3 of September 8th, 2020, correct?

4 A I don't know.

5 Q The PCOC is not a city entity, correct?

6 MR. ENSLIN: Object to the form.

7 BY MS. PARSONS:

8 Q If you understand you can answer.

9 A I don't know.

10 Q Okay. Did you understand that the letter  
11 would be circulated or be available publicly?

12 A I don't know.

13 Q What did you do to prepare to draft this  
14 letter?

15 MR. ENSLIN: Object to the form. I'll  
16 object to the extent it calls for work product or  
17 privileged materials, in particular that it would  
18 require the disclosure of mental processes that are  
19 protected by the work product doctrine and instruct  
20 you not to answer.

21 BY MS. PARSONS:

22 Q Consistent with that you can answer?

23 MR. ENSLIN: I just instructed her not to  
24 answer.

25

1 BY MS. PARSONS:

2 Q You state in here coaching is not  
3 discipline. How did you come to that conclusion?

4 MR. ENSLIN: Objection, calls for the  
5 disclosure of attorney-client privilege and in  
6 particular mental impressions that are protected by  
7 the work product doctrine. I'm instructing you not  
8 to answer.

9 BY MS. PARSONS:

10 Q Are you following your counsel's advice?

11 A Yes.

12 Q So your position is that the way you  
13 determined that coaching is not discipline is based  
14 on advice of counsel, correct?

15 MR. ENSLIN: I'll object. I made the  
16 objection and I gave the instruction. So you asking  
17 her what I did or what was in my head other than what  
18 I disclosed is improper.

19 BY MS. PARSONS:

20 Q So in drafting this letter were you  
21 drafting this letter on behalf of the City of  
22 Minneapolis?

23 A At the time that I drafted this letter my  
24 client was the City of Minneapolis.

25 Q So you understood that this was a

1 definitive statement on the position of the City of  
2 Minneapolis about coaching as used within  
3 Minneapolis?

4 MR. ENSLIN: Object to the form, vague and  
5 ambiguous.

6 BY MS. PARSONS:

7 Q You can answer.

8 A I don't understand the question.

9 Q In other words, this was not a letter that  
10 you drafted saying this is the opinion of Trina  
11 Chernos, correct?

12 MR. ENSLIN: Object to the form.

13 BY MS. PARSONS:

14 Q This was as stated a legal opinion based  
15 on the City Attorney's Office, correct?

16 MR. ENSLIN: Object to the form.

17 A You can answer.

18 BY MS. PARSONS:

19 Q You can answer.

20 A My client at the time this was drafted was  
21 the City of Minneapolis.

22 Q That's not my question, though. My  
23 question is you understood that this letter was not  
24 the opinion of Trina Chernos as an individual; it was  
25 a legal opinion from the City Attorney's Office,

1 correct?

2 MR. ENSLIN: Object to the form?

3 A My memo states that it's from the City  
4 Attorney's Office.

5 BY MS. PARSONS:

6 Q Is it your position that whether coaching  
7 is discipline is something that requires a legal  
8 analysis?

9 MR. ENSLIN: Object to the form. Can you  
10 read that question back to me one more time, please?

11 (The requested portion of this record was  
12 read back by the reporter.)

13 A I was asked to provide a legal opinion and  
14 my memo states I am providing a legal opinion.

15 BY MS. PARSONS:

16 Q That's not my question.

17 A You asked me my position. I stated my  
18 position.

19 Q I asked your position more broadly.

20 MS. PARSONS: Can you read that back,  
21 please?

22 (The requested portion of this record was  
23 read back by the reporter.)

24 MR. ENSLIN: Object to the form, asked and  
25 answered, also speculative and calls for a legal

1 conclusion.

2 BY MS. PARSONS:

3 Q You can answer.

4 A I would repeat my previous answer.

5 Q Which was that you provided a legal  
6 opinion in this letter, correct?

7 A Correct. I did what our office was asked  
8 to do.

9 Q In arriving at the position that coaching  
10 is not discipline is it your position that that  
11 requires legal analysis?

12 MR. ENSLIN: Object to the form, vague and  
13 ambiguous, calls for a legal conclusion, speculative  
14 and beyond the scope.

15 MS. WALKER: Beyond the scope of what?

16 MR. ENSLIN: The subpoena. She's not here  
17 as an expert. You're not paying her as an expert.  
18 You're asking her for an expert opinion. She's not  
19 an expert.

20 BY MS. PARSONS:

21 Q You can answer.

22 A I provided a legal opinion, not Trina  
23 Chernos' position on anything. This is the legal  
24 opinion of the City Attorney's Office.

25 Q In arriving at the position that coaching

1 is not discipline -- strike that. One sec.

2 In arriving at the position that coaching  
3 is not discipline, the city therefore relied on  
4 advice of counsel, correct?

5 MR. ENSLIN: Object to the form.

6 A No.

7 MR. ENSLIN: Let me just put my objection.  
8 Objection to the form, vague and ambiguous.

9 BY MS. PARSONS:

10 Q Why did you say no?

11 A One of the reasons I said no is because as  
12 this memo indicates there was a publication on  
13 intranet with respect to coaching that predated this  
14 legal opinion at Exhibit 59.

15 Q Any other reasons you said no?

16 A I never represented the city on a  
17 grievance over coaching.

18 Q Any other reasons?

19 A I do not recall anybody making the  
20 argument that coaching was discipline prior to the  
21 PCOC in 2020, especially after they had been informed  
22 in 2014 or 2015 that coaching is not discipline.

23 Q So to make sure I'm understanding, when  
24 you say prior to PCOC in 2020, can you be more  
25 specific about when PCOC in 2020 first raised

1 coaching as discipline?

2 MR. ENSLIN: Can you read that question  
3 back, please?

4 (The requested portion of this record was  
5 read back by the reporter.)

6 MR. ENSLIN: Object to the form, asked and  
7 answered, foundation.

8 BY MS. PARSONS:

9 Q You can answer.

10 A I don't know.

11 Q So let's look at --

12 MS. WALKER: Can I interject something?

13 MS. PARSONS: Sure.

14 MS. WALKER: Mark, I just want to get some  
15 clarity for the record here. So the question I  
16 believe was did the city rely upon the advice of  
17 counsel in reaching the position that coaching is  
18 discipline. And you objected as legal conclusion.  
19 But you're also objecting on attorney-client  
20 privilege grounds for her answering certain  
21 questions.

22 So I think if the city relied upon legal  
23 advice in reaching the conclusion that coaching is  
24 discipline, then your objection is proper and there  
25 is some privileged information there. But if it did

1 not rely on legal advice then there is no privilege  
2 at issue.

3 And so I think we need some clarity from  
4 the witness as to whether in reaching its position  
5 that coaching is not discipline the city was relying  
6 on legal advice before we can really parse through  
7 what's privileged or not. And so I would ask that we  
8 at least get an answer to that question and go from  
9 there.

10 MR. ENSLIN: Yeah. She's not a 30.02(f)  
11 witnesses first. So it's improper to ask her what  
12 the city's position was and how they took it. If you  
13 had a 30.02(f) witness you could have asked that.  
14 She's not a 30.02(f). She is here as a fact witness  
15 only. And you can ask her about the memo that she  
16 authored to the extent you have questions that don't  
17 reveal her processes about what she did to make that.  
18 Those are mental impressions that are protected by  
19 the work product doctrine.

20 So she doesn't have -- I don't even  
21 believe she has foundation to testify whether the  
22 city relied on legal advice when it made the decision  
23 to determine coaching is not discipline. So it's not  
24 even a proper question for her. You don't have  
25 foundation for it. She's not a 30.02(f) so she can't

1 speak to it.

2 We also aren't going to let you ask her  
3 about any of her mental impressions or any of the  
4 privileged communications that she had related to  
5 this work. And that's where we've drawn the line  
6 from the moment we walked in and even before.

7 MS. WALKER: And is that because she was  
8 giving the city advice on whether the coaching is  
9 disciplinary? Because that's the only reason it  
10 would be privileged and that's all we're trying to  
11 clarify here.

12 MR. ENSLIN: I have to go back to the  
13 question. I'm not following the nuance -- you're  
14 trying to make some sort of nuanced distinction and I  
15 apologize. I'm not following it. So I think we're  
16 talking about two different things because you're  
17 talking about whether she gave the city legal advice  
18 and clearly she did and we've been objecting on  
19 privilege grounds because of it. So that's clear.

20 Whether -- the other part of your question  
21 about what the city's official position was, she  
22 doesn't -- she's not here to testify as to that.  
23 She's not a 30.02(f). That's not within her purview.  
24 So she can testify about what she did, which is draft  
25 this memo, but that's all she can testify to and

1 that's what she's attempting to do and you're  
2 attempting to spin it in a way that it can't be spun.

3 MS. WALKER: I'm not trying to spin it.  
4 I'm just trying to understand what appear to me to be  
5 conflicting objections. But I think the record has  
6 been made.

7 MS. RISKIN: I mean, I need to add,  
8 though, questions about asking whether the city  
9 relied on advice of counsel, you are not in a  
10 position to require a defendant to raise advice of  
11 counsel as a defense and that hasn't been raised.  
12 And so to be clear, from the questions you're asking  
13 you're not going to be able to -- it is totally  
14 improper to try to pigeonhole a party into raising  
15 advice of counsel when it is not a part of the case.

16 MS. WALKER: But if you're not even  
17 permitting her to testify on what she was advised on  
18 then I think you are really overusing the  
19 attorney-client privilege objection in instructing  
20 her not to answer. And so that's just the record I  
21 wanted to make and we can sort it out later.

22 But you can't have it both ways. You  
23 can't not allow her to testify as to what she gave  
24 advice on and call it a legal conclusion and then  
25 object to every question on that topic as privileged.

1 MR. ENSLIN: I think we just disagree  
2 about what's happening, but we understand. You've  
3 made your record and someone else can decide after  
4 the fact.

5 BY MS. PARSONS:

6 Q Looking back at Exhibit 59, question 1,  
7 "Does the analysis correctly conclude that under the  
8 current Minneapolis Police Department (MPD) policy  
9 and procedure manual coaching is not discipline? If  
10 not, please explain." When you saw that question did  
11 you already have a sense of how you would answer  
12 that?

13 MR. ENSLIN: Object to the form, calls for  
14 mental impressions. I'm instructed her not to  
15 answer.

16 BY MS. PARSONS:

17 Q Did you conduct an investigation?

18 A What you read is not what the document  
19 reads. What you read aloud is different than the  
20 first page of Exhibit 59.

21 Q Numeral 1?

22 A Yes.

23 Q "Does the analysis correctly conclude that  
24 under the current Minneapolis Police Department (MPD)  
25 policy and procedure manual coaching is discipline?

1 If not, please explain." Did I read that correctly?

2 A You did just now, yes.

3 Q Did you conduct an investigation to  
4 determine the answer to that?

5 A I don't know how you define investigation.

6 Q How would you describe it?

7 A I would not define what I did in  
8 preparation for this memo as an investigation.

9 Q So what did you do in preparation for this  
10 memo?

11 MR. ENSLIN: Object to the form, calls for  
12 privileged material and mental impressions. I'm  
13 instructed you not to answer.

14 BY MS. PARSONS:

15 Q Are going to take that advice of your  
16 counsel or will you answer that question?

17 A On the advice of counsel I'm not answering  
18 the question you just asked.

19 Q Question 2, "Are the joint supervisors  
20 authorized to issue discipline under state law and  
21 the current MPD manual (including the IAU complaint  
22 manual 37? Please explain." What did you do to  
23 answer that question?

24 MR. ENSLIN: Object to the form. It calls  
25 for privileged material and work product protection.

1 I'm instructing the witness not to answer.

2 BY MS. PARSONS:

3 Q Are you taking your counsel's advice?

4 A Yes.

5 Q Question 3, "Does the lack of a (1)  
6 Garrity warning, (2) opportunity for Loudermill  
7 hearing and (3) opportunity to grieve the case impact  
8 whether past cases of coaching can be made public?  
9 Please explain." What did you do to prepare to  
10 answer that question?

11 MR. ENSLIN: Privileged, work product,  
12 instruct not to answer.

13 BY MS. PARSONS:

14 Q Are you taking your counsel's advice?

15 A Yes.

16 Q But you would not call what you did an  
17 investigation, correct? That's what you just  
18 testified to?

19 MR. ENSLIN: Object to the form, vague and  
20 ambiguous.

21 BY MS. PARSONS:

22 Q You can answer.

23 A What I did with respect to preparing this  
24 memo? Is that your question?

25 Q Yes.

1           A       It does not meet my definition of  
2     investigation, no.

3           Q       What is your definition of investigation?

4           A       In the context of what, please?

5           Q       Explain your answer when you say it does  
6     not meet your definition of an investigation? What  
7     is your definition of an investigation?

8           A       Depending on the context it can have  
9     different definitions.

10          Q       Okay. So help me understand what you  
11     meant by your testimony that it does not meet your  
12     definition of an investigation?

13          A       I'm not going to answer questions about  
14     how I prepared this legal opinion.

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

16          A       I think you are.

17          Q       You said it does not meet your definition  
18     of an investigation. I asked what your definition of  
19     an investigation is.

20          A       It depends on the context.

21          Q       Okay. So explain to me the context and  
22     the different meanings of investigation.

23                 MR. ENSLIN: Object to the form. This is  
24     getting argumentative. You don't have to answer that  
25     question. That's argumentative.

1 MS. WALKER: That is not a proper  
2 instruction.

3 MR. ENSLIN: I just gave her the  
4 instruction.

5 MS. WALKER: Let's take a break. Let's go  
6 off the record.

7 (Recess from 1:23 p.m to.1:50 p.m.)

8 BY MS. PARSONS:

9 Q All right. I'm going to ask the court  
10 reporter to read back one of your answers and then I  
11 will ask a question. It's lines 6 and 7 when we were  
12 talking about an investigation.

13 (The requested portion of this record,  
14 page 108, lines 6-8, was read back by the reporter.)

15 BY MS. PARSONS:

16 Q So I'm betting your counsel will object  
17 now, but my question to you and you can choose to  
18 answer it or not, but in fairness to you I want to  
19 give you the chance to explain what it was that you  
20 did and how it was not an investigation.

21 MR. ENSLIN: Can I ask a question and  
22 then -- it's a compound question. So was the first  
23 part of it what did she do?

24 BY MS. PARSONS:

25 Q I'll rephrase. So I want to give you a

1 chance to explain what you meant when you said that  
2 you did not conduct an investigation.

3 A I prepared a legal opinion. I just -- in  
4 this context it does not meet my definition of  
5 investigation.

6 Q Anything else to say there?

7 A No.

8 Q Okay. Looking at this letter, you  
9 appended several documents to the letter. Why did  
10 you choose those documents to append?

11 MR. ENSLIN: Object to the form, calls for  
12 disclosure of attorney-client privilege and I  
13 instruct the witness not to answer.

14 BY MS. PARSONS:

15 Q Who is your standard -- outside of this --  
16 we can put Exhibit 59 to the side. Do you have a  
17 standard practice when writing a legal opinion about  
18 disclosing the bases for that opinion?

19 A Regarding a standard practice, I meet my  
20 obligation as an attorney.

21 Q All right. So let me say a statement and  
22 you can agree or disagree. I would say that if I  
23 were writing a legal opinion that I knew was going to  
24 be publicly disclosed I would want to make sure that  
25 the bases for that opinion are disclosed in the

1 letter so that people understand where I'm coming  
2 from. Do you agree that you hope for the same when  
3 you write a legal opinion?

4 MR. ENSLIN: Object to the form,  
5 incomplete hypothetical, calls for speculation.

6 BY MS. PARSONS:

7 Q I'm not asking to speculate. I'm asking  
8 if you agree that you hope for the same when you  
9 write a legal opinion.

10 A Not necessarily.

11 Q What determines that?

12 MR. ENSLIN: Object to the form,  
13 incomplete hypothetical, calls for speculation.

14 BY MS. PARSONS:

15 Q I'm not asking to speculate.

16 MR. ENSLIN: There is speculation because  
17 it's an incomplete hypothetical. So there are any  
18 number of occasions or possibilities you could be  
19 talking about. So it does call for speculation  
20 because the hypothetical is incomplete.

21 BY MS. PARSONS:

22 Q So in any scenarios that come to mind  
23 right now why would you say not necessarily?

24 MR. ENSLIN: Same objections.

25 A The practice of law can be fluid. To say

1 standard practice I'm not even sure I understand what  
2 you mean when you say that.

3 BY MS. PARSONS:

4 Q What would be a context -- or have you  
5 ever intentionally omitted the bases for your legal  
6 opinion?

7 A No. I try to answer the questions that  
8 were asked to be answered.

9 Q And make sure that people understand how  
10 you reached that answer, right?

11 A Not necessarily. Sometimes a client might  
12 not want a bunch of case law cited.

13 Q Okay. Do you know whether this letter was  
14 provided to any employees of the City of Minneapolis  
15 outside of the Office of the City Attorney?

16 MR. ENSLIN: Object to the form as vague.

17 BY MS. PARSONS:

18 Q You can answer.

19 MS. WALKER: It's not vague.

20 MR. ENSLIN: It is vague. When? When are  
21 you talking about?

22 MS. WALKER: Ever.

23 MR. ENSLIN: Ever?

24 MS. PARSONS: Yeah.

25

1 BY MS. PARSONS:

2 Q Do you know whether Mary Zenzen was  
3 provided this letter?

4 A I don't know.

5 Q Do you know whether Katherine Knudsen was  
6 provided this letter?

7 A I don't know.

8 Q Do you know whether anyone in the City  
9 Clerk's Office was provided this letter?

10 A I can't say for certain whether they were  
11 or were not.

12 Q Do you know whether anyone who was  
13 responsible responding to MGDPA requests was provided  
14 this letter?

15 A I don't know.

16 Q All right. Let's talk about -- One sec.  
17 Let me just orient myself for a second. I'd like to  
18 talk about the May 2021 PCOC meeting. Let's start  
19 by -- can you tell me -- tell me what you remember  
20 about why you were asked to participate in that  
21 meeting.

22 A It's my understanding I was asked to talk  
23 about the law of the Data Practices Act.

24 Q What about the Data Practices Act?

25 A Whatever I said there is what I talked

1 about.

2 Q Who asked you to talk about -- to  
3 participate in the PCOC meeting?

4 A I don't remember.

5 Q Do you recall what you did to prepare for  
6 that meeting?

7 A It was three years ago. As I sit here  
8 today I don't recall exactly what I did.

9 Q One sec. Let me see if I can cut out some  
10 questions.

11 MS. PARSONS: Can you grab Exhibit 104?

12 BY MS. PARSONS:

13 Q I'll give you a few minutes to read that.

14 A (Reviewing document.) I've finished  
15 reading Exhibit 104.

16 Q Okay. So on the last page, right,  
17 so 68120, it looks like Casey Carl was sending a  
18 calendar invite for a preparation meeting. Do you  
19 recall that meeting?

20 A I don't.

21 Q Do you recall any meetings before the PCOC  
22 meeting that were intended to prepare these public  
23 statements?

24 A Can you ask the question again, please?

25 MS. PARSONS: Sure. Can you read that

1 back?

2 (The requested portion of this record was  
3 read back by the reporter.)

4 A Yes. Before the date on which the meeting  
5 actually occurred.

6 BY MS. PARSONS:

7 Q Tell me what you remember.

8 A I refuse to answer. Attorney-client  
9 privilege.

10 Q This is a public presentation, correct?

11 A The meeting beforehand was not a public  
12 presentation.

13 Q The PCOC meeting was a public meeting?

14 A Apparently.

15 Q You understood that members of the public  
16 would be able to watch that meeting?

17 A I cannot say for certain that I understood  
18 whether they -- those meetings were publicly  
19 available.

20 Q You understood that it happened by Zoom, a  
21 video call?

22 A I don't know what medium they used for us  
23 to interact with the commission.

24 Q But you understood it was on video?

25 A We were participating in the meeting

1 electronically.

2 Q In these meetings before the PCOC meeting  
3 were you advising individuals -- the other  
4 individuals who would appear at that meeting how to  
5 prepare or about their statements?

6 A A meeting did occur in preparation for the  
7 PCOC meeting that ultimately occurred.

8 Q And were you providing legal advice in  
9 that meeting?

10 A Yes.

11 Q To every person who appeared at the PCOC  
12 meeting?

13 A I represented the City of Minneapolis at  
14 the time.

15 Q And you advised each of the people who  
16 testified at that May PCOC meeting how to answer  
17 questions?

18 MR. ENSLIN: Object to the form. So that  
19 specifically gets into what advice she gave. I'm  
20 going to instruct the witness not to answer on  
21 privilege grounds.

22 BY MS. PARSONS:

23 Q Did you provide legal advice to every  
24 person in that preparation meeting for these public  
25 comments?

1           A       I provided legal advice to the City of  
2       Minneapolis during that meeting.

3                       (Plantiff's Exhibit 211 was marked  
4                       for identification.)

5       BY MS. PARSONS:

6           Q       Let's look at Exhibit 211. Let me just --  
7       yes. 211.

8           A       (Reviewing document.) I read Exhibit 211.

9           Q       So here on the first page, 72669, you ask  
10       whether the slides will be attached to the public  
11       agenda and Mr. Jeffries says these slides will be  
12       available to the public. So you understood this was  
13       going to be public?

14          A       I understood the slides would be on a  
15       public agenda.

16          Q       And that the public had access to these  
17       slides?

18          A       According to this document here, Jeffries  
19       answered "Yes, these slides will be available to the  
20       public and attached to the agenda."

21          Q       So you understood that the slides were  
22       available to the public?

23          A       The slides, yes.

24          Q       And you understood that next sentence,  
25       "The slide content should just overall be general and

1 the presenters can go into more detail in their  
2 talking points"? So you understood that the topics  
3 on -- that the topics discussed would go into more  
4 detail -- strike that.

5 A You refreshed my recollection by providing  
6 Exhibit 211 that three years ago I asked whether the  
7 slides would be attached to a public agenda and the  
8 response I received was that the slides would be  
9 attached.

10 Q And you still want to stand by the advice  
11 of your legal counsel to not answer on the grounds of  
12 privileged communications preparing for the PCOC  
13 meeting?

14 A Correct, and my own responsibilities as a  
15 licensed attorney in Minnesota to not divulge  
16 attorney-client privilege. I hold that inviolate and  
17 sacrosanct.

18 Q I understand. So let's go back to  
19 Exhibit 104. You say on that first page there ending  
20 in 119, "Data indicates that there was no prior  
21 interpretation by the MPD that coaching is  
22 discipline." Do you see that?

23 A I do see Exhibit 104, yes.

24 Q Did I correctly read that line?

25 A I'd have to have the court reporter read

1 it back to me. I see where you appear to be reading  
2 from.

3 Q Okay. "Data indicates that there was no  
4 prior interpretation by the MPD that coaching is  
5 discipline." Did I read that correctly?

6 A You did. And what the document itself has  
7 is quotation marks around "prior interpretation."

8 Q Why do you point that out?

9 A Because you're asking me if you read it  
10 aloud accurately and reading it aloud does not  
11 reflect that "prior interpretation" has quotation  
12 marks around it.

13 Q Was it significant to you to put that in  
14 quotation marks?

15 A I put quotation marks around it.

16 Q Okay. What did you mean by that?

17 A In looking at Exhibit 104, Bates page  
18 number 068120, an email that appears to be from Casey  
19 Carl uses the phrase "prior interpretation."

20 Q Okay. And what did you mean the data  
21 indicates that there was no prior interpretation by  
22 the MPD that coaching is not discipline?

23 A As I sit here today I don't know exactly  
24 what I was referring to three years ago on April 8th  
25 of 2021 when I wrote this email.

1           Q       You attached four documents. Was that the  
2 data you were referring to?

3           A       The attached documents to what?

4           Q       In your email you say "To further inform  
5 today's internal discussion at 2:30, attached please  
6 find examples of data verifying that coaching in the  
7 MPD and enterprise-wide is not discipline." And then  
8 there are four numbered lines there. Is that the  
9 data that indicates there's no prior interpretation  
10 that coaching is discipline?

11          A       Well, Exhibit 104 does not contain  
12 attachments. So I'm unable to answer your question.

13          Q       The data as described in those four  
14 numbered lines, is that the data that indicates no  
15 prior interpretation by MPD that coaching is  
16 discipline?

17          A       Not necessarily. What my email says is  
18 find examples of data and then it lists four things.  
19 And then a subsequent transmittal on page 68119 of  
20 Exhibit 104 indicates resending the 2020  
21 administrative announcement referencing number 4  
22 which actually bears the date of 2021.

23          Q       Any other data that comes to mind?

24                   MR. ENSLIN: Object to the form, vague.  
25

1 BY MS. PARSONS:

2 Q You can answer.

3 A I don't know what I had in mind three  
4 years ago. I can only read aloud from this email.

5 Q So I'm going to jump around a little bit  
6 here, but I've got some questions hopefully to bring  
7 us closer to the end.

8 MR. ENSLIN: I won't object to that.

9 MS. WALKER: A first time for everything.

10 MS. PARSONS: We're having so much fun.

11 MR. ENSLIN: We're joking, Leita. I don't  
12 know. We could end up liking each other at the end  
13 of this.

14 MS. WALKER: It could happen.

15 MS. PARSONS: Okay. I would like --  
16 Isabella, can you help me pull some documents. 15,  
17 25, 56, 76, 202.

18 (Plaintiff's Exhibit 202 was marked  
19 for identification.)

20 BY MS. PARSONS:

21 Q You might have 56 now that I've said that.  
22 Yes. So you should have 56 and 76 from one of the  
23 early buckets that I gave you. So it's 15, 25, 56,  
24 76 and 202. Do you have those in front of you now?

25 A One more time. Exhibits 15, 25 --

1 Q 56, 76, 202.

2 A Yes.

3 Q Okay. So you previously today looked at  
4 56 and 76. So for the moment I'd like you to look at  
5 15, 25 and 202 and tell me if you've seen these  
6 documents before.

7 A Could you ask me one by one, please?

8 Q Sure. Exhibit 15.

9 A (Reviewing document.) And your question  
10 was?

11 Q Have you seen this?

12 A I can't say for certain whether I've seen  
13 Exhibit 15 before today or not.

14 Q Okay. What about Exhibit 25? Have you  
15 seen that before today?

16 A (Reviewing document.) So Exhibit 25 is  
17 dated 2014. Exhibit 15 appears to be dated 2015. As  
18 I sit here today I can't say for certain whether or  
19 not I've ever seen either of these two documents  
20 before.

21 Q Okay. Exhibit 202, have you seen that?

22 A (Reviewing document.) Exhibit 202, dated  
23 2015, I can't say for certain that I've ever seen  
24 this one before either.

25 Q So I'll represent to you that Exhibit 202

1 was produced yesterday by the city defendants and  
2 that you are listed as the custodian for this  
3 document. Does that jog your memory on whether  
4 you've seen this before?

5 A No.

6 Q Do you recall participating in the  
7 grievance of Officer ,  
8 ?

9 A Nothing on Exhibit 202 indicates my  
10 participation, nor do I recall participating in a  
11 grievance related to .

12 Q Would there be a reason you are listed as  
13 the custodian if these were not in your files?

14 MR. ENSLIN: Object to the form,  
15 foundation, vague.

16 BY MS. PARSONS:

17 Q If you know you can answer.

18 A I don't know what you mean by custodian.  
19 I don't know what you mean.

20 Q Do you know the term "metadata"?

21 A I've heard the term "metadata."

22 Q Have you participated in document  
23 discovery as an attorney before?

24 A I have provided legal advice with respect  
25 to discovery, yes.

1           Q       Have you produced documents in discovery  
2 before, written documents in discovery before?

3           A       Yes.

4           Q       Electronic documents?

5           A       Yes.

6           Q       Metadata, you're familiar with that from  
7 producing electronic documents, the term "metadata"?

8           A       I've heard the word "metadata."

9           Q       And you understand it means -- that it can  
10 provide -- part of what metadata provides is whose  
11 files they came from?

12                   MR. ENSLIN: Object to the form.

13           A       I don't know.

14 BY MS. PARSONS:

15           Q       All right. I'll move on. Let's look at  
16 another batch of exhibits. I don't think you have --  
17 I've given you any of these yet. So 86, 210 --

18                   MS. PARSONS: So let me just give you in  
19 order. 86, 206, 207, 208 and 210.

20                               (Plaintiff's Exhibits 206 to 208 and  
21                               210 were marked for identification.)

22 BY MS. PARSONS:

23           Q       Okay. We can go one by one. So  
24 Exhibit 86, have you seen this document before?

25           A       (Reviewing document.) I don't know.

1 Q Exhibit 206, have you seen this document?

2 A (Reviewing document.) Exhibit 206  
3 contains my name as from and to in two different  
4 places.

5 Q No reason to dispute that this is you as  
6 indicated in the to and from lines?

7 A I don't know where this document came  
8 from. All I can say is it appears to be emails, yes,  
9 and with my name and my title and phone number and  
10 fax number.

11 Q Okay. So no reason to dispute that this  
12 is you, right?

13 A All I can testify about is the document I  
14 have in front of me.

15 Q Okay. And all I'm asking is no reason to  
16 dispute that this is your information and that this  
17 appears to be you?

18 A It appears to be, yes.

19 Q Okay. 207, have you seen this document  
20 before?

21 A (Reviewing document.) I can't say for  
22 certain. I do recall working on a matter with the  
23 name .

24 Q Okay. What do you remember about that  
25 matter?

1           A       Well, Exhibit 207 is dated 2014. I  
2 believe it to be my handwriting on this document.

3           Q       Okay. What else do you remember about  
4 this, about the                   grievance?

5           A       From ten years ago, just what I told you  
6 today.

7           Q       Okay. Let's look at -- we'll come back to  
8 that -- Exhibit 208.

9           A       (Reviewing document.) I have looked at  
10 Exhibit 208.

11          Q       Do you recall this document?

12          A       The email string here?

13          Q       Yes.

14          A       Well, it's from 2016. I do with your  
15 putting it in front of me today.

16          Q       Does it jog your memory about anything  
17 about this email exchange?

18          A       No.

19          Q       Who is Kevin Beck?

20          A       The Kevin Beck who I know is -- and at the  
21 time I knew him was an attorney with the law firm of  
22 Kelly & Lemmons.

23          Q       Okay. Was he a client of yours?

24          A       No.

25          Q       I see. He an attorney for the city?

1 A Of Minneapolis?

2 Q Correct.

3 A Not that I know of.

4 Q Was he an attorney for the federation,  
5 Minneapolis Police Department Federation?

6 A Not the Minneapolis Police Department  
7 Federation, no.

8 Q The MPD officers' federation?

9 A The Police Officers Federation of  
10 Minneapolis, yes.

11 Q Okay. So this -- looking at both  
12 Exhibit 208 and 206, and I'm interested here in the  
13 dates. So in 208 on March 22nd Kevin Beck wrote to  
14 you "In regard to this matter I haven't seen the  
15 updated letter with the reckoning period language  
16 removed that we agreed to. I'm trying to close the  
17 file. Can you please provide an update."

18 Looking at -- and actually 207, which as  
19 you've testified also relates to the  
20 grievance, there's a line crossed out. It says "This  
21 case will remain a B violation and will remain on the  
22 file until 11/15/2016 which is three years from the  
23 date of the incident. This case will remain in IAU  
24 files per the record retention guidelines mandated by  
25 state law."

1                   Is that the reckoning period language that  
2                   you agreed to remove?

3           A        I don't know because there's nothing  
4                   attached to Exhibit 208.

5           Q        This is an O'Hanlon --

6           A        And I disagree with your characterization  
7                   of my earlier testimony. I can't tell as I look at  
8                   207 -- 207 does not reference a grievance number.

9           Q        Take a closer look at Exhibit 206 and 210.  
10                   I'll represent to you that I interpret these as being  
11                   part of a grievance, these record being part of a  
12                   grievance. And you can review them and tell me if  
13                   you disagree.

14          A        Can you show me the grievance?

15          Q        Okay. So 206 on pages 2 -- ending in  
16                   2288, "Hello, Chief Glampe. I've attached copy of  
17                   POFM Grievance 15-1 which has been filed on behalf of  
18                   Paul O'Hanlon. A hard copy of the grievance will go  
19                   out in tomorrow's mail." That is from January 12th,  
20                   2015.

21          A        I read that along with you. My question  
22                   is do you have Grievance Number 15-1?

23          Q        Exhibit 86 I believe is all that we have  
24                   received in production.

25          A        I can't answer your question about

1 Exhibit 207 with no grievance number reference.

2 Q So what documents -- I'll represent to you  
3 I do not believe that we have received any other  
4 documents on the O'Hanlon grievance. What documents  
5 would you have expected to see?

6 MS. RISKIN: I'm looking at the  
7 production. I'm sorry. Maybe I can help on this.  
8 So Exhibit 208 which is the Bates number 72290 had  
9 attached to it the Bates number that ends 72291,  
10 which I don't see here. But 72291 is -- if you look  
11 at Exhibit 206, the email from -- not the top email,  
12 but the one below that from Trina Chernos to Travis  
13 Glampe on February 1st, 2016 at 10:35, that --

14 MS. NASCIMENTO: You said 72291?

15 MS. RISKIN: Yeah. 72291, which is the  
16 same as from Exhibit 206 starting with that email  
17 going down. So 72291 does not have the email from  
18 Travis Glampe to Jason Kaess up at the top, but the  
19 rest of it is there. That was one of the attachments  
20 to Exhibit 208.

21 Another attachment to Exhibit 208 has the  
22 Bates number CITY 072295. It is a copy -- it is a  
23 duplicate of Exhibit 207. So Exhibit 207 was  
24 attached to Exhibit 208. And then Exhibit 208 also  
25 had attached to it CITY 072293 which is a copy of the

1 grievance which I do not see printed out here.

2 MS. PARSONS: Let's actually go off the  
3 record and we'll track that down.

4 (Discussion off the record from 2:40 p.m  
5 to 2:57 p.m.)

6 BY MS. PARSONS:

7 Q I will hand you what's been marked as  
8 Plaintiff's Exhibit 212.

9 (Plaintiff's Exhibit 212 was marked  
10 for identification.)

11 BY MS. PARSONS:

12 Q Before we took a break you had asked to  
13 see the grievance for Officer O'Hanlon. Having now  
14 seen the grievance, does that jog your memory about  
15 this -- the grievance process for Officer O'Hanlon?

16 A So I have Exhibit 212 in front of me which  
17 references on two different pages grievance number  
18 15-1 and lists Grievant Paul O'Hanlon.

19 Q Okay. So this is the grievance that you  
20 had wanted to see just earlier when you were saying  
21 you couldn't testify without seeing the grievance?

22 A I did ask to see Grievance Number 15-1. I  
23 would want to match that up with the IAU case number  
24 on the other document before I can answer your  
25 question.

1 Q Okay.

2 A (Reviewing documents.) So with  
3 Exhibit 112 in front of me I see that Exhibit 207  
4 references the same IAU case number, 13-32434.

5 Q Okay. So they reference the same  
6 grievance?

7 A Grievance 15-1 appears to relate to IAU  
8 Case Number 13-32434.

9 Q Okay. So they reference the same case  
10 number?

11 A The cover letter does, yes. The grievance  
12 itself at 72294 does not contain an IAU case number.

13 Q So having seen this now does that refresh  
14 your recollection about anything related to the  
15 Officer O'Hanlon grievance?

16 A Yes.

17 Q What?

18 A So Exhibit 206 references Grievance 15-1,  
19 which I can now with these exhibits in front of me  
20 verify that they correspond with IAU Case  
21 Number 13-32434.

22 Q So this letter, Exhibit 207 -- this letter  
23 saying you will receive two sustained B-level  
24 violations with coaching, that was the subject of  
25 this IAU Case Number 13-32434?

1           A           Yes. Grievance Number 15-1 involves IAU  
2 Case Number           .

3           Q           Okay. Anything else you remember about  
4 it?

5           A           I don't.

6           Q           Okay. Earlier you looked at Exhibit 7.  
7 So at page 20 of that document Bates number 1189.  
8 Okay? Looking back to -- originally we looked at  
9 that paragraph previously, 7.3.2 disciplinary  
10 options. The last sentence there says "Both  
11 documents provide" -- and this is what I'm curious  
12 about -- "discipline is to be corrective and not  
13 punitive."

14                   Do you agree that discipline is to be  
15 corrective and not punitive?

16           A           I have read that in City of Minneapolis  
17 documents, yes.

18           Q           So you agree with that statement that  
19 discipline within the City of Minneapolis is to be  
20 corrective and not punitive?

21           A           I mean, termination is discipline. A  
22 terminated employee, I don't know what their  
23 perspective would be about whether that's corrective  
24 and not punitive.

25           Q           Does the employee's perspective matter?

1 MR. ENSLIN: Object to the form.

2 A Matter to whom? I can't answer your  
3 question.

4 BY MS. PARSONS:

5 Q You can set that to the side. I have a  
6 hypothetical to run by you. So let's say a chief of  
7 police comes to you and says I have an officer who's  
8 violated policy, I really want to bring the hammer  
9 down on him, I want him to go 20 days without pay,  
10 but I don't want to have to deal with a grievance and  
11 I'm going to call it a time out.

12 Would you advise him that that is  
13 sufficient to get around a grievance?

14 MR. ENSLIN: Object to the form, calls for  
15 a legal conclusion, speculation, incomplete  
16 hypothetical, calls for -- I'll leave it at that.

17 BY MS. PARSONS:

18 Q I'm not asking you to speculate. Just  
19 based on that hypothetical.

20 MR. ENSLIN: I'll object to the form  
21 because it's an incomplete hypothetical it is  
22 speculation. It's pure speculation. It's a  
23 hypothetical. That's what a hypothetical is, is  
24 speculation. It's not a real situation.

25

1 BY MS. PARSONS:

2 Q Can the chief of police get around  
3 grievance by what they call the discipline they  
4 impose?

5 MR. ENSLIN: Same objections.

6 BY MS. PARSONS:

7 Q You can answer.

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

9 Q What would you need to be able to answer  
10 my question?

11 A Could you start by repeating it, please?

12 MS. PARSONS: Sure. Could you start  
13 back -- could you repeat the hypothetical, please?

14 (The requested portion of this record was  
15 read back by the reporter.)

16 A I would not give my legal advice based on  
17 only that information.

18 BY MS. PARSONS:

19 Q What would you need?

20 A I would need an attorney-client privileged  
21 conversation and ask what I need to ask.

22 Q So what the chief calls it is not  
23 sufficient to determine if it --

24 A Well, part of the problem with the  
25 question is that the chief -- a chief of police, at

1 least not in the clients that I represented, don't  
2 file grievances. The labor union files grievances.

3 Q Right. So meaning he did not -- in this  
4 hypothetical the chief did not want to deal with a  
5 grievance filed on behalf of the officer.

6 A Well, I thought your question said  
7 something about avoiding a grievance.

8 Q Right.

9 A I mean, the union determines whether to  
10 file a grievance. At least I should say with respect  
11 to the police officers federation agreement with the  
12 City of Minneapolis as I last knew it.

13 Q And a suspension is subject to grievance  
14 based on your last understanding, correct?

15 MR. ENSLIN: Object to the form.

16 BY MS. PARSONS:

17 Q You can answer.

18 A A disciplinary suspension as I understood  
19 the federation agreement as I have read it a long  
20 time ago was subject to the federation being able to  
21 file a grievance.

22 Q So calling something -- calling 20 days  
23 without pay a timeout would not -- under your  
24 understanding of what is subject to the grievance  
25 procedures, that would not get around the grievance

1 process?

2 MR. ENSLIN: Object to the form, calls for  
3 a legal conclusion, speculation, foundation,  
4 incomplete hypothetical.

5 A A loss of pay in the framework we were  
6 just describing might be grievable.

7 BY MS. PARSONS:

8 Q Regardless of what the chief calls it?

9 MR. ENSLIN: Same objection.

10 A I'm focusing on the loss of pay in your  
11 question.

12 BY MS. PARSONS:

13 Q Sure. Okay. Let's look briefly at  
14 Exhibit 3. Or actually, I'm sorry. I don't need you  
15 to look at that. Actually, sorry. I lied again.

16 MS. PARSONS: Can you grab Exhibit 3?  
17 Sorry.

18 A (Reviewing document.)

19 Q So I'll represent to you that this is the  
20 data request that MNCOGI submitted that is at issue  
21 in this lawsuit. And as you see at the top of that  
22 first page of the exhibit, Katherine Knudsen  
23 responded to this request saying "Coaching is not  
24 discipline and has never been discipline."

25 And we've been trying to figure out in

1 this lawsuit the origin of that statement, "Coaching  
2 is not discipline and has never been discipline."  
3 And I'll represent to you that in Katherine Knudsen's  
4 testimony she said that she had heard that from Mary  
5 Zenzen and in Mary Zenzen's testimony she said she  
6 heard that from an assistant city attorney in a  
7 training.

8 What can you tell me beyond that about  
9 that statement, coaching is not discipline,  
10 originated within the City of Minneapolis?

11 MR. ENSLIN: Object to the form.

12 BY MS. PARSONS:

13 Q You can answer.

14 A I can't speak for Katherine Knudsen.

15 Q Where did you first hear coaching is not  
16 discipline?

17 A I don't remember.

18 Q Is it safe to assume that came from the  
19 City Attorney's Office?

20 MR. ENSLIN: Object to the form.

21 A I wouldn't know.

22 BY MS. PARSONS:

23 Q Do you have any evidence to the contrary  
24 that it came from the City Attorney's Office?

25 MR. ENSLIN: Object to the form.

1           A       I don't have a basis on which to answer  
2       that question.

3       BY MS. PARSONS:

4           Q       So you're not aware of any evidence to the  
5       contrary?

6                   MR. ENSLIN: Object to the form.

7           A       I don't have a basis to be able to answer  
8       your question.

9       BY MS. PARSONS:

10          Q       Okay. Your counsel today as repeatedly  
11       objected to my questions as calling for legal  
12       conclusions. You recall that in general, right?

13          A       There have been objections, yes.

14          Q       On the basis of legal conclusion. You're  
15       an attorney. What is your understanding of what a  
16       legal -- a legal conclusion?

17          A       Well, for example, it's what judges do  
18       occasionally, make legal conclusions.

19          Q       Attorneys as well?

20          A       Attorneys give legal opinions. They can  
21       make objections based on a question calling for a  
22       legal conclusion.

23          Q       And legal conclusions are based on  
24       evidence, right?

25                   MR. ENSLIN: Object to the form, vague and

1       ambiguous.

2       BY MS. PARSONS:

3             Q       You can answer.

4             A       I'm not convinced I agree with you.

5             Q       What don't you agree with?

6             A       Well, I think it's a broadly stated  
7       question without much basis to ask.

8             Q       Okay. Interpret it more narrowly.

9             A       Please ask me a question that I can answer  
10       narrowly.

11            Q       A legal conclusion -- let's go more  
12       specifically. I'll strike that. Do you understand  
13       in this case the judge is being asked to decide  
14       whether coaching is discipline?

15            A       I don't know what the judge in this case  
16       is being asked to decide.

17            Q       Okay. I'll represent that to you. That  
18       the judge is being asked to decide if coaching is  
19       discipline. So that's a legal -- that is a question  
20       calling for a legal conclusion, correct?

21            A       I don't know.

22            Q       I mean, I'm a little skeptical that you  
23       don't know as a lawyer whether that is calling for a  
24       legal conclusion.

25                   MR. ENSLIN: Object to the form. It's

1 argumentative.

2 BY MS. PARSONS:

3 Q The question at issue in this case is  
4 whether coaching is discipline. Will you agree that  
5 that's calling for a legal conclusion?

6 MR. ENSLIN: Objection, asked and  
7 answered.

8 A I don't know that I have enough  
9 information to base it on that.

10 BY MS. PARSONS:

11 Q What would you need to answer that?

12 A I haven't been involved in this case, you  
13 know, other than what I've testified to today. I  
14 haven't been employed by Minneapolis since 2012.

15 Q You read the complaint, correct?

16 A I did, yes.

17 Q You read the answer?

18 A Yes. I skimmed the answer when it was  
19 provided to me in preparation for this deposition.

20 Q And you're not willing to say that the  
21 question of whether coaching is discipline is calling  
22 for a legal conclusion?

23 A A complaint and an answer don't answer  
24 that question.

25 Q I understand. But as a lawyer having read

1 these documents, having seen documents, I would  
2 expect that you could answer that question yes or no.

3 MR. ENSLIN: Object to the form,  
4 argumentative, repetitive, irrelevant.

5 BY MS. PARSONS:

6 Q So how about I represent to you that we  
7 think that it's calling for a legal conclusion. Are  
8 you willing to tell me that based on what you have  
9 seen today in these exhibits coaching is not  
10 discipline?

11 MR. ENSLIN: Object to the form, calls for  
12 a legal conclusion, speculative. It's not an expert  
13 witness.

14 MS. PARSONS: That's a fair point.

15 BY MS. PARSONS:

16 Q Do you need me to repeat the question?

17 MR. ENSLIN: It's not even a fair  
18 question. Why does she have to give her opinion on  
19 this case? She's not an expert. She's not here on  
20 behalf of the city.

21 BY MS. PARSONS:

22 Q I'll ask it a different way. In your  
23 letter the Exhibit 59, you said "coaching is not  
24 discipline." After everything we've shown you today  
25 would you change anything you said in that letter?

1           A       No.

2           Q       Would you change anything that you said at  
3 the PCOC meeting in May 2021?

4           A       No.

5                   MS. PARSONS: All right. That's all I  
6 have for today. Thank you for your time. Before we  
7 go off the record given the number of objections on  
8 privilege and instructions not to answer we'll hold  
9 this deposition open for the time being until we can  
10 take a closer look at those objections.

11                  MR. ENSLIN: We don't have any questions.  
12 We'll read and sign.

13                  MS. PARSONS: Okay. We can go off the  
14 record.

15                   (Reading and signing reserved).

16                   (Whereupon, at 3:19 p.m. the deposition  
17 concluded.)

18                               \* \* \* \* \*

19

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## REPORTER'S CERTIFICATE

STATE OF MINNESOTA )  
COUNTY OF HENNEPIN )

ss.

I hereby certify that I reported the deposition of TRINA CHERNOS on February 29, 2024, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and that this transcript is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality.

That the right to read and sign the deposition by the witness was requested.

WITNESS MY HAND AND SEAL THIS 5th day of March, 2024.



Jonathan Wonnell

Notary Public, Hennepin County, Minnesota

My Commission expires January 31, 2027

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March 13, 2024

To: Mr. Enslin

Case Name: Minnesota Coalition On Government Information v. City Of  
Minneapolis, Et Al.

Veritext Reference Number: 6343800

Witness: Trina Chernos                      Deposition Date: 2/29/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown

above, or email to [production-midwest@veritext.com](mailto:production-midwest@veritext.com).

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6343800

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/29/2024

WITNESS' NAME: Trina Chernos

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date Trina Chernos

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6343800

CASE NAME: Minnesota Coalition On Government Information v.  
City Of Minneapolis, Et Al.

DATE OF DEPOSITION: 2/29/2024

WITNESS' NAME: Trina Chernos

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have listed my changes on the attached  
Errata Sheet, listing page and line numbers as  
well as the reason(s) for the change(s).

I request that these changes be entered  
as part of the record of my testimony.

I have executed the Errata Sheet, as well  
as this Certificate, and request and authorize  
that both be appended to the transcript of my  
testimony and be incorporated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trina Chernos

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They have listed all of their corrections  
in the appended Errata Sheet;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

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## ERRATA SHEET

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ASSIGNMENT NO: 6343800

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Date

Trina Chernos

21

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22

DAY OF \_\_\_\_\_, 20\_\_\_\_.

23

\_\_\_\_\_  
Notary Public

24

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Commission Expiration Date

[&amp; - 2015]

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## Minnesota Rules of Civil Procedure

## Part V. Depositions and Discovery

## Rule 30

## Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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# EXHIBIT I

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

3 \* \* \* \* \*

4 MINNESOTA COALITION ON  
GOVERNMENT INFORMATION

Transcript of Proceedings

Court File Number:  
27-CV-21-7237

Plaintiff,

vs.

CITY OF MINNEAPOLIS;

CASEY J. CARL, in his  
official capacity as  
City Clerk for the City of  
Minneapolis;

PATIENCE FERGUSON, in her  
official capacity as  
Chief Officer of the Human  
Resources Department for  
the City of Minneapolis;

and

MEDARIA ARRADONDON, in his  
official capacity as  
Chief of Police for the  
Minneapolis Police  
Department,

Defendant.

\* \* \* \* \*

The above-entitled matter came before  
the Honorable Karen A. Janisch, Judge of District Court,  
at the Hennepin County Government Center in Minneapolis,  
Minnesota on the 7th of November, 2022.

\* \* \* \* \*

## A P P E A R A N C E S

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(continued)

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P R O C E E D I N G S

THE COURT: This is Court File 27-CV-21-7237.  
I'm going to start by asking to have appearances noted  
for the record. If we could start with on behalf of  
the plaintiffs.

MS. WALKER: Thank you, Your Honor. Leita  
Walker with Ballard Spahr on behalf of plaintiff, the  
Minnesota Coalition on Government Information, also  
known as MNCOGI. With me today is my colleague,  
Isabella Nascimento, from Ballard; and Dan Shulman  
from the ACLU, which is co-counsel on this case.  
Terri Nelson, also with the ACLU, is in the gallery.

MR. SHULMAN: Good afternoon, Your Honor.

THE COURT: Good afternoon, everybody. And if  
we could have appearances noted please on behalf of  
defendants.

MS. RISKIN: Yes, Your Honor, good afternoon.  
I'm Sarah Riskin, Assistant City Attorney with the  
City of Minneapolis, on behalf of all the defendants.  
And with me is Mark Enslin, also Assistant City  
Attorney.

THE COURT: And on behalf of the intervenors.

MR. KELLY: Good afternoon, Your Honor. Joe  
Kelly on behalf of intervenor, Police Officers  
Federation of Minneapolis.

1 THE COURT: Okay. And when we go forward with  
2 arguments on the motions presented, I know there was  
3 an inquiry from the plaintiffs about the order. I  
4 don't know if there's been some discussion and  
5 agreement on order or -- I'm seeing no.

6 MS. WALKER: Yeah, plaintiff's prepared to go  
7 first.

8 THE COURT: Okay. And I -- I indicated I  
9 think we had a message that typically, if there's not  
10 an agreement on what order when there's cross motions,  
11 I -- my default is to start with the plaintiffs  
12 because their name is first on the pleading. So it's  
13 really as deep as that.

14 So the -- there was also an issue raised that  
15 we could address today as well. Potentially there's a  
16 request for, you know -- relief under 56.04 was  
17 requested in response to the Federation's filing.  
18 There's been some back and forth about that. I don't  
19 know if it would be helpful on those issues and the  
20 presentation of those issues to let you know what I  
21 understand the scope of what's before me and what I  
22 asked for in regard to the -- the motions.

23 Previously on the motions for judgment on the  
24 pleadings, I considered those and took the matter  
25 under advisement. I issued an order on April 15th of

1       this year denying judgment on the pleadings, and one  
2       of the things -- the reason I did so was that my  
3       review of the statute led me to believe that there was  
4       an ambiguity in the statutory language, particularly  
5       surrounding the scope of and the meaning of  
6       "disciplinary action" as used in the statute and  
7       finding that, although it is an issue of law for the  
8       Court to interpret an ambiguous statute, that I wanted  
9       input from the parties on that issue before attempting  
10      that myself so that -- that issue could be fully  
11      briefed by everybody and input by everybody.

12             The initial briefs really didn't anticipate  
13      that as -- on the motion for judgment on the pleadings  
14      -- didn't anticipate the ambiguity. I didn't get  
15      legislative history or any of that stuff.

16             And so from that order, I did direct that the  
17      parties meet and confer about the best way to present  
18      the legal issue. Maybe I could have been a little  
19      clearer in my order, but the legal issue I anticipated  
20      on that was the issue of the meaning of that ambiguous  
21      term within the statute, as previously identified by  
22      the Court.

23             I understand that once defined, there may be  
24      some -- some issues about applying the appropriate  
25      definition to this case. To some extent, I interpret

1 the issues raised by the plaintiff opposing the  
2 Federation's briefing to somewhat be asking, you know,  
3 look, does that put the cart before the horse.

4 Please make sure you decide what the issue is,  
5 as far as the definition, then give us an opportunity  
6 to argue how to apply it, as well as potentially to do  
7 discovery about how to apply it.

8 I don't know if I've given a fair summary of  
9 that or not. Certainly I'll give you that  
10 opportunity. But I thought it might be helpful to  
11 have everybody here before we get too far into arguing  
12 about that. I do consider the issue before the Court  
13 to be focused now on what is the correct definition in  
14 use and language. What's the scope of the language  
15 and the meaning of the language used by the  
16 legislature?

17 And so, you know, I don't think I was asking  
18 for people then to also determine how to apply that or  
19 address that at this time. So that's what I  
20 understand the scope to be or at least the first step  
21 in the analysis the Court is going to have to engage  
22 in, in regard to what I consider to be very  
23 interesting legal issues presented to the Court.

24 But trying to go through it in a very  
25 methodical way to make sure everybody gets an input

1 and a say on every step of the process and deciding  
2 any ultimate resolution.

3 So my thought was, with that understanding,  
4 I'll leave it to each of the parties to argue or  
5 address that additional issue and the request under  
6 56.04 by plaintiffs in any way you would like to  
7 during the time allotted for your argument.

8 So my thought is, is I'll hear first on the --  
9 any motion you're a proponent of from the plaintiffs,  
10 then from the defendants, the City; and then from the  
11 intervenor. And then if we need to do another round  
12 of that, we'll do another quick round of that.

13 So I have allotted about an hour and a half,  
14 you know. So, yeah, anticipating we'll be able to  
15 wrap up here between 3:30 or about -- yeah, about 3:30  
16 to 4:00. So with that -- and who is going to be  
17 raising and arguing on behalf of the plaintiff MNCOGI?

18 MS. WALKER: I am, Your Honor.

19 THE COURT: Okay. So, Ms. Walker, go ahead  
20 when you're ready. And let -- let me make sure, is  
21 the podium microphone on?

22 MR. SHULMAN: Oh, I think it is.

23 THE COURT: Hold on just a second before you  
24 go. I need to make sure the keyboard gets connected  
25 to the computer. So we'll go off the record just a

1 minute.

2 (A recess was taken at 2:11 p.m.)

3 (The recess concluded at 2:17 p.m.)

4 THE COURT: We will go back on the formal  
5 court record at this time. And, Ms. Walker, for the  
6 argument on behalf of plaintiff, go ahead when you're  
7 ready.

8 MS. WALKER: Thank you, Your Honor. Your  
9 Honor, in general, we agree with your summary of the  
10 issues here before you today. We're here on what we  
11 believe is a very narrow issue. We're not here on  
12 whether coaching data is [indiscernible]. We're not  
13 here today on whether coaching is the final  
14 disposition of discipline. We're here on a meaning of  
15 a very specific phrase used in Section 1343 in the  
16 Data Practices Act, the phrase "disciplinary action."

17 And so I'm happy to answer any questions you  
18 have about our Rule 56.04 affidavit. But in general,  
19 I think our position expressed in that affidavit and  
20 the accompanying papers is self-explanatory. And I  
21 want to use most of my time today doing what the Court  
22 asked, which is helping it with the pretty simple task  
23 of defining the phrase "disciplinary action."  
24 Discrete task, maybe not simple. A narrow task.

25 In the course of doing that, I'll touch on

1       some of the things the Federation raised and address  
2       many of the tangential issues raised by both the City  
3       and the Federation, including numerous hypotheticals,  
4       discussion of final disposition, and what we believe  
5       are very -- are inappropriate policy arguments.

6               We believe these tangential issues lack merit,  
7       are irrelevant, or both, in regards to the issue  
8       before the Court today. So the challenge here today  
9       over the next 90 minutes is to take a pretty sprawling  
10      briefing and keep our eye on the prize and arrive at a  
11      global, statewide definition of "disciplinary action"  
12      that applies to union and non-union employees alike.  
13      And if there's a way I can help you with that, I know  
14      you will stop and redirect me.

15             THE CLERK: Sorry to interrupt. I think the  
16      court reporter is picking up your typing sounds.  
17      That's probably why they switched out the keyboard.  
18      And --

19             THE COURT: Probably.

20             THE CLERK: Ms. Walker, she's saying she can't  
21      hear you terribly well. I'm going to turn up the  
22      microphone just to make sure, but you may need to  
23      speak up.

24             MS. WALKER: Okay. Will you give me a thumbs  
25      up if it gets better?

1 THE CLERK: Yes.

2 MS. WALKER: I'll keep my eye on you.

3 With that background in mind, Your Honor, the  
4 first task we believe before the Court is to decide  
5 whether the meaning of "disciplinary action" is  
6 ambiguous. And I want to direct you to the first page  
7 of the handout. I brought a packet I gave  
8 Mr. Higgins.

9 Yes, the very first page, which is a direct  
10 quote from Minnesota Statute 645.16, which makes --  
11 makes clear that this is the first [indiscernible]  
12 report. If the statute is "clear and free from all  
13 ambiguity, the letter of the law shall not be  
14 disregarded under the pretext of pursuing the spirit."

15 Now prior to the January hearing on the City's  
16 motion for judgment on the pleadings, no party had  
17 taken a position of the question of ambiguity. It  
18 simply was not part of the City's motion. At the  
19 hearing in January, the City affirms multiple times --

20 THE CLERK: No, she can't hear you very well.  
21 She thinks it might be the mic.

22 THE COURT: That -- so perhaps -- do we have a  
23 longer cord on -- what is that one? It's stuck. I'm  
24 sorry. This is not the courtroom I usually use.

25 MS. WALKER: I can stand there, Your Honor.

1 My concern is just that I'm pushed over --

2 THE COURT: Actually, if you can scootch the  
3 podium over and use the mic from there, I think then  
4 -- [indiscernible]. That could also be why maybe this  
5 podium was all the way over in the corner.

6 MS. WALKER: Yeah. Okay. How's that?

7 THE CLERK: I'll ask her.

8 THE COURT: Why don't you -- we'll go off the  
9 record just a moment for this technical issue. Would  
10 you just kind of talk into that microphone a bit and  
11 we'll get confirmation from our court reporters that  
12 it is picking you up well?

13 (A brief recess was taken.)

14 THE COURT: Ms. Walker, then continue with the  
15 plaintiff's argument.

16 MS. WALKER: Thank you, Your Honor. So -- so  
17 what I was saying was that prior to January, no party  
18 had taken a position. It just wasn't an issue whether  
19 "disciplinary action" is an ambiguous phrase. In  
20 January, in response to a couple of questions by you,  
21 the City said on the record, and we've quoted in the  
22 transcript, that they do not believe the statute is  
23 ambiguous, that they think it is unambiguous, and that  
24 we should resort to dictionary definitions.

25 My client, MNCOGI, was not asked about that in

1 January, and we took no position. And then in April,  
2 the Court issues its order finding that this phrase is  
3 ambiguous. And so our first point today -- we'll be  
4 very candid -- is to ask you to reconsider that  
5 decision.

6 We understand that you issued that April order  
7 without the benefit of our briefing on the issue of  
8 ambiguity. And the City, incidentally, has not  
9 changed its position or offered any argument in  
10 support of the Court's finding of ambiguity. It's  
11 just taking the Court's order at face value.

12 But ambiguity is a threshold, an extremely  
13 important issue in statutory interpretation. And I  
14 would point you in particular to the very recent case  
15 from the Minnesota Supreme Court, Energy Policy  
16 Advocates vs. Ellison. And that was a Minnesota  
17 Government Data Practices Act case where the Court  
18 looked at statutory language -- even found that the  
19 results it was handing down might be absurd -- but  
20 still said it's not ambiguous; there's a plain  
21 meaning. We have to apply the plain meaning.

22 And that's what we think here. We don't think  
23 "disciplinary action" is ambiguous. We think it has a  
24 plain, readily ascertainable meaning. And in addition  
25 to the Energy Policy Advocates case, I would point you

1 to the KSTP case. That's another Supreme Court case  
2 from 2016 -- quite recent -- where one of the issues  
3 the Court was asked to decide was the meaning of the  
4 word "maintained," right? And it did exactly what  
5 we're asking the Court to do here, which is resort to  
6 dictionary.

7 Two other reasons the dictionary sort of  
8 controls here. There's -- you asked for legislative  
9 history, Your Honor, and we spent a lot of time  
10 looking into it. There's none. And there's nothing  
11 that suggests that the Court meant anything other than  
12 the plain dictionary definition of the term.

13 And this statute has been in effect for  
14 40 years, and there has been multiple opportunities,  
15 and in fact the legislature has tinkered with the  
16 meaning of other terms in the statute, such as "final  
17 disposition." But it has never revisited or tried to  
18 define for courts what it meant by "disciplinary  
19 action." And we think all of those factors suggests  
20 that the legislature meant the plain English words  
21 discernible from a dictionary to apply.

22 So let me tell you what we think the  
23 dictionary says about this term. Our definition, and  
24 I quote, is "an act or a thing done or having to do  
25 with treatment that corrects or punishes."

1           So how do we get there? And I would like to  
2 point you to pages 2 and 3 of the handout I brought  
3 today. The first thing that's important to understand  
4 are the words the legislature did not use, right? And  
5 that's on Slide 2.

6           We have examples of things the legislature  
7 could have said, but didn't. It didn't list certain  
8 kinds of discipline or punishment. The examples here  
9 come straight from the City and the Federation's  
10 collective bargaining agreement, by the way. It  
11 didn't use the fairly simple, single, elegant word  
12 "punishment." It actually didn't even use the word  
13 "discipline." It did not incorporate a materiality  
14 component.

15           Instead -- and if you flip to page 3, you can  
16 see the language it did use. This is straight from  
17 Section 1343. It used the phrase "disciplinary  
18 action." And the word "disciplinary" is notably  
19 broader than "discipline." Standing alone, it means  
20 of or having to do with discipline.

21           And the City's only real response to this is  
22 -- which you can find at page 8 of their opposition --  
23 is to say that every one of the citations MNCOGI  
24 includes -- and it was an exhaustive list, Your Honor,  
25 as I'm sure you've seen in the briefs -- uses

1 punishment as part of the definition.

2 That's their response to -- to the laborious,  
3 exhaustive research we did. And that's true; of  
4 course punishment is a type of disciplinary action.  
5 We don't deny that. But disciplinary is broader. In  
6 fact, even the word "discipline" standing alone  
7 without "a-r-y" on the end means treatment that  
8 corrects or punishes. And disciplinary, again, is  
9 anything that relates to discipline.

10 Meanwhile, the law is clear, and I would  
11 direct you to the Whelan case. But whether something  
12 is disciplinary does not depend on whether or not it  
13 is material or materially adverse on employment. So  
14 the notion the City is trying to -- to push, which is  
15 that disciplinary action occurs only if something very  
16 serious is imposed -- only if something that's  
17 grievable is imposed, that -- that just doesn't hold  
18 up.

19 And I point you to Slide Number 4, where you  
20 can see citations in the briefs of the City and the  
21 Federation themselves that the legislature understood  
22 disciplinary to include low-level consequences and  
23 corrective actions, such as reprimand -- another word  
24 for that is a rebuke -- and warnings. That's on Page  
25 Number 4 of your handout.

1           And this definition is also, incidentally,  
2           completely consistent with the model of progressive  
3           discipline to which the City claims adherence. The  
4           idea there is that you discipline, but you do it in a  
5           way that doesn't sting too much, that doesn't cause a  
6           material adverse impact, in hopes that the situation  
7           improves. But it's still discipline. And then you  
8           escalate as necessary.

9           So the City doesn't want you to look at the  
10          dictionary. And you can flip to Slide Number 5, Page  
11          Number 5 in your handout to see their proposed  
12          definitions. Its first choice is that the definition  
13          of "disciplinary action" should essentially be  
14          whatever they want it to be. They don't say it quite  
15          that way. What they say is the definition should be  
16          actions, quote, "designated as disciplinary in  
17          collective bargaining agreements, employment  
18          agreements, and/or binding personnel statutes, or  
19          rules that govern the terms of the employment  
20          relationship."

21          But of course they draft and negotiate the  
22          collective bargaining agreement, and so what it comes  
23          down to is the definition should be what we say it is.  
24          And Your Honor has already rejected that argument. I  
25          would direct you to Slide Number 6 and Number 7 in the

1           handout I gave to you this morning or this afternoon.

2                   In January, you had sort of a visceral  
3           reaction to this idea that the legislature turned the  
4           reins over to public agencies and that the City should  
5           get to say it is whatever it wants it to be and change  
6           it at the City's whim. And you said that again in  
7           April in your order.

8                   Moreover, Your Honor -- and I would point you  
9           to the next page of the handout, Page Number 8 -- the  
10          City-preferred definition ignores that the legislature  
11          knew how and had examples of how to give discretion if  
12          it wants to, but it chose not to.

13                   So the example there on the left is from the  
14          Federal Freedom of Information Act. Enacted in 1966,  
15          this language you see here was in the original  
16          version. And FOIA took a very balanced, discretionary  
17          weighing of the pros and cons and giving agencies a  
18          lot of leeway.

19                   And if you look at the various law review  
20          articles we've cited, including many by Don  
21          Gemberling, Minnesota took the opposite approach. It  
22          didn't want a miniature FOIA. It wanted concrete,  
23          specific language. It wanted to remove discretion.  
24          It wanted to take away balancing tests.

25                   And the other column on this page 8 shows that

1       when the legislature did want to give public agencies  
2       some discretion, it knows how. And you can see that  
3       Section 1339 where it uses the language "if the  
4       government entity determines," you don't see that  
5       language in Section 1443. There's no reference to "if  
6       the government entity determines" that it's  
7       disciplinary action, then it's public.

8               So what the City does instead of pay attention  
9       to the plain language of this statute, which is the  
10      place we start, is it jumps right to the eight factors  
11      found in 645.16. And I want to discuss those in a  
12      minute, but first, let me talk about their alternative  
13      definition -- and again, you can see it at page 5 --  
14      which is their fallback position. And that's the  
15      definition that starts in the right place. It starts  
16      with the dictionary.

17             And when they begrudgingly look to the  
18      dictionary as an alternative, they propose something  
19      much more narrower than what MNCOGI proposes, and we  
20      think incomplete. The language they finally settle on  
21      in their response brief, and they go back and forth  
22      before they finally come down to something in that  
23      second brief, is, quote, "formal action -- formal  
24      action -- that is motivated by an intent to punish."

25             Now again, if the legislature had wanted to

1 limit disclosures to situations where punishment had  
2 occurred, that's a much simpler word to use than  
3 "disciplinary action." But they didn't use that word.  
4 The statute doesn't refer to a formal action, nor does  
5 it refer to intent.

6 And on that point, Your Honor, any definition  
7 that focuses on motive or intent is going to be  
8 extremely fact-intensive. If that's the definition  
9 adopted here, we are going to need to inquire into the  
10 state of mind of every person who ordered or executed  
11 coaching in each and every case, for hundreds of  
12 coaching forums that exist to this day in permanent  
13 personnel files.

14 And that definition does nothing to address  
15 the City's other major argument, which is, well, if  
16 you adopt the dictionary definition, employees aren't  
17 going to have notice. Its intent is what matters,  
18 that employees won't know if they're being disciplined  
19 unless they can read the mind of their supervisor and  
20 know his motivations.

21 But let's talk about the eight factors, Your  
22 Honor. And I am hoping to reserve about ten minutes  
23 for rebuttal.

24 THE COURT: Okay.

25 MS. WALKER: So we've listed the factors on

1 page 9 of the handout, just so you have them handy.  
2 And we walked through each of these in our opening  
3 brief. I don't intend to tediously walk through each  
4 one again. But I do want --

5 THE COURT: Can I just -- the biggest thing  
6 with going with the dictionary definition, to some  
7 extent, is that different dictionaries use different  
8 definitions. Has there been a specific dictionary  
9 that the Minnesota Supreme Court or the legislature  
10 has -- has said, "We like to use this dictionary for  
11 meanings when we don't really say what we mean."  
12 Because, I mean, I can tell you, back in April, I had  
13 also looked at some dictionaries and actually reached  
14 a conclusion that there was not consistency  
15 necessarily --

16 MS. WALKER: Mm-hmm. Mm-hmm.

17 THE COURT: -- in regard to dictionary  
18 definitions, which I also found problematic. I'll let  
19 you know on a little secret, I was really hoping you  
20 guys were going to find some legislative history.

21 MS. WALKER: We were too, Your Honor.  
22 Dictionaries always provide multiple definitions --

23 THE COURT: Yes.

24 MS. WALKER: -- for the same word. They  
25 always give --

1 THE COURT: And they're not consistent. You  
2 can use -- and they're not consistent over the years.  
3 Do I go back to a dictionary that was published at the  
4 time that the statute was written? Do a use a more  
5 modern dictionary? That -- that's my --

6 MS. WALKER: So --

7 THE COURT: In fact, I'm going to tell you one  
8 of my concerns when it's they just go by the  
9 dictionary. There's online dictionaries. There's --

10 MS. WALKER: Correct.

11 THE COURT: -- printed dictionaries. There's  
12 old dictionaries; there's new dictionaries.

13 MS. WALKER: Correct. And -- and our opening  
14 brief addresses this in some detail.

15 THE COURT: Mm-hmm.

16 MS. WALKER: There are preferred dictionaries,  
17 and I can't tell you off the top of my head which one  
18 it is, but our -- our brief addresses that and cites  
19 cases recognizing certain dictionaries as particularly  
20 reliable.

21 The case law is also very clear that you look  
22 at a dictionary from 1979 or as close to 1979 as you  
23 can get, and that's what we did, Your Honor. All of  
24 the definitions you'll see in our brief are from 1979,  
25 unlike what the City did in defining "discipline," not

1 "disciplinary," as punishment. They looked at an  
2 internet definition from 2022.

3 And so my point too is there are some rules of  
4 the road in terms of which dictionaries and which  
5 year, and we believe we've got the better of the  
6 argument on that half. But I don't think you can find  
7 that a phrase is ambiguous just because a single  
8 dictionary provides multiple synonyms or because this  
9 dictionary provides a slightly different dictionary  
10 that than def-- than this dictionary. Because that  
11 would always be the case. If you look up any word,  
12 there's going to be slight differences.

13 THE COURT: Right. But the scope of the term  
14 your argument is hinged on, correction being included  
15 within the term as -- as opposed to punishment. So  
16 even if -- even if that's the case, that as in  
17 applying it, you know, trying to come up with some  
18 type of universal definition that could actually be  
19 applied in regard to the statute, the concern I have  
20 with a definition that includes any type of  
21 correction, it would require any time you met with  
22 your supervisor and they told you to do better, or  
23 wrote it down -- I met with you and told you to do  
24 better -- that would then be public data, and the  
25 reasons therefore, which I'm assuming often wouldn't

1 be documented, but it -- extremely expansive as far as  
2 what would be included. And the record keeping, then  
3 that would be -- because there's these -- the Data  
4 Practices Act goes hand in hand with the official  
5 records requirement --

6 MS. WALKER: Mm-hmm.

7 THE COURT: -- and record retention  
8 requirements, that it would potentially start to  
9 require that every "do better" instruction from a  
10 employer be maintained for production. Wouldn't it --  
11 would it not?

12 MS. WALKER: So, yes. And this a little bit  
13 of the -- well, let me say this. Any time a court  
14 defines a statutory term for the first time, you can  
15 imagine infinite numbers of hypotheticals. And if and  
16 when you define this term in a global, statewide way  
17 that's not just specific to unions, there's going to  
18 be follow-on litigation. We're going to have to  
19 explore the contours. Other parties, other agencies;  
20 there will be other cases that explore the contours of  
21 what it means to punish or correct.

22 I -- I don't know that it's super helpful or  
23 that we can really evaluate all these hypotheticals in  
24 a vacuum as we stand here today, but I would say two  
25 things. One is if you're worried about the breadth of

1 the definition, know that the presumption is in favor  
2 of access. And if you're waffling between two  
3 reasonable definitions and one's broader and one's  
4 very narrow, you should go with the broad one. And  
5 that's the KSTP case, and I believe it's Footnote 2,  
6 and I would encourage you to read it.

7 But secondly, I think it's very important --  
8 and I know you want a global definition -- but I think  
9 it's very important to not lose sight of this case.  
10 This involves a consequence -- if we can call it that,  
11 because that's a neutral term -- that was documented  
12 on a preordained form and was put in a permanent  
13 personnel file. And that is different, Your Honor --  
14 and again, I know you're trying to look at a global  
15 definition, but that is -- that is very different than  
16 oral feedback, which isn't even subject to the Data  
17 Practices Act because no data is corrected. And it's  
18 also very different than the everyday e-mails public  
19 employees send one another that have reminders or that  
20 correct misunderstandings.

21 Like, for example, I assume Ms. Riskin and her  
22 team wrote a draft of their brief and sent it to one  
23 another and edited it and sent edits back, maybe to  
24 someone more junior. Is that corrective action under  
25 the definition we're proposing? I don't think so.

1           And I think those things -- even though it is  
2       correcting a brief, in a sense -- I think those things  
3       will be sussed out later. I don't think we can suss  
4       out every hypothetical in this case. But remember  
5       that the presumption is in favor of access, that  
6       Counsel's in favor of a broad definition, and you just  
7       can't forget the facts of this case.

8           I mean, the other big fact of this case is  
9       that our data request was for coaching data arising  
10      from substantiated violations, right? So a very  
11      specific complaint about a violation of a specific  
12      part of the policy manual and a finding that it was  
13      violated and then coaching on a preordained form that  
14      was put in a permanent personnel file.

15          I'm prepared to move to the eight factors if  
16      you are.

17           THE COURT: Go ahead. Go ahead.

18          MS. WALKER: Okay. So again, they're on Slide  
19      Number 9. And the City really focused most of its  
20      briefing on the 8th factor. It sort of glossed over  
21      some of the -- the first few. The 8th factor, of  
22      course, is administrative interpretations of statute.  
23      And they focus on several opinions from the Department  
24      of Administration.

25          So I'll come back to that. But I want to

1       emphasize that I think we have a strong argument on  
2       ambiguity and the plain meaning, and I think our  
3       definition is right, and you can stop there.

4               But if you get to these eight factors, I think  
5       based on the reasons the statute was created, the  
6       policies it was intended to perpetuate, I mean, what  
7       you can discern from the statute and court decisions  
8       about it and writings about it is that our argument on  
9       the eight factors is even stronger.

10              So on the advisory opinions, the lesson to  
11       take for these non-binding opinions is not that they  
12       support the City's definition that coaching is  
13       whatever we say it is, but that the commissioner tends  
14       to base his decisions on the content of the documents  
15       at issue. He actually looks at the data and the terms  
16       or phrase used the by the person completing the form  
17       and then the commissioner decides whether it's  
18       disciplinary.

19              And I just want to, you know, remind the Court  
20       that that is what MNCOGI has been asking for all  
21       along, right? We have a protective order in this  
22       case, and we're saying let us -- let us see these  
23       coaching forms and do what the commissioner does,  
24       argue on a case-by-case basis whether these are  
25       disciplinary action.

1           When the Department of Administration has  
2       defined disciplinary action -- and it hasn't very  
3       frequently -- it goes to the dictionary, just like  
4       MNCOGI is proposing. And again, we think their  
5       definition's a bit too narrow. They look at the word  
6       "discipline," not "disciplinary." And I don't know  
7       that the Department of Administration has always  
8       looked back at dictionaries from 1979 because those  
9       are harder to get your hands on. But for all those  
10      reasons, we think you should look to the dictionary,  
11      and you should go with the definition we propose.

12           Then on the first four factors, Your Honor,  
13      all of these boil down to the reason the Data  
14      Practices Act and specifically Section 1443 was  
15      enacted. All of them show the legislature opted to  
16      take discretion out of hands that Section 1443  
17      governs.

18           And most importantly, I really want to  
19      disabuse the Court of the notion perpetuated by the  
20      City and the Federation that while there's a  
21      presumption of access under the act writ large, that  
22      Section 1443 somehow flips the script and creates a  
23      presumption of privacy. That's what the City wants  
24      you to believe, but that is not true.

25           And I would point you to Page Number 10 of our

1       handout. This is a direct quote from that 2016 KSTP  
2       case where the Minnesota Supreme Court firmly rejected  
3       the notion that Section 1443 creates a presumption of  
4       privacy. The Data Privacy Act is not -- the -- sorry.  
5       The Data Practices Act is not a data privacy law. It  
6       is a public access law. It creates a presumption of  
7       access to all government data. It is purposefully  
8       different than other freedom of information acts, such  
9       as FOIA, and it was designed to be detailed, specific,  
10      and concrete, and to remove discretion from the hands  
11      of the agencies it governs.

12           THE COURT: Unfortunately, in practice it was  
13      neither concrete or clear in many respects. Hence the  
14      number of pages that it has ballooned to be as opposed  
15      to the initial -- the initial act was very short.

16           MS. WALKER: You are -- you are correct. And  
17      I actually think the way the Data Practices Act has  
18      grown continues to reflect the legislative intent that  
19      the legislature wants to govern each and every thing  
20      and doesn't want to leave it up to the -- to the City  
21      or the public entity. They want to create the law and  
22      they want to have control over whether it's public or  
23      not.

24           So, you know, dictionary definitions, they're  
25      tricky; I get that. But I think you can totally push

1 to the side the City's preferred definition that it's  
2 whatever we say it is.

3 So then, Your Honor, the City and the  
4 Federation both point to PELRA as a,  
5 quote, "contemporaneous statute that somehow governs  
6 the meaning of disciplinary action."

7 You know, for lack of a better place, I think  
8 this is part of factor five in the list of eight  
9 factors. And I want to keep the PELRA comments pretty  
10 short because I know I'm running out of time. But  
11 what you need to know about it is PELRA does not  
12 define disciplinary action. It uses the phrase, but  
13 it doesn't offer a definition either. And even if it  
14 did offer guidance of the meaning of the phrase, it  
15 could not control your analysis here because PELRA  
16 only applies to union employees. And you're looking  
17 for a global, statewide definition that applies to all  
18 public agencies and all employees, and not all public  
19 employees are part of a union.

20 The Federation especially is using PELRA to  
21 argue that PELRA requires all written disciplinary  
22 action to be grievable. Coaching's not grievable  
23 under the terms of the collective bargaining  
24 agreement; therefore, PELRA somehow precludes a  
25 finding that coaching is disciplinary.

1 But it does no such thing. Take a look at  
2 Page Number 11 of the handout. This is a letter  
3 you've seen before, Your Honor. It was an exhibit to  
4 one of the pleadings.

5 "The City has acknowledged --" and it's small,  
6 but I've highlighted it there on the second page that,  
7 quote, "the lack of opportunity to grieve a case is  
8 not determinative of whether coaching is discipline."

9 That alone sidelines PELRA. What the  
10 Federation is concerned about in the issues they want  
11 to argue about are far removed from what we're here to  
12 discuss today. We're not here to decide whether  
13 coaching is disciplinary action. Not today. And we  
14 aren't here to talk about whether there's a -- been a  
15 final disposition. Those questions require discovery.

16 We're here to define disciplinary action. And  
17 if you turn to Slide 12, you'll see that the  
18 Federation's own collective bargaining agreement,  
19 consistent with the City's letter, shows that certain  
20 risk-- written disciplinary action sometimes is not  
21 grievable, despite the supposed controlling language  
22 of PELRA.

23 So if you look at Slide 12, Section 1202 of  
24 the collective bargaining agreement talks about what's  
25 grievable, doesn't list a warning. But Section 30.08

1 of the collective bargaining agreement lists a warning  
2 as disciplinary.

3 So the two just aren't connected, and because  
4 PELRA is not designed for non-union employees and  
5 because it does not define disciplinary action, we  
6 think you should disregard all arguments about it.

7 Finally, Your Honor, on the issue of  
8 consequences and notice and the sky is falling if they  
9 adopt a dictionary definition, we think the City's  
10 argument on this is overblown and that it drastically  
11 overlooks the negative consequences that would follow  
12 if you adopt its preferred definition, which is: It  
13 is what we say it is.

14 First and foremost, everything the City says  
15 about employee morale and mass exodus and all the  
16 problems this would cause is lawyer argument. They  
17 don't have an affidavit from the Chief of Police.  
18 This is summary judgment. And they've come forward  
19 with no evidence that anything they say is a belief  
20 actually held by the people running the Minneapolis  
21 Police Department.

22 The other thing you need to remember -- and  
23 we've talked about this -- is when it comes to the  
24 Data Practices Act, it's written punishment and  
25 written corrective action. So this notion that this

1 is going to hamstring us, we're not even going to be  
2 able to talk to our employees and engage in day-to-day  
3 management; nope, that's not true. But I think we all  
4 need to ask the City -- and we plan to in discovery --  
5 why do you write it down? Why do you put it in a  
6 permanent personnel file?

7 And as best we can see, Your Honor, there's  
8 three reasons. Because you want to use it to escalate  
9 discipline later. Because you want to use it if an  
10 officer sues you for disciplining him to show he's  
11 always been a problem. Or if someone else sues you  
12 about a hostile work environment or about the officer,  
13 and you want to show that you tried to address it.  
14 That's why you write things down and put them in  
15 personnel files, and that's all disciplinary in  
16 nature.

17 Don't be confused by the City's red herring  
18 argument that if you adopt a dictionary definition,  
19 employees won't have notice. Every public employee in  
20 this state takes the job knowing that government data  
21 is presumptively public. Every e-mail they send,  
22 every form they fill out, all of it could someday  
23 become public. And, in fact, that's why we have the  
24 Department of Administration resolving disputes,  
25 because sometimes there's confusion. It's not like

1       there's certainty even now, right? We have to go to  
2       the Department of Administration sometimes and ask,  
3       "Is this disciplinary?" And sometimes employees are  
4       surprised. Sometimes they think it's not, and it is,  
5       and it gets released.

6               What the City is really talking about when it  
7       comes to notice, Your Honor, is -- is due process.  
8       And they're jumping the gun to the issue of final  
9       dep-- disposition, and that's just not what we're here  
10      today to discuss.

11             So here's the thing of it, Your Honor, is that  
12      even if you went with the City's definition that  
13      disciplinary action is whatever we say it is, there's  
14      still a clear path by which MNCOGI wins this case.  
15      And, in fact, our complaint relied heavily on the  
16      City's own policies and procedures in the collective  
17      bargaining agreement.

18             And when we were here in January, we gave you  
19      two or three examples of how they're kind of cornered  
20      by their own words, right? That a warning is  
21      disciplinary, and coaching looks like a warning. That  
22      they don't put anything except discipline in permanent  
23      personnel files, and yet they put coaching forms in  
24      personnel files.

25             So even if you went with a narrow definition,

1 we still think we should get discovery. We still  
2 think there's a path to prevailing in this case. But  
3 we appreciate that you want to think bigger and define  
4 disciplinary action in a more global manner. That  
5 term is found in a statute of general applicability.  
6 It applies to union and non-union employees alike.

7 And we believe our proposed definition  
8 reflects the plain language as well as the legislative  
9 intent, and we urge you to adopt it. Thank you.

10 THE COURT: Thank you. And, Ms. Riskin, are  
11 you arguing on behalf of the City?

12 MS. RISKIN: Yes, I am, Your Honor.

13 THE COURT: Okay.

14 MS. RISKIN: And I'll head to the podium as  
15 well.

16 THE COURT: Thank you.

17 MS. RISKIN: You don't mind if I use your  
18 table?

19 MS. WALKER: No, please do.

20 MS. RISKIN: Appreciate that. I'm not quite  
21 as tall as Ms. Walker.

22 THE COURT: And go ahead, Ms. Riskin, when  
23 you're ready.

24 MS. RISKIN: Thank you, Your Honor. Good  
25 afternoon. As a preliminary matter, the City is not

1 here to discuss the merits of the case. Although I do  
2 believe a lot of that came up in the plaintiff's  
3 argument, we were following the instructions, which is  
4 just to interpret the phrase.

5 The Data Practices Act is a classification  
6 statute. I think it's important that we get back to  
7 remembering that. It doesn't regulate government  
8 operations. It doesn't tell a government entity how  
9 it is supposed to behave or when it is supposed to  
10 decide to discipline someone. What it does is it says  
11 once the government entity has created data,  
12 collected, maintained -- there's the list. But if the  
13 government entity has the data, the Data Practices Act  
14 says here's how it is classified. And that's it.  
15 It's not here to tell government entities how to run.

16 The definitions that are being proposed -- the  
17 plaintiff, both in briefing and in oral argument, has  
18 said that -- that defendants somehow needed to engage  
19 in some additional analysis to rethink the Court's  
20 decision already on ambiguity. And respectfully, the  
21 Court had made the determination it was ambiguous.  
22 It's law of the case at this point.

23 And so defendants haven't engaged in a full  
24 dictionary analysis, although they have -- we have  
25 engaged in some. The definition that defendants have

1 put forward is the definition that the Commissioner of  
2 Administration has used consistently for decades.  
3 It's not the City's preferred definition or proposed,  
4 and there's no discretion in this -- in the City's  
5 proposal. If something is disciplinary action, at  
6 final disposition it is public. Period. The City's  
7 not debating that.

8 So the definition that is put forward is  
9 actually universal. It's universal in the sense that  
10 any government entity, any public employee, union or  
11 not, can look at that definition and understand what  
12 is disciplinary action for that individual.

13 The definition is consistent with the factors  
14 in 645.16. And I'll note -- it's helpful actually  
15 that we have factors in this PowerPoint, but the  
16 factors do not require a balancing of, you know,  
17 equality among each of the factors. And, in fact, the  
18 statute says that these are factors that can be  
19 considered among other things. But on balance, these  
20 factors support the proposed definition.

21 We can look at the contextual clues. Again,  
22 we're not here to talk about the purpose of Data  
23 Practices Act. We are here to talk about  
24 Section 13.43. It is a part of the Data Practices  
25 Act. But the public presumption that applies in the

1 Data Practices Act, the purpose of Section 13.43, is  
2 to provide a more specific classification. And the  
3 default for that more specific classification is found  
4 in subdivision 4. Unless it's one of the items listed  
5 in another subdivision, all other personnel data is  
6 private.

7 The Minnesota Supreme Court has said the  
8 purpose of the Minnesota Government Data Practices Act  
9 is to balance the rights of individuals -- data  
10 subjects -- to protect personnel information from  
11 indiscriminate disclosure, with the right of the  
12 public to know what the government is doing.

13 So when we look at Section 13.43, it's about  
14 public employment. And this is a point also in  
15 looking at ambiguity. The question is, is there more  
16 than one reasonable interpretation. And there is  
17 clearly more than one reasonable interpretation of the  
18 phrase "disciplinary action," which is what makes it  
19 ambiguous. And if this briefing hasn't shown that  
20 it's ambiguous, I don't know what would.

21 But it -- the definition -- even if it's a  
22 reasonable definition, it has to be applied in  
23 context. We're not talking about just any kind of  
24 disciplinary action. This isn't a question of whether  
25 a physician's license to practice medicine is at risk

1 or, you know, that they've been disciplined. It's not  
2 about a hunting license or a fishing license. This is  
3 about disciplinary action in the context of public  
4 employment.

5 And the legislature was aware of public  
6 employment generally. We can't say it wasn't. PELRA  
7 existed at that point. I understand Ms. Walker's  
8 point, PELRA doesn't apply to everyone. But there are  
9 certain things that apply in public employment.  
10 Public employees have constitutional property interest  
11 in their employment. Not every one of them. If you  
12 are probationary, you may not.

13 But that's part of context when we talk about  
14 disciplinary action in public employment, that there  
15 may be a constitutional right that that individual has  
16 in challenging any sort of, you know, proposed  
17 deprivation.

18 So the legislature struck the balance in favor  
19 of privacy, unless explicitly stated otherwise in  
20 Section 13.43. And that makes sense. Public  
21 employees -- contrary to Ms. Walker's statement that  
22 public employees know when they take a job with the  
23 government that everything, you know, could be public,  
24 that's actually not true. Public employees do not  
25 give up all aspects of privacy just by going to work

1       for a public entity. They know that some things will  
2       be public, but work performance, the everyday lives,  
3       the example even that -- that you gave earlier, those  
4       types of things, public employees are not assuming  
5       that every transgression they have or every -- every,  
6       you know, performance-related conversation they have  
7       is going to be a matter of public record or that it's  
8       discipline.

9               The legislature was recognizing that people  
10       have to perform their jobs; public employees have to  
11       be able to do their job. And the way that the  
12       legislature recognizes privacy interest was to ensure  
13       that not every aspect of their work lives would be  
14       available for -- for a public display. The default is  
15       subdivision 4. It's private.

16              And subdivision 2(a)(5), which is the  
17       subdivision we're talking about, and it must be  
18       interpreted narrowly. The legislature could have made  
19       lots of stuff public, right? There is a public  
20       interest in allegations of misconduct, for example,  
21       against public employees. We can see why the public  
22       might care about that.

23              THE COURT: So as far as the impact on  
24       interpretation of statutory language -- I just want to  
25       make sure I'm understanding the argument you're making

1           regarding the presumption globally of the Data  
2           Practices Act to -- to fall in favor of public access.

3           Your interpretation is that by the express  
4           language of public employment section, that the  
5           presumption that unless specifically stated, that it  
6           is private as to the individuals. Are you saying that  
7           I have to incorporate that in ensuring that -- except  
8           as expressly stated -- is interpreted narrowly? Is  
9           that the argument you're making? That that supports a  
10          narrow interpretation of those express language  
11          provisions making certain things public?

12           MS. RISKIN: Yes.

13           THE COURT: Okay.

14           MS. RISKIN: So it needs to be interpreted  
15          narrowly, because otherwise it swallows the rule in  
16          subdivision 4. And to -- KSTP, the footnote in KSTP,  
17          I want to address that quickly.

18           The Court actually wasn't -- wasn't asked  
19          whether there was a counter presumption and explicitly  
20          said that. That wasn't the question before it. The  
21          question before it was whether or not the data was  
22          personnel data at all. And that's why the public  
23          presumption still applied there.

24           But Court even said even if there is -- even  
25          if the presumption is flipped, it doesn't matter here

1           because this data is not personnel data. So that  
2           footnote is dicta, but also, that wasn't the question  
3           in front of the Court.

4                   Subdivision 4 is very clear in saying what it  
5           -- you know, what it is. And so in looking at the  
6           context, for example, subdivision 2(a)(4), which is  
7           not the one we're looking at right now, but there's  
8           case law that's helpful here. That says the existence  
9           and status of the complaint is public.

10                   So the idea that the public has an interest in  
11           knowing about allegations of misconduct of public  
12           employees, I can agree with that. But that's not what  
13           the legislature decided. The legislature didn't  
14           decide that the public gets to know every time there's  
15           an allegation of misconduct against a public employee.  
16           What the public gets to know is the existence and the  
17           status. That's it. Not the nature.

18                   The public doesn't get to know whether the  
19           allegation has been substantiated. The only time the  
20           public would know that is at final disposition of  
21           disciplinary action under subdivision 285.

22                   But subdivision 284, when that was interpreted  
23           by the Minnesota Supreme Court in the Navarre case --  
24           it's 652 N.W.2d 9. Interpreting that, the Supreme  
25           Court took an extremely narrow approach to

1 subdivision 2(a). 2(a)(4) in particular.

2 The comment that -- that complaints -- in that  
3 case, there are complaints against a teacher. And the  
4 district says these complaints are sometimes alarming,  
5 and it's an unusual number of complaints. Both of  
6 those were found by the Minnesota Supreme Court to  
7 violate the Data Practices Act, because it stated more  
8 than just the existence and status of a complaint.  
9 And the point is that the Minnesota Supreme Court  
10 construes those exceptions in subdivision 2 and 2(a)  
11 very narrowly. We have to have a strict construction  
12 of subdivision 2.

13 The proposed definition the defendants have  
14 put forth is consistent with the Commissioner's  
15 long-standing approach also. And the Commissioner's  
16 approach is persuasive. It's Administrative Law 101  
17 that we defer to the agency that is charged with  
18 interpreting a statute.

19 And going back to the Navarre case, Footnote 5  
20 in that case, there the Minnesota Supreme Court was  
21 also influenced by the Commission and cited that the  
22 Commissioner of Administration is statutorily all --  
23 authorized under Minnesota Statute 13.072 to issue  
24 advisory opinions and said, in that case, the -- the  
25 question was whether it was public data that the

1 employee was on medical leave. And the Court held  
2 that it was and said that the advisory opinions have  
3 concluded that the fact that an employee is on  
4 administrative leave for medical reasons is public  
5 data, and then cited to an advisory opinion.

6 And then the Minnesota Supreme Court said,  
7 while not binding authority, this is persuasive  
8 authority, supports our holding. And the advisory  
9 opinion cited to was not related to that case. It was  
10 not the parties in that case. It was the Minnesota  
11 Supreme Court recognizing that the approach that the  
12 Department of Administrative uses is persuasive  
13 authority to tell the courts this is how we interpret  
14 the Data Practices Act.

15 The agency tasked with interpreting the  
16 statute is in the best position to understand it and  
17 to apply it. Another Minnesota Supreme Court case,  
18 Goodman vs. State -- it's 282 N.W.2d 559 -- in  
19 discussing ambiguity, there's more than one reasonable  
20 interpretation. The Minnesota Supreme Court says our  
21 practice when faced with such ambiguity is to accord  
22 substantial consideration to the interpretation of  
23 administrators working daily with the problem sought  
24 to be remedied.

25 The Commissioner's approach is to look at the

1 authorities governing the employment relationship and  
2 to require notice to an employee for an action to be  
3 disciplinary action under Section 13.43. And I'm not  
4 talking about the post-- you know, after the decision  
5 has been made, the appeal rights. I'm talking about  
6 the employee needs to be told, "You are being  
7 disciplined."

8 Since 1996, the Department of Administration  
9 has had advisory opinions that's followed this  
10 approach. And in the Opinion 96-001, which we briefed  
11 -- included in our brief -- the Department of  
12 Administration concluded that there was no  
13 disciplinary action because there -- the governing  
14 authority -- the collective bargaining agreement  
15 required notices -- certain notices -- to be provided  
16 to employees alongside discipline. And there, they  
17 weren't told that they were being disciplined.

18 That's the reality. The way you know if  
19 you've been disciplined is the rules of your workplace  
20 tell you this is discipline, and you get a letter that  
21 says, "Here's the discipline." I've said that a  
22 written reprimand is disciplinary, and here is a  
23 written reprimand.

24 THE COURT: So in that -- 96-001, and I'm  
25 going to have to say I -- I have not had a chance to

1 read all the cases and all of the things cited within  
2 the briefs. Is the context of that -- the issue  
3 presented to the Department of Admin. in that decision  
4 really the same as this broad issue? Or was it  
5 whether or not a particular person's information could  
6 be released? Because if it's the later -- latter,  
7 don't we get to that only after we apply an initial  
8 definition and then individual employees and whether  
9 their due process rights allow the release of it,  
10 isn't that a separate issue?

11 MS. RISKIN: Um --

12 THE COURT: Because otherwise, there'd be no  
13 ever changing of any process or no real way to ever  
14 have these issues presented to the courts, in  
15 particular, for a broader definition more generally.  
16 Because it would be -- well, on an individual case, as  
17 long as nobody said it was and it couldn't ever be.  
18 So it seems to me that that's an individual-based  
19 inquiry, as opposed to the global-based inquiry. And  
20 how would I apply that individual-based inquiry or --  
21 to a global inquiry?

22 MS. RISKIN: Sure. Well, and I think -- I  
23 think that's where we get at the application is the  
24 next step, right? Right now we're looking at the  
25 definition. And looking at the Department of

1 Administration's advisory opinions, yes, what happens  
2 is there's a request for one individual to look at  
3 that one individual action.

4 But the Department of Administration follows a  
5 process, right? So the process that it follows -- and  
6 that's really what we're proposing, is to follow the  
7 process that the Department follows, which is to look  
8 at the governing authorities that govern that  
9 employment relationship and to say does this meet with  
10 those governing authorities.

11 So if -- if the governing authorities -- if  
12 you're looking at Civil Service Rules and Civil  
13 Service Rules lay out here's what discipline is and  
14 here are the procedures, then you would determine in  
15 any particular situation, you know, does it meet that?

16 But it also has to be that we've told the  
17 person. So if you look at all of the opinions  
18 together and -- and in our moving brief we kind of go  
19 through the opinions together to show what the -- what  
20 the process is that's followed. But they all require  
21 the employee to know that they are being disciplined.  
22 And the -- the concepts of what happened.

23 So in Section 13.072 it concludes that  
24 government entities or any entity actually -- I think  
25 it says any person -- can rely on Commissioner

1 interpretation. And there's actually a language that  
2 says unless the Commissioner -- I'm not going to cite  
3 it. I'm not going to quote it directly correct, but  
4 it's in subdivision 2.

5 And it basically says unless the Commissioner  
6 doesn't intend for any entities to be able to rely on  
7 it, it -- it has to say in, there, "I don't want you  
8 to rely on it." And I actually think that I should  
9 look at it and read it to you because that would be  
10 much more articulate than I am being at this moment.

11 THE COURT: Well, and the question is, is that  
12 limited -- is that everybody can rely on anything  
13 we've said in a decision versus that you presented  
14 this question to us, we issued a decision on the issue  
15 specifically presented, and you are entitled to rely  
16 on that.

17 MS. RISKIN: Both of those are addressed in  
18 subdivision 2, but what I'm referring to is the first.

19 THE COURT: Okay. General reliance --

20 MS. RISKIN: Yes, general reliance.

21 THE COURT: -- not specific reliance.

22 MS. RISKIN: And -- and that's the way it  
23 works. The Commissioner has an opinion; government  
24 entities rely on it. And that opinion from 1996,  
25 public sector employers have relied on the

1 Commissioner's approach for more than half of the life  
2 of the Data Practices Act, and that's how  
3 long-standing that precedent is.

4 A contrary interpretation that doesn't follow  
5 that approach would have huge implications for  
6 government entities. It would -- it would involve  
7 having to review all government documents to make sure  
8 they're consistent with whatever this new definition  
9 is, if there's some, you know -- a Court-made  
10 definition that's not consistent with how the  
11 Department of Administration has approached the  
12 determination. It would include looking at -- you  
13 know, having to review all of the collective  
14 bargaining agreements, any sort of civil service  
15 rules, to make sure that they're consistent.

16 Employers and unions, I know that we are  
17 talking about beyond just employers and unions, but  
18 part of the public sector is the unionized workforce  
19 where PELRA requires there to be negotiation  
20 bargaining over terms and conditions of employment.  
21 And collective bargaining agreements therefore  
22 identify discipline, and they identify the procedures.

23 But any definition that doesn't defer to those  
24 is going to require every collective bargaining  
25 agreement for public employment in the state to be

1 looked at and suddenly they're what? Preempted by a  
2 different definition because it's not consistent?

3 The condition due process concerns are -- are  
4 real. And notice is part of that. The legislature  
5 understood that it was dealing with public employment.  
6 It understood that there could be -- you know, there  
7 are special aspects of the employment relationship.  
8 It would be wrong to apply a broad definition that has  
9 no reasonable connection to the topic of the statute,  
10 just public employment.

11 In the public sector, disciplinary action has  
12 to mean something. And the definition that defendants  
13 are putting forward that's consistent -- that's based  
14 on the Department of Administration's approach, it  
15 comports with reality. As the Department of  
16 Administration required in one of the opinions that we  
17 cited, if the letter -- even if it looks similar to  
18 disciplinary action, it looks like it could be -- if  
19 it didn't say on it, "You are being disciplined," it's  
20 not disciplinary. And when it says, "You are being  
21 disciplined," it is.

22 You have to tell a public employee whether or  
23 not they're being disciplined. That's how they know.  
24 And it tells them where they fall on the spectrum of  
25 progressive discipline. That's how the employee knows

1           how serious the issue is. And it's how the employer  
2           ensures that it meets just cause for future  
3           disciplinary actions.

4                   This concern that this proposal would result  
5           in -- or does result in government entities just  
6           having too much discretion and they get to decide, you  
7           know, when do they want something to be public or not,  
8           the idea that government entities are best positioned  
9           to determine whether data falls within a particular  
10          term of the statute is consistent with analogous case  
11          law. And so this is where we circulated an  
12          unpublished case this morning, Krout v. City of  
13          Greenfield, and I've provided a copy to the clerk.

14                   The question there, it's also under  
15          Section 13.43. And the question was whether elected  
16          officials are employees under the statute. The word  
17          "employee" is not defined in the statute.

18                   And the Court again-- the Court deferred to a  
19          long-standing approach from the Commissioner of  
20          Administration. And there -- that's a 2012 case --  
21          the Court referred to it as long-standing -- it's from  
22          1995 -- that the Commissioner of Administration had  
23          first taken the position. So we are nine years longer  
24          than that.

25                   And the approach is the entity decides if

1       elected officials are employees. And from the case,  
2       the Minnesota Court of Appeals says, you know, both.  
3       We give more careful consideration to advisory  
4       opinions when they are on point and long-standing.  
5       And it said the Commissioner of Administration has  
6       opined that the classification of data about elected  
7       officials depends upon whether the entity considers  
8       the elected official to be an employee.

9               If so, the data are classified pursuant to  
10       Section 13.43. If not, the data are presumed public  
11       pursuant to Section 13.03, subdivision 1. We see no  
12       reason to diverge from the Commissioner of  
13       Administration's opinions. They are directly on point  
14       and long-standing. Because the City of Greenfield  
15       does not consider its elected officials to be  
16       employees, they are not employees for the purposes of  
17       13.43.

18              And then the Court of Appeals says allowing  
19       governmental units to decide whether their elected  
20       officials are employees also comports with the  
21       fundamental purpose of the MGDPA. The statute seeks  
22       to reconcile the rights of data subjects to protect  
23       personal information from indiscriminate disclosure  
24       with the right of the public to know what the  
25       government is doing.

1           The MGDPA also attempts to balance these  
2           competing rights within the context of effective  
3           government information -- operation, excuse me.

4           It's a classification statute. The Data  
5           Practices Act does not tell government entities how  
6           they are supposed to act. And the -- the proposed  
7           definition doesn't impact the classification. If it's  
8           disciplinary action, it's discipline -- it's  
9           disciplinary action; it's public upon final  
10          disposition. But the employer's in the best position  
11          to know whether it's disciplined an employee.

12          The definition proposed by plaintiff -- with  
13          all due respect, these are not hypotheticals we're  
14          coming up with. It is so overbroad. It is incapable  
15          of application. It requires a subjective analysis  
16          every time. I don't know how anybody would recognize  
17          disciplinary action in that -- with this proposal.

18          And Ms. Walker says, well, that will be  
19          handled next time. But it's true if a piece of -- if  
20          work product is sent from a public employee -- I'm a  
21          public employee. If I send the brief -- if this came  
22          up, if I send a brief to my superior and it comes back  
23          with tracked changes, that literally would fall within  
24          their definition of disciplinary action.

25          THE COURT: I think City attorneys have their

1 own very special classification.

2 MS. RISKIN: Well, I'd like to think that, you  
3 know, City attorneys are very important and deserving  
4 --

5 THE COURT: I do believe attorneys, for the  
6 entities, are elsewhere governed under the Data  
7 Practices Act as far as their work product, so --

8 MS. RISKIN: I --

9 THE COURT: That aside, maybe an -- an  
10 analysis that doesn't involve attorneys would be more  
11 --

12 MS. RISKIN: Sure.

13 THE COURT: -- apropos.

14 MS. RISKIN: Sure. There's -- well, and I  
15 think courts are also different from -- from other  
16 public entities.

17 THE COURT: We are. We're governed by our  
18 Court Access Rules governed by the -- issued by the  
19 Supreme Court.

20 MS. RISKIN: Right. So that's fair, the  
21 drafts of the brief. But another public employee who  
22 has some other form of written work product that they  
23 send and it comes back with tracked changes or there's  
24 a request in -- in an e-mail, can you please -- you  
25 know, I need you to provide your work product one to

1 two days earlier next time. Has that person just been  
2 subjected to disciplinary action?

3 And it is absurd to think that an employer who  
4 has not intended to discipline an employee and an  
5 employee who doesn't believe they've been disciplined  
6 and their union doesn't believe they've been  
7 disciplined, they can all be on the same page and  
8 understand that there has not been disciplinary action  
9 here. And yet, a public -- a data request comes in,  
10 and that would be deemed to be disciplinary action  
11 under the proposed definition by plaintiffs.

12 So suddenly, even though nobody in the  
13 employment relationship thinks that that person has  
14 been disciplined, that can be on the front page of the  
15 Star Tribune. There is now a public file that says  
16 this person has been disciplined -- "disciplinary  
17 action" if -- you know, to use the language in the  
18 statute. How would anybody recognize it?

19 And it's not hypothetical. Every day people  
20 spend -- public employees, your full-time public  
21 employee, they're spending five days a week, like --  
22 that'd be great if they were only spending 40 hours a  
23 week at work. But that's a lot of time that you spend  
24 performing and having your performance looked at.

25 Performance evaluations, we know, are not

1 public data. But how -- how would their definition  
2 distinguish a performance evaluation where there is  
3 going to be feedback on areas for improvement? Unless  
4 their proposal is that now all performance evaluations  
5 are now disciplinary action. That can't be what --  
6 what the legislature meant. And it wouldn't be  
7 consistent with case law.

8 It's -- it also constricts any workable  
9 administration of the Data Practices Act. The  
10 structure of the act is that there's a responsible  
11 authority with each entity. And a request comes in,  
12 the responsible authority has to gather the data.  
13 Whew.

14 THE COURT: Yeah. You need to --

15 MS. RISKIN: I'm so sorry. I will --

16 THE COURT: -- wrap up. Yeah.

17 MS. RISKIN: I'll speed it up. How about  
18 that?

19 Has to -- has to gather the data and provide a  
20 response. If every time we have to look at -- that  
21 responsible authority has to analyze or start  
22 interviewing people to find out did you intend to  
23 punish, there's nothing workable about that.  
24 Following a rule where you require, on the face of the  
25 document, for it to say, "this is discipline; you have

1       been disciplined," the responsible authority knows  
2       whether this is disciplinary action. They have to  
3       find out if it's final disposition, but they know it's  
4       disciplinary action. Everybody knows it's  
5       disciplinary action, because it says it.

6               That's what the Data Practices Act needs to  
7       mean in order for disciplinary action to have any  
8       meaning, in order to retain the meaning from the  
9       default provision in subdivision 4. It cannot just be  
10      everyday corrective action.

11             I'm making sure that I address anything else  
12      that they brought up. Excuse me for just one moment.

13             Unless the Court has any other questions.

14             THE COURT: I do not.

15             MS. RISKIN: Okay. Thank you.

16             THE COURT: Mr. Kelly?

17             MR. KELLY: I'll try to be as brief as  
18      possible, Your Honor.

19             THE COURT: Thank you.

20             MR. KELLY: Good afternoon, Your Honor.

21      Joseph Kelly on behalf of the Police Officers  
22      Federation of Minneapolis. I just want to start by  
23      informing the Court if -- if we look at the briefs  
24      submitted by the parties and the plaintiff,  
25      specifically, seeks to have the Court ignore the

1 Public Employee Labor Relations Act. They ignore the  
2 history behind it and seeks this Court to -- to ignore  
3 it, saying that it's going to be seeking a global  
4 definition of disciplinary action, so therefore PELRA  
5 should not be considered.

6 However, if you look at PELRA 179A.01, the  
7 public policy discusses that the public policy of this  
8 state and the purpose of PELRA is to promote orderly  
9 and constructive relationships between all public  
10 employers and their employees. This policy is subject  
11 to the paramount right of the citizens of the state to  
12 keep inviolate the guarantees for their health,  
13 education, safety, and welfare. That's in paragraph  
14 (a).

15 Paragraph (b) goes on to discuss that PELRA  
16 involves the relationships between the public, public  
17 employees, and employer governing bodies involve  
18 responsibilities to the public and a need for  
19 cooperation and employment protection which are  
20 different from those found in the private sector.

21 PELRA was designed to balance the rights of  
22 public employees, both unionized and non-unionized,  
23 because part of PELRA includes the right of public  
24 employees to organize and to attempt to organize and  
25 not be punished for doing so.

1           So PELRA does not just only apply to exclusive  
2       representatives and public employers. It applies to  
3       all public employees and all public employers and then  
4       contains different portions of public employees  
5       receive added protection.

6           So the most important piece is that in 1979,  
7       when PELRA was amended at the same time that the  
8       Minnesota Government Data Practices Act was created,  
9       it included a requirement that all disciplinary action  
10      be subject to compulsory binding arbitration between  
11      the public employer and anybody subject to the -- a  
12      collective bargaining agreement. And that said  
13      compulsory binding arbitration, that requirement must  
14      be contained in the contract or memorandum of  
15      agreement between the parties.

16          What this comes down to, quite simply, is --  
17      it's also important to note that there are certain  
18      rights of public employees and certain rights of  
19      public employers. As briefed thoroughly, the terms  
20      and conditions of employment, including discipline,  
21      must be a meet -- met and negotiated between the  
22      public employer and public employees that have  
23      exclusive representatives.

24          Of note, important in the Public Employment  
25      Labor Relations Act is inherent managerial rights.

1 The inherent managerial policy, the right to direct  
2 the workforce. So any written action just purely  
3 directing a workforce, including pure correction  
4 without a punishment aspect, falls within inherent  
5 managerial right.

6 If there is written disciplinary action by a  
7 public employer against a public employee, it must be  
8 subject to a compulsory binding arbitration. And as  
9 the City pointed out, the decision on whether or not  
10 to discipline, if there is a disciplining decision,  
11 the employer must provide notice of that decision to  
12 the employee. And pursuant to PELRA, the employee has  
13 a right for an opportunity to be heard to rebut said  
14 decision.

15 A -- the Chief of Police in the City of  
16 Minneapolis or any public employer has the right and  
17 discretion to determine whether or not to discipline  
18 somebody. The decision on whether or not to  
19 discipline, I -- let me rephrase. The decision not to  
20 discipline was specifically found to be not reviewable  
21 by any court.

22 And as the City pointed out, the whole purpose  
23 of the Minnesota Government Data Practices Act is a  
24 data classification. So data that the public employer  
25 has gets put in different buckets: public buckets,

1 non-public buckets. Disciplinary action gets put in  
2 the public bucket once it reaches a final disposition,  
3 and non-public if it's a non-disciplinary or not final  
4 disposition. If it's non-disciplinary, it's  
5 non-public.

6 And I do want to just address the plaintiff's  
7 position that all government data is presumptively  
8 public. Although when looking at parts of the  
9 Government Data Practices Act outside of the personnel  
10 data, 13.43, that may be correct. However, 13.43 is  
11 very restrictive because of subdivision 4 that says  
12 except for other subdivisions, it's presumptively  
13 private.

14 So to state that we start at a public -- that  
15 everything is public regarding personnel data until  
16 proven otherwise is just not true. It's the exact  
17 opposite. It's non-public by default, unless it meets  
18 one of the other categories specifically articulated  
19 in the Government Data Practices Act.

20 And it can't be lost that -- it's a little --  
21 I know the Court wants to make a global definition for  
22 disciplinary action. It gets a little more  
23 complicated because, as the Court notes, that there  
24 are different portions of this -- of statutes  
25 throughout the Minnesota statutes that address

1 different sectors' employees that have different  
2 classifications.

3 So the judicial branch doesn't fall within the  
4 Minnesota Government Data Practices Act. Chapter 43A  
5 addresses specifically State employees that have  
6 different rights and obligations, that addresses those  
7 employees that are not subject to collective  
8 bargaining agreements have a different guaranteed  
9 grievance process in front of a disinterested  
10 arbitrator to review whether discipline is  
11 appropriate, for instance.

12 However, getting back to the decision on  
13 whether to discipline an employee or not rests  
14 exclusively with the employer. There's a very simple  
15 test regarding disciplinary action. Is the action by  
16 the public employer -- the City of Minneapolis in this  
17 case -- subject to compulsory binding arbitration? If  
18 yes, it is disciplinary action. If no, it is not  
19 disciplinary action. That's the end of the inquiry.

20 As noted in our brief, so the decision not to  
21 discipline being not subject to review by the Court or  
22 the Court of Appeals, that was in the community --  
23 Communities United Against Police Brutality vs. the  
24 City of Minneapolis case.

25 Here, the request by the plaintiff is to have

1 the authority as a disinterested third party to review  
2 a chief's decision as a third party and have the Court  
3 intervene to determine whether or not something is  
4 actually disciplinary or not.

5 The City and the Chief's office has the -- is  
6 in the best position to determine whether or not  
7 discipline has been imposed. And as the Court noted  
8 and the City noted, the plaintiff's requested  
9 definition would be so encompassing that what it  
10 actually would end up doing is restricting a public  
11 employers' inherent managerial right. Because then  
12 it's inserting the Court into the decision-making  
13 process on whether or not discipline should -- was or  
14 was not imposed.

15 If a public employer is saying there is not  
16 discipline here, we did not -- I'm not disciplining  
17 you, to the employee, a third party cannot come and  
18 challenge said decision to not discipline. Although  
19 that may be frustrating for members of the public, the  
20 way that in the City of Minneapolis' example -- the  
21 way that that would be addressed would be at the  
22 ballot box. It would be by voting for a candidate for  
23 mayor, because under the City's charter, the mayor is  
24 -- who also then gives decision -- disciplinary  
25 decision to the Chief through statute.

1           If they're unhappy with disciplinary decisions  
2           or a lack thereof from the Chief, they vote for a new  
3           mayor and require -- ask the new mayor to replace the  
4           chief for not disciplining enough people.

5           So, Your Honor, I don't want to take too much  
6           more of the time because I think it's been extensively  
7           briefed by both parties. I did want to address the  
8           plaintiff's motion to defer our brief. Plaintiff  
9           spent a large portion of their brief addressing  
10          coaching specifically and a good portion of their oral  
11          argument.

12          I think the Court's in the best position to  
13          take whatever the parties have briefed and ignore  
14          those that it sees inappropriate to consider at this  
15          point and to actually consider those that help it make  
16          its decision. We ask that you adopt the City's  
17          proposed definition. Pending any questions from you,  
18          that's all I have this afternoon.

19                THE COURT: Okay. Thank you.

20                MR. KELLY: Thank you.

21                THE COURT: Ms. Walker, any follow up?

22                MS. WALKER: Yes, Your Honor. Your Honor, I  
23                kind of lost track of how many minutes I might have  
24                left.

25                THE COURT: Um --

1 MS. WALKER: I'll try to keep it to five to  
2 eight?

3 THE COURT: If you would keep it around ten  
4 minutes, that would be great.

5 MS. WALKER: Okay. I --

6 THE COURT: We're now at -- that clock is  
7 wrong. It's the end of daylight savings time, and so  
8 it's -- it's 3:30 now. So --

9 MS. WALKER: Okay. I -- that should be no  
10 problem for me.

11 I don't know that there's a particular order  
12 here of what I'm going to say, but I do want to  
13 address a number of things the City and Federation  
14 argued.

15 So first of all, the City argued that the  
16 issue of ambiguity and the finding in April that the  
17 statute is ambiguity -- ambiguous is the law of the  
18 case. That's the first we've heard them make that  
19 argument. Up until the hearing they were arguing that  
20 it was unambiguous. And I'm not aware of any case law  
21 that would prevent you in any way from revisiting that  
22 issue and changing your mind if you think it'd be  
23 appropriate to do so.

24 On the presumption of access and what happens  
25 in 13.43, does the presumption get flipped? Your

1 Honor, there's a reason we put the language from KSA--  
2 KSTP on page 10 of our handout. Like, I don't know  
3 how to say it in a different way, but I would just  
4 encourage you to read that case. That Minnesota  
5 Supreme Court case from six years ago is the latest  
6 word on the issue. It's very clear the presumption  
7 applies to every provision. There's no flipping of  
8 the presumption.

9 And the same is true of the iPad opinions.  
10 They just don't say what the City says they say. And  
11 I would encourage you to read them; there's really  
12 just four that really matter. And they are briefed in  
13 our response that was filed on October 24th. Two of  
14 them don't even talk about the meaning of disciplinary  
15 action in a way that's helpful to you. They don't  
16 provide a definition.

17 The two that provide a definition go to the  
18 dictionary. None of them say we're deciding that we  
19 defer to the City. Now do they look at City  
20 documents? Do they look at the underlying data? Do  
21 they look at the notice the employees got before they  
22 were disciplined or not disciplined, as the case may  
23 be? Sure.

24 And I think we'll do that in discovery, and I  
25 think you'll hear argument on that when we're back

1 here to -- to wrap this case up with a complete motion  
2 for summary judgment.

3 But to the extent those iPad opinions talk  
4 about the meaning of disciplinary action, they go to  
5 the dictionary. And again, I don't know how else to  
6 say that other than to just say they're not reading  
7 them correctly, and I would encourage you to read  
8 them.

9 They're also wrong that you owe deference to  
10 those opinions. And we briefed this extensively in  
11 our October 24th submission, this is an issue of de  
12 novo, particularly if you were to find that the  
13 statute is unambiguous. It's your call, Your Honor,  
14 how you define that. And you don't owe any deference  
15 to the Department of Administration or the  
16 Commissioner. Although if you're inclined to defer,  
17 again, we think deference would point you to relying  
18 on dictionary definitions.

19 Your Honor, what -- what you face here is a  
20 fork in the road. Either the statute is unambiguous  
21 and you go with the plain meaning and you go with the  
22 dictionary definition or you find that it's ambiguous  
23 and you look at legislative intent. And although the  
24 City likes to parade out a whole bunch of horrible  
25 hypotheticals and the sky is falling and what are we

1       going to do, this is going to be so confusing. They  
2       haven't told you anything that would suggest that the  
3       legislature intended to give them carte blanche to  
4       decide what is disciplinary and what is not and to  
5       decide that if it's not convenient to have it publicly  
6       disclosed, we're just going to say it's not  
7       disciplinary. Nothing they've cited supports that  
8       conclusion.

9               And so what they've done, Your Honor, is they  
10       have tried to win their case today with hypotheticals.  
11       But frankly, they overstate them. And let me give you  
12       an example. If you look at Slide Number 2, that very  
13       first definition, or very first bullet point, I should  
14       say; which is not the language of the statute, but  
15       it's something the legislature could have done if it  
16       wanted to.

17              The red words in that very first bullet are  
18       straight from the collective bargaining agreement,  
19       right? And so the collective bargaining agreement in  
20       two separate sections lists what the City and the  
21       Federation agree is disciplinary: warning,  
22       suspension, written reprimand, transfer, demotion, or  
23       discharge.

24              And Ms. Riskin came up here, and I believe I'm  
25       quoting her directly when she said, "An employee

1 doesn't know it's not disciplinary unless we tell them  
2 it's disciplinary, unless it says at the top of the  
3 form it's disciplinary." And so take that to its  
4 illogical extreme, Your Honor. The City could go to  
5 an employee it doesn't like anymore and it could say,  
6 well, if we give you a warning or a suspension or a  
7 written reprimand, a transfer, demotion, or discharge,  
8 you get to grieve it. So you're just going to go on a  
9 timeout. It's not disciplinary. It's not  
10 disciplinary; it's just a timeout. And we're not  
11 going to pay you.

12 And I guarantee the Federation would be the  
13 first one here saying that's discipline and we know  
14 it's discipline; it feels like discipline. Just  
15 because you didn't tell us it was disciplinary, just  
16 because it's not -- a timeout's not listed here;  
17 that's disciplinary.

18 And so this idea that no one knows it's  
19 disciplinary unless it's spelled out and only the City  
20 is the arbiter of what is disciplinary, that actually  
21 doesn't serve the Federation very well either. And I  
22 think they're short-sighted not to realize that.

23 The Federation -- while the City says it's  
24 only disciplinary if we tell them it's disciplinary,  
25 the Federation's point of, well, if it's not

1           grievable, it's not disciplinary. And again, the  
2           Federation didn't have anything to say to pages 11 and  
3           12 of our handout.

4           THE COURT: So on this issue that you're  
5           raising -- it's not unless they say it is -- I mean,  
6           aren't you crossing into that line of the inherent  
7           managerial authority? Because isn't -- isn't there  
8           case law, especially in the arena of teachers, that  
9           essentially putting them on special assignment, so  
10          changing their actual duties, putting them on special  
11          assignment as long as they're paid the same, isn't  
12          grievable? Isn't disciplinary action? Isn't there  
13          case law, you know -- and that's an area that's just  
14          -- is up to the City? Or up to the employer because  
15          of their authority?

16          MS. WALKER: There may be, Your Honor. I  
17          think my point is, it's not disciplinary just because  
18          the City says it is, just because they label it as  
19          such. And they don't get to get out from under the  
20          rubric of disciplinary action by putting somebody on  
21          leave without pay and calling it a timeout instead of  
22          a suspension. Just like they don't get out from under  
23          the rubric of discipline and public disclosure by  
24          giving someone what amounts to a written warning and  
25          calling it coaching.

1           And so it just can't -- that just can't -- and  
2           again, that's fact-specific to our case, and I know  
3           you're looking global, but it just can't be that the  
4           only thing that is disciplinary is what we tell the  
5           employee is disciplinary. Because it would give the  
6           City not only authority to keep things from the  
7           public, but to run roughshod over public employees by  
8           calling discipline something not -- that it's not.  
9           I'm not sure I said that right. By calling something  
10          that's clearly discipline by another name that doesn't  
11          have to be -- happen to be referenced in the  
12          collective bargaining agreement, by calling it a  
13          timeout.

14                 So that -- that can't be the answer. And it  
15          also can't be the answer that if it's not grievable in  
16          the collective bargaining agreement, it's not  
17          disciplinary. The City has admitted that's not true.  
18          That's the letter on page 11.

19                 We know that warnings are disciplinary, that  
20          it says so in the collective bargaining agreement, but  
21          they're not grievable either. And so, again, I --  
22          what they're saying to you -- what Mr. Kelly said is  
23          just not accurate.

24                 Your Honor, just two final points. You know,  
25          we believe that the statute is unambiguous. And I

1 can't get a read on whether you agree with us or not  
2 about that. But if you --

3 THE COURT: Well, I think I found very much  
4 not on that in my order. I don't know how much  
5 clearer than my written order I already issued on that  
6 would be.

7 MS. WALKER: Fair enough. We wanted to give  
8 you the benefit of briefing --

9 THE COURT: No, you can brief it and I have --  
10 am reading it, and I am considering the matters  
11 briefed before me. But I think I have taken what  
12 could not be more of an express position on ambiguity,  
13 other than writing in a written order I find it to be  
14 ambiguous.

15 MS. WALKER: Understood, Your Honor.

16 Should you change your mind, you don't need to  
17 concern yourself with consequences. And much of the  
18 argument today falls by the wayside. And I do want to  
19 make that point because the consequences are unclear.  
20 But it is the legislature's problem and concern if you  
21 were to agree with us and find that this is  
22 unambiguous.

23 THE COURT: And I understand that argument.

24 MS. WALKER: And the final point, Your Honor,  
25 is that if you find yourself here today uncertain

1       about what to do, you can deny both motions. You  
2       asked for briefing on this, but if you decide that  
3       maybe this case should move into discovery, maybe this  
4       is an issue that would benefit from some discovery,  
5       and I can take this under advisement and hold it in  
6       abeyance, that is within your power. And we have no  
7       objection to having both motions denied, Your Honor.

8               That takes this case back to where it was in  
9       January, April, where you denied the motion for  
10      judgment on the pleadings, and the case moves into  
11      discovery as is the normal course. Thank you.

12             THE COURT: Thank you. Any last words,  
13      Ms. Riskin? I think -- okay. You were right at about  
14      your time anyhow, so.

15             The Court will take the matter under  
16      advisement and issue a decision as soon as we can. It  
17      is likely to be in that 60- to 90-day timeframe given  
18      that I don't think I have a day available for writing  
19      in between now and the end of the year. So we're  
20      going to be picking this up and looking at it  
21      primarily starting in January.

22             So with that, we'll go ahead and go off the  
23      formal court record. Thank you, everybody, for the  
24      arguments presented and the extensive briefing and  
25      thought that everybody has put into this issue and

1           presented to the Court. Thank you.

2                   MS. RISKIN: Thank you, Your Honor.

3                   MR. SHULMAN: Thank you, Your Honor.

4   (WHEREUPON, the proceedings were concluded at 3:42 p.m.)

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1 STATE OF MINNESOTA

2 COUNTY OF HENNEPIN

3  
4 COURT REPORTER'S CERTIFICATE

5  
6 I, Erin R. Watson, an Official Court Reporter in  
7 and for the Fourth Judicial District of the State of  
8 Minnesota, do hereby certify that I have transcribed  
9 the foregoing transcript from a CourtSmart audio  
10 recording, and that the foregoing pages constitute a  
11 true and correct transcript of the proceedings taken  
12 in connection with the above-entitled matter.

13  
14  
15 Dated and signed the 1st day of December, 2022.

16 

17 /s/Erin R. Watson  
18  
19  
20  
21  
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25

# EXHIBIT

# J

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

-----  
Minnesota Coalition on

Government Information,

Plaintiff,

vs.

Court File No. 27-CV-21-7237

City of Minneapolis,

Casey J. Carl,

Patience Ferguson and

Medaria Arradondo,

Defendants.

TRANSCRIPT OF PROCEEDINGS

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The above-entitled proceeding came before the  
Honorable Karen Janisch on the 18th day of January 2022 at  
approximately 3:05 p.m. in Courtroom 1456 in the Hennepin  
County Government Center, City of Minneapolis, County of  
Hennepin, State of Minnesota.

APPEARANCES:

Mary Andreleita Walker, Esquire, for the Plaintiff.

Daniel Shulman, Esquire, for the Plaintiff.

Sarah Riskin, Esquire, for Defendants, City of  
Minneapolis, Casey Carl, Patience Ferguson, and Medaria  
Arradondo.

1 APPEARANCES (continued):

2 Joseph Kelly, Esquire, for Defendant, Police Officers'

3 Federation of Minneapolis.

1     **(WHEREUPON, the following proceeding was duly had:)**

2                   THE COURT: I'm now going to formally call  
3     the case, and we're going to go on the formal court  
4     record. This is Court File 27-CV-21-7237. I'm going  
5     to start the hearing by asking to have appearances  
6     noted for the record, and I'm going to start on behalf  
7     of the plaintiff, the Minnesota Coalition on  
8     Government Information.

9                   MS. WALKER: Thank you, Your Honor. This is  
10    Leita Walker at Ballard Spahr on behalf of the  
11    plaintiff, who you will hearing me refer to as MN  
12    COGI. With me today also representing the plaintiff  
13    and on your screen are Dan Shulman from the ACLU and  
14    the person from Ballard Spahr, Terry Nelson, from the  
15    ACLU. I think that's everyone formally appearing  
16    today.

17                  THE COURT: Okay. And to assist our court  
18    reporters in making sure we have an accurate record,  
19    Ms. Walker, are you going to be presenting argument in  
20    opposition on behalf of the plaintiff?

21                  MS. WALKER: Yes.

22                  THE COURT: Okay. And now, I'm going to ask  
23    for appearances to be noted for the record on behalf  
24    of the defendant.

25                  MS. RISKIN: Good afternoon, Your Honor.  
26

1 This is Sarah Riskin from the Minneapolis City  
2 Attorney's Office appearing on behalf of the  
3 defendant. My co-counsel rather than appearing  
4 formally are in the public link.

5 THE COURT: Okay. And you're appearing on  
6 behalf of the City of Minneapolis, Casey J. Carl,  
7 Patience Ferguson and Medaria Arradondo.

8 MS. RISKIN: That's Arradondo. Yes.

9 THE COURT: Thank you.

10 MS. RISKIN: Yes, Your Honor. It's a joint  
11 motion by all defendants.

12 THE COURT: Okay. And on behalf of the  
13 intervenor?

14 MR. KELLY: Good afternoon, Your Honor.  
15 Joseph Kelly on behalf of intervenor, Police Officers'  
16 Federation of Minneapolis.

17 THE COURT: All right. And before we get  
18 started, I'm going to note that the Court did by  
19 motion earlier today grant request from five media  
20 outlets to be able to record and cover today's  
21 hearing. The goal of the Court is to try to make this  
22 as consistent with what it would be like if we were in  
23 person in the courtroom and I had granted an order  
24 permitting them to set up cameras in the courtroom.

25 I'm also going to note that earlier today after  
26

1 the Court filed its initial order, the Court did  
2 receive another request by a media outlet to also be  
3 present and record today's hearing. The Court has not  
4 granted that request. It was coming in at a timing  
5 that would not have allowed any time for any parties  
6 to have responded and objected to the request given  
7 its timing and the lateness of the timing. So, the  
8 only media outlets for which the Court has granted the  
9 request to record this session are those that are  
10 appearing here today and specifically were granted  
11 that right through the Court's earlier filed order.

12 No other recording of this hearing is permitted  
13 by any party, any attendee or any person. Only the  
14 Court's own recording and those of the media for which  
15 the Court's order covers are permitted any recording.

16 All right. I am going to ask that just for  
17 clarity in the record that when you begin speaking as  
18 attorneys if you could state your name so that it will  
19 be clear who is speaking.

20 The Court has before it this afternoon a motion  
21 filed by the defendants in this case seeking judgment  
22 on the pleadings. I will start with argument from the  
23 City and then, I will hear argument from the plaintiff  
24 in opposition to the motion. My understanding and  
25 I'll confirm this, Mr. Kelly, is that the intervenors  
26

1 are not participants in this motion, correct?

2 MR. KELLY: That's correct, Your Honor.

3 THE COURT: Okay. And so, Ms. Riskin, my  
4 understanding is you will be arguing the motion on  
5 behalf of defendants. And just for timing purposes, I  
6 did schedule an hour for this hearing, and we'll have  
7 about an hour. That gives both sides about 30  
8 minutes. We are getting started a little bit late.  
9 So, we will go for about an hour from now. Ms.  
10 Riskin, go ahead when you're ready.

11 MS. RISKIN: May I please the Court. My  
12 name is Sarah Riskin. I'm appearing today on behalf  
13 of the defendants. Courts do not sit as super  
14 personnel departments. This is a common concept in  
15 employment discrimination cases, but it applies  
16 equally here. The plaintiff is asking the Court to  
17 insert itself in the City's management decisions and  
18 convert what the City has clearly deemed is not  
19 discipline into discipline because if plaintiff  
20 prevails, the data it seeks will become public.

21 But the City's hands, the defendants' hands, are  
22 tied by the Data Practices Act because the data  
23 plaintiff seeks is private. (inaudible) and has  
24 always been a nondisciplinary tool. And the City has  
25 an interest and employers have an interest in having  
26

1       some means of providing nondisciplinary feedback and  
2       even corrective action to employees. It builds trust  
3       for an employee to be able to make mistakes without  
4       being disciplined. The City after all hires people,  
5       and people are not perfect.

6             It's to everyone's benefit for employees to be  
7       able to succeed at their highest potential, which  
8       includes they have to do something different without  
9       also being told that they are being disciplined.  
10       Discipline can be demoralizing. There has to be  
11       something short of discipline that employers can use  
12       as a tool in managing employee performance. And  
13       relevant here, coaching can be done quickly.

14            Discipline does not happen quickly in the public  
15       sector. The Public Employment Labor Relations Act  
16       requires bargaining over terms and conditions of  
17       employment including that there needs to be a  
18       grievance arbitration procedure or written discipline.  
19       If a police officer, the Police Officer Discipline  
20       Procedures Act has procedural requirements. There are  
21       pre-deprivation procedures and post-deprivation  
22       procedures.

23            Minneapolis City Ordinance Chapter 172 lays out a  
24       multi-step process before police officer discipline  
25       can be imposed. It is not uncommon for it to take

1 years for discipline to become final in the public  
2 sector.

3 The City has an inherent managerial interest in  
4 having some nondisciplinary means of addressing issues  
5 quickly and that's what coaching is, and that's how it  
6 is differentiated from discipline. The judgment of  
7 when and whether to discipline employees is something  
8 that is unique reserved for an employer.

9 Now, in the case of police officers, by law,  
10 discipline decisions are reserved for the chief law  
11 enforcement officer. This includes the determination  
12 of whether someone should be disciplined, what  
13 discipline to impose and --

14 THE COURT: Could I ask, please, by law, if  
15 you could be clear as to what law, whether it's a stat  
16 statute, whether it's a provision of the common law,  
17 whether it is an ordinance that has an active law.

18 MS. RISKIN: Sure. Yeah. Actually, it  
19 comes from multiple places. State law, Minnesota  
20 Statute 626.89, the Peace Officer Discipline  
21 Procedures Act reserves the discipline decisions for  
22 the chief law enforcement officer. It specifically  
23 says that no civilians or other oversight board can  
24 infringe on that right. Minneapolis City Ordinance,  
25 Chapter 172, also believes under Minneapolis city

1 ordinance that the chief is responsible for all  
2 discipline decisions.

3 And then aside from the kind of legislative  
4 statutory rules, the Labor Agreement also assigns -- I  
5 guess that's a different sort of law, but the Labor  
6 Agreement defines that the Chief is responsible for  
7 discipline decisions. And that includes the right to  
8 decide not to discipline, to make a determination not  
9 to discipline.

10 If plaintiff wants coaching data, the solution is  
11 for the Legislature to change what personnel data is  
12 made public under the Data Practices Act. Taking the  
13 factual allegations in the complaint as true, the  
14 complaint fails to satisfy Rule 12.03 standards.

15 So, I'll start first with the Data Practices Act.  
16 This act is the Legislature's way of balancing the  
17 public's interest in monitoring government affairs  
18 with the private interests of those who are involved  
19 in government operations. The Legislature recognizes  
20 that public employees have a privacy interest in their  
21 personnel data. This is the idea that people do make  
22 mistakes, and they need training and they need  
23 mentoring.

24 The Legislature has struck a balance in making  
25 government data public by deciding that where there is  
26

1 and this is a quote from the statute, "final  
2 disposition of discipline action," that then the  
3 specific reasons for the action and the data  
4 documenting the basis for the action are public. But  
5 the Data Practices Act doesn't define disciplinary  
6 action.

7 So, courts, you know, if we look at a dictionary  
8 definition, you see that generally discipline means  
9 punishment. So, in the employment context, punitive  
10 actions are things that result in loss of pay, loss of  
11 seniority, loss of title or a change in your terms and  
12 conditions of employment. There's no allegation that  
13 coaching has any of these nor could there be. It's  
14 clear that the City --

15 THE COURT: So, is the City's position that  
16 that's the place that the Court starts is that the  
17 Court has to start at looking at terms used in the  
18 Data Practices Act, disciplinary action, and determine  
19 whether or not under the statute language coaching is  
20 disciplinary action?

21 MS. RISKIN: Yes. So, under the statute's  
22 language, and this is why it is appropriate for  
23 amotion for judgment on the pleadings that you look at  
24 the statutory language and while there's no definition  
25 supplied, we look to a dictionary, and it tells us  
26

1        what is considered disciplinary. And the other part  
2        of the statute that helps is looking at Subdivision  
3        2B, which explores further what happens, what does it  
4        mean to have final disposition of disciplinary action.  
5        And there, really, that statute is talking about what  
6        is final disposition. But it says in the case of  
7        arbitration proceedings arising under collective  
8        bargaining agreements, the final disposition occurs at  
9        the conclusion of the arbitration proceedings or upon  
10       the failure of the employee to (inaudible) arbitration  
11       within the time provided by the bargaining agreement.

12        So, the statute is telling you that it takes into  
13       account grievance arbitration procedures. And it  
14       interacts with other statutes. It interacts with  
15       PELRA, the Public Employment Labor Relations Act,  
16       cause in PELRA, it says that, you know, public  
17       employers have to bargain over the terms and  
18       conditions of employment, and that includes that all  
19       contracts must include a grievance procedure providing  
20       for compulsory binding arbitration of grievances  
21       including all written disciplinary actions.

22        The claim here is coaching is written discipline  
23       and, therefore, it has to be subject to grievance  
24       arbitration and the Data Practices Act addresses that  
25       and says you don't reach final disposition without it.

1 THE COURT: I'm not sure that the claim of  
2 the plaintiff is that coaching is written discipline.  
3 Is there room in their complaint for the argument that  
4 the coaching is some form of verbal discipline, verbal  
5 disciplinary action and that there is a writing that  
6 documents the verbal action because the discipline  
7 itself is verbal rather than written?

8 MS. RISKIN: Well, it's my understanding  
9 that the allegation is that it's written discipline,  
10 specifically because of the coaching documentation  
11 form. I suppose if it's a different argument then,  
12 maybe we're in a different world of determining the  
13 written aspect of it.

14 THE COURT: I thought I read in their and  
15 the plaintiffs can correct me if I am incorrectly  
16 reading their papers, their memorandum in opposition.  
17 I thought they had pleaded it at some point to a  
18 warning, which would potentially be a verbal warning.

19 MS. RISKIN: There is that argument made  
20 that it's identical to a warning, and I think we have  
21 addressed this in the brief, but the civil services  
22 rules do have something that is called a disciplinary  
23 warning, which also the fact that it says disciplinary  
24 warning, I think, means the civil service rules  
25 contemplate that there can be a warning that is not  
26

1 disciplinary, but the civil service rules also are --  
2 the labor agreement trumps the civil service rules  
3 when we're talking about discipline in the police  
4 officer context.

5 And the question of whether coaching is identical  
6 to a warning, I'll point to the PCOC meeting that is  
7 incorporated throughout the complaint, and there were  
8 questions asked about that and answered as to why this  
9 would be different. A disciplinary warning would  
10 still need to follow the same procedure for  
11 discipline. That's all under, for example, the Peace  
12 Officer Discipline Procedures Act.

13 And there are other procedures, Lowdermill (ph),  
14 Garrity (ph) and are other cases that come into play  
15 also in public employment separate from the statute.

16 So, I guess to the extent the allegation is of  
17 written discipline, then the Data Practices Act --  
18 we're at the end of the story. There is no allegation  
19 that there is grievance arbitration, you know, and  
20 under the labor agreement. So, if we look at the  
21 labor agreement to figure out what is considered  
22 discipline in the MPD since this case is about the  
23 MPD, you look at the labor agreement for the MPD. It  
24 has suspension, written reprimand, demotion,  
25 discharge.

1           Those are all things that are subject to  
2 grievance arbitration. They are all things in Article  
3 12, which is called discipline. They are all  
4 consistent with the dictionary definition of  
5 discipline with, you know, there being something  
6 punitive or loss of pay.

7           And if the Court is using reasonable inferences  
8 from the allegations, and the only reasonable  
9 inference is that the City and the Federation both  
10 recognize this list as the universal list of possible  
11 disciplinary actions. There was a comment, I think,  
12 within a brief about, you know, maybe the City and the  
13 Federation are just kind of colluding, but it's not  
14 reasonable to presume. It is about reasonable  
15 inferences.

16           It's not reasonable to presume that the City and  
17 the Federation have conspired to somehow  
18 (indiscernible) power's requirement for any number of  
19 reasons. A reasonable inference doesn't include a  
20 presumption that two adversaries negotiate a  
21 collective bargaining agreement in a way that would  
22 subject both parties to unfair labor practice charges.

23           It's certainly not reasonable to make that  
24 inference when the parties have negotiated for an  
25 arbitration procedure for discipline, and that's the  
26

1 whole reason the Federation is here cause the  
2 Federation is bound to protect its members' interests,  
3 which means the Federation also has to have a say if  
4 the agreement, if bargained for, is going to be  
5 upended.

6 Under the Labor Agreement, employees can also  
7 only be disciplined for just cause. This is in  
8 Article 12.01, and I don't think this received much  
9 attention in the briefing, but it's important. I  
10 think it's an important thing to look at.

11 Officers cannot be disciplined unless there is  
12 just cause, and what just cause is is, you know, you  
13 can write a book. People have written books on what  
14 is considered just cause. The coaching documentation  
15 form establishes that an officer can be coached  
16 without a policy violation, without a finding of  
17 misconduct. There is nothing that requires there to  
18 be a particular, you know, procedure that has been  
19 followed before discipline. There is, frankly,  
20 nothing that says that there has been just cause found  
21 before coaching can be imposed.

22 Coaching also can't be discipline because as we  
23 were talking about before, discipline decisions are  
24 reserved to the Chief, and that's under the Peace  
25 Officer Discipline Procedures Act, under the Labor  
26

1 Agreement, under local ordinance, but officers can be  
2 coached without any involvement of the Chief. Local  
3 ordinance has a very specific procedure there that  
4 permits it. If only the Chief can issue discipline  
5 but the joint supervisors from OPCR, Officer Police  
6 Conduct Review, can refer cases for coaching, and  
7 precinct supervisors can determine coaching is  
8 appropriate. Coaching cannot, under the ordinance, be  
9 discipline.

10 Now, plaintiff addresses this issue by claiming  
11 that there are procedural differences between coaching  
12 that results in a joint supervisor referral and  
13 coaching imposed by the Chief after full  
14 investigation, and they're saying they're not after A  
15 level coachings anyway. But there's no basis to make  
16 this distinction because at the end of the day,  
17 coaching is coaching. There is no difference in the  
18 final outcome. There is no difference in the form.

19 THE COURT: But if the distinction is who  
20 makes that final decision and some of them, a subgroup  
21 of coaching memoranda relate to decisions made by  
22 persons other than the chief, that wouldn't  
23 necessarily resolve whether or not those coaching  
24 decisions made by the Chief are or are not discipline.  
25 Would it?

1 MS. RISKIN: Well, the coaching  
2 documentation doesn't have a spot for the Chief to  
3 sign. So, the coaching documentation, you know,  
4 indicates the supervisor. I'd have to look at the  
5 form to see the exact title.

6 THE COURT: I think I need to make myself a  
7 little more clear. So, wouldn't it be possible there  
8 could be two groups of data, one which are coaching  
9 imposed by the Chief, and the other are coaching  
10 imposed by persons other than the Chief?

11 MS. RISKIN: I think that's theoretically  
12 possible, but it is not how anything operates, right?  
13 So, if you look at the coaching documentation form,  
14 there's no way to tell from a coaching documentation  
15 form whether that came through the joint supervisors  
16 or whether that came through a full investigation of  
17 the Chief.

18 You know, on that point, the joint supervisors  
19 can refer a case, you know, for coaching, but they  
20 don't have to. So, you could have the same case that  
21 has an A level violation where the joint supervisors  
22 refer one way and it gets coached without any  
23 involvement from the Chief, and that same case also  
24 could go through full investigation and still end up  
25 in the same place with coaching documentation.

1           So, in that sense, you still have the same  
2           allegation. You still have the same outcome. I don't  
3           think -- that process is not a real distinction that  
4           happens.

5           You know, at the end of the day whether somebody  
6           has been coached -- if you have somebody who is  
7           coached over here and somebody is coached over here,  
8           either way, that person is coached.

9           And both of those forms are stored in OPCR files.  
10          That's what was said at the PCOC meeting. Even though  
11          in the case, you have some procedural hallmark of  
12          discipline, you don't have all of them because even if  
13          you go through the Chief and you have all of the  
14          hearings or the formal statement and the interview,  
15          you still don't have grievance arbitration. The Data  
16          Practices Act acknowledges grievance arbitration as  
17          being part of the final disposition of disciplinary  
18          action.

19          THE COURT: Although doesn't the actual  
20          statutory language in relation to the definition of a  
21          final disciplinary action, arbitration defines when it  
22          occurs if it's subject to arbitration. But if it's  
23          not subject to arbitration, it's just the decision of  
24          the final decision maker within the governmental  
25          entity. That's the point that it becomes final,  
26

1 correct?

2 MS. RISKIN: Yes. Correct. And that makes  
3 sense when you're outside of the collective bargaining  
4 process. Not all public employees are in a union,  
5 right? So, there are public employees who, I'm one of  
6 them. I'm not in a union. If I'm disciplined, I'm  
7 not going have a grievance arbitration procedure. And  
8 so, the first part addresses that.

9 But we're operating in a world where the City and  
10 the Federation have exhaustively negotiated the impact  
11 of discipline and the grievance arbitration.

12 THE COURT: So, my understanding is the  
13 City's argument is that the decision from the final  
14 decision maker in the governmental entity applies to  
15 those who are not subject to PELRA and collective  
16 bargaining whereas arbitration is compulsory and  
17 mandatory in relation to anything that constitutes  
18 discipline for PELRA employees covered by collective  
19 bargaining agreements.

20 MS. RISKIN: Well, I think it depends. You  
21 have to look at the agreements. There's a potential  
22 world and so, the parties come together and they talk  
23 about what's discipline and there's a potential world  
24 where the parties could say here are the things. I'm  
25 trying to think of one of the agreements off the top  
26

1 of my head, and I apologize that I can't point to it  
2 right now. But there are agreements where they say  
3 here's the discipline, and you can file an appeal. Of  
4 this list, you can appeal A, B and C, or B, C and D,  
5 but not A. So, there can be collective bargaining  
6 agreements where the parties agree they are not going  
7 to allow for a grievance arbitration procedure for  
8 certain types of discipline.

9 THE COURT: Okay. But for disciplinary  
10 action that fell under that and wasn't grievable, it  
11 becomes final at the final decision of the  
12 governmental authority?

13 MS. RISKIN: Yes.

14 THE COURT: At that point.

15 MS. RISKIN: Yes. Whatever that final  
16 decision is.

17 THE COURT: And I just want to confirm I  
18 understand your argument in regards to the statutory  
19 language, disciplinary action as used within the  
20 Minnesota Government Data Practices Act. Is it the  
21 City's position that that term is not ambiguous and  
22 it's subject to a dictionary-based definition that  
23 would apply to any entities that are covered by the  
24 Data Practices Act? Okay.

25 MS. RISKIN: What about the problems with  
26

1 plaintiffs' logic here? Every allegation of fact is  
2 that the City and MPD has consistently treated  
3 coaching as nondisciplinary, and that's the  
4 Federation's position to the offense and (inaudible)  
5 subject to consideration. But there's no allegation  
6 that anyone involved with coaching on any end of it  
7 has ever considered it to be discipline. And we don't  
8 agree with plaintiff's allegations regarding the  
9 numbers on the OPCR dashboard but, you know, our  
10 disagreement is irrelevant for purposes of this  
11 motion. I understand that. Allegations are taken to  
12 be true.

13 But what makes absolutely zero sense is  
14 plaintiff's allegation that the City is somehow hiding  
15 something from the public considering the fact that  
16 the City publicizes aggregate data regarding coaching  
17 in addition to both aggregate data and specific data  
18 the City formally makes available about discipline.  
19 If the City or the MPD were trying to hide its  
20 coaching practices, it would not publicize the fact  
21 that it uses coaching or the number of times it does  
22 so.

23 And to be clear, the City doesn't have a stake in  
24 whether the Data Practices Act says something is or is  
25 not public. If the data is public, the City will  
26

1 provide it. But the Data Practices Act does not  
2 require the relief of nondisciplinary private data  
3 and, in fact, it prohibits it.

4 So, you know, the City doesn't have a choice  
5 about what the Legislature deems to be public, but the  
6 choice that it does have is how it treats its  
7 employees and the ways that it seeks encourage and  
8 build the workforce short of discipline. The City has  
9 to have a nondisciplinary means of communicating with  
10 its employees to provide feedback and it needs  
11 something that can be effective, which means  
12 addressing issues as they arrive and not having to go  
13 through a long drawn-out process before it can have  
14 the conversation and set up the (indiscernible).

15 The City has called this coaching. The bottom  
16 line is coaching is just not discipline under the Data  
17 Practices Act. It's not discipline because the Chief  
18 says it's not and the Chief has the discretion to make  
19 these decisions. It's not discipline because it has  
20 never been treated as such. It's not discipline  
21 because it's not grievable, and it's not discipline  
22 because it can be imposed without any of the  
23 procedural hallmarks of discipline.

24 There's no union representative present for  
25 coaching. Employers have the inherent right to  
26

1 determine whether the actions they take are  
2 disciplinary. And because coaching is not discipline,  
3 it's not public data.

4 The allegations in the complaint do not state a  
5 colorable claim for relief, and the defendants  
6 respectfully request our motion to be granted. I'm  
7 happy to answer any other questions, but otherwise, I  
8 will wait for rebuttal.

9 THE COURT: I do have a couple questions on  
10 your this is a motion that is found under Rule 12.03  
11 as a motion for judgment on the pleadings. As I  
12 understand the motion brought by the City, the City is  
13 taking the position that all claims of all kinds are  
14 subject to dismissal on the motion for judgment of the  
15 pleadings and that the Court should issue an order  
16 dismissing all the claims in the complaint with  
17 prejudice. Is that accurate?

18 MS. RISKIN: Yes.

19 THE COURT: Okay. I guess the question I  
20 have is that whether or not, in particular, all of the  
21 claims as asserted within the complaint or that could  
22 be reasonably inferred as being asserted within the  
23 confines of the complaint are addressed by the motion  
24 brought by the City. Specifically, the complaint  
25 asserts four counts under the Data Practices Act or  
26

1 related to the Data Practices Act, one for an order  
2 from the Court to compel compliance with the act, a  
3 claim for damages for violation of the act, a claim  
4 for injunctive relief regarding policies and how to  
5 implement compliance with the act and lastly, a claim  
6 for declaratory relief under Minnesota Statute 555 in  
7 relation to declaring the rights and issues under the  
8 Data Practices Act.

9 The question I have is even if the Court agrees  
10 with your statutory interpretation, does your motion  
11 actually address all of the specific claims and  
12 requests asserted in the complaint, and I'm going to  
13 focus particularly on allegations in the complaint  
14 that of the four items, not the four claims, but the  
15 four items requested by the plaintiff, that their  
16 fourth sought on nonemployee specific data in which  
17 coaching is described as discipline and that they did  
18 not get a response for that, wouldn't that claim at a  
19 minimum survive cause that would be public data, not  
20 about the individual employees or about communications  
21 or documents within the city and the nature of their  
22 describing coaching, these would be discipline.

23 MS. RISKIN: You know, that's a fair  
24 question. I guess I don't have right in front of me  
25 what the City's response was. But I recall the City  
26

1       responding to the data request in multiple parts  
2       saying there is no responsive data or saying coaching  
3       is not discipline, and also the City has no responsive  
4       data. I guess I read that as saying there was no data  
5       comparing, related to that fourth request, that there  
6       was nothing describing and I'm sorry cause I don't  
7       have the wording exactly, the request in front of me.

8               THE COURT: But there wasn't that there was  
9       no response, but that the response was there was no  
10      data to produce in response to the request?

11             MS. RISKIN: Yeah. I thought it said the  
12      City has no responsive data. But I'll concede to the  
13      extent the briefing is not, you know, was not clear,  
14      if the Court finds that the briefing isn't sufficient  
15      on that, then so be it, and that's what remains.

16             THE COURT: Okay. Anything further, Ms.  
17      Riskin?

18             MS. RISKIN: Not at this point. I'll wait  
19      for rebuttal.

20             THE COURT: Okay. Ms. Walker.

21             MS. WALKER: Thank you, Your Honor. Good  
22      afternoon and I'm glad you're feeling better.

23             THE COURT: Thank you.

24             MS. WALKER: So, you know, very briefly,  
25      I'll argue that the defendants' motion is  
26

1 inappropriate and untimely to begin with. These sorts  
2 of motions are meant to be used in connection with  
3 affirmative defenses and counterclaims. There are  
4 none of those. If defendants thought that MN COGI had  
5 failed to state a claim, it really should have brought  
6 a motion to dismiss several months ago, but they  
7 answered, the Federation intervened. They waited for  
8 plaintiff to start discovery. They even answered some  
9 of it. And six months later, they bring the motion.  
10 We think it should be dismissed for that reason alone.

11 But regardless, the bar MN COGI has to pass to  
12 survive defendants' motion for judgment on the  
13 pleadings is very, very low, and we have easily  
14 cleared it. All that's required -- this isn't the  
15 federal plausible facts standard. All that's required  
16 is that we show a possibility that evidence will be  
17 discovered that supports our claim and MN COGI has  
18 done that and more.

19 And what is the claim? It is that defendants  
20 violated Section 13.43 of Minnesota statute, which is  
21 at the top of the slides that we sent over a while  
22 back, and I'm hoping that Your Honor has that in front  
23 of you as I'll refer you to discreet slides as I go  
24 through.

25 THE COURT: Okay.

1 MS. WALKER: MN COGI sought coaching data  
2 under that statute on grounds that coaching is  
3 disciplinary action and, thus, public under 13.43.  
4 And when defendants refused to disclose data  
5 responsive to that request, they said it was because  
6 coaching is not discipline, and you can see their  
7 response on Slide Number 2.

8 So, that is how MN COGI structured its complaints  
9 in this case. It looked at the defendants' rationale  
10 for refusing to disclose presumptively public data,  
11 and it filed a complaint that alleges that coaching is  
12 discipline. Let me repeat that. That coaching is  
13 discipline. I'd ask the Court to declare exactly  
14 that, and you can see the request for declarative  
15 relief on Slide Number 3.

16 So, to answer a question that you asked Ms.  
17 Riskin, we're not really saying that coaching is  
18 written discipline. We're saying that coaching is  
19 discipline. I'll stop. But we are seeking data. The  
20 Data Practices Act doesn't give any member of the  
21 public a right to be a fly on the wall and listen to a  
22 conversation. It doesn't require the City and the  
23 other defendants to document something in response to  
24 a request. It just requires them to produce  
25 responsive data that they already have.

1           So, in that sense, it is a claim that coaching is  
2           written discipline because it is a claim for data.

3           And the --

4           THE COURT: So, the coaching is the written  
5           document, or is the coaching what is actually said in  
6           the meeting between the coach and the employee?

7           MS. WALKER: Well, we have asked for  
8           coaching documentation forms and all data related to  
9           the coaching of B, C and D level violations. So, what  
10          I was about to say is we are not stripping the  
11          defendants of what Ms. Riskin referred to as, you  
12          know, a private way to correct behavior quickly and  
13          just in time and informally. Mentoring is still  
14          allowed. Training is still allowed. We're looking  
15          for data that arises from coaching when coaching is  
16          used in a disciplinary manner.

17          We'll freely admit that that the Minneapolis  
18          Police Department called different types of things  
19          coaching. So, on the one hand, they seemed to refer  
20          to mentoring as coaching and informal walks to grab a  
21          coffee with a colleague is never documented. They  
22          call that coaching. And then, they also refer to the  
23          consequence that arises from a sustained finding that  
24          a police officer used excessive force, the completion  
25          of a form that goes permanently in a personnel file,  
26

1 and it can be used to enhance discipline down the road  
2 if the police officer messes up again. They also  
3 called that coaching.

4 So, that's why we structured our request in this  
5 lawsuit the way we did. We're only looking for data.  
6 That's all we have a right to under the law. And  
7 we're not even looking for data on the A level  
8 violations. We're looking for violations on the B, C  
9 and D level violations, and I'll talk about why we  
10 think that kind of coaching is disciplinary.

11 THE COURT: Now, I understand this argument,  
12 but one of the basic things that I think I need to  
13 fully understand everybody's position on is what are  
14 the legal issues, if any, that have been presented to  
15 the Court in the motion for judgment on the pleadings?  
16 In a motion for judgment on the pleadings, as I  
17 understand their motion, they're saying even if you  
18 assume everything they allege in the complaint as  
19 being true, the application of the government Data  
20 Practices Act and the other statutes and law establish  
21 that you are not entitled -- as a matter of law  
22 establish that you cannot succeed on your claim.

23 They base this on an interpretation of the  
24 Minnesota Government Data Practices Act. As I read  
25 the brief in opposition filed by the plaintiff, one of  
26

1       the things it said in there is, Judge, you don't have  
2       to try to decide this for anybody other than the  
3       particular situation and circumstances presented by  
4       the Minneapolis Police Department and their references  
5       as to what they think coaching is or how they defined  
6       it or described it.

7               For purposes of the current motion, don't I need  
8       to determine whether or not the coaching as alleged in  
9       the complaint and what evidence you could find to  
10      potentially support that could be within the  
11      definition of disciplinary action as that term is  
12      actually used in the Government Data Practices Act and  
13      that term would apply to every type of governmental  
14      entity described and defined within the act.

15              MS. WALKER: Sure. So, in a minute, I'd  
16      like to walk you through four key allegations in the  
17      complaint that we believe state a claim as to why  
18      coaching as used at the Minneapolis Police department  
19      for B, C and D level violations is disciplinary.

20              THE COURT: Has the plaintiff offered the  
21      Court a definition of disciplinary action that you  
22      believe is what is intended and meant by the term  
23      disciplinary action as used in the Data Practices Act?  
24      I don't know how I can move forward with this without  
25      defining an undefined term. The Legislature didn't  
26

1       define it. Ms. Riskin has taken the position on  
2       behalf of the City that it's not ambiguous and the  
3       Court should apply the ordinary meaning of the term  
4       and has offered dictionary-based definition.

5               But before I can determine whether whatever  
6       Minneapolis is doing is or is not discipline, don't I  
7       need to define what the statute means by disciplinary  
8       action as that term is used cause I'm having trouble  
9       and struggling with any idea that that changes, that  
10      the definition would change entity to entity. I agree  
11      that what is actually done entity to entity in  
12      determining whether what is done fits within that  
13      definition might be different, but the definition  
14      itself, wouldn't you agree, would have to be  
15      consistent because it's a statutory term?

16              MS. WALKER: I actually don't agree with  
17      that. If I were in your shoes trying to write an  
18      opinion interpreting this statute and how it's applied  
19      to the facts, which is key, if the statute applies to  
20      facts and cannot define this in a vacuum, I would not  
21      attempt to create a global definition.

22              And let me give you a couple of reasons why. So,  
23      there are other terms in the Data Practices Act that  
24      have been subject to litigation, and the courts have  
25      had to discern their meaning. An obvious one is the  
26

1 word prompt. Okay? So, the Data Practices Act  
2 requires that executive agencies respond promptly to a  
3 request under the Data Practices Act. Now, courts  
4 could have said do I need to come up with like a  
5 universal definition of what is prompt across all  
6 agencies, across all data practices requests and  
7 should it be six weeks or should it be a week, or  
8 should it be six months?

9 I would have said to that Court like I'm saying  
10 to you now. No. What is prompt depends on the  
11 circumstances. It depends on how voluminous the  
12 request is. It depends what the request is for. Does  
13 it require legal review? Does it require redaction?  
14 Right? Is this a request for ten years' worth of data  
15 that may or may not be subject to the attorney-client  
16 privilege? Prompt means something very different  
17 there than if it's a request for a single incident  
18 report from the police department, which can be  
19 produced within 24 hours.

20 And there are other examples like that where  
21 courts have looked at terms within the Data Practices  
22 Act and found that they have to be defined in context.  
23 So, I don't think you should, and I'm not prepared to  
24 --

25 THE COURT: (Inaudible) to any source of  
26

1 using that when the term is disciplinary action or  
2 we're talking about the reverse presumptions that the  
3 statute contains in relation to personnel data?

4 MS. WALKER: There is no case that we have  
5 found interpreting disciplinary data or disciplinary  
6 actions. There is also no case we found and the  
7 defendants haven't cited one suggesting that the Chief  
8 of Police have carte blanche to decide what it is. If  
9 I'm put on the spot and I have to come up with a  
10 definition here and now, it is that any action that  
11 looks like a written disciplinary warning that is  
12 defined under the Civil Service Rule at the very  
13 least, that is discipline. And I think you'll see as  
14 I walk through some additional slides here that a  
15 written coaching documentation form is  
16 indistinguishable, absolutely indistinguishable from a  
17 written warning, which everyone has agreed is  
18 disciplinary.

19 THE COURT: And I just want to make sure  
20 we're, you know -- I was left a little after reading  
21 the memorandum that it appeared that the plaintiff's  
22 position was essentially disciplinary action the Court  
23 should address it with, oh, I know it when I see it  
24 without necessarily coming up with a specific  
25 interpretation. I'm trying to fit that within the  
26

1       construct of the law and multiple Minnesota Supreme  
2       Court decisions that address statutory interpretation  
3       and how the Court is supposed to go about statutory  
4       interpretation, which in the end is what this is  
5       about.

6               MS. WALKER: Well, it's not a pure question  
7       of law based on the plain language of the statute.  
8       This is what does this term mean as applied to the  
9       facts of the Minneapolis Police Department? And also,  
10      I don't think our definition is you know it when you  
11      see it. I think what we are saying is at this  
12      juncture, which is very early, there are facts that  
13      show, and we have cited that even within the  
14      Minneapolis Police Department, there are admissions  
15      and acknowledgements and a pattern and practice and  
16      treating coaching as discipline.

17             But the last thing I want to say, Your Honor, is  
18      in attempting to articulate a definition today of  
19      disciplinary action, I do think you're getting a bit  
20      ahead of where we are in the case. Today, the only  
21      question is: Have we in our complaint created enough  
22      facts to show you a possibility that coaching within  
23      the MPD is disciplinary And so, the notion of trying  
24      to define it today or reach the end result today in a  
25      ruling that, yes, it is disciplinary, which is  
26

1 obviously what we hope you'll ultimately rule, isn't  
2 the task before you today. Today is just have we  
3 stated a claim such that it is possible facts will be  
4 discovered during discovery that coaching within this  
5 particular government body is disciplinary.

6 And I can walk through some of those facts now,  
7 but I don't want to short circuit the discussion we're  
8 having.

9 THE COURT: No. Go ahead.

10 MS. WALKER: So, if you go to Slide 4, as I  
11 said, the fundamental question in this lawsuit is  
12 coaching discipline. Answering that question is the  
13 only way the Court can get questions of public access  
14 out of the hall of mirrors that defendants have  
15 constructed. As we said, this term is not defined,  
16 and it cannot be decided in a vacuum without  
17 discovery. What is disciplinary varies across  
18 workplaces and even within workplaces, and it's highly  
19 fact intensive. You can't look at dictionary  
20 definition, although if you did and I want to point  
21 you to Page 9 of the reply brief, they cited a  
22 dictionary definition that discipline is punishment to  
23 correct or train, which is identical to the definition  
24 of coaching that the City uses, that they use it as a  
25 gentle correction and training mechanism.

1           So, even if you go to the dictionary, Your Honor,  
2           and even if you pick their chosen definition, it  
3           supports MN COGI's position that coaching is  
4           disciplinary when used by the MPD.

5           So, Slide 4 is a summary of the facts that  
6           support our central premise and the fundamental  
7           question in this lawsuit. Starting on Slide 4 because  
8           there are lots and lots of acronyms in this case and  
9           exhibits already, we've laid out the chapter and verse  
10          for your convenience. I will reference those as I go  
11          along. I'm not going to walk you through them one by  
12          one, but what I would encourage you to look at is the  
13          table on the last three pages of the slide deck  
14          because that is a list of examples and it's not  
15          exhaustive of material contradictory things that the  
16          defendants have said about coaching and discipline and  
17          final disposition and the collective bargaining  
18          agreement.

19          Your Honor, the first point in the first  
20          allegation in the complaint showing that coaching is  
21          discipline is that the police department's own policy  
22          manual, at least prior to December 2020 when they  
23          drastically revised it, (inaudible). First, and you  
24          can see this on Slide 6. It says that in the  
25          violation of the manual is subject to discipline, that  
26

1 discipline shall be imposed.

2 It says this is true even for A level violations,  
3 and it says that one of the accepted forms of  
4 discipline for an A level violation is quote  
5 "documented oral correction." This is their own  
6 words. You can see this on Slide 9.

7 So, to get back to your question of do I need a  
8 universal definition when I'm interpreting this, I  
9 don't think you do. But if you do, a documented oral  
10 correction which follows straight from the defendants'  
11 own policy manual is one way to define discipline  
12 because the coaching documentation form that you can  
13 see, I think, on Slide 20 is nothing if not a  
14 documented oral correction by the policy's own  
15 language. This form reflects discipline.

16 And beyond that if the policy says that  
17 discipline shall be imposed even for A level  
18 violations and the only consequence imposed is  
19 coaching, then the logical inference, the one we've  
20 made and the one you have to give credence to at this  
21 stage, is that coaching is discipline.

22 The City's response to this first allegation and  
23 I'm just at the first one is that as a tortured  
24 reading or even if it is a correct reading, that  
25 doesn't mean coaching is discipline. It just means  
26

1 the department wasn't following its own policy. It's  
2 not a tortured reading, and we explain why at Slides 7  
3 and 8 where we show you where the policy manual  
4 actually defines the word shall.

5 And as for the department not following its own  
6 policy, that argument gets the City nowhere. Either  
7 the policy is binding and always followed, in which  
8 case the documented oral correction, i.e., the  
9 coaching form, reflects discipline and is public or  
10 what the City has committed to paper in the form of  
11 policies and other public statements can't be trusted.  
12 If the City is on the hand saying look at our policies  
13 but then admitting that they don't follow them, that's  
14 exactly why we need discovery in this case.

15 Your Honor, the second allegation showing why  
16 coaching is discipline is that to this day, even after  
17 the City papered over its old policy manual about 13  
18 months ago, defendants insist that B, C and D level  
19 violations are not eligible for coaching. They must  
20 be disciplined. You can see them say this on Slide  
21 11, where we quote statements they made to the Police  
22 Conduct Oversight Committee and again, more recently  
23 in connection with this motion.

24 And yet we know, and this is on Slide 12, that  
25 coaching is frequently imposed as the only consequence  
26

1           for B, C and D level violations. Forty-eight times  
2           since 2013, Your Honor. Again, a logical inference,  
3           the one we've made and the one you're required to give  
4           credence to at this stage is that if B, C and D level  
5           violations must be disciplined and coaching is the  
6           only consequence imposed, the coaching is  
7           disciplinary.

8           Again, maybe the City will say we don't follow  
9           our own policies. We don't really mean what we say  
10          cause that doesn't help them because their entire  
11          motion is based on asking this Court to believe them  
12          when they say that coaching is not discipline.

13          The third allegation showing that coaching is not  
14          discipline is that the collective bargaining agreement  
15          says it's not. You can see the exact language of the  
16          collective bargaining agreement on Slide 14. It says  
17          nondisciplinary records may not be kept in personnel  
18          files and yet, defendants admit that coaching forms  
19          are kept in personnel files. If you look at Slide 15,  
20          you can see admissions by both the defendants and the  
21          Federation to this effect.

22          So, the nondisciplinary records may not be kept  
23          in personnel files, but coaching forms are kept in  
24          personnel files since coaching is not nondisciplinary.  
25          In other words, it is disciplinary. So, again,  
26

1 another universal definition that you could craft is  
2 if the CBA says nondisciplinary records cannot be kept  
3 in personnel files and coaching forms are kept in  
4 personnel files, then they're disciplinary. That's a  
5 very easy, simple, elegant solution here.

6 THE COURT: That would be the definition of  
7 disciplinary action to apply to all forms of  
8 governmental agencies across the state of Minnesota?  
9 That wouldn't be the definition of the statutory term  
10 disciplinary action.

11 MS. WALKER: No. But I think you can craft  
12 a definition. Again, I don't think you should craft a  
13 definition to a point globally across all government  
14 entities for all purposes for all time.

15 THE COURT: I think ultimately I'm going to  
16 have to address that issue. Whether it's  
17 appropriately before me in this motion is a question,  
18 but to some extent if their policies and procedures  
19 can establish whether something is or isn't  
20 disciplinary action, then it's not governed by the  
21 Legislature definition or use of the term disciplinary  
22 action in the statute, and the meaning of that,  
23 whether it's found to be ambiguous or nonambiguous,  
24 wouldn't they just be able to in 2020 change their  
25 policies and change that and make it nondisciplinary?

1       Clean up their policies, clean up their practices  
2       going forward, and it's no longer a disciplinary  
3       action.

4               MS. WALKER: Well, that's what they tried to  
5       do in December 2020, six months after George Floyd  
6       died and yet --

7               THE COURT: But if it's a moving  
8       differential, depends on the context, depends on what  
9       they say about it, as a government entity, they can  
10      change what they say about it going forward. I mean,  
11      that's the problem I have without having and starting  
12      with what is the definition of disciplinary action as  
13      used in the statute? What did the Legislature mean?  
14      Is the term ambiguous or not? If it's not ambiguous,  
15      what is the plain meaning? If it is ambiguous, what  
16      is the legislative history and the tools I'm supposed  
17      to use to interpret ambiguous statutory language,  
18      which isn't what an individual entity subject to the  
19      law may think it is.

20              MS. WALKER: Right. I guess one way to  
21      explain my view is this is not a question of statutory  
22      construction. This is a question of statutory  
23      application. So, we're not arguing about plain  
24      meaning and dictionary definitions.

25              THE COURT: But if I'm to apply the statute,  
26

1           don't I need to know what the statute means and then I  
2           apply that meaning to the facts of the case.

3                   MS. WALKER: I think you need to -- look. I  
4           think dictionary definitions are one thing you can  
5           consider in trying to ascertain legislative meaning.  
6           But ultimately, this is a statute and there are  
7           statutes out there that say things like you must act  
8           reasonably. Well, is reasonably -- we know that some  
9           torts. Reasonably isn't defined in the law anywhere,  
10          right? It depends on the facts and the circumstances,  
11          and I think the same argument applies to disciplinary  
12          action.

13                  But what is disciplinary at the Hennepin County  
14          Library may not be the same as what is disciplinary at  
15          the Minneapolis Police Department and what you have to  
16          look at is not just policies but also patterns and  
17          practices.

18                  But let me get to the fourth one because I think  
19          if you're truly looking for a global definition, this  
20          may be the easiest one for you. Our fourth allegation  
21          in the complaint is that coaching is discipline  
22          because it is indistinguishable from a written warning  
23          and everyone, including defendants, can see that a  
24          written warning is disciplinary.

25                  If you look at the Civil Service Commission rules  
26

1 on Slide 17, you can see the definition of a  
2 disciplinary warning, and I would also point you to  
3 the transcript filed as Exhibit A to the Riskin  
4 declaration. It's not on a slide, but this is a  
5 transcript of remarks by city officials at the PCOC  
6 meeting where written warnings are discussed and  
7 clearly, everyone is in agreement that they are  
8 disciplinary.

9 So, looking at that definition from the Civil  
10 Service Commission rules on Slide 17, note that it has  
11 three parts and starting with Slide 18, I want to walk  
12 you through how tracks perfectly, Your Honor, onto the  
13 coaching documentation form. It may not be used in  
14 every instance of coaching. Maybe sometimes, it's  
15 super informal and happens in five minutes and is  
16 never memorialized. We're not seeking that. That's  
17 Level A. That's not data. We're seeking the form.

18 So, on Slide 18, you'll see that the first  
19 elements of the definition of a written warning is a  
20 verbal discussion between the employee and supervisor  
21 covering the details of the problem. What does the  
22 coaching documentation form ask for on the very first  
23 line? The date, time and location of the supervisor's  
24 conversation with the employee about the problem.

25 On Slide Number 19, you see the second element of  
26

1 a written warning as defined by the Civil Service  
2 Commission rules. It is a plan for correcting the  
3 problem, and what do you see on the coaching form?  
4 The supervisor's recommendation.

5 And finally, Your Honor, the third element under  
6 a disciplinary warning is a written memo to document  
7 the offense. If you look at Slide 20, there you see  
8 the coaching documentation form in all its glory. If  
9 it's not a written memo documenting the coaching  
10 session and the recommendations, I don't know what it  
11 is.

12 The defendants have tried to distinguish  
13 coaching, written coaching, on a form from a warning  
14 by saying, well, coaching can't be grieved. But there  
15 are three problems with this argument. First of all,  
16 Your Honor, the collective bargaining agreement  
17 recognizes a warning as discipline. You can see that  
18 in Section 30.08, which is quoted on Slide 22. It  
19 clearly states that if an employee fails a drug test,  
20 they can receive a warning as a form of discipline.

21 But then you look to Section 12.02, which is what  
22 the city defendants hang their hats on, and it lists  
23 the things that can be grieved. What's not there? A  
24 written warning. Grievances started under the  
25 negotiated CBA with a written reprimand, and they go  
26

1 on from there.

2 Ms. Riskin said something in her portion of the  
3 argument, and it's exactly what's happening here. She  
4 said, well, you asked her about it is just people who  
5 are subject to a collective bargaining agreement where  
6 disposition can be final upon a decision without a  
7 grievance, and she said no. She said no. Sometimes,  
8 public employees can be disciplined, but the  
9 collective bargaining agreement doesn't recognize that  
10 form of discipline as something that's grievable. She  
11 said it will list types of discipline as A, B, C and  
12 then it will only list the grievable ones as C and D.  
13 That's disagreement, Your Honor.

14 Under this agreement in 30.08, a warning is  
15 discipline. Under the Civil Service Commission rules,  
16 a warning is discipline. But under Section 12.02, a  
17 warning is not grievable under the Federation's  
18 contract. So, that's not a way in which a written  
19 warning is different than written coaching.

20 If you move to Slide 23, you'll see that beyond  
21 this problem under the collective bargaining agreement  
22 --

23 THE COURT: I'm going to let you know, Ms.  
24 Walker, we're going to go about another five minutes.

25 MS. WALKER: Great. The City has admitted  
26

1 and this is on Slide 23 that the lack of opportunity  
2 to grieve a case is not determinative of whether  
3 coaching is discipline. So, this notion that a  
4 warning can be distinguished from coaching because one  
5 is grievable and one is not, the City has said that  
6 grievability is not the dispositive issue.

7 Your Honor, in the last few minutes here, I want  
8 to talk for a minute about this notion of final  
9 disposition. This was a big of a big switch in the  
10 City's reply. All along, they've taken the position  
11 that coaching is not discipline. And then in their  
12 reply brief, they suddenly want to talk about final  
13 disposition. Their argument is that coaching can't be  
14 disciplinary because, if it is, the defendants have  
15 been violating various laws, maybe the collective  
16 bargaining agreement. They can't possibly be in  
17 violation of the law and, therefore, coaching can't  
18 possibly be discipline.

19 We have three responses to this. One, whether  
20 the defendants have complied with due process and  
21 collective bargaining rights in disciplining their  
22 employees is an issue between the Federation and the  
23 City. That was our position on the motion to  
24 intervene. Mr. Kelly conceded that it's an issue to  
25 be resolved if and only if you agree that coaching is  
26

1 disciplinary. Then we'll all probably be briefing  
2 whether grievance rights attach and how quickly the  
3 data should be released.

4 Secondly, Your Honor, we don't think the Court  
5 needs to take up the issue but, if it does, it's  
6 entirely possible the defendants have been violating  
7 laws other than the Data Practices Act. This notion  
8 that because PODCA and PROA and the city ordinance  
9 require all these things and, therefore, coaching  
10 can't be discipline is nonsense.

11 But lastly, Your Honor, a finding of coaching is  
12 disciplinary does not itself mean that defendants have  
13 violated other laws. And certainly, all you're being  
14 asked to decide today is whether a possibility exists  
15 that facts will be discovered that establish coaching  
16 is discipline. So, all this time has been spent on  
17 PODCA and PROA and the collective bargaining agreement  
18 is an issue for another day.

19 I'll stop there and I'm happy to answer any  
20 questions you have.

21 THE COURT: Well, as you noticed, I jumped  
22 in and asked them as I had them. I don't have,  
23 although before I say that, let me just check my notes  
24 here. I think I asked them as we went through your  
25 argument. Thank you. Ms. Riskin, any brief rebuttal?

1 MS. RISKIN: I'll keep it brief cause there  
2 may be things I could address, but one thing that I  
3 want to address is the manual, the MPD manual, and the  
4 idea that there was a huge change in it. There are a  
5 couple of reasons why that argument just doesn't hold  
6 any water.

7 The first is that a manual isn't in the law. So,  
8 the discretion that the Chief has in deciding whether  
9 or not to discipline somebody is granted to the Chief  
10 by state law and by city ordinance. And so, the idea  
11 that the policy manual may say something, that doesn't  
12 mean that a Chief legally has to discipline or that  
13 whatever consequence follows is discipline.

14 But also, the manual, you know, when you look at  
15 it, if you go back to Slide 6, Plaintiff's Slide 6,  
16 the manual explicitly says discipline may range from a  
17 written reprimand to termination. The manual says.  
18 And then, the next sentence, which plaintiffs are, you  
19 know, happy to quote whenever they can, discipline  
20 shall be imposed following a sustained violation. So,  
21 regardless of whether that is a timing, they like to  
22 cite the torture interpretation. But that sentence  
23 has to be read in the context of that sentence, that  
24 provision, where it specifically says discipline may  
25 range from a written reprimand to termination.

1           So, the policy manual didn't demand discipline  
2           for every violation, and we also know that because the  
3           documents that were cited that were attached to that  
4           letter, which, you know, we're supporting and agree  
5           can be considered, you know, get more detailed about  
6           the discipline process including where they say that  
7           -- I'd have to find the specific page, but where they  
8           say that no discipline shall be imposed when we're  
9           past the reckoning period even if it is a B, C or D  
10          violation. The specific documents say we don't always  
11          impose discipline.

12          You know, and they talk about the different  
13          factors to be considered in making discipline  
14          determinations.

15                THE COURT: Is there a distinction in  
16          Minneapolis between -- is a written warning different  
17          than a written reprimand? We're getting to some  
18          extent into a lot of semantics and I think both sides  
19          have argued whether or not that level of detail is  
20          really before the Court at this stage on a motion for  
21          judgement on the pleadings.

22                MS. RISKIN: So, the Civil Services Rules do  
23          distinguish between them. The Civil Services Rules,  
24          11.04, lay out, you know, for those employees that are  
25          subject to it, lay out the different levels of  
26

1 discipline, and warning and written reprimand are  
2 different. This is also maybe it's in the reply brief  
3 that there is also a Civil Service Rule that says to  
4 the extent there's overlap between the labor agreement  
5 and the rules, the labor agreement supersedes the  
6 rule. So, not all and, in fact, I think most of the  
7 labor agreements -- we have 22 -- when you go through  
8 them, they don't have the exact same discipline that's  
9 in the Civil Services Rules.

10 Let me just check my notes to see if there was  
11 anything else that I felt needed to be addressed on  
12 their argument. I won't take the opportunity to say  
13 where I disagree with the allegations because  
14 obviously, I know that's not how it goes.

15 MS. WALKER: Your Honor, could I ask one  
16 question if Ms. Riskin is done?

17 THE COURT: Let's confirm whether Ms. Riskin  
18 is done first and then yes.

19 MS. RISKIN: Well, I will say in looking at  
20 the dictionary definition that we provided correcting  
21 and training, we agree that coaching is used to  
22 correct and train, but the key word in the dictionary  
23 definition is punishment. Coaching is not punishment.

24 I think this whole argument about the logical  
25 inference that any consequence that follows a  
26

1       sustained violation, you know, I'll note that the  
2       citations that they have don't actually say that any  
3       violations are sustained. But that logical inference  
4       -- to me, that is not a logical inference. That's  
5       like the tail wagging the dog. The Court only needs  
6       to make logical inferences at this point.

7               I think I will leave it at that unless there are  
8       follow-up questions, and I understand Ms. Walker has  
9       some other comments to make.

10              THE COURT: I don't have any follow-up  
11       questions. Ms. Walker, you indicated you had a  
12       question.

13              MS. WALKER: And it is a question, which  
14       I'll preface by saying I understand the Court is  
15       struggling with the ultimate issue that may fall in  
16       its lap about how to define disciplinary action. As I  
17       said, I think it's premature to get there and, for  
18       that reason, we didn't brief it. You know, we briefed  
19       the notice pleadings standard and what we believe are  
20       sufficient allegations to meet the standard.

21              My question is: If the Court feels like it needs  
22       to define what is disciplinary action at this  
23       juncture, would you please let us know, and we would  
24       like to submit additional briefing on that because I  
25       clearly did not have a definition roll off the tip of  
26

1 my tongue today. Okay.

2 THE COURT: I understand that to be the  
3 request.

4 MS. WALKER: Thank you.

5 THE COURT: I have one last item. I think  
6 it's a housekeeping item. Now that the arguments have  
7 been presented to the Court on the motion, in the  
8 order the Court issued on December 1, I did ask that  
9 the parties with the intervenor meet and confer as to  
10 potential amendments necessary to or requested in  
11 relation to the scheduling order and trial order  
12 issued by the Court. I asked that those be submitted  
13 if there was agreement or competing positions be  
14 submitted to the Court within 14 days.

15 I'm not sure I saw anybody respond to that. I  
16 know we had this coming up probably within that 14  
17 days as that was initially scheduled. I did need to  
18 reschedule today's hearing from earlier in December  
19 due to my own illness and so, perhaps everybody was  
20 thinking we were going to talk about it at that  
21 hearing that got moved to today. And so, I am just  
22 going to renew my request. I am not reprimanding  
23 anybody because I think it moved along with this  
24 hearing date, which was at the Court's request, not at  
25 the request of the parties that you do meet and confer  
26 on the scheduling issues and submit proposals so that

1 the Court can address scheduling issues moving  
2 forward.

3 I do want to thank the attorneys for the  
4 arguments presented to the Court this afternoon. They  
5 are interesting arguments. These are interesting  
6 issues legally, factually, and the Court will be  
7 taking the matter under advisement and issuing  
8 decision based not only on the arguments presented  
9 here this afternoon but the memoranda and motions  
10 filed with the Court. I'll issue a decision as soon  
11 as we can.

12 Anything else from the parties for the court  
13 record before we go ahead and conclude this  
14 afternoon's hearing?

15 MS. RISKIN: Thank you, Your Honor. We did  
16 meet and confer, and we have a draft proposed  
17 schedule. I think no one filed it, but we will do  
18 that, one of us.

19 THE COURT: Thank you.

20 MS. WALKER: Thank you, Your Honor. I was  
21 going to say the same. We agreed if I recall.

22 THE COURT: Okay. Well, we will keep our  
23 eyes out for that, and we will be working on this  
24 motion as soon as we can get to it here in my  
25 chambers. Thank you, everybody. Have a good rest of

1           your day. We'll go ahead and go off the court record  
2           at this time.

3   **(WHEREUPON, the proceeding concluded at approximately 4:20**  
4   **p.m.)**

5

1 STATE OF MINNESOTA)

2 )

3 COUNTY OF HENNEPIN)

4

5

6 I, Diane Aho, do hereby certify that the above and

7 foregoing transcript consisting of the preceding pages is a

8 true and correct transcript of the digital recording taken on

9 the above date and is a full, true and complete transcript of

10 the proceedings to the best of my ability.

11

12

13

14 Dated: 10-4-2022

15

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17 Diane Aho /s/

18 Diane Aho,

19 Court Reporter

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# EXHIBIT

# K

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

\* \* \* \* \*

Minnesota Coalition on Government Information,

Plaintiff,

vs.

Court File No. 27-CV-21-7237

City of Minneapolis; Casey J. Carl,  
in his official capacity as City Clerk  
for the City of Minneapolis; Patience Ferguson,  
in her official capacity as Chief Officer in the  
Human Resources Department for the City of  
Minneapolis; and Medaria Arradondo, in his official  
capacity as Chief of Police for the Minneapolis Police  
Department,

Defendant.

\* \* \* \* \*

\*\*\*\*\*

The above-entitled matter came before the Honorable Karen  
A. Janisch, Judge of the Fourth Judicial District, in the  
Hennepin County Government Center, City of Minneapolis, County  
of Hennepin, State of Minnesota, on the 14<sup>th</sup> day of October 2021.

\*\*\*\*\*

A P P E A R A N C E S

Isabella Nascimento, Daniel Shulman, Teresa Nelson,  
and Clare Diegel, American Civil Liberties Union of Minnesota,  
appeared on behalf of the Plaintiff.

Leita Walker and Emily Parsons, Ballard Spahr,  
appeared on behalf of the Plaintiff.

1 Paul Ostrow and Hal Davis, Board Members of  
2 Minnesota Coalition on Government Information, appeared on  
3 behalf of the Plaintiff.

4 Rebecca Krystosek and Sarah Riskin, Assistant  
5 Minneapolis City Attorneys, appeared for and on behalf of the  
6 Defendant.

7 Joseph Kelly, Police Officers Federation of  
8 Minneapolis, appeared as Intervenor.

9

10 Christine Lewandoski  
11 Official Court Reporter  
12 Minneapolis, Minnesota

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1 THE COURT: This is Court File 27-CV-21-7237.  
2 I'm going to ask to start by having appearances noted for  
3 the record. If we could start with the Plaintiff,  
4 please.

5 MS. NASCIMENTO: Good morning, Your Honor. My  
6 name is Isabella Nascimento, and I'm here on behalf of  
7 Plaintiff, Minnesota Coalition on Government Information,  
8 MNCOGI. With me today are my co-counsel Daniel Shulman  
9 from the ACLU, Teresa Nelson from the ACLU, Clare Diegal  
10 from the ACLU, Leita Walker from Ballard Spahr and Emmy  
11 Parsons from Ballard Spahr. Also with us are two  
12 representatives from MNCOGI, Paul Ostrow and Hal Davis,  
13 who are board members for the Minnesota Coalition on  
14 Government Information.

15 THE COURT: Okay. Thank you. And on behalf of  
16 the City?

17 MS. KRYSTOSEK: Good afternoon, Your Honor.  
18 Rebecca Krystosek, Assistant City Attorney, appearing on  
19 behalf of the City of Minneapolis and for the Defendants.  
20 With me today is Sarah Riskin, who is also an Assistant  
21 City Attorney.

22 THE COURT: Okay. And on behalf of the party  
23 wanting intervention, the Federation?

24 MR. KELLY: Good afternoon, Your Honor. Joseph  
25 Kelly on behalf of the applicant Police Officers'

1 Federation of Minneapolis.

2 THE COURT: Okay. We're here on the motion  
3 initiated by the Federation seeking to intervene in this  
4 case. I did see in the file and have had the chance to  
5 look at the briefs that have been submitted. My review  
6 -- just want to make sure I didn't miss anything. I  
7 didn't see that there was a position taken by the City.  
8 Is that correct?

9 MS. KRYSTOSEK: That's correct, Your Honor.

10 THE COURT: Okay. So, my anticipation for  
11 today's hearing is that I'm going to hear first from the  
12 moving party, so I'll hear Mr. Kelly on behalf of the  
13 Federation, and then I will hear the opposition to the  
14 motion, which was filed by the Coalition. Who's going to  
15 be arguing on behalf of the Coalition?

16 MS. NASCIMENTO: I will today, Your Honor.  
17 Thank you.

18 THE COURT: Okay. And could you give me the  
19 pronunciation of your name again?

20 MS. NASCIMENTO: Yes, Nascimento.

21 THE COURT: Nascimento. Thank you. So, Ms.  
22 Nascimento, I'll recognize you when it's your turn to  
23 respond. So, Mr. Kelly, I'll start with you on behalf of  
24 the Federation. An overview that might be helpful to the  
25 Court, as I looked through the materials, I think for all

1 sides, it would be helpful in citing authority if you can  
2 be clear whether that is precedential authority from the  
3 Minnesota Courts, nonprecedential authority from the  
4 Minnesota Court of Appeals, whether it's offered for  
5 persuasive authority on other Courts, such as the Federal  
6 Courts, that are -- have weighed in on similar issues.  
7 Certainly, if you can be clear as to where that fits in  
8 the hierarchy of precedent that I need to look at, that  
9 would be helpful to me. Also, in regard to the  
10 Federation, it would be helpful for me if you could talk  
11 about why intervention is the appropriate action in this  
12 case as opposed to some type of a status, such as amicus  
13 status. So, Mr. Kelly, go ahead when you're ready.

14 MR. KELLY: Thank you, Your Honor. Again, good  
15 afternoon, Your Honor. Joseph Kelly on behalf of the  
16 applicant for intervention, Police Officers' Federation  
17 of Minneapolis. The Minnesota Supreme Court has  
18 established the four elements required under Minnesota  
19 Rule of Civil Procedure 24.01 to -- that must be met for  
20 intervention to be appropriate. Those four factors I'll  
21 address briefly, and already I think that both parties  
22 have briefed extensively on that. But I did want to  
23 touch on probably the timeliness of the application,  
24 which seems to be a dispute between the parties about  
25 whether its -- the Federation's application is timely.

1           So, when determining whether an application is  
2           timely, the Minnesota Supreme Court and the Court of  
3           Appeals both have identified that in reported cases, so  
4           precedential cases, that it's on a case-by-case basis is  
5           when it is determined. In the Minnesota Supreme Court  
6           case of *SST Incorporated* that both parties have cited in  
7           their briefs, the factors that determine timeliness are  
8           based upon how far the suit has progressed, the reason  
9           for the delay in seeking intervention, and any prejudice  
10          to the existing parties because of the delay. Plaintiffs  
11          oppose the Federation's motion based on the claim that  
12          any interest is not ripe at this point. However, the  
13          only authority that it relies upon involves insurance  
14          subrogation claims, which would only be triggered on the  
15          loss of economic benefits, which none of that has to do  
16          with what's in front of us today. In fact, the Supreme  
17          Court, specifically in *SST*, noted that the intervention  
18          in that case was actually untimely and only granted very  
19          limited intervention because of how untimely the  
20          application for intervention was. The timeliness here is  
21          extremely early stage of litigation. What Plaintiffs ask  
22          the Federation to do is to do exactly what was deemed as  
23          inappropriate in *SST*, which is to wait during the course  
24          of the -- while the case is pending, and essentially hope  
25          for the outcome that is most beneficial for the

1        intervenor. When it was going incorrectly or poorly for  
2        the intervenor, the motion to intervene was then made,  
3        which the Court said that that was properly deemed as  
4        untimely because they cannot wait to see whether it's  
5        favorable, that the intervenor needs to act when they  
6        become aware of a potential for negative effects.

7                The other aspect has to do with whether there is an  
8        interest in the subject matter of the action, and I think  
9        there's some confusion as to the Minnesota Government  
10       Data Practices Act that the Plaintiff relies upon. So,  
11       the Government Data Practices Act, Chapter 13,  
12       specifically at issue here is 13.43, personnel data, is  
13       not read in a vacuum. The portion of 13.43 that is  
14       relied upon by Plaintiff for justifying their seeking of  
15       coaching memorandum is 13.43 subdivision 2B, and the only  
16       way that discipline is available as public data is after  
17       final disposition occurs at the conclusion of arbitration  
18       proceedings that arise under a collective bargaining  
19       agreement. The data sought here are -- is data involving  
20       members of the Federation that are subject to the  
21       collective bargaining agreement between the Police  
22       Officers' Federation of Minneapolis and the City of  
23       Minneapolis.

24                Now, regarding whether there is in fact discipline  
25       or not, the Federation has a right under PELRA to

1 challenge any written discipline, which the Plaintiffs  
2 argued coaching memoranda is discipline, is written  
3 discipline, and that's why they are arguing they should  
4 be entitled to copies of it. And if that is the case,  
5 then the Federation has the compelling interest, a legal  
6 cognizable interest, in the outcome of this case because  
7 if coaching memoranda are in fact discipline, then the  
8 Federation has a right to grieve the discipline. And as  
9 the Plaintiffs --

10 THE COURT: Can I interject though? In  
11 tracking this argument with PELRA and with the right to  
12 grieve, if we are looking at past actions versus -- in  
13 defining what the laws in application to things that  
14 already occurred in the past, is that interest still  
15 there as opposed to if the Court finds that the  
16 Plaintiff's position is correct and that this is a form  
17 of discipline and it should be public data? They may be  
18 entitled to what was done in the past, but certainly then  
19 what happens in the future would be subject to collective  
20 bargaining, not necessarily, but they would be subject to  
21 the process going forward. So, do you still have that  
22 interest if all they're looking for is things from the  
23 past? The data request, of course, would be defined  
24 within a moment in time for record that existed at that  
25 time.

1 MR. KELLY: Yes, and that's precisely why the  
2 Federation has an interest at this point. Because if the  
3 Court were to rule or the City were to change course and  
4 make a decision that it is discipline, then the  
5 Federation would -- the issue they can bring up is  
6 effectively that the Federation doesn't have a right to  
7 grieve past coaching. Well, the problem with that is  
8 that the Federation didn't have a right to grieve  
9 coaching previously because it wasn't disciplinary. The  
10 Federation only has a right under PELRA to grieve written  
11 discipline, and because, as the City has pointed out in  
12 its pleadings it is the City's position that it is not  
13 discipline, the Federation has not had a right to file a  
14 grievance. So, that's exactly why the Federation has a  
15 cognizable interest right now. Because if the City or  
16 Your Honor were to find that this is in fact discipline,  
17 the issue that would come up at that point would be, as  
18 the Plaintiffs have pointed out, the timing of the  
19 discipline. So, if the Federation were not intervenors  
20 now, whenever the Court would make a ruling, the  
21 Federation would have to effectively file for a temporary  
22 injunction restraining any release of any previous  
23 coaching memoranda subject to the grievance procedure.  
24 So, it would just cause undue delay for this Court and  
25 then ultimately the result of what the Plaintiff seeks.

1           So, if the Plaintiff's relief was granted by this  
2 Court, the Federation will be forced to file for an  
3 emergency injunction to prevent the release of any data  
4 because the question would be, does the Court's Order  
5 trigger the timeline, which we would argue at that point  
6 in time that that's the timeline that would trigger it.  
7 And I'm sure the Plaintiffs would argue, well these are  
8 from more than 21 days ago so you've waived your  
9 timelines, but everything ends up being related and  
10 there's a domino effect that would take place without the  
11 Federations involvement now.

12           First, if the Federation is allowed to intervene,  
13 all of those issues could be sorted out by Your Honor  
14 through the course of any Court Orders, which could  
15 include starting the grievance process is now just to  
16 preserve the possibility of a potential ruling by the  
17 Court, and then subject to the Court's ruling.  
18 Unfortunately, because the City's position that coaching  
19 is not discipline, the Federation has been prevented from  
20 being able to file any grievances to challenge those  
21 coaching memoranda, which is exactly why I stated if this  
22 was purely a suit making a change to coaching memoranda,  
23 that all coaching memoranda in the future would be  
24 considered disciplinary and they weren't seeking  
25 retroactive coaching memoranda, then the Federation would

1 not have any interest in intervening because its rights  
2 wouldn't be affected. But because there's the potential  
3 that there would be a claim that coaching memoranda were  
4 always discipline and subject to the grievance procedure  
5 even though the City of Minneapolis through its inherit  
6 managerial right has determined not to discipline these  
7 officers and to categorize these memoranda as non-  
8 disciplinary, the Federation was not allowed to grieve or  
9 challenge in any way, shape or form those coaching  
10 memoranda.

11 So, effectively what's happening is the Plaintiff is  
12 seeking a change of the classification of data because  
13 the City as the responsible authority has classified  
14 these as non-disciplinary and therefore non-public. But  
15 if there is any change, either voluntarily by the City of  
16 Minneapolis or by this Court, then the Federation's  
17 interest is now and needs to be heard. Its rights under  
18 the Collective Bargaining Agreement, which is instructed  
19 by PELRA and its due process rights pursuant to PELRA,  
20 are affected.

21 Regarding other cases that the Plaintiff cited, I  
22 don't believe that I cited any non-precedential cases in  
23 any of my beliefs with perhaps an exception of just the  
24 definition of a property right from the Minnesota  
25 District Court, but -- I mean that was -- there are

1 plenty of precedential things out there that state that  
2 the source of property rights come from the law, and in  
3 this case non-public data and the procedure of due  
4 process rights before something becoming public, it's  
5 what's spelled out in statute. So, the due process  
6 requires -- which compulsory arbitration is defined in  
7 PELRA and not purely as Plaintiff claims as contracting  
8 away some sort of public right, the right to compulsory  
9 binding arbitration is found in PELRA and it's required  
10 to be additionally put in a written contract between the  
11 parties.

12 There was a -- some non-precedential opinions for  
13 cases cited by Plaintiff in their response brief, or  
14 their opposition, and I'd like to address both those  
15 briefly. One would be *Columbus* case out of Ohio in 2000  
16 was -- that case was to prevent public data from being  
17 released because inappropriately the parties in that case  
18 had identified that certain public data was supposed to  
19 be destroyed pursuant to the collective bargaining  
20 agreement. That's not the case here. We're not saying  
21 these documents don't exist. We're also not saying that  
22 we -- that there was no contractual way to change the  
23 classification of certain discipline. The fact is that  
24 the City of Minneapolis and the Police Officers'  
25 Federation of Minneapolis are adversaries when it comes

1 to discipline on its officers, at least in part. So, at  
2 some point, the Federation may agree with the discipline  
3 imposed by the Chief of Police. If they agree, they may  
4 make the decision not to file a grievance because they  
5 believe that the decision of the Chief of Police is  
6 supported by just cause. Then those cases where the  
7 Federation or its membership believe that the discipline  
8 was not supported by just cause, the Federation has a  
9 duty, a statutory duty, of fair representation to  
10 challenge said discipline or decision by the Chief of  
11 Police.

12 In the case of coaching memoranda, again, I don't  
13 want to get too deep into ways -- the underlying facts,  
14 that the Chief of Police exercises his or her discretion  
15 about whether discipline is appropriate for the alleged  
16 misconduct against its officers. In these cases of  
17 coaching memoranda, the Chief of Police exercised said  
18 discretion and determined the discipline was not  
19 appropriate, but rather a coaching memoranda.

20 Additionally, in the supplemental authority from the  
21 Southern District of New York is not precedential and is,  
22 I would argue, not even persuasive as those were cases  
23 that were personal injury cases and Monell claims based  
24 upon allegations of unlawful policing and civil unrest in  
25 the summer of 2020. The unions in those cases sought to

1 intervene for a number of reasons, but it certainly  
2 wasn't for the release of non-public data. There are  
3 various reasons why they sought, but the bulk of the  
4 reason was there were -- the police union was concerned  
5 about injunctive relief that would have been granted or  
6 agreed upon, it would change NYPD policies which would  
7 affect the benefits and the working conditions of the  
8 employees. In this case, the Federation seeks to  
9 intervene to ensure that non-public data remains non-  
10 public, and if there's a change in classification of  
11 coaching memorandum to be considered disciplinary, the  
12 Federation is ensured to have its right to grieve past  
13 coaching memoranda with this Court if it were to find  
14 that coaching memoranda are in fact discipline. That  
15 part of the Court's Order through the Federation, being  
16 allowed to intervene as a defendant, would contemplate  
17 either some sort of timeline for when those items would  
18 be released, which would also be able to address a  
19 timeline, if any, for grievances to be filed and  
20 processed.

21 Finally, the -- although the City did not object to  
22 the Federation's intervention, that should not weigh to  
23 any way shape or form about whether the Federation's  
24 interests are adequately represented. In fact, it  
25 actually flies in the face of what the process for

1 intervention is about requiring a notice to intervene  
2 giving the parties 30 days to object and a failure to  
3 object is acquiescing to said intervention. Then in this  
4 case, as I noted before, the Federation and the City of  
5 Minneapolis are normally adversarial when it comes to  
6 discipline, so without the Federation's intervention,  
7 there would be nothing stopping the City of Minneapolis  
8 from engaging in a settlement agreement where they  
9 decided to change course without notifying the Federation  
10 and agreeing to release all coaching memoranda despite  
11 them not previously being subject to the collective  
12 bargaining agreement or PELRA's requirement for  
13 compulsory arbitration for written discipline.

14 THE COURT: If that happened, wouldn't at that  
15 point you have an ability to bring your own case against  
16 the City if you believed it was in violation of PELRA or  
17 wouldn't you be able to bring a different case perhaps  
18 with injunctive relief?

19 MR. KELLY: Yes, Your Honor. Well, the  
20 question would be if the City agreed to that and then  
21 turned over the files on the same day they signed it, the  
22 bell has rung at that point and you can't unring the bell  
23 of releasing of what should have been non-public records,  
24 which is why intervention is appropriate if it actually  
25 creates judicial economy. Because now the case would be

1 partially or fully litigated in your court and then  
2 you'll have to potentially be litigated in another court  
3 with the Federation and the City as the two parties with  
4 the same issue being before the Court, which is exactly  
5 why permissive intervention would be appropriate if  
6 somehow permissive intervention as a matter of right was  
7 appropriate under 24.02. But Your Honor is correct. If  
8 appropriate action in that case would be a separate  
9 potential cause of action against the City of Minneapolis  
10 by the Federation prohibiting the release of any records  
11 -- which if we did that, in theory we could do that now,  
12 file an action prohibiting them from being released  
13 subject to the collective bargaining agreement, but for  
14 judicial economy, I would hope that the court  
15 administration of Hennepin County would recommend that  
16 those two courses be combined in front of Your Honor  
17 then. So, I think the best way for judicial economy and  
18 for all parties is to have the Federation intervene now  
19 so all of these issues can be addressed by Your Honor in  
20 any order that may come out of this Court.

21 THE COURT: You would acknowledge that as of  
22 right now the position taken by the City is that they are  
23 not public, correct?

24 MR. KELLY: That is correct, yes. Again, but  
25 without the Federations intervention, there is the

1 possibility that the City could engage in a settlement  
2 agreement without notifying a co-defendant of this action  
3 and release the records immediately upon signatures being  
4 put on the piece of paper.

5 THE COURT: Okay.

6 MR. KELLY: Pending any questions that you  
7 have, Your Honor, that's all I have at this time.

8 THE COURT: I think you may have answered it  
9 within it, but would allowing a petition to file an  
10 amicus brief or participate as amicus be sufficient to  
11 protect the interest of the Federation?

12 MR. KELLY: The Federation's position is that  
13 that would not be sufficient because that would merely be  
14 as a friend of the Court because the Federations rights  
15 to grieve and its members rights to have non -- private  
16 data remain private are at not just tangentially  
17 affected, they are directly affected by this action.  
18 That's why intervention is appropriate at this stage,  
19 Your Honor.

20 THE COURT: Okay. Ms. Nascimento.

21 MS. NASCIMENTO: Yes.

22 THE COURT: Go ahead when you are ready on  
23 behalf of the Coalition Plaintiff.

24 MS. NASCIMENTO: Thank you, Your Honor, and may  
25 it please the Court. At least on paper and based on the

1 Federation's argument today, the Plaintiff and the  
2 Federation actually don't seem to be that far apart. It  
3 actually appears that there is little in the suit for  
4 this Court to resolve.

5 I want to point the Court to two sentences in the  
6 Federation's reply that Your Honor should focus on, and  
7 in fact that Mr. Kelly today repeated a couple times. In  
8 its reply on page 12, the Federation writes, "If  
9 Plaintiff were to concede that the coaching memoranda  
10 will not be deemed final disposition of discipline until  
11 after the Federation is able to exhaust the grievance  
12 procedure, then the Federation would not provide any  
13 valuable insight to this litigation." Then on page 11  
14 the Federation writes, "If Plaintiff were to concede,  
15 that it only requests future instances of coaching it  
16 deems discipline, then the Federation would not have an  
17 interest in this litigation." In these two sentences,  
18 Your Honor, and which Mr. Kelly repeated a couple of  
19 times, that the Federation makes it very clear why does  
20 it want to intervene in this case. It seeks to intervene  
21 to protect its ability to arbitrate discipline, this  
22 arbitration right under its labor agreement with the City  
23 of Minneapolis, but those arbitration rights actually  
24 aren't before the Court to rule on as Mr. Kelly said a  
25 couple of times. Mr. Kelly repeated a few times, if the

1 Court were to rule or if the City were to change course,  
2 then -- which indicates that its interests actually  
3 aren't before the Court yet. The issue that's currently  
4 before the Court to determine and what the subject of  
5 this action is whether coaching is discipline. The  
6 Federation seems to agree with Plaintiff that that is the  
7 subject of the action. In its opening brief on page 5 it  
8 acknowledges Plaintiff may be correct that the issue in  
9 this case is whether coaching memoranda are in fact  
10 public record, and they concede in their own words in  
11 their reply that they "don't have any valuable input to  
12 provide on that question."

13 With that, Your Honor, the Plaintiffs are lost and a  
14 little confused as to what --

15 THE COURT: I'm a little confused too because  
16 as I took the complaint and took a look at the complaint  
17 so that I could try to understand whether this was a  
18 statutory interpretation issue really being made before  
19 the Court or whether there were claims for release of the  
20 information sought damages and the like, maybe I'm  
21 misinterpreting the complaint, but it seems to be  
22 extraordinarily broad in all the relief sought.

23 MS. NASCIMENTO: Right, but Your Honor --

24 THE COURT: I don't see that you have conceited  
25 any of the two points that have been made, and if there

1 is a concession on those points, I would certainly want  
2 that to be made perhaps in writing to the Court so that  
3 would be clear that there was a narrowing of the claims  
4 and issues before the Court.

5 MS. NASCIMENTO: Right, Your Honor. It's  
6 actually not Plaintiff's concession but rather the  
7 Federation's concession, but their interests just aren't  
8 ripe yet. They haven't materialized. It requires first  
9 a determination by this Court that coaching is  
10 discipline, and their interest is more on the remedy  
11 right, the timing of the release of the documents. The  
12 Plaintiff's position, at least for the relief right,  
13 which in their position is -- our position is that this  
14 coaching is discipline and that it is public information  
15 and should be released to the public, but the relief to  
16 the public is remedial and in fact requires that the  
17 Court first answer this predicate question, the merit  
18 question of is coaching discipline.

19 THE COURT: How do you envision that this is  
20 going to be presented to the Court? Is there going to be  
21 discovery that's needed? Is there -- that's going to  
22 include any of the private data? Is there going to be a  
23 trial where what is done and what is the coaching going  
24 to be presented? Are there going to be witnesses or is  
25 this purely a legal argument that's just going to be

1 presented to the Court essentially for a declaratory  
2 relief?

3 MS. NASCIMENTO: Thank you, Your Honor. We  
4 believe that this is a matter of statutory interpretation  
5 and would be a matter on dispositive motion, which  
6 obviously then would be subject to a hearing, but  
7 certainly we would engage in discovery. We think that to  
8 be able to make those arguments, we do need to engage in  
9 discovery. And we have asked for a trial, Your Honor,  
10 but it --

11 THE COURT: I know. I think you've asked for a  
12 jury trial.

13 MS. NASCIMENTO: I think that's correct, and --  
14 but on that point, Your Honor, I do think that it remains  
15 to be seen, but it does require this kind of focus on the  
16 central question of is coaching discipline, and that's  
17 what the trial or dispositive motion or frankly anything  
18 at this point would be about. There first needs to be  
19 this merit determination on whether coaching is  
20 discipline before the Federation's interest in  
21 arbitrating that discipline even materializes.

22 Now, because of that, Your Honor, and the concession  
23 from the Federation that they have no interest in either  
24 the merit question of is coaching discipline as well as  
25 the concession that they have no interest in perspective

1 instances of coaching as discipline, it leaves only the  
2 retrospective instances of coaching. On that, we don't  
3 actually disagree that the Federation would have an  
4 interest in being part of that conversation on the issue  
5 of timing of the release of the coaching data, but again,  
6 Your Honor, that's a remedial question that first  
7 requires that merit determination on the essential  
8 question of is coaching data? And on that question, the  
9 Federation has, in its own words, stated it has no  
10 valuable insight to provide.

11 THE COURT: So, if it's purely a matter of  
12 statutory interpretation, and there's not -- I'm not sure  
13 what discovery would be relevant to that, but perhaps  
14 there is some. I mean, should this be a bifurcated  
15 proceeding where that issue proceeds first as an issue of  
16 law on perhaps cross-motions and that the issue of  
17 intervention then be addressed at a later point?

18 MS. NASCIMENTO: We do think that Your Honor  
19 should deny the Federation's motion at this point without  
20 prejudice and permitting it to renew its motion at a  
21 later point after that initial question, the dispositive  
22 question of whether coaching is discipline, has been  
23 decided by the Court.

24 THE COURT: I guess that doesn't answer my  
25 question. Should we bifurcate that so discovery and

1 other things that parties would engage in in litigation  
2 wouldn't occur until after the legal issue was  
3 determined?

4 MS. NASCIMENTO: No, Your Honor. We think its  
5 necessary that there is discovery on this issue because  
6 to be able to provide Your Honor with a fulsome argument  
7 as to why coaching is discipline, we have provided well  
8 beyond what's needed obviously to survive a motion to  
9 dismiss and on the pleadings, but that's really only the  
10 tip of the iceberg. There's a lot of data that would  
11 need to be determined as for, for example, when coaching  
12 is being used and from what instance is it being used.  
13 We have provided, for example, the Coaching Job  
14 Documentation Form, which demonstrates that it is very  
15 similar to the City's use of, for example (inaudible),  
16 but without the benefit of discovery we simply don't have  
17 more to provide for the Court, but we think that  
18 discovery would demonstrate exactly how the City is using  
19 coaching as its form of discipline but to convert its  
20 obligation under the Minnesota Government Data Practices  
21 Act. So no, we disagree --

22 THE COURT: Would that discovery seek at all  
23 any of the documents the City has found not to be public?

24 MS. NASCIMENTO: I think that, Your Honor, in  
25 thinking through this might be what the City had

1 initially called your chambers in which the parties need  
2 to meet and confer on initially.

3 THE COURT: Because I'm going to let you know,  
4 I have a concern because then you are directly relating  
5 to pieces of information the City has classified as non-  
6 public that relate to individual employees, which are  
7 represented by the Federation. Wouldn't that bring them  
8 in, at least, as an interested party in that issue?

9 MS. NASCIMENTO: Respectfully, Your Honor,  
10 that's not the interest that they've stated, which is  
11 only on their ability to grieve or arbitrate discipline,  
12 and on that issue they've conceded that they don't have  
13 an interest or that it does not relate to the essential  
14 question of whether coaching is discipline. They stated  
15 that they have no valuable insight to provide on that  
16 question. The only interest that they've stated is on  
17 their ability to arbitrate discipline.

18 THE COURT: Wouldn't they have an issue if the  
19 Court had to fashion a protective order in an age of  
20 electronic data with the leaks and the like? Wouldn't  
21 they have an interest in the security and protection of  
22 what has been, at least up until now by the authority of  
23 the City, been determined to not be public information  
24 about an individual? Usually, you would allow that  
25 individual the opportunity to participate and have notice

1 because the Court is obligated under the statute to weigh  
2 the interest.

3 MS. NASCIMENTO: Certainly, Your Honor, and I  
4 think if that were the -- if that were the argument that  
5 the Federation has made, certainly we would have briefed  
6 it and I would like the opportunity if the Court is  
7 interested in that, the ability to brief it. That simply  
8 isn't the interest that they've put forward here. And  
9 they've said a couple of times that their interest is --  
10 arises solely after Your Honor determines that, in  
11 Plaintiff's favor, that coaching is discipline. If Your  
12 Honor determines that coaching is not discipline, in  
13 City's favor for example, then their interest never  
14 materializes. It is the Federation's burden under both  
15 Rule 24.01 and 24.02 to clearly lay out what their  
16 interest in this litigation is as to the subject of the  
17 action, and on that they've clearly laid out their  
18 interest. It's just not ripe yet.

19 Again, we would say, Your Honor, that the  
20 appropriate course here would be to deny the Federation's  
21 motion without prejudice leaving them the ability to  
22 renew their intervention motion at the time that their  
23 interest materializes, once the Court determines that  
24 coaching is discipline. I hope that I've answered Your  
25 Honor's question.

1 THE COURT: You have. Thank you.

2 MS. NASCIMENTO: If there's nothing else, Your  
3 Honor, I'm happy to answer any other question, but  
4 otherwise, I think that's all I've --

5 THE COURT: Just to be clear, my understanding  
6 is that the Plaintiff's are opposing intervention both as  
7 a matter of right and as permissive intervention,  
8 correct?

9 MS. NASCIMENTO: That's correct, Your Honor.  
10 We are opposing both. The timeliness requirement for us,  
11 Your Honor, really is the basis here and it's the fact  
12 that the Federation's stated interest does not  
13 materialize unless and until the Court determines that  
14 coaching is discipline, and that applies both to Rule  
15 24.01 as well as 24.02. In their argument in saying that  
16 there is a common question of law or fact, really that  
17 common question of law or fact only arises once their  
18 interest materializes. They can rely on power or point  
19 to their collective bargaining agreement on the basis of  
20 their right to arbitrate discipline only once coaching  
21 has been determined to be discipline. So, it's simply  
22 premature at this time. It should be denied without  
23 prejudice.

24 THE COURT: Okay. And just to be clear, and I  
25 think you've clearly stated, that your timeliness

1 objection isn't that it's being brought too late.

2 Instead, it's being brought too early.

3 MS. NASCIMENTO: That's right, Your Honor. I'm  
4 sorry, I should have said this as well, which is the case  
5 law also demonstrates that limited -- that intervention  
6 generally is not an all or nothing thing. Limited  
7 intervention, for example, granting intervention simply  
8 on its remedial issue of what is the timing of the  
9 release of this disciplinary data, is an inherent power  
10 that this Court has, and those cases appear on the  
11 Plaintiff's brief on page 16 at footnote 7. Thank you,  
12 Your Honor.

13 THE COURT: Thank you. Mr. Kelly, anything  
14 further?

15 MR. KELLY: Yes, Your Honor. Thank you. I'll  
16 be very brief. So, Plaintiff misstates the Federation's  
17 position in claiming that the sole interest is the  
18 ability to grieve and arbitrate discipline. Throughout  
19 the Federation's briefs, in the reply brief explicitly on  
20 page one, the interest is to keep its members private  
21 data private. Throughout the briefing, that is the  
22 interest, and the reason why its intertwined is the  
23 subdivision relied upon by Plaintiff in claiming that  
24 these are public -- this is public data is a claim that  
25 coaching memoranda are discipline. In order to do that,

1 the employee and the Federation have the right to  
2 challenge any discipline through due process, ultimately  
3 through the compulsory binding arbitration. The reason  
4 why this interest is now is that the -- if the Federation  
5 had the ability to grieve coaching memoranda from two  
6 years ago and it led to an arbitrator, an arbitrator  
7 could ultimately find that there was not just cause to  
8 issue coaching memoranda given the circumstances. Some  
9 of those circumstances, because this is not discipline,  
10 could be coaching memoranda issued in instances where  
11 there was not even a violation of any fault being  
12 alleged. It could be just a better way to do business,  
13 but the Federation's interest is to protect its -- as the  
14 exclusive representative of its members, to protect the  
15 members data and continue to keep them private and also  
16 to preserve its due process rights to challenge  
17 discipline. The reason why this is particularly  
18 concerning to the Federation is if the Court or the City  
19 were to make a finding or agree that coaching is in fact  
20 discipline and release it while under the Data Practices  
21 Act, an arbitrator -- if they were to find -- the  
22 arbitrator were to find that there was not just cause to  
23 support it, it would not be considered discipline and it  
24 would be removed and rescinded from the person's records.

25 Now, for retroactive or retrospective coaching

1 memoranda had not been subject to due process through the  
2 disciplinary process through a compulsory binding  
3 arbitration, which is why, now as Your Honor pointed out,  
4 the fact of bifurcation would be interesting, the  
5 Plaintiff clearly does not want that, which is why  
6 intervention is appropriate now. Otherwise, the  
7 Federation would be essentially forced to file a separate  
8 action, which would cloud the procedural foster of this  
9 case.

10 THE COURT: But would you agree with me that at  
11 most, perhaps the interest of the Federation in the  
12 statutory interpretation issue, may be perhaps an amicus  
13 type interest as opposed to an intervention party  
14 interest?

15 MR. KELLY: That's an interesting question that  
16 I hadn't thought of completely, but under the personnel  
17 data, under the subdivision, the Federation's interest is  
18 listed in the statute as an interested party because it's  
19 subject to the collective bargaining agreement and  
20 arbitration through the collective bargaining agreement.  
21 So, my --

22 THE COURT: To some extent, as to the legal  
23 issue itself, the interpretation of the statute, this  
24 case is based on a request for information related to  
25 employees subject to the Federation Union, but really a

1 decision from this Court or if appealed and incorporated  
2 into the interpretation of the statute, wouldn't your  
3 interest really be the same as any other public employee  
4 union?

5 MR. KELLY: Yes, but what's being starred here  
6 is not just any other public union. This is specific to  
7 the Federation's memberships -- the data on the  
8 Federation's membership. This isn't the Plaintiff just  
9 seeking all coaching memoranda. It's asking for the  
10 Minneapolis Police Department's coaching data.

11 THE COURT: Anything further?

12 MR. KELLY: No, Your Honor. Thank you very  
13 much.

14 THE COURT: Anything further from the  
15 Plaintiff?

16 MS. NASCIMENTO: No, Your Honor. I'm simply  
17 saying that for all the reasons that we've already  
18 stated, intervention at this point would be inappropriate  
19 under Rule 24.01 and 24.02, and that Your Honor should  
20 deny without prejudice permitting the Federation to renew  
21 its motion after the Court has determined that coaching  
22 is discipline. Thank you.

23 THE COURT: Okay. The Court will take the  
24 matter under advisement. I will issue a decision as soon  
25 as I can. I do consider this to be pretty time sensitive

1 as opposed to some of the other matters the Court has  
2 under advisement, so I will try to get to it as soon as I  
3 can and get an order out. With that, if there are -- we  
4 can go ahead and go off the formal court record.

5 (The proceedings were adjourned.)  
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1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

3 \* \* \* \* \*

4 Minnesota Coalition on Government Information,

5 Plaintiff,

6 vs.

Court File No. 27-CV-21-7237

7 City of Minneapolis; Casey J. Carl,  
8 in his official capacity as City Clerk  
9 for the City of Minneapolis; Patience Ferguson,  
10 in her official capacity as Chief Officer in the  
11 Human Resources Department for the City of  
12 Minneapolis; and Medaria Arradondo, in his official  
13 capacity as Chief of Police for the Minneapolis Police  
14 Department,

Defendant.

15 \* \* \* \* \*

COURT REPORTER'S CERTIFICATE

16 I, Christine Lewandoski, an Official Court Reporter in and  
17 for the Fourth Judicial District of the State of Minnesota, do  
18 hereby certify that I have transcribed the foregoing transcript  
19 from the Court Smart audio recording, and that the foregoing  
20 pages constitute a true and correct transcript of the  
21 proceedings taken in connection with the above-entitled matter.

DATED this 14th day of December 2021.

22 /s/ Christine Lewandoski

23 Christine Lewandoski, Court Reporter  
24 C-859 Government Center  
25 300 South Sixth Street  
Minneapolis, MN 55487  
612-596-1950